

Fill in this information to identify the case:

United States Bankruptcy Court for the:

Southern District of Florida  
(State)

Case number (if known): Chapter 11

☐ Check if this is an amended filing

## Official Form 205

**Involuntary Petition Against a Non-Individual**

12/15

Use this form to begin a bankruptcy case against a non-individual you allege to be a debtor subject to an involuntary case. If you want to begin a case against an individual, use the *Involuntary Petition Against an Individual* (Official Form 105). Be as complete and accurate as possible. If more space is needed, attach any additional sheets to this form. On the top of any additional pages, write debtor's name and case number (if known).

**Part 1: Identify the Chapter of the Bankruptcy Code Under Which Petition Is Filed****1. Chapter of the Bankruptcy Code**

Check one:

- ☐ Chapter 7  
☒ Chapter 11

FILED-USBC, FLS-WPB  
 '22 APR 19 PM12:22

**Part 2: Identify the Debtor****2. Debtor's name**

Bernstein Family Realty, LLC

**3. Other names you know the debtor has used in the last 8 years**

Include any assumed names, trade names, or doing business as names.

BFR, LLC  
 BERNSTEIN FAMILY REALTY, LLC  
 BFR

**4. Debtor's federal Employer Identification Number (EIN)**☐ Unknown

26 - 2735064  
 EIN

**5. Debtor's address**

Principal place of business

2753 NW 34th Street

Number Street

Boca Raton FL 33434  
 City State ZIP Code

Palm Beach County

County

Mailing address, if different

2753 NW 34th Street

Number Street

P.O. Box

Boca Raton FL 33434  
 City State ZIP Code

Location of principal assets, if different from principal place of business

Real Estate at same address

Number Street

and unknown location Liquid assets

City State ZIP Code

Debtor Bernstein Family Realty, LLC  
Name

Case number (if known) \_\_\_\_\_

6. Debtor's website (URL) not applicable

7. Type of debtor
- ☒ Corporation (including Limited Liability Company (LLC) and Limited Liability Partnership (LLP))
- ☐ Partnership (excluding LLP)
- ☐ Other type of debtor. Specify: \_\_\_\_\_

## 8. Type of debtor's business

Check one:

- ☐ Health Care Business (as defined in 11 U.S.C. § 101(27A))
- ☐ Single Asset Real Estate (as defined in 11 U.S.C. § 101(51B))
- ☐ Railroad (as defined in 11 U.S.C. § 101(44))
- ☐ Stockbroker (as defined in 11 U.S.C. § 101(53A))
- ☐ Commodity Broker (as defined in 11 U.S.C. § 101(6))
- ☐ Clearing Bank (as defined in 11 U.S.C. § 781(3))
- ☒ None of the types of business listed.
- ☐ Unknown type of business.

## 9. To the best of your knowledge, are any bankruptcy cases pending by or against any partner or affiliate of this debtor?

- ☒ No *P*
- ☐ Yes. Debtor \_\_\_\_\_ Relationship \_\_\_\_\_
- District \_\_\_\_\_ Date filed \_\_\_\_\_ Case number, if known \_\_\_\_\_
- MM / DD / YYYY
- Debtor \_\_\_\_\_ Relationship \_\_\_\_\_
- District \_\_\_\_\_ Date filed \_\_\_\_\_ Case number, if known \_\_\_\_\_
- MM / DD / YYYY

**Part 3: Report About the Case**

## 10. Venue

Check one:

- ☒ Over the last 180 days before the filing of this bankruptcy, the debtor had a domicile, principal place of business, or principal assets in this district longer than in any other district.
- ☐ A bankruptcy case concerning debtor's affiliates, general partner, or partnership is pending in this district.

## 11. Allegations

Each petitioner is eligible to file this petition under 11 U.S.C. § 303(b).

The debtor may be the subject of an involuntary case under 11 U.S.C. § 303(a).

At least one box must be checked:

- ☒ The debtor is generally not paying its debts as they become due, unless they are the subject of a bona fide dispute as to liability or amount.
- ☐ Within 120 days before the filing of this petition, a custodian, other than a trustee, receiver, or an agent appointed or authorized to take charge of less than substantially all of the property of the debtor for the purpose of enforcing a lien against such property, was appointed or took possession.

## 12. Has there been a transfer of any claim against the debtor by or to any petitioner?

- ☒ No
- ☐ Yes. Attach all documents that evidence the transfer and any statements required under Bankruptcy Rule 1003(a).

Debtor Bernstein Family Realty, LLC  
Name

Case number (if known) \_\_\_\_\_

**13. Each petitioner's claim**

Name of petitioner	Nature of petitioner's claim	Amount of the claim above the value of any lien
<u>Joshua Bernstein</u>	<u>See attached</u>	<u>\$ \$77,411.00</u>
<u>Jacob Bernstein</u>	<u>See attached</u>	<u>\$ \$77,411.00</u>
<u>Daniel Bernstein</u>	<u>See attached</u>	<u>\$ 77,411.00</u>
Total of petitioners' claims		<u>\$ 232,233.00</u>

If more space is needed to list petitioners, attach additional sheets. Write the alleged debtor's name and the case number, if known, at the top of each sheet. Following the format of this form, set out the information required in Parts 3 and 4 of the form for each additional petitioning creditor, the petitioner's claim, the petitioner's representative, and the petitioner's attorney. Include the statement under penalty of perjury set out in Part 4 of the form, followed by each additional petitioner's (or representative's) signature, along with the signature of the petitioner's attorney.

**Part 4: Request for Relief**

**WARNING** – Bankruptcy fraud is a serious crime. Making a false statement in connection with a bankruptcy case can result in fines up to \$500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

Petitioners request that an order for relief be entered against the debtor under the chapter of 11 U.S.C. specified in this petition. If a petitioning creditor is a corporation, attach the corporate ownership statement required by Bankruptcy Rule 1010(b). If any petitioner is a foreign representative appointed in a foreign proceeding, attach a certified copy of the order of the court granting recognition.

I have examined the information in this document and have a reasonable belief that the information is true and correct.

**Petitioners or Petitioners' Representative****Name and mailing address of petitioner**

Name Joshua Bernstein  
2753 NW 34th Street  
Number Street  
City Boca Raton State FL ZIP Code 33434

**Name and mailing address of petitioner's representative, if any**

Name \_\_\_\_\_  
Number Street \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ ZIP Code \_\_\_\_\_

I declare under penalty of perjury that the foregoing is true and correct.

Executed on

MM / DD / YYYY

X

Signature of petitioner or representative, including representative's title

**Attorneys**

Printed name \_\_\_\_\_  
Firm name, if any \_\_\_\_\_  
Number Street \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ ZIP Code \_\_\_\_\_  
Contact phone \_\_\_\_\_ Email \_\_\_\_\_  
Bar number \_\_\_\_\_  
State \_\_\_\_\_

X

Signature of attorney

Date signed

MM / DD / YYYY

Debtor **Bernstein Family Realty, LLC**  
 Name

Case number (if known)

**Name and mailing address of petitioner**

**Jacob Bernstein**

Name

**2753 NW 34th Street**

Number Street

**Boca Raton**

**FL**

**33434**

City

State

ZIP Code

**Name and mailing address of petitioner's representative, if any**

Name

Number Street

City

State

ZIP Code

I declare under penalty of perjury that the foregoing is true and correct.

Executed on

MM / DD / YYYY

x

Signature of petitioner or representative, including representative's title

Printed name

Firm name, if any

Number Street

City

State

ZIP Code

Contact phone

Email

Bar number

State

x

Signature of attorney

Date signed

MM / DD / YYYY

**Name and mailing address of petitioner**

**Daniel Bernstein**

Name

**2753 NW 34th Street**

Number Street

**Boca Raton**

**FL**

**33434**

City

State

ZIP Code

**Name and mailing address of petitioner's representative, if any**

Name

Number Street

City

State

ZIP Code

I declare under penalty of perjury that the foregoing is true and correct.

Executed on

MM / DD / YYYY

x

Signature of petitioner or representative, including representative's title

Printed name

Firm name, if any

Number Street

City

State

ZIP Code

Contact phone

Email

Bar number

State

x

Signature of attorney

Date signed

MM / DD / YYYY



**BERNSTEIN FAMILY REALTY, LLC  
ADDITIONAL WORKSHEET TO INVOLUNTARY PETITION**

**CHAPTER 11 INVOLUNTARY BANKRUPTCY PETITION AGAINST  
BERNSTEIN FAMILY REALTY, LLC US BANKRUPTCY COURT FOR THE  
SOUTHERN DISTRICT OF FLORIDA**

1. We are the Petitioners, individual Creditors Joshua, Jacob and Daniel Bernstein filing this Involuntary petition against Bernstein Family Realty, LLC .
2. We are all over the age of 18 years.
3. We are filing this Individual Petition against a company, BFR, LLC and are the sole Owners and Members of this Company owning the LLC through our Individual Irrevocable Trusts where we individually are the sole and only beneficiary of each such Trust.
4. The Trusts are attached as Exhibits along with the Operating Agreement of Bernstein Family Realty, LLC. .
5. We are not lawyers but are all educated and read English and research and have a State court attorney but are still seeking a Bankruptcy attorney and reserve the right to have an attorney represent us once we can retain one.
6. We file this Petition in good faith for a proper purpose to seek the equal distribution of the assets of BFR to proper Creditors.

7. We believe there are special circumstances in our filing because we were minors when some of the original acts occurred that we have been told about and learned about and read about.
8. We are still still trying to understand and sort out a lot of this out since this LLC was set up by our Grandfather Simon Bernstein as Asset Protection for us and also our parents to have a home which is the main asset at risk to what we are told and believe is an improper foreclosure.
9. We have been told and believe this main asset which is real estate at 2753 NW 34th Street Boca Raton, Florida has been steered by improper preference to and by Ted Bernstein and his attorney Alan Rose and where a risk of further disproportionate share of this asset may go to Ted Bernstein and where we have been told this asset should have been paid off years ago according to our father and a Sworn Statement by William Stansbury who was friends and in business with our Grandfather and was also selected by him as Successor Trustee of his Trusts.
10. This sworn statement is attached as well. . .
11. We believe the purpose of filing is proper to protect both BFR and ourselves as Creditors under the US Bankruptcy laws.
12. We each made Capital Contributions to purchase and protect this Asset the bulk of which was paid for by our Trusts in 2008 totalling \$217,233.00 and

we have attached Bank Records to show these payments which we each made equally.

13. We also each paid taxes to maintain this Asset from our own funds totalling \$15,000.00 paying one third each by Agreement.
14. The Operating Agreement gives us the clear and undisputed right to seek return of our Capital Contributions and there is no dispute about this or the amounts in question which is why our claims are one third each of those undisputed amounts paid.
15. We understand there are at least 2 Creditors against the Real Estate being Walter Sahm and his Patricia Sahm that have a Note and Mortgage on this asset but we recently confirmed Walter Sahm is Deceased as of over 15 months ago by confirmed Florida Death Certificate from Sumter County but their lawyer Robert Sweetapple hid and concealed this Suggestion of Death from the State Court for over 8 months and filed in Walter's name as a Deceased person getting improper Judgment now trying to Sell the property improperly.
16. We have been shown handwritten Letters by Walter and Pat Sahm sent to our parents and Ted Bernstein back in 2013 where even Walt Sahm told Ted

and all the documents and records from Trusts and banks and never paid the Note.

17. So since the hijacking of our Company and other misconduct by Ted Bernstein and Tescher and Spallina as Estate lawyers and other frauds we have been told about BFR, LLC stopped paying it's bills properly and continued to not pay which is why the foreclosure is going as part of a scheme as Mr. Stansbury even confirms the Note was supposed to be paid upon our Grandfather's passing and more than enough monies were there to pay this and we were not individually liable and Mr. Stansbury confirms this was not supposed to diminish our other Inheritances which have not been paid either except for a small amount.

18. Somehow the "new lawyer" for Walt and Pat Sahm never sued Ted Bernstein and instead we have been shown a Transcript where Robert Sweetapple who sued wrong parties and didn't name parties right and concealed the Death of Walt Sahm from the Court for months was also admitting to conferring with attorney Alan Rose for Ted Bernstein who is also at the center of withholding Documents and Records and accounts from us for years and even using an illegal Guardianship against Josh and then Jake Bernstein when over the age of 18 years using this setup to withhold information and disclosures to us.

19. This is shown by the attached filing by attorney Paul Turner who shows Josh never has received any information and disclosures nor have any of us.
20. From what we are told Tescher and Spallin resigned in fraud from the original Trusts and Estate cases and Resigned as Registered Agent of BFR, LLC so there is no proper party to be Served listed at the Secretary of State listing so the Secretary of State probably needs to get Served this Petition.
21. We have attached documents showing our Father had an attorney at Tripp Scott trying to get original documents and any documents from Tescher and Spallina going back to 2012 and this is attached too and so are attempts our Father made on his own to get documents and records from the Courts but to this day we have virtually no information on BFR, LLC.
22. Our parents Eliot and Candice Bernstein are likely Creditors as well from the way BFR, LLC and the mortgage foreclosure threat and games were used against them by Ted Bernstein and Alan Rose to extort them into taking improper settlements and we are told they may have claims from all the upkeep to this asset they did as well.
23. But we understand from recent Zillow searches there should be at least \$400,000.00 or so plus in Equity in the property even after the Sahms are fully paid off at their numbers which we believe are improper based on the



fraudulent filings in the foreclosure and actions of Robert Sweetapple working with Alan Rose for Ted Bernstein.

24. We have also attached records showing over \$6 Million plus in Accounts that our Grandfather had at the time of passing and then value of Real Estate and other assets and understand some of these Investments and Accounts should have flowed into BFR.
25. So we think there is a good chance of a plan to save BFR and restore its status but at least pay all proper creditors.
26. We also believe Ted Bernstein and Alan Rose should be holding at least \$1 Million in their Trust Account for the 3 of us from the sale of our grandparents home in Lions Head Lane in St. Andrews and a beach Condo.
27. There are accounts at JP Morgan and Wilmington Trust and others that have never been accounted for and in addition to BFR records there is LIC Holdings ( Life Insurance Concepts ) and Bernstein Family Investments ( BFI ) and Bernstein Family Holdings that are all entities for BFR to look to go over potential assets.
28. We have attached as many documents to help explain this complex case and are trying to get an attorney to further help us in Bankruptcy but Alan Rose as attorney for Ted Bernstein has been holding up release of \$300,000.00 in a Court Registry solely for in our names that we could use to revamp BFR

and claw back and find its assets but Rose and Ted Bernstein have blocked those funds too to even save BFR's one clear real estate asset off the foreclosure block.

29. We think our Father has some message from Walt Sahn the Secured Creditor through his Estate now going back to when Walt was actually alive several years ago where Walt said to our Dad that our Grandfather Simon had told Walt that Simon was worth about \$41 Million before he passed yet we have only been Distributed about \$100,000.00 total since 2012 and where the Sahms should have been paid off years ago but for Ted Bernstein and Alan Rose and those working with them.

30. These documents should help show the special circumstances of the case.

**WARNING --** Bankruptcy fraud is a serious crime. Making a false statement in connection with a bankruptcy case can result in fines up to \$500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571. Petitioners request that an order for relief be entered against the debtor under the chapter of 11 U.S.C. specified in this petition. If a petitioning creditor is a corporation, attach the corporate ownership statement required by Bankruptcy Rule 1010(b). If any petitioner is a foreign representative appointed in a foreign proceeding, attach a certified copy of the order of the court granting recognition.

I have examined the information in this document and have a reasonable belief that the information is true and correct.

Petitioners or Petitioners' Representative Attorneys

Name and mailing address of petitioner

JOSHUA BERNSTEIN

Name

2753 NW 34TH STREET

Number Street

BOCA RATON, FL 33434

City State ZIP Code

Name and mailing address of petitioner's representative, if any

Name

Number Street

City State ZIP Code

I declare under penalty of perjury that the foregoing is true and correct.

Executed on

MM / DD / YYYY

Signature of petitioner or representative, including representative's title

JACOB BERNSTEIN

Name

2753 NW 34TH STREET

Number Street

BOCA RATON, FL 33434

\_\_\_\_\_  
City State ZIP Code

Name and mailing address of petitioner's representative, if any

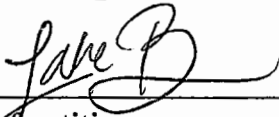
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Name

\_\_\_\_\_  
Number Street

\_\_\_\_\_  
City State ZIP Code

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 04/19/22  
MM / DD / YYYY

  
Signature of petitioner or representative, including representative's title

DANIEL BERNSTEIN

\_\_\_\_\_  
Name

2753 NW 34TH STREET

\_\_\_\_\_  
Number Street

BOCA RATON, FL 33434

\_\_\_\_\_  
City State ZIP Code

Name and mailing address of petitioner's representative, if any

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Name

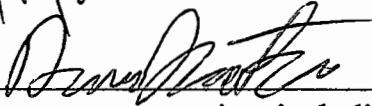
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City State ZIP Code

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 04/14/22

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Signature of petitioner or representative, including representative's title



Filing # 146761038 E-Filed 03/30/2022 11:15:10 PM

**EXHIBIT 1.530**

CASE NO.: 50-2018-CA-002317  
Sahm Foreclosure v BFR, LLC et al

**PROOF OF WIRE TRANSFER IN AMOUNT OF \$217,233.00 FROM  
TRUSTS BELONGING TO JOSHUA, JACOB AND DANIEL BERNSTEIN**  
FOR DOWN PAYMENT PURCHASE OF SAHM HOME VIA BFR,LLC AND  
HUD STATEMENT AND WARRANTY DEED JUNE 20, 2008

NOTE - DOCUMENTS TAKEN FROM LIS PENDENS FILED IN SAHM  
FORECLOSURE BY DEFENDANT CANDICE BERNSTEIN UNDER  
ECASEVIEW DOCUMENT NUMBER 75 FILED MAY 26, 2020

06/20/08 11:51:02

&lt;CHANNEL 14&gt;-&gt;

5613923969

Page 001

COMERICA BANK  
WIRE TRANSFER FAX NOTIFICATION

## DOMESTIC CREDIT ADVICE

FLORIDA TITLE AND CLOSING COMPANY  
CO JOHN M CAPPELLER JR PA  
350 CAMINO GARDENS BLVD STE303  
BOCA RATON, FL 33432Fax Date 06/20/2008  
Transfer Date 06/20/2008  
Account [REDACTED]  
Seq # 080620003519  
Amount \$217,233.00  
Fad Ref 000712

Sending Bank 061003415 SILVERTON BK, N.A.

Receiving Bank 067012099 COMERICA BANK

Beneficiary ACCT-[REDACTED]  
FLORIDA TITLE & CLOSING COMPANY ESC  
350 CAMINO GARDENS BLVD # 303  
BOCA RATON, FL 33432Originator ACCT-xxx [REDACTED]  
BERNSTEIN FAMILY REALTY LLC  
950 PENINSULA CORPORATE CIRCLE  
SUITE 3010 BOCA RATON, FL 33487Originator's Bank ABA-[REDACTED]  
LEGACY BANK OF FLORIDA

Amount \$217,233.00

Acceptance Timestamp 06/20/2008 11:32

OMAD Fields 20080620F6QC949C00001006201132FT01

IMAD 20080620F1B7281C000712

THIS TRANSFER IS SUBJECT TO APPLICABLE FEES AND THE TERMS AND CONDITIONS OF  
THE 'FUNDS TRANSFER AUTHORIZATION AND AGREEMENT'.PLEASE DIRECT INQUIRIES TO COMERICA INVESTIGATIONS AT 1-800-643-4421  
PRESS OPTION 3 AND REFER TO THE WIRE SEQ #

HUD-1 U.S. Department of Housing and Urban Development Page 2

Settlement Statement			Paid from Borrower's Funds at Settlement	Paid from Seller's Funds at Settlement
100. Total Sales/Broker's Com. based on price	\$360,000.00 @	% = 540.00		
101.	540.00	% to Remax Advantage Plus		
102.		% to		
103. Commission paid at settlement				540.00
104. Processing Fee		to Remax Advantage Plus	245.00	245.00
105. Loan origination fee		% to		
106. Loan discount		% to		
107. Appraisal fee		to		
108. Credit report		to		
109. Lender's inspection fee		to		
110. Mortgage insurance application fee		to		
111. Assumption Fee		to		
112.		to		
113.		to		
114.		to		
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116. Interest from 06/20/08 to 07/01/08	\$ 18,569.00	/day	215.48	
117. Mortgage insurance premium for	months to			
118. Hazard insurance premium for	years to			
119. Flood insurance premium for	years to			
120.	years to			
121. Hazard insurance	months @	per month		
122. Mortgage insurance	months @	per month		
123. City property taxes	months @	per month		
124. County property taxes	months @	per month		
125. Annual assessments	months @	per month		
126. Flood insurance	months @	per month		
127.	months @	per month		
128.	months @	per month		
129. Aggregate accounting adjustment				
130. Settlement or closing fee	to Florida Title & Closing Co.		150.00	150.00
131. Abstract or title search	to Florida Title & Closing Co.			275.00
132. Title examination	to			
133. Title insurance binder	to			
134. Mortgage Document Preparation	to Florida Title & Closing Co.		350.00	
135. Notary fees	to			
136. Attorney's Fees	to Steven I. Greenwald, P.A.		2,250.00	
(includes above item numbers:)				
137. Title insurance	to Florida Title & Closing Co.		25.00	1,875.00
(includes above item numbers:)				
138. Lender's coverage (Premium):	\$110,000.00 (\$25.00)			
139. Owner's coverage (Premium):	\$360,000.00 (\$1,875.00)			
140. Endorse:				
141.	to			
142.	to			
143.	to			
144. Recording fees	Deed \$19.10 Mortgage(s) \$97.10 Releases		105.20	
145. City/county tax/stamps	Deed Mortgage(s)		220.00	
146. State tax/stamps	Deed \$2,520.00 Mortgage(s) \$385.00		385.00	2,520.00
147.	to			
148. Release Processing Fee	to Florida Title & Closing Co.		25.00	
149. Survey	to PAC Surveying		323.00	
150. Courier/Recording-Express Processing	to Florida Title & Closing Co.		50.00	25.00
151. Municipal Lien Processing Fee	to Florida Title & Closing Co.			40.00
152. F&B Storage Processing Fee	to Florida Title & Closing Co.		37.50	37.50
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(Enter on lines 103, Section J and 602, Section K)			4,389.18	3,732.00

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account by me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement.

Bernstein Family Realty LLC

By: Simon Bernstein, Manager Borrower

Borrower

Walter E. Syme Seller

Patricia Salim Seller

The HUD-1 Settlement Statement which I have prepared is a true and accurate account of this transaction. I have caused, or will cause, the funds to be disbursed in accordance with this statement.

Florida Title & Closing Co.

As its Authorized Representative

Date

WARNING: It is a crime to knowingly make false statements to the United States on this or any other similar form. Penalties upon conviction can include a fine and imprisonment. For details see Title 18 U.S.C. Code Section 1001 and Section 1010.

DoubleTime®

HUD-1 U.S. Department of Housing and Urban Development Page 2

700. Total Sales/Broker's Com. based on price		\$350,000.00 @	% = 540.00	Paid from Borrower's Funds at Settlement	Paid from Seller's Funds at Settlement
701.	540.00	% to Remax Advantage Plus			
702.		% to			
703.	Commission paid at settlement				540.00
704.	Processing Fee to Remax Advantage Plus			245.00	245.00
705.	Loan origination fee % to				
706.	Loan discount % to				
707.	Appraisal fee to				
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I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or for me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement.

Bernstein Family Realty, LLC

By: Simon Bernstein, Manager Borrower

Borrower

Walter E. Salem Seller

Patricia Salem Seller

The HUD-1 Settlement Statement which I have prepared is a true and accurate account of this transaction. I have caused, or will cause, the funds to be disbursed in accordance with this statement.

Florida Title & Closing Co.

As its Authorized Representative

Date

WARNING: It is a crime to knowingly make false statements to the United States on this or any other similar form. Penalties upon conviction can include a fine and imprisonment. For details see Title 18 U.S.C. Code Section 1001 and Section 1010.

DoubleTime®



Prepared by and return to:  
John M. Cappeller, Jr.

Florida Title & Closing Co.  
350 Camino Gardens Blvd. Suite 303  
Boca Raton, FL 33432  
561-392-3636  
File Number: FT08-087  
Will Call No. 159

CFN 20080241510  
OR BK 22723 PG 0689  
RECORDED 06/26/2008 09:06:17  
Palm Beach County, Florida  
AMT 360,000.00  
Doc Stamp 2,520.00  
Sharon R. Bock, CLERK & COMPTROLLER  
Pg# 0689 - 690; (2pgs)

Parcel Identification No. 06-42-47-10-02-007-0680

[Space Above This Line For Recording Data]

## Warranty Deed

(STATUTORY FORM - SECTION 689.02, F.S.)

This Indenture made this 18<sup>th</sup> day of June, 2008 between Walter E. Sahm and Patricia Sahm, his wife whose post office address is 8230 SE 17<sup>th</sup> Winterthur Loop, The Villages, FL 32162 of the County of Marion, State of Florida, grantor\*, and Bernstein Family Realty, LLC, a Florida limited liability company whose post office address is 950 Peninsula Corporate Circle, Suite 3010, Boca Raton, FL 33431 of the County of Palm Beach, State of Florida, grantee\*,

Witnesseth that said grantor, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable considerations to said grantor in hand paid by said grantee, the receipt whereof is hereby acknowledged, has granted, bargained, and sold to the said grantee, and grantee's heirs and assigns forever, the following described land, situate, lying and being in Palm Beach County, Florida, to-wit:

Lot 68, Block G, BOCA MADERA UNIT 2, according to the Plat thereof, recorded in Plat Book 32, Pages 59 AND 60, of the Public Records of Palm Beach County, Florida.

Subject to restrictions, reservations and easements of record and taxes for the year 2008 and thereafter

and said grantor does hereby fully warrant the title to said land, and will defend the same against lawful claims of all persons whomsoever.

\* "Grantor" and "Grantee" are used for singular or plural, as context requires.

DoubleTime



Filing # 146674645 E-Filed 03/30/2022 07:36:23 AM

**EXHIBIT 1.530**

CASE NO.: 50-2018-CA-002317  
Sahm Foreclosure v BFR, LLC et al

JUNE 2008 LETTER TO STANFORD TRUST COMPANY PRESIDENT FROM NATURAL FATHER AND GUARDIAN ELIOT BERNSTEIN DIRECTING TRUST FUNDS FROM JOSH, JAKE AND DANNY BERNSTEIN TRUSTS FOR PAYMENT OF THE SAHM HOUSE SUBJECT OF THIS FORECLOSURE.

Eliot Bernstein  
39 Little Ave  
Red Bluff, CA 96080-3519  
RE: Children's Residence

June 18, 2008

Mr. Louis Fournet  
President  
Stanford Trust Company  
445 North Boulevard, 8<sup>th</sup> Floor  
Baton Rouge, LA 70802

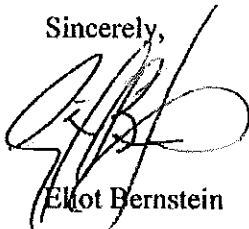
Dear Mr. Fournet:

Please be advised that as guardian for my children that they will be moving into a residence, with the address of 2753 NW 34<sup>th</sup> Street, Boca Raton, FL 33434.

We are requesting that the funds from the children's individual Irrevocable Trust accounts be used toward the purchase of this residence. This is necessary to provide shelter for the children. These are the only available funds for this residence. My children are listed below.

Josh Bernstein  
Jacob Bernstein  
Daniel Bernstein

Sincerely,

A handwritten signature in black ink, appearing to be 'Eliot Bernstein', written over a horizontal line.

Eliot Bernstein

Eliot & Candice Bernstein  
39 Little Ave  
Red Bluff, CA 96080-3519

June 18, 2008


Mr. Louis Fournet  
President  
Stanford Trust Company  
445 North Boulevard, 8<sup>th</sup> Floor  
Baton Rouge, LA 70802

RE: Distribution for Children's Residence

Dear Mr. Fournet:

Please be advised that as guardians for our children, Josh, Jacob and Daniel Bernstein that they will be moving into a residence, with the address of 2753 NW 34<sup>th</sup> Street, Boca Raton, FL 33434. We hereby, indemnify Stanford Trust Company for this distribution with respect to any future needs of the children.

Sincerely,



Eliot Bernstein



Candice Bernstein

Filing # 146993626 E-Filed 04/04/2022 02:39:11 PM

**EXHIBIT 1.530**

CASE NO.: 50-2018-CA-002317

Sahm Foreclosure v BFR, LLC et al

**PART OF THE "MISSING MILLIONS"** BEING JUST ONE ACCOUNT STATEMENT FROM WILMINGTON TRUST FOR SIMON BERNSTEIN IRREVOCABLE TRUST DATED THROUGH AUGUST 31, 2012 LESS THAN 2 WEEKS BEFORE SIMON BERNSTEIN PASSES **BEING JUST ONE ACCOUNT "NEVER ACCOUNTED FOR" TO THIS DATE** WHILE TED BERNSTEIN AND ALAN ROSE CARRY ON A "NARRATIVE" OF SIMON AS A "PAUPER"

NOT A CERTIFIED COPY

088949-000 TT/SIMON L BERNSTEIN IRREVTR

*As of August 31, 2012*

**Private Client Advisor:**

CARECE M. RUFÉ

[cruse@wilmingtontrust.com](mailto:cruse@wilmingtontrust.com)

302-651-8248

**Rodney Square North**  
1100 North Market Street

Wilmington DE 19890-0001

[www.wilmingtontrust.com](http://www.wilmingtontrust.com)

877-836-9206

On July 1, 2012, Wilmington Trust converted to a new trust and investment management system. This statement is produced from our new system which reflects information in a slightly different format. Please note that year to date fields will include cumulative data with a start date of July 1, 2012, but will not include data or totals from the first six months of 2012. If you have any questions, please contact your relationship team.

For clients invested in the Wilmington Trust Common Trust Funds, audited financial reports are prepared annually for the funds and are available to you at no charge. If you would like to receive copies of these reports, please contact your Relationship Manager. Wilmington Trust receives an administration fee from the common trust funds equal to 0.10% annually of the market value of the common trust funds held in client accounts.

1602671 02 AT 0744 \*\*AUTO 9 1 4704 33496 000023999 00011N

www.scribd.com

**SIMON L. BERNSTEIN**

7020 LIONS HEAD LANE

BOCA RATON, FL 33496-5931



2012-09-06 00001123100000 MSE162671 0001 0001130206 000623999 00001500 088949-000 H





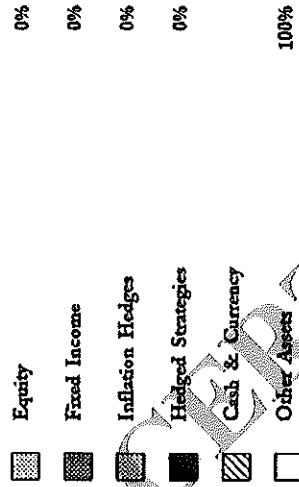
# Market Value Summary

083949-000 TT/SIMON L BERNSTEIN IRREV TR

As of August 31, 2012

Page 1 of 7

ASSET ALLOCATION  
CURRENT RELATIONSHIP MARKET VALUE: \$2,829,962



	MARKET VALUE (M/V) As of 7/31/2012	NET CONTRIBUTIONS (WITHDRAWALS)	MARKET VALUE (M/V) CHANGE	MARKET VALUE (M/V) As of 8/31/2012
TOTAL PRINCIPAL	\$2,842,462	\$0	\$0	\$2,842,462
TOTAL INCOME	(\$12,500)	\$0	\$0	(\$12,500)
TOTAL	\$2,829,962	\$0	\$0	\$2,829,962

Net contribution/withdrawal figures include fees. Market value figures include accruals.



TS004808

2012-09-06 00001121100000 MSB1602671 0001 0001130206 000023998 00001500 088949-000 H



# Income Summary

088949-000 TT/SIMONLBERNSTEIN IRREV TR

As of August 31, 2012

Page 2 of 7

	From 7/31/2012 through 8/31/2012	Calendar Year to Date
	TAXABLE	TAX EXEMPT
TOTAL PRINCIPAL	\$0	\$0
TOTAL INCOME	\$0	\$0
TOTAL	\$0	\$0

## Realized Gain/(Loss) Summary

	From 7/31/2012 through 8/31/2012	Calendar Year to Date
	SHORT TERM	LONG TERM
TOTAL PRINCIPAL	\$0	\$0
TOTAL	\$0	\$0

Realized gain/(loss) figures do not include currency gain/(loss).

TS004809

2012-09-06 00001123100000 MSB1602671 0001 0001130206 000023598 00001500 08 000 H



## Summary of Investments

088949-000 TT/SIMON L. BERNSTEIN IRREV TR

As of August 31, 2012

Page 3 of 7

INVESTMENT CATEGORY	MARKET VALUE (M/V) As of 7/31/2012	% OF M/V	MARKET VALUE (M/V) As of 8/31/2012	% OF M/V
<b>PRINCIPAL PORTFOLIO(S)</b>				
Cash & Currency				
Uninvested Cash				
TOTAL Cash & Currency	(\$729.06)	(0.03)	(\$729.06)	(0.03)
Other Assets				
Privately Held Partnerships				
TOTAL Other Assets	2,843,190.72	100.03	2,843,190.72	100.03
<b>TOTAL PRINCIPAL PORTFOLIO(S)</b>	<b>2,842,461.66</b>	<b>100.00</b>	<b>2,842,461.66</b>	<b>100.00</b>
<b>INCOME PORTFOLIO(S)</b>				
Cash & Currency				
Uninvested Cash				
TOTAL Cash & Currency	(12,500.00)	100.00	(12,500.00)	100.00
<b>TOTAL INCOME PORTFOLIO(S)</b>	<b>(12,500.00)</b>	<b>100.00</b>	<b>(12,500.00)</b>	<b>100.00</b>
<b>GRAND TOTAL(S)</b>	<b>2,829,961.66</b>		<b>2,829,961.66</b>	



TS004810

2012-09-0600001123100000 MSB1602571 0001 0001130206 000023997 00161000 088949-000 H



# Summary of Activity

038949-000 TT/SIMON L BERNSTEIN IRREV TR

August 1, 2012 through August 31, 2012

Page 4 of 7

	AMOUNT
<b>PRINCIPAL</b>	
OPENING CASH & CASH MANAGEMENT BALANCES:	
RECEIPTS	
No activity during this period	
DISBURSEMENTS	
No activity during this period	
CLOSING CASH & CASH MANAGEMENT BALANCES:	(729.06)
<b>INCOME</b>	
OPENING CASH & CASH MANAGEMENT BALANCES:	
RECEIPTS	
No activity during this period	
DISBURSEMENTS	
No activity during this period	
CLOSING CASH & CASH MANAGEMENT BALANCES:	(12,500.00)

TS004811

2012-09-060000112310000 MSB1602671 C001 0001130206 C00023997 00165000 088 000 H



## Investment Detail

088949-000 TT/SIMON L BERNSTEIN IRREV TR

As of August 31, 2012

Page 5 of 7

QUANTITY DESCRIPTION	MARKET VALUE (M/V) MARKET UNIT PRICE	%M/V	FEDERAL TAX COST AVERAGE UNIT COST	UNREALIZED GAIN/(LOSS)	ACCRUED INCOME	ESTIMATED ANNUAL INCOME	YIELD (%) YTM (%)
<b>PRINCIPAL PORTFOLIO(S)</b>							
Cash & Currency (729.0600) CASH	(\$729.06) 1.0000	(0.03)	(\$729.06) 1.00	\$0.00	\$0.00	\$0.00	0.00
<b>TOTAL Cash &amp; Currency</b>	<b>(729.06)</b>	<b>(0.03)</b>	<b>(729.06)</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>
<b>Other Assets</b>							
BERNSTEIN FAMILY INVESTMENTS, LLLP (49.5% INTEREST) CUSIP 99W764AB3	2,843,190.72	100.03	1,915,456.39	927,734.33	0.00	0.00	0.00
<b>TOTAL Other Assets</b>	<b>2,843,190.72</b>	<b>100.03</b>	<b>1,915,456.39</b>	<b>927,734.33</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>
<b>TOTAL PRINCIPAL PORTFOLIO(S)</b>	<b>2,842,461.66</b>	<b>100.00</b>	<b>1,914,727.33</b>	<b>927,734.33</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>
<b>INCOME PORTFOLIO(S)</b>							
Cash & Currency (12,500.0000) CASH	(12,500.00) 1.0000	100.00	(12,500.00) 1.00	0.00	0.00	0.00	0.00
<b>TOTAL Cash &amp; Currency</b>	<b>(12,500.00)</b>	<b>100.00</b>	<b>(12,500.00)</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>
<b>TOTAL INCOME PORTFOLIO(S)</b>	<b>(12,500.00)</b>	<b>100.00</b>	<b>(12,500.00)</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>
<b>GRAND TOTAL(S)</b>	<b>2,829,961.66</b>		<b>1,902,227.33</b>	<b>927,734.33</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>



TS004812

2012-09-06 00001121100000 MSB:1602671 0001 0001110206 000012996 00161500 088949-000 FI



## Activity Detail

088949-000 TT/SIMON L. BERNSTEIN IRREV TR

August 1, 2012 through August 31, 2012

Page 6 of 7

DATE	TYPE	QUANTITY DESCRIPTION	AMOUNT
<b>PRINCIPAL</b>			
OPENING CASH & CASH MANAGEMENT BALANCES:			
Cash balances are invested on a daily basis.			
No activity during this period			
CLOSING CASH & CASH MANAGEMENT BALANCES:			(729.06)
<b>INCOME</b>			
OPENING CASH & CASH MANAGEMENT BALANCES:			
Cash balances are invested on a daily basis.			
No activity during this period			
CLOSING CASH & CASH MANAGEMENT BALANCES:			(12,500.00)

TS004813

2012-09-06 00001123100000 MSB1602671 0001 0001130286 000023996 00163500 089' 000 H



## Other Information

083949-000 TT/SIMON L BERNSTEIN IRREV TR

As of August 31, 2012

Page 7 of 7

The market value and estimated income information contained in this statement reflect market quotations at the close of your statement period and may not reflect current values. This statement should not be used to prepare tax documents. Information for tax reporting purposes will be reflected in your annual Wilmington Trust Tax Information Letter. Please contact your relationship manager if you have any questions.

The Estimated Annual Income (EAI) has been provided for comparison purposes only. EAI may be based on historical information for equities and commingled vehicles such as funds and private placements.

You have 180 days from your receipt of this report to notify Wilmington Trust in writing of your objection to or disapproval of any item set forth in this report. If you do not deliver a written objection or disapproval to Wilmington Trust within the time period stated above, the matters contained in this report shall be deemed to be approved by you and you will be prevented from later asserting any objection or disapproval.

If you do make an objection or disapproval of any item set forth in this report your claim will be limited to the applicable state statute of limitations and will begin to run on the date that you received this report. A claim may be precluded earlier by adjudication, release, consent, limitation or otherwise. We suggest that you consult with your attorney concerning limitation periods that may affect your rights to bring a claim.



2012-09-0600001123100000 M5B1602671 0001 0001130206 000025995 00900000 086945-000 H

TS004814



**EXHIBIT FOR INVOLUNTARY BANKRUPTCY AGAINST “BFR, LLC”**

**Piece-Meal Documentary Proof of “Missing Millions” and “Missing  
Files-Records”**

THIS IS AN EXCERPT OF AN “ALL WRITS” FEDERAL FILING BY ELIOT  
BERNSTEIN BEING PARAGRAPHS 164-188 FILED 2-24-16  
IN Case: 1:13-cv-03643 Document #: 214

SEE BELOW EXCERPT

In addition to the grounds set forth above where Alan Rose and Steven Lessne both should be Disqualified from representation as Material fact witnesses in the Stanford-Oppenheimer-JP Morgan Trust documents involving Gerald Lewin, Traci Kratish and others, both attorneys have engaged in Sharp and abusive practices by:

1. filing motions with minimal Notice during times I have Noticed as Unavailable for medical reasons;
2. seeking to hear at 5 Minute UMC Motion dates complex matters knowingly requiring Hearings;
3. seeking to have Ordered at such Motion dates hundreds of thousands of dollars in attorneys fees without providing ANY Billing statements;
4. Falsely presenting to the Florida Courts knowing misrepresentations of claimed Injunctions against me by SDNY Judge Shira Scheindlin and directly misrepresenting the truth and actual language;
5. pursuing Guardianship as a retaliatory tool against seeking truth and disclosure and justice.

This Court should now Enjoin and Restrain Alan Rose who is under this Court's jurisdiction as having appeared in a federal court deposition for Ted Bernstein who is under the Court's jurisdiction, or at least enjoining Ted Bernstein and the Probate Court of Judge Phillips at least temporarily.

**"Side-Deals" and "Agreements" Thwarting and Impairing this Court's Jurisdiction**

It is expressly known that "some form" of side deal - agreement is in place where somehow Creditor William Stansbury has some "settlement" with Ted Bernstein yet the terms are completely unknown and should be fully disclosed and while William Stansbury has been very helpful to myself and my family in many ways the actions of his attorney Peter Feaman in not pursuing avenues of relief combined with the orchestrated actions of O'Connell and Rose demand this Court exercise it's injunctive and inherent powers to determine how such off record agreements are manipulating the integrity of both federal and state proceedings and the court should further act upon and resolve the conflicts of interests of the attorneys and for those not under the Court's jurisdiction I pray for leave to Amend to add parties and claims herein.

**Piece-Meal Documentary Proof of "Missing Millions" and "Missing Files-Records"**

154. While it is presently unknown to Eliot when COLIN first gained knowledge of the sizable holdings of Simon and Shirley Bernstein or when COLIN first had involvement in Bernstein family matters inside or outside the Courthouse, Court records and documentary evidence show COLIN becoming involved in both the Estate cases of Shirley and Simon Bernstein in at least

2010 for Shirley Bernstein and 2012 for Simon Bernstein when he took over his Estate case from FRENCH.

155. From the minimal records and Discovery obtained by Eliot via Court Ordered Production of Tescher & Spallina, PA upon their removal, Simon Bernstein had assets and holdings of over \$13 Million plus in Investments Accounts, Private Banking Accounts, checking accounts, retirement accounts etc since 2008 when Tescher & Spallina, PA, TESCHER and SPALLINA were doing Estate Family Planning for Simon and Shirley Bernstein plus over \$5 Million in real estate based upon Listings of the properties weeks prior to Simon's passing.
156. That the Tescher & Spallina PA, production documents which are Not Originals are not transferred to the replacement Curator, Benjamin Brown, Esq. until on or about June 02, 2014, nearly a year after Eliot first reported to the COLIN court that Fraud Upon the Court had taken place and approximately nine months since the September 13, 2013 hearing before COLIN where he had admissions from the lawyers and fiduciaries that Fraudulent Documents had been submitted to the Court by Tescher & Spallina PA.
157. The failure of COLIN to seize the records of all parties involved that committed Fraud Upon his court allowed the parties involved to begin to prepare further alleged fraudulent documents to attempt to cover up for the crimes exposed in Eliot's May 2013 pleading, subsequent pleadings and criminal complaints they were then being investigated in.
158. TESCHER and SPALLINA's production lacks all of the following;
- a. Historical and present Bank and other Financial Institutions statements for the multitude of Simon's Personal and Financial Accounts,
  - b. Post Mortem Personal and Corporate Mail,
  - c. Mail from time periods prior to Simon's passing,

- d. Historical and current Business Records of Simon's,
- e. Historical and current Insurance records i.e. Homeowners, Jewelry, Auto, Business, etc.,
- f. Historical and current Corporate Records for any of the many companies Simon owned,
- g. Historical Signed Tax Returns, personal and corporate, for any years,
- h. Computer Data and Drives both personal and corporate, and,
- i. Tescher and Spallina despite Court Order to turn over records to Curator retained Original Dispositive Documents and all original documents, as what was tendered to the Curator had only one original alleged Promissory Note for Eliot's children's home that was never filed with the courts.

159. What was left upon inspection by Eliot at O'Connell's office of Simon's personal and corporate records was 3 bankers boxes of files each only partially filled, for a man who ran multiple businesses, had multiple financial institution accounts and more. On information and belief, despite O'Connell having a court order to inspect Simon's offices with Eliot present, they failed to ever inventory Simon's office prior to TED's eviction and despite Eliot being allowed to be present at any inventory of the office, Eliot was never contacted to appear.

160. That O'Connell was supposed to have inventories all of Simon's home business records done by a professional appraiser and turn that appraisal over to Eliot and while the appraiser did come to Simon's house to reinventory as court ordered, he failed to provide an inventory of the records.

161. After O'Connell inventorying, Rose enters home for lighting issue and alleges to have discovered and then removed documents and trust documents included from the home, despite that he had no legal authority to remove any properties of the Estate of Simon.

162. Where the Tescher & Spallina, PA production documents referenced herein are alleged to be part of an attempt to cover up crimes and are virtually all alleged to be fraudulent and not at all

representative of the law firm files of Simon Bernstein or the files that became part of Simon and Shirley's Estates. There was only 1 original document sent, not even the original dispositive documents were tendered to the Successor, no historical banking, tax or other business records and there was virtually no mail from the time of Simon's death included in the production.

163. From Tescher & Spallina, PA Production, Bates Doc. No. TS001503-TS001506, by Letter dated June 25, 2013 from Grant Thornton, under Primary Express Account 309513, Payee Bernstein Family Investments LLP, regarding a claim against Stanford Bank International Limited ( "the Company"), a Claim was allowed for \$1,062,734.50 in the Antiguan Estate. The Letter references that there may be "more letters of notification in order to incorporate all CDs." Where the CD's my father held on information and belief were only a small fraction, one to two percent of his holdings.
164. However, by Tescher & Spallina, PA Bates Doc. No. TS003734 the STANFORD Simon & Shirley Bernstein Valuations as of 5/28/2008 reflect a Net Worth for that Statement at \$6, 928,933.52 ( Million ) with \$839,362.12 in Cash Available.
165. From Tescher & Spallina, PA Production, Bates Doc. No. TS004808 by Statement dated Aug. 31, 2012 (two weeks before Simon's death) in the Wilmington Trust Investment Details for 088949-000 Simon L. Bernstein Irrev TR the Grand Total \$2,829,961.66, thus this nearly \$3 Million remains wholly Unaccounted for and according to William Stansbury this value may be doubled to Over \$6 Million when Shirley Bernstein's 49% of this account is factored in, which also remains Unaccounted for.

166. From Tescher & Spallina, PA Production already exhibited herein TED allegedly settled Simon's \$2,000,000.00 of CD's with Stanford with Grant Thornton for \$1,062,734.50. There is no complete accounting.
167. From Tescher & Spallina, PA Bates Doc. No. TS005459 Simon Bernstein BankOne checking activity Acct MI/FL/Ga Checking XXXX7231 \$67,402.08 was the available Balance in that account as of 10/15/12 just after Simon Bernstein's passing with \$109,456.67 available as of Sept. 7, 2012 just a short time before his passing for that account.
168. By Tescher & Spallina, PA Bates Doc. No. TS005478 JP Morgan Bernstein Family Investment LLP Acct. W32635000 showed \$1,872,810.91 for a 49.5% interest in the total Market Value with Accruals with \$807,289.79 Cash included for Statement covering 8/1/12-8/31/12 just weeks before Simon Bernstein's passing.
169. By Tescher & Spallina, PA Bates Doc. No. TS004765 JP Morgan Simon Bernstein Account No. 000000849197231 showing Total Payments & Transfers of \$97,793.74 for the period 8/10/12 to 9/12/12 up to Simon's passing.
170. By Tescher & Spallina, PA Bates Doc. No. TS004820 JP Morgan Simon Bernstein Trust Robert M. Spallina Donald L. Tescher Trustees Primary Account 000000478018083 Dec. 20, 2013 Balance \$150,177.17 with an "Internal Transfer" of \$100,000.00 on Dec. 20, 2015. It is unknown what this "Internal Transfer" was for that occurred over a year after Simon's passing.
171. By email dated Feb. 8, 2013 Victoria Roraff, Registered Client Service Associate of OPPENHEIMER of the Boca Raton, Florida office writing to SPALLINA she admits she does not have a File on all of the STANFORD Accounts but provides how some of the accounts

change account numbers transferring from STANFORD to OPPENHEIMER

**From:** Roraff, Victoria [Victoria.Roraff@opco.com]  
**Sent:** Friday, February 08, 2013 10:27 AM  
**To:** Robert Spallina  
**Subject:** RE: Stanford Statement Request

I don't have a file on all of them – but here's what I'm able to provide:

NM2012273 – Bernstein Holdings LLC – became G51-1403458  
NM2012109 – Bernstein Family Investments LLLP – became G51-1403425  
NM2010376 -  
NJF011401 – Bernstein Family Investments LLLP – became G51-1403433  
NJF011443 -  
NJF011674 – Bernstein Family Investments LLLP – became G51-1403441  
NJF010213 –

Thank you,

*Vickie Roraff*  
Registered Client Service Associate

Oppenheimer & Co. Inc.  
Boca Village Corporate Center  
4855 Technology Way  
Suite 400  
Boca Raton, FL 33431

(T) 561-620-3117  
(F) 561-416-8671  
Toll Free - 888-999-3660

172. Thus with at least \$13 million plus in known cash and accounts and over \$6 million in real estate ( the St. Andrews home and Beachfront Condominium ), approximately \$800,000.00 plus in Jewelry, a Bentley that values at several hundred thousand, a Porsche that values at over one-hundred thousand, a million dollar settlement with STANFORD payout and the Life Insurance of \$1.7 million in the original underlying case herein, there was over \$20 million in known assets held by Simon Bernstein shortly prior to and after his passing, yet Third-Party Defendants, Estate attorney O'CONNELL and TED and ROSE falsely and fraudulently claim now Simon Bernstein's Estate and Trusts are virtually gone, depleted as if it vanished into thin



air without any distribution at all to Eliot and his family who are beneficiaries under any beneficiary scenario asserted by any party and they have provided No accountings that show the total holdings from the date of the decedents' deaths to date, in violation of Probate Rules and Regulations and fail to show where the vanished holdings have gone in 2.5 years justifying a preliminary injunction at this time.

173. These numbers from the minimal bare discovery obtained to date do not include and are without any accounting for the value of Simon's holdings in the Intellectual Properties of "Iviewit" which propels the Estate and Trust to one of the largest in the country when royalties are finally monetized.

174. The value of the VEBA which is already part of this federal litigation involving the Illinois life insurance is but one of many unknown assets in this case and it is unknown what happened to the VEBA assets once the VEBA was unwound as alleged by Counter-Defendants and Third-Party Defendants.

175. Certain documentary evidence shows the VEBA may have been worth \$50 Million or more with Simon and Shirley as primary plan participants, yet this asset and these funds have also allegedly disappeared and vanished according to Counter-Defendants and Third-Party Defendants PAMELA, TED, D. SIMON, A. SIMON and other defendants and again with no accountings and no records provided to beneficiaries or this Court.<sup>61</sup> Where the VEBA Trust Trustee LASALLE is according to all parties the named PRIMARY BENEFICIARY of the missing insurance policy underlying this action.

S B Lexington Inc Death Benefit Plan United Bank Of Illinois N A	
Employer Identification Number (EIN)	363479122

<sup>61</sup> S B Lexington Inc Death Benefit Plan United Bank Of Illinois N A Information  
<http://www.nonprofitfacts.com/IL/S-B-Lexington-Inc-Death-Benefit-Plan-United-Bank-Of-Illinois-N-A.html>

Name of Organization	S B Lexington Inc Death Benefit Plan United Bank Of Illinois N A
Address	120 W State St, Rockford, IL 61101-1125
Subsection	Voluntary Employees' Beneficiary Association (Non-Govt. Emps.)
Foundation	All organizations except 501(c)(3)
Organization	Corporation
Exempt Organization Status	Unconditional Exemption
Tax Period	2009
Assets	\$50,000,000 to greater
Income	\$10,000,000 to \$49,999,999
Filing Requirement	990 - Required to file Form 990-N - Income less than \$25,000 per year
Asset Amount	\$0
Amount of Income	\$0
Form 990 Revenue Amount	\$0

176. On or about September 2012, Eliot discovered that his father Simon Bernstein's home office computers had been virtually wiped clean of data, dispositive documents removed from the home by a one Rachel Walker minutes after Simon died causing reasonable and great suspicion when considering the sudden and alleged suspicious manner of passing, the allegations of Simon's being poisoned made by his brother TED and others and the millions of dollars in holdings Simon Bernstein had after decades of being in business thus beginning a continuing and ongoing pattern of missing documents, missing information, missing trusts, missing IRA beneficiaries, missing insurance policies and missing evidence which now must be halted and enjoined.

177. Thus, the destruction and loss of vital business records and account records began by the time of Simon's passing in 2012 if not earlier.

178. On or about Nov. 1, 2013 and Dec. 10, 2013 Eliot pro se filed a motion to Produce against TED as the Personal Representative in the Estate of Shirley Bernstein yet no such production has been forthcoming by TED to date.

179. That Eliot also filed an extensive production request of O'Connell the Personal Representative of the Estate of Simon now and O'Connell challenged the routine request and the court has not yet made determination, thereby further denying Eliot necessary documentation of the Estate of Simon and making it impossible to have Validity or Construction hearings without either obtaining the records or having a statement as to where they are.

180. The Court should note that despite having a court order from COLIN to inventory Simon's home and office business records and produce the inventory to beneficiaries and interested parties, despite reassurances from O'Connell that the documents and records would be inventoried, no such inventory was produced. It was later learned that O'CONNELL nor his office inventoried Simon's business address for records as court ordered and by the time this was learned it was also learned that TED had been evicted from the office and removed all the records from that address before the court ordered inventorying could be done.

181. The Court should note that COLIN ordered a re-inventorying of assets as it was learned that Personal Property from the Shirley Condo sale was missing and where TED claimed it was moved to the garages of his father's primary home and months later when the re-inventorying was done it was found that all these items were missing and the garages were empty. Despite learning of this O'CONNELL has taken no action to report the missing Personal Property that is in his custody to the proper authorities and further took possession of remaining items and moved them to an undisclosed location.

182. TESCHER and SPALLINA's production lacks all of the following;

- a. Historical and present Bank and other Financial Institutions statements for the multitude of Simon's Personal and Financial Accounts,
- b. Post Mortem Personal and Corporate Mail,

- c. Mail from time periods prior to Simon's passing,
- d. Historical and current Business Records of Simon's,
- e. Historical and current Insurance records i.e. Homeowners, Jewelry, Auto, Business, etc.,
- f. Historical and current Corporate Records for any of the many companies Simon owned,
- g. Historical Signed Tax Returns, personal and corporate, for any years,
- h. Computer Data and Drives both personal and corporate, and,
- i. Tescher and Spallina despite Court Order to turn over records to Curator retained Original Dispositive Documents and all original documents, as what was tendered to the Curator had only one original alleged Promissory Note for Eliot's children's home that was never filed with the courts.

183. What was left upon inspection by Eliot at O'Connell's office of Simon's personal and corporate records was 3 bankers boxes of files each only partially filled, for a man who ran multiple businesses, had multiple financial institution accounts and more. On information and belief, despite O'Connell having a court order to inspect Simon's offices with Eliot present, they failed to ever inventory Simon's office prior to TED's eviction.

184. That O'Connell was supposed to have inventories all of Simon's home business records done by a professional appraiser and turn that appraisal over to Eliot and while the appraiser did come to Simon's house to reinventory as court ordered, he failed to provide an inventory of the records and he failed to inventory all of the Personal Property as required, stating they were out of time.

185. After O'Connell inventorying, Rose enters the home for alleged lighting issues and alleges to have discovered and then removed illegally documents and trust documents included from the

home which were under the custody of O'Connell, despite that he had no legal authority to remove any properties of the Estate of Simon.

186. Where the Tescher & Spallina, PA production documents referenced herein are alleged to be part of an attempt to cover up crimes and are virtually all alleged to be fraudulent and not at all representative of the law firm files of Simon Bernstein or the files that became part of Simon and Shirley's Estates. There was only 1 original document sent, not even the original dispositive documents were tendered to the Successor, no historical banking, tax or other business records and there was no mail from the time of Simon's death included in the production.

187. That Simon had almost a fifty year career in the insurance industry and had multiple active companies, including having had multiple trust companies for various of his products he invented and Simon was a meticulous record keeper and had massive office space housing records prior to his death. Simon had computer records dating back 20 years and all these records and data now appear missing.

188. Mail from the day he died and prior to his death appears missing, including bank statements, insurance records for home, life and property insurances, insurance commission checks, insurance policy records, credit card statements and virtually all of his mail is unaccounted for. Years of personal finance records of his many Private Banking Accounts and Statements all missing from his records for accounts held at Oppenheimer, Stanford, JP Morgan, Sabadell Bank, Legacy Bank, Wilmington Trust, Wells Fargo, etc. Tax Returns missing. Trust Documents Missing. Insurance Policies Missing for both he and Shirley. IRA account histories missing. Pension account information missing. According to O'Connell Simon and Shirley's business and personal finance records were in less than three banker boxes. No hard drives

have been recovered and data from them produced. All records of his 17 year involvement with the Iviewit Technology Companies, including his stock in the companies and copies of Intellectual Property Filings and more, which I had seen at his office only a few months prior to his death are all missing, including thousands of emails regarding the companies and other pertinent information that Simon was safekeeping after it was seized from the companies on or about 2000-2001. Overall the contents of Simon's home and office records should have amounted to over 100 banker boxes filled and gigabytes of data.

**Ted Bernstein, Greenberg Traurig, Stanford Trust, Robert Spallina, Proskauer Rose**

189. TED is the oldest son of Simon and Shirley Bernstein, now deceased.
190. Simon Bernstein passed away in Sept. of 2012, having predeceased his wife Shirley Bernstein who passed away in Dec. 2010.
191. Ted was the last person in possession of my Mini-van before it was turned over to the body company where it was burglarized with wires taken out and a PD report generated and then taken to another company where it was Car-bombed.
192. While Ted Bernstein had been asked to come forward to the FBI about the circumstances of the Car-bombing he has never done so to my knowledge.
193. TED was living in the home of Simon Bernstein pulling his life together prior to the Car-bombing of Eliot's family vehicle in 2005.
194. TED soon thereafter was commingling with PROSKAUER, LEWIN and Greenberg Traurig and suddenly gets a Multi-million dollar home on the intra-coastal waters.<sup>62</sup> TED has other insurance business relationships with Tescher & Spallina, PA, TESCHER and SPALLINA right

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<sup>62</sup> Zillow Listing TED Home @ [http://www.zillow.com/homes/880-Berkeley-St-Boca-Raton-FL-33487\\_rb/?fromHomePage=true&shouldFireSellPageImplicitClaimGA=false](http://www.zillow.com/homes/880-Berkeley-St-Boca-Raton-FL-33487_rb/?fromHomePage=true&shouldFireSellPageImplicitClaimGA=false)

Filing # 146993626 E-Filed 04/04/2022 02:39:11 PM

**EXHIBIT 1.530**

CASE NO.: 50-2018-CA-002317

Sahm Foreclosure v BFR, LLC et al

NOV. 9, 2012 ATTORNEY CHRISTINE YATES FROM TRIPP SCOTT DETAILED LETTER TO TESCHER - SPALLINA SEEKING PRODUCTION AND DISCLOSURE OF SIMON AND SHIRLEY BERNSTEIN TESTAMENTARY DOCUMENTS, TRUSTS, ACCOUNTINGS ETC ON BEHALF OF ELIOT AND CANDICE BERNSTEIN AS PARENTS OF JOSHUA, JACOB, DANIEL BERNSTEIN WHO WERE MINORS IN 2012

**NOTE - TESCHER AND SPALLINA PREDOMINANTLY FAIL TO DISCLOSE AND PROVIDE RELEVANT DOCUMENTS AND ACCOUNTINGS WHILE ASSETS BEING DISTRIBUTED BY TED BERNSTEIN BEFORE ANY VALIDITY OR CONSTRUCTION HEARING**

**SEE PRIOR EXHIBIT ON 1.530 ATTORNEY PAUL TURNER MOTION FILED FEB. 5TH OF 2018 ON BEHALF OF JOSHUA BERNSTEIN NOW AN ADULT OVER 18 WHO WAS STILL BEING DENIED COMMUNICATIONS, DOCUMENTS, ACCOUNTINGS AND DISCLOSURES YEARS LATER NOW BY USE OF AN ILLEGAL GAL**

**SEE OTHER PRIOR EXHIBIT ENTERED ON 1.530 JOSHUA BERNSTEIN "CEASE AND DESIST" ILLEGAL GAL AS HE WAS AGE OF MAJORITY AT TIME OF MOTION AND ORDER = CEASE AND DESIST SENT TO ATTORNEY ALAN ROSE, DIANA LEWIS AND SELECTED FEDERAL AUTHORITIES**





Christine P. Yates  
Direct Dial: 954.760.4916  
Email: [cty@trippscott.com](mailto:cty@trippscott.com)

November 9, 2012

**Via E-Mail and U.S. Mail**

Robert L. Spallina, Esq.  
Teschler & Spallina, P.A.  
4855 Technology Way  
Suite 720  
Boca Raton, FL 33431

**Re: Estates of Shirley Bernstein and Simon Leon Bernstein**

Dear Mr. Spallina:

Our firm represents Mr. and Mrs. Bernstein, individually, as natural guardians of Joshua, Jacob, and Daniel Bernstein, and as Trustees of any trusts created for Joshua, Jacob and Daniel Bernstein by Simon and/or Shirley Bernstein. In order to assist us in this matter, please provide us with copies of the following:

1. Copies of all estate planning documents including all Wills and Trusts for Shirley Bernstein and Simon Leon Bernstein that our client was a beneficiary, whether qualified or contingent;
2. Copies of all estate planning documents including all Wills and Trusts that our client's children, Joshua, Jacob and/or Daniel, are named as beneficiary, whether qualified or contingent;
3. Copies of all documents executed in May and June 2012 regarding the Last Will and Testament of Shirley Bernstein;
4. Estate Accounting for Shirley Bernstein;
5. Estate Accounting for Simon Bernstein;
6. Trust Accountings for any Trusts that our client, his spouse, or his children are a beneficiary, whether qualified or contingent;
7. Copies of any claims filed in the Estate of Shirley Bernstein and Simon Bernstein;
8. Copy of the Inventory filed in the Estate of Shirley Bernstein;
9. Copy of the Inventory filed in the Estate of Simon Bernstein, or if none, please provide the approximate date you expect the Inventory will be prepared and filed with the Probate Court;
10. Allocation of the tangible personal property of Shirley and Simon Bernstein. Specifically, is the jewelry being divided among the ten grandchildren?;
11. Appraisals of tangible personal property, specifically the jewelry, artwork and collectibles;
12. All documents relating to the life insurance policies owned by Shirley and/or Simon, insuring Shirley and/or Simon's life, or for the benefit of Shirley and/or Simon Bernstein;
13. Please provide documentation concerning the allocation and division of all companies owned by Simon and/or Shirley at the time of their deaths and copies of any partnership,

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110 Southeast Sixth Street, Fifteenth Floor • Fort Lauderdale, Florida 33301

Post Office Box 14245 • Fort Lauderdale, Florida 33302

Tel 954.525.7500 • Fax 954.761.8475 • [www.trippscott.com](http://www.trippscott.com)

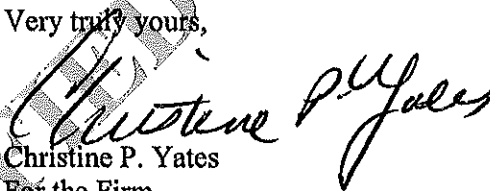
Fort Lauderdale • Tallahassee

Robert L. Spallina, Esq.  
November 9, 2012  
Page 2 of 2

- operating, or stockholders agreements;
14. Please provide a status of the ongoing litigation involving Stanford;
  15. Please provide a status of the Iliewit company stock. Were the issues with Gerald Lewin resolved?;
  16. Please provide a status of the funding of Telenet Company and Candice's employment with Telenet; and
  17. Please provide any information you have with regards to the college funds created by Simon or Shirley Bernstein for the benefit of Joshua, Jacob and/or Daniel.

Thank you for your attention to this matter. Should you have any questions, please feel free to contact my office.

Very truly yours,

  
Christine P. Yates  
For the Firm

CPY/jcj

cc: Eliot Bernstein  
Marc Garber

EXHIBIT 1 - SUPPLEMENT 1.530 FILED BY JOSH, JAKE, DANNY BERNSTEIN SAHM MORTGAGE  
IN THE CIRCUIT COURT OF THE 15<sup>TH</sup> JUDICIAL CIRCUIT IN  
AND FOR PALM BEACH COUNTY, FLORIDA

IN RE:

CASE NO. 50-2012-CP-004391-XXXX-NB

ESTATE OF SIMON L. BERNSTEIN

DECEASED.

**OBJECTION TO MOTION TO APPROVE MEDIATION SETTLEMENT  
AGREEMENT WITH TESCHER & SPALLINA, P.A.**

COMES NOW Joshua Bernstein, by and through his undersigned legal counsels, Paul D. Turner, Esq., Christopher Perré, Esq., the law firm of Perlman, Bajandas, Yevoli & Albright, P.L., ("PB&A"), and Marc J. Soss, Esq. (collectively "Counsel"), hereby files this objection to the Motion to Approve Mediation Settlement Agreement (the "Mediation Agreement") and states as follows:

**Background**

1. On or about October 2, 2012, probate proceedings were commenced for the decedent.
2. At the time the proceedings were commenced, Joshua Bernstein ("Joshua"), one of the beneficiaries of the Estate and Trust of Simon L. Bernstein was a minor with a date of birth in August 1997.
3. On March 8, 2016, a Motion for Appointment of a Guardian Ad Litem ("GAL Motion") to represent the interests of the children of Eliot Bernstein was filed with this Court. At the time the GAL Motion was filed Joshua was over the age of eighteen (18) years and did not require a guardian-ad-litem to be appointed for him.
4. On April 8, 2016, this Court approved the GAL Motion and appointed Diana Lewis, Esquire ("Lewis"), as the guardian-ad-litem for Joshua.
5. On November 9, 2016, a Motion to Approve Compromise and Settlement, Appoint a Trustee for the Trusts created for D.B., Ja.B. & Jo.B and Determine Compensation for Guardian-Ad-Litem was filed with this Court.
6. On October 27, 2017, a Motion to Direct Payments for Benefit of Eliot's Children to Court Registry in lieu of Appointing Trustee; and to Determine Compensation for Guardian Ad Litem and Discharge Guardian was filed with this Court. The matter is scheduled for hearing

on February 6, 2018.

### **Florida Guardian-Ad-Litem**

7. Section 744.102(10) of the Florida Statutes defines the term “Guardian-Ad-Litem” as “a person who is appointed by the court having jurisdiction of the guardianship or a court in which a particular legal matter is pending to represent a ward in that proceeding.”

8. Section 744.3025, Claims of Minors, of the Florida Statutes, further provides:

(1)(a) The court may appoint a guardian ad litem to represent the minor’s interest before approving a settlement of the minor’s portion of the claim in a case in which a minor has a claim for personal injury, property damage, wrongful death, or other cause of action in which the gross settlement of the claim exceeds \$15,000 if the court believes a guardian ad litem is necessary to protect the minor’s interest.

(b) Except as provided in paragraph (e), the court shall appoint a guardian ad litem to represent the minor’s interest before approving a settlement of the minor’s claim in a case in which the gross settlement involving a minor equals or exceeds \$50,000.

(c) The appointment of the guardian ad litem must be without the necessity of bond or notice.

(d) The duty of the guardian ad litem is to protect the minor’s interests as described in the Florida Probate Rules.

(e) A court need not appoint a guardian ad litem for the minor if a guardian of the minor has previously been appointed and that guardian has no potential adverse interest to the minor.

(2) Unless waived, the court shall award reasonable fees and costs to the guardian ad litem to be paid out of the gross proceeds of the settlement.

(3) A settlement of a claim pursuant to this section is subject to the confidentiality provisions of this chapter.

9. A Guardian-Ad-Litem is appointed to represent the best interests of either an incapacitated individual or a minor in a legal proceeding.

### **Basis for Objection**

10. At the time that Lewis was appointed to be the guardian ad litem for Joshua, he was neither a minor nor incapacitated. As a result, a guardian ad litem should not have been appointed for Joshua.

11. Between April 8, 2016, the date Lewis was appointed as guardian ad litem for Joshua and the date hereof, Lewis owed a fiduciary duty to Joshua. Notwithstanding said duty, Lewis has never communicated with him, discussed the legal proceedings or made him aware of the alleged settlement reached during the mediation. As of the date of the filing of this objection, Joshua is completely unaware of the terms of the proposed settlement and has never been provided a copy of the mediation settlement agreement.

12. As a result, a guardian ad litem should not have been ever appointed for Joshua, had no authority to bind Joshua to any settlement agreements she may have allegedly entered into on his behalf, and any settlements negotiated and/or entered into on his behalf by Lewis should be deemed void.

### Conclusion

WHEREFORE, Joshua Bernstein pray this Honorable Court for an order (i) denying the Motion to Approve Mediation Settlement Agreement and all supplemental matters related thereto; (ii) removing Diana Lewis, Esquire as the guardian-ad-litem for Joshua; and (iii) awarding such other and further relief as deemed just and equitable under the circumstances.

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 5, 2018, a true and correct copy of the foregoing document is being served, pursuant to Rule 2.516(b), Fla. R. Jud. Admin., via Florida Courts e-Filing Portal to the names and e-mail addresses provided by all parties, counsel of record and *pro se* parties.

Dated: February 5, 2018.

Respectfully submitted,

/s/ Paul Turner

Paul D. Turner, Esq. (0113743)

pturner@pbyalaw.com

Christopher T. Perré (FBN 123902)

cperre@pbyalaw.com

PERLMAN, BAJANDAS, YEVOLI & ALBRIGHT, P.L.

200 South Andrews Ave. Suite 600

Ft. Lauderdale, Florida 33301

T: (954) 566-7117 / F: (954) 566-7115

AND

Marc Soss, Esq. (937045)

mjs@fl-estateplanning.com

11010 Hyacinth Pl

Lakewood Ranch, FL 34202-4158

United States

T: 941-928-0310 / F: 813-342-7967

*Attorneys for Beneficiary, Joshua Bernstein.*

EXHIBIT 3 - SUPPLEMENT 1.530 FILED BY JOSH, JAKE, DANNY BERNSTEIN SAHM MORTGAGE

**LIMITED LIABILITY COMPANY**

**OPERATING AGREEMENT**

**of**

**BERNSTEIN FAMILY REALTY, LLC**

**a Florida limited liability company**

NOT A CERTIFIED COPY



**OPERATING AGREEMENT OF  
BERNSTEIN FAMILY REALTY, LLC**

This Limited Liability Company Agreement (the "Agreement") is made and entered into as of the \_\_\_\_ day of June, 2008, by and among BERNSTEIN FAMILY REALTY, LLC, a Florida limited liability company (the "Company"); STANFORD TRUST COMPANY, Trustee of the DANIEL BERNSTEIN IRREVOCABLE TRUST dated September 7, 2006, STANFORD TRUST COMPANY, Trustee of the JAKE BERNSTEIN IRREVOCABLE TRUST dated September 7, 2006, and STANFORD TRUST COMPANY, Trustee of the JOSHUA Z. BERNSTEIN IRREVOCABLE TRUST dated September 7, 2006, and any subsequent transferee as the Members ("Members"). The Members are herein sometimes referred to individually as a "Member" and collectively as "Members."

**WITNESSETH:**

WHEREAS, Articles of Organization for **BERNSTEIN FAMILY REALTY, LLC** (the "Company") were filed with the Florida Department of State on June 2, 2008.

WHEREAS, the Members desire to reduce their agreements to writing, to set forth the rights and obligations of the Members and the Manager.

NOW, THEREFORE, the Members and the Company hereby agree as follows:

**ARTICLE I**

**DEFINITIONS**

The following terms used in this Agreement shall have the following meanings:

- (a) "**Act**" shall mean the Florida Limited Liability Company Act at F.S § 608.401, *et seq* and all amendments to the Act.
- (b) "**Articles of Organization**" shall mean the Articles of Organization of **BERNSTEIN FAMILY REALTY, LLC**, as filed with the Department of State of Florida on June 2, 2008, and as may be amended from time to time.
- (c) "**Capital Contribution**" shall mean any contribution to the capital of the Company in cash or the fair market value of property by a Member whenever made, net of any liabilities secured by such contributed property.
- (d) "**Capital Account**" as of any given date shall mean the Capital Contribution to the Company by a Member as adjusted up to such date pursuant to Article VIII.
- (e) "**Code**" shall mean the Internal Revenue Code of 1986 or corresponding provisions of subsequent superseding federal revenue laws.



(f) **"Company"** shall refer to **BERNSTEIN FAMILY REALTY, LLC**, a limited liability company formed under the laws of the State of Florida.

(g) **"Distributable Cash"** shall mean all cash, revenues and funds received by the Company from Company operations, less the sum of the following to the extent paid or set aside by the Company: (i) all principal and interest payments on indebtedness of the Company and all other sums paid to lenders; (ii) all cash expenditures incurred in the normal operation of the Company's business; and (iii) such Reserves as the Managers deem reasonably necessary for the proper operation of the Company's business.

(h) **"Entity"** shall mean any general partnership, limited liability partnership, limited partnership, limited liability limited partnerships, limited liability company, corporation, joint venture, trust, business trust, cooperative, association, foreign trust or foreign business organization.

(i) **"Gifting Member"** shall mean any Member who gifts, bequeaths or otherwise transfers for no consideration (by operation of law or otherwise, except with respect to bankruptcy) all or any part of its Membership Interest.

(j) **"Initial Capital Contribution"** shall mean the initial contribution to the capital of the Company pursuant to this Agreement.

(k) **"Interest"** shall mean "Percentage Interest" unless otherwise specifically agreed or in the case of special allocations.

(l) **"Majority Interest"** shall mean the Interests of Members, which in the aggregate exceed 50% of all Interests.

(m) **"Manager"** shall mean one or more managers designated as such pursuant to this Agreement or by subsequent vote of the Members. References to the Manager in the singular or as him, her, it, itself, or other like references shall also, where the context so requires, be deemed to include the plural or the masculine or feminine reference, as the case may be. Any Person may be named a Manager pursuant to this Agreement.

(n) **"Member"** shall mean each of the parties who executes a counterpart of this Agreement as a Member and each of the parties who may hereafter become Members. To the extent a Manager has purchased a Membership Interest in the Company, he will have all the rights of a Member with respect to such Membership Interest, and the term "Member" as used herein shall include a Manager to the extent he has purchased such Membership Interest in the Company. If a Person is a Member immediately prior to the purchase or other acquisition by such Person of an Transferee Interest, such Person shall have all the rights of a Member with respect to such purchased or otherwise acquired Membership Interest or Transferee Interest, as the case may be.

(o) **"Membership Interest"** shall mean a Member's entire interest in the Company including such Member's Transferee Interest and, the right to participate in the management of the business and affairs of the Company, including the right to vote on, consent to, or otherwise participate in any decision or action of or by the Members granted pursuant to this Agreement and the Act.

(p) **"Net Income"** and **"Net Losses"** shall mean the income, gain, loss, deductions and credits of the Company in the aggregate or separately stated, as appropriate, determined in accordance with sound accounting principles employed under the cash method of accounting at the close of each fiscal year on the Company's tax return filed for federal income tax purposes.

(q) **"Operating Agreement"** (or **"Agreement"**) shall mean this Operating Agreement of **BERNSTEIN FAMILY REALTY, LLC**, as originally executed and as amended from time to time.

(r) **"Percentage Interest"** shall mean, for any Member, the percentage interest that the Capital Account of the Member bears to the total Capital Accounts of all of the Members of the Company, as set forth at Section 9.1 herein, and Exhibit A, as may be changed from time to time by the unanimous vote of the Members.

(s) **"Person"** shall mean any individual or Entity, and the heirs, executors, administrators, legal representatives, successors, and assigns of such "Person" where the context so permits.

(t) **"Reserves"** shall mean funds set aside or amounts allocated to reserves which shall be maintained in amounts reasonably deemed sufficient by the Managers for working capital and to pay taxes, insurance, debt service or other costs or expenses incident to the ownership or operation of the Company's business.

(u) **"Selling Member"** shall mean any Member or Transferee which sells, assigns, pledges, hypothecates or otherwise transfers for consideration all or any portion of its Membership Interest or Transferee Interest.

(v) **"Transferee"** shall be person who has not been admitted by the Company as a Member Partner, but, by virtue of a Transfer of an Interest in the Company to said person, said person is entitled to a pro rata share of one or more of the Company's items of income, losses, credits, and distributions of the Company's assets pursuant to this Agreement and the Act, but said person shall not have, and is not entitled to any right to participate in the management or affairs of the Company, including, the right to vote on, consent to or otherwise participate in any decision of the Members or Manager.

(w) **"Transferring Member"** shall collectively mean a Selling Member and a Gifting Member.

(x) **"Treasury Regulations"** shall include proposed, temporary and final regulations promulgated under the Code.

## ARTICLE II

### FORMATION OF COMPANY

#### 2.1 Organization.

**BERNSTEIN FAMILY REALTY, LLC**, has been organized as a Florida limited liability company by executing and delivering the Articles of Organization to the Florida Department of State in accordance with and pursuant to the Act.

**2.2 Name.**

The name of the Company is **BERNSTEIN FAMILY REALTY, LLC**, and all business of the Company shall be conducted under that name unless a majority of the Members agree to the filing and use of a fictitious name.

**2.3 Principal Place of Business.**

The initial principal place of business of the Company shall be 950 Peninsula Corporate Circle, Suite 3010, Boca Raton, Florida 33431. The Company may locate its places of business and registered office at any other place or places as the Manager may deem advisable.

**2.4 Registered Office and Registered Agent.**

The Company's initial registered office shall be at the office of its registered agent in Florida, and the name of its initial registered agent shall be Donald R. Tescher, 2101 Corporate Blvd., Suite 107, Boca Raton, Florida, 33431. The registered office and registered agent may be changed by filing the address of the new registered office and/or the name of the new registered agent with the Florida Department of State pursuant to the Act.

**2.5 Term.**

The term of the Company has filed Articles of Organization with the Florida Department of State, and shall have perpetual existence, unless the Company is earlier dissolved in accordance with either the provisions of this Agreement or the Act.

**ARTICLE III**

**BUSINESS OF COMPANY**

The business of the Company shall be to engage in management of investments, and closely-held business or real estate ventures, and such lawful activities as are reasonably necessary or useful to the furtherance of the forgoing purpose (the "Business").

**ARTICLE IV**

**NAMES AND ADDRESSES OF MEMBERS**

The names and addresses of the Members are listed on Exhibit A attached hereto and incorporated herein, as amended from time to time.

**ARTICLE V**

**RIGHTS AND DUTIES OF MANAGERS**

**5.1 Management.**

**5.1.1 General.** The business and affairs of the Company shall be managed by its Managers. The Managers shall direct, manage, and control the business of the Company. Except for situations in which the approval of the Members is expressly required by this Agreement or by nonwaivable provisions of the Act, the Managers shall have exclusive, sole, full and complete authority, power and discretion to manage and control the business, affairs and properties of the Company, to make all decisions regarding those matters, and to perform any and all other acts or activities customary or incident to the management of the Company's business. At any time when there is more than one Manager, any one Manager may take any action permitted to be taken by the Managers, unless the approval of more than one of the Managers is expressly required pursuant to this Agreement or the Act. The Managers may create a Board of Directors, and may also appoint individuals with or without titles, including the titles of General Manager, Executive Director, President, Vice President, Treasurer, Secretary, and Assistant Secretary, to act on behalf of the Company with such power and authority as the Managers or Board of Directors may delegate to any such Person.

**5.1.2 Initial Managers/Designation of Managers/Voting.** The Members agree that the initial Manager of the Company is SIMON BERNSTEIN. Unless otherwise specifically agreed herein, business decisions of the Company shall be made by said Manager. The Members shall vote their Interests such that only the aforementioned person is Manager of the Company for so long as he is alive and not mentally disabled or incompetent. After proper notice, in the event of death or mental disability or incompetence of the Manager, the Members shall vote on and elect a new Manager.

## **5.2 Certain Powers of Managers.**

Without limiting the generality of Section 5.01, the Manager (or, if more than one Manager, then the Managers) shall have power and authority, on behalf of the Company to do the following:

- (a) To acquire or lease property from any Person as the Managers may determine, whether or not such Person is directly or indirectly affiliated or connected with any Manager or Member;
- (b) To borrow money for the Company from banks, other lending institutions, the Managers, Members, or affiliates of the Managers or Members on such terms as the Managers deem appropriate, and in connection therewith, to hypothecate, encumber and grant security interests in the assets of the Company to secure repayment of the borrowed sums. No debt shall be contracted or liability incurred by or on behalf of the Company except by the Managers, or to the extent permitted under the Act, by agents or employees of the Company expressly authorized to contract such debt or incur such liability by the Managers;
- (c) To purchase liability and other insurance to protect the Company's property and business;
- (d) To hold and own Company real and personal properties in the name of the Company;
- (e) To invest Company funds in time deposits, short-term governmental obligations, commercial paper or other investments;



(f) To sell or otherwise dispose of all or substantially all of the assets of the Company as part of a single transaction or plan as long as such disposition is not in violation of or a cause of a default under any other agreement to which the Company may be bound;

(g) To execute on behalf of the Company all instruments and documents, including, without limitation, checks; drafts; notes and other negotiable instruments; mortgages or deeds of trust; security agreements; financing statements; documents providing for the acquisition, mortgage or disposition of the Company's property; assignments, bills of sale; leases; and any other instruments or documents necessary to the business of the Company;

(h) To employ accountants, legal counsel, managing agents or other experts to perform services for the Company;

(i) To enter into any and all other agreements on behalf of the Company, in such forms as the Managers may approve; and

(j) To do and perform all other acts as may be necessary or appropriate to the conduct of the Company's business.

Unless authorized to do so by this Agreement or by the Manager of the Company, no attorney-in-fact, employee or other agent of the Company shall have any power or authority to bind the Company in any way, to pledge its credit or to render it liable for any purpose. No Member shall have any power or authority to bind the Company unless the Member has been authorized by the Manager to act as an agent of the Company in accordance with the previous sentence.

### **5.3 *Liability for Certain Acts.***

Each Manager shall perform his duties as Manager in good faith, in a manner he or she reasonably believes to be in the best interests of the Company, and with such care as an ordinarily prudent person in a like position would use under similar circumstances. A Manager shall not be liable to the Company or to any Member for any loss or damage sustained by the Company or any Member, unless the loss or damage shall have been the result of fraud, deceit, gross negligence, willful misconduct, unlawful acts, or a wrongful taking by the Manager.

### **5.4 *No Exclusive Duty to Company.***

A Member or Manager shall not be required to manage the Company as his or her sole and exclusive function and may have other business interests and engage in activities in addition to those relating to the Company. Neither the Company nor any Member shall have any right, by virtue of this Agreement, to share or participate in such other investments or activities of a Manager or to the income or proceeds derived therefrom.

### **5.5 *Bank Accounts.***

The Manager may from time to time open bank accounts in, the name of the Company, and the Manager shall be the sole signatory thereon, unless Members owning a Majority Interest determine otherwise.

**5.6 Indemnity of the Managers, Employees and Other Agents.**

The Company shall, to the maximum extent permitted under the Act, indemnify and make advances for expenses to Managers, its employees, and other agents.

**5.7 Resignation.**

Any Manager of the Company may resign at any time by giving written notice to the Members of the Company. The resignation of any Manager shall take effect upon receipt of notice thereof or at such later date specified in such notice; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. The resignation of a Manager who is also a Member shall not affect the Manager's rights as a Member and shall not constitute a withdrawal of a Member.

**5.8 Removal.**

A Manager shall not be subject to removal by vote of the Members except, if at all, pursuant to the provisions of this Agreement, as it may be amended by agreement of all of the Members.

**5.9 Vacancies.**

To the extent not expressly provided for in Section 5.1.2 "Voting Agreement of Members," and only to said extent, if any: Any vacancy occurring for any reason in the number of Managers of the Company may be filled by the affirmative vote of Members holding a majority of the Percentage Interests present at an election at a meeting of Members called for that purpose or by the Members' unanimous written consent. A Manager elected to fill a vacancy shall be elected for the unexpired term of their predecessor in office and shall hold office until the expiration of such term and until their successor shall be elected and qualified or until the Manager's earlier death, resignation or removal. A Manager chosen to fill a position resulting from an increase in the number of Managers shall hold office until his successor shall be elected and qualified, or until his earlier death, resignation or removal.

**5.10 Salaries.**

Each Manager shall receive annual compensation (the "Management Fee") if such compensation is agreed to by a majority of the Percentage Interest of the Members in writing, and shall be entitled to reimbursement of reasonable and necessary expenses advanced on behalf of the Company.

**ARTICLE VI**

**RIGHTS AND OBLIGATIONS OF MEMBERS**

**6.1 Limitation of Liability.**

Each Member's liability to the Company shall be limited as set forth in this Agreement, the Act and other applicable law.

**6.2 Company Liability.** A Member will not be personally liable for any debts, obligations, liabilities or losses of the Company, whether arising in contract, tort, or otherwise, solely by reason of being a Member, beyond his respective Capital Contributions or any obligation of the Member under Sections 8.1 and 8.2 hereunder, except as provided in Section 6.7 or as otherwise required by law.

**6.3 List of Members.**

Upon the written request of any Member, the Managers shall provide a list showing all of the names, addresses and Membership Interests and Transferee Interests in the Company.

**6.4 Approval of Sale of All Assets.** The Managers shall have the right, to approve the sale, exchange or other disposition of all, or substantially all, of the Company's assets which is to occur as part of a single transaction or plan.

**6.5 Company Books.**

The Managers shall maintain and preserve, during the term of the Company, the accounts, books, and other relevant Company documents described in Section 9.9. Upon reasonable written request, each Member and Transferee shall have the right, at any time during ordinary business hours, as reasonably determined by the Manager, to inspect and copy, at the requesting Member's or Transferee's expense, the Company documents required to be maintained under Section 608.4101 of the Act, and such other documents which the Managers, in their reasonable discretion, deem appropriate.

**6.6 Priority and Return of Capital.**

Except as may be expressly provided in Article IX, no Member or Transferee shall have priority over any other Member or Transferee, either as to the return of Capital Contributions or as to Net Profits, Net Losses or distributions; provided that this Section shall not apply to loans which a Member has made to the Company.

**6.7 Liability of a Member to the Company.**

A Member who receives a distribution or return in whole or in part of its contribution is liable to the Company only to the extent provided by the Act.

**ARTICLE VII**

**MEETINGS OF MANAGERS AND MEMBERS**

**7.1 Meetings.**

Meetings of the Managers, for any purpose or purposes, may be called by any Manager. Meetings of the Members for any purpose or purposes, may be called by any Members holding at least 51% of the Percentage Interests of the Members.

**7.2 Place of Meetings.**



The Managers may designate any location within the U.S., either within or outside the State of Florida, as the place of meeting for any meeting of the Members. If no designation is made, or if a special meeting be otherwise called, the place of meeting shall be the principal place of business of the Company.

### **7.3 Notice of Meetings.**

Except as provided in Section 7.04, written notice stating the place, day and hour of the meeting and the purpose or purposes for which the meeting is called shall be delivered not less than five (5) nor more than thirty (30) days before the date of the meeting, either personally or by mail, by or at the direction of the Managers or Member or Members calling the meeting, to each Member or Manager entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered two (2) calendar days after being deposited in the United States mail, certified mail return receipt requested, addressed to the Member or to the Manager at its address as it appears on the books of the Company, with postage therein prepaid. Notice may also be given by telegram, teletype or facsimile, or other form of electronic communication. Managers and Members may participate in and hold meetings whereby all conference telephone or similar communications equipment whereby all persons participating in the meeting can hear each other. Participation by communications equipment shall constitute presence at the meeting, unless a Member or Manager is participating in the meeting for the express purpose of objecting to the transaction of any business on the ground the meeting is not lawfully called or convened.

**7.4 Meeting of All Members and Meetings of All Managers.** If all of the Members or all of the Managers shall meet at any time and place, and consent to the holding of a meeting at such time and place, such meeting shall be valid without call or notice, and at such meeting lawful action may be taken.

### **7.5 Record Date.**

For the purpose of determining Members entitled to notice of or to vote at any meeting of Members or any adjournment thereof, or Members entitled to receive payment of any distribution, or in order to make a determination of Members for any other purpose, the date on which notice of the meeting is mailed or the date on which the resolution declared such distribution is adopted, as the case may be, shall be the record date for such determination of Members. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this Section, such determination shall apply to any adjournment thereof.

### **7.6 Quorum.**

Members holding at least fifty percent (50%) of all Percentage Interests, represented in person or by proxy, shall constitute a quorum at any meeting of Members, and if there is more than one Manager then serving, then a majority of the number of the then-serving Managers shall constitute a quorum at a meeting of the Managers, who shall be represented in person, and shall constitute a quorum at any meeting.

### **7.7 Manner of Acting.**

If a quorum is present, the affirmative vote of a majority of all of the Members represented at the meeting, who must hold a majority Percentage Interest in the Company, shall be the act of the Members, unless the vote of a greater or lesser proportion or number is otherwise required by the Act, or by this Agreement. Unless otherwise expressly provided herein or required under applicable law, only Members who have a Membership Interest may vote or consent upon any matter and their vote or consent, as the case may be, shall be counted in the determination of whether the matter was approved by the Members.

#### **7.8 Proxies.**

At all meetings of Members, a Member may vote in person or by proxy executed in writing by the Member or by a duly authorized attorney-in-fact. Such proxy shall be filed with the Managers of the Company before or at the time of the meeting. No proxy shall be valid after eleven (11) months from the date of its execution, unless otherwise provided in the proxy. Managers shall not be able to vote by Proxies.

#### **7.9 Action by Members Without a Meeting.**

Action required or permitted to be taken at a meeting of Members may be taken without a meeting if the action is evidenced by one or more written consents describing the action taken, signed by each Member entitled to vote and delivered to the Managers of the Company for inclusion in the minutes or for filing with the Company records. Action taken under this Section is effective when all Members entitled to vote have signed the consent, unless the consent specifies a different effective date.

#### **7.10 Waiver of Notice.**

When any notice is required to be given to any Member, a waiver thereof in writing signed by the person entitled to such notice, whether before, at, or after the time stated therein, shall be equivalent to the giving of such notice.

### **ARTICLE VIII**

#### **CONTRIBUTIONS TO THE COMPANY AND CAPITAL ACCOUNTS**

##### **8.1 Members' Initial Capital Contributions.**

Each Member shall contribute such amount as is set forth on the books and records of the Company. No interest shall accrue on any Capital Contribution and the Member shall not have the right to withdraw or be repaid any Capital Contribution except as provided in this Agreement.

##### **8.2 Additional Contributions.**

A Member may, but shall not be obligated to, make such additional Capital Contributions as shall be determined by the Managers. Such additional Capital Contributions shall be reflected in the Account of the Contributing Member and shall not be a part of any other Member's Capital Account absent written agreement of the Members. After the making of any such determination, the Managers

shall give written notice to each Member of the amount of required additional contribution, if any, and each Member may deliver to the Company its pro rata share thereof (in proportion to the *respective* Percentage Interest of the Member on the date such notice is given) no later than thirty (30) days following the date such notice is given. None of the terms, covenants, obligations or rights contained in this Section 8.2 is or shall be deemed to be for the benefit of any person or entity other than the Members and the Company, and no such third person shall under any circumstances have any right to compel any actions or payments by the Managers and/or the Members.

### **8.3 Capital Accounts.**

(a) A separate Capital Account will be maintained for each Member. Each Member's Capital Account will be increased by (1) the amount of money contributed by such Member to the Company; (2) the fair market value of property contributed by such Member to the Company (net of liabilities secured by such contributed property that the Company is considered to assume or take subject to under Code Section 752); (3) allocations to such Member of Net Profits and Net Losses; and (4) allocations to such Member of income described in Code Section 705(a)(1)(B). Each Member's Capital Account will be decreased by (1) the amount of money distributed to such Member by the Company; (2) the fair market value of property distributed to such Member by the Company (net of liabilities secured by such distributed property that such Member is considered to assume or take subject to under Code Section 752); (3) allocations to such Member of expenditures described in Code Section 705(a)(2)(B); and (4) allocations to the account of such Member of Company loss and deduction as set forth in such Regulations, taking into account adjustments to reflect book value.

(b) In the event of a permitted sale or exchange of a Membership Interest or a Transferee Interest in the Company, the Capital Account of the transferor shall become the Capital Account of the Transferee to the extent it relates to the transferred Membership Interest or Transferee Interest in accordance with Section 1.704-1(b)(2)(iv) of the Treasury Regulations.

(c) The manner in which Capital Accounts are to be maintained pursuant to this Section 8.3 is intended to comply with the requirements of Code Section 704(b) and the Treasury Regulations promulgated thereunder. If the Company determines that the manner in which Capital Accounts are to be maintained pursuant to the preceding provisions of this Section 8.3 should be modified in order to comply with Code Section 704(b) and the Treasury Regulations, then notwithstanding anything to the contrary contained in the preceding provisions of this Section 8.3, the method in which Capital Accounts are maintained shall be so modified; provided, however, that any change in the manner of maintaining Capital Accounts shall not materially alter the economic agreement between or among the Members as set forth in this Agreement.

(d) Except as otherwise required in the Act (and subject to Sections 8.1 and 8.2), no Member or Transferee shall have any liability to restore all or any portion of a deficit balance in such Member's or Transferee's Capital Account.

### **8.4 Withdrawal or Reduction of Members' Contributions to Capital.**

(a) A Member or Transferee Interest Holder shall not receive out of the Company's property any part of its Capital Contribution until all liabilities of the Company, except liabilities to

Members on account of their Capital Contributions, have been paid or there remains property of the Company sufficient to pay them.

(b) A Member or Transferee Interest Holder, irrespective of the nature of its Capital Contribution, has only the right to demand and receive cash in return for its Capital Contribution.

(c) Notwithstanding anything to the contrary in this Agreement, a Member may withdraw from the Company only at the time or upon the occurrence of an event specified in this Agreement or in the Articles of Organization. No such event is specified in either the Articles of Organization or in this Agreement at the date hereof. A Member which violates the withdrawal prohibition in this Section shall be liable for breach of this Agreement and shall become a Transferee. A withdrawing Member shall not have a right to receive the fair value of receive the withdrawing member's Interest in the Company as of the date of the resignation but rather, shall have only such rights as a Transferee would have to receive distributions as are made by the Company in the discretion of the Managers.

## ARTICLE IX

### ALLOCATIONS, INCOME TAX, DISTRIBUTIONS, ELECTIONS AND REPORTS

#### 9.1 *Allocations of Income and Losses from Operations.*

The Net Income and Net Losses of the Company for each fiscal year, and each Member or Transferee's share of Cash Flow, will be allocated in accordance with the Percentage Interests schedule set forth in Exhibit A attached hereto, and, except as provided therein, the Percentage Interests of Members shall be proportionate to the amount of their Capital Accounts as determined hereinabove.

#### 9.2 *Special Tax Provisions As to Extraordinary Allocations, if Any, to Capital*

Allocations of Net Income and Net Losses other than those set forth above shall be made based upon the determinations of the tax accountants and attorneys employed by the Company, giving regard to the intention expressed hereinabove and otherwise herein, with respect to special or priority allocations if any, and with regard to federal partnership tax and capital accounting principles described in Section 8.3 hereinabove.

#### 9.3 *Distributions.*

Within the discretion of the Managers as to amounts, if any, and as to timing, the Managers may distribute Cash Flow to the Members, in accordance with their Percentage Interests .

#### 9.4 *Limitation upon Distributions.*

(a) No distributions or return of contributions shall be made and paid if, after the distribution or return of distribution is made either

- (1) the Company would be insolvent; or



(2) the net assets of the Company would be less than zero.

(b) The Managers may base a determination that a distribution or return of contribution may be made under Section 9.4(a) in good faith reliance upon a balance sheet and profit and loss statement of the Company represented to be correct by the person having charge of its books of account or certified by an independent public or certified public accountant or firm of accountants to fairly reflect the financial condition of the Company.

**9.5 Tax Accounting Principles.**

The income and losses of the Company shall be determined in accordance with sound tax accounting principles applied on a consistent basis using generally accepted tax accounting principles as applied consistent with the Code.

**9.6 Interest on and Return of Capital Contributions.**

No Member shall be entitled to interest on its Capital Contribution or to a return of its Capital Contribution, except as otherwise provided in this Agreement.

**9.7 Loans to Company.**

Nothing in this Agreement shall prevent any Member from making secured or unsecured loans to the Company by agreement with the Company, provided that such loans are arms-length transactions, containing terms customary in the lending industry at the time such loans were made.

**9.8 Accounting Period.**

The Company's accounting period shall be the calendar year ("Fiscal Year").

**9.9 Records, Audits and Reports.**

At the expense of the Company, the Managers shall maintain records and accounts of the operations and expenditures of the Company. At a minimum, the Company shall keep at its principal place of business the following records:

(a) A current list of the full name and last known address of each Member and Transferee setting forth the amount of cash each Member and Transferee has contributed, a description and statement of the agreed value of the other property or services, each Member and Transferee has contributed or has agreed to contribute in the future, and the date on which each became a Member or Transferee, and their respective Percentage Interest in the Company;

(b) A copy of the Articles of Organization of the Company and all amendments thereto together with executed copies of any powers of attorney pursuant to which any amendment has been executed;

(c) Copies of the Company's federal, state, and local income tax returns and reports, if any, for the three most recent years;

(d) Copies of the Company's currently effective written Agreement, all amendments thereto, and copies of any financial statements of the Company for the three most recent years;

(e) Notices of and minutes of every Member and Managers meeting,

(f) Any written consents obtained from Members for actions taken by Members without a meeting; and

(g) Unless contained in the Articles of Organization or the Agreement, a writing prepared by the Managers setting out the following:

(1) The times at which or events on the happening of which any additional contributions agreed to be made by each Member and Transferee are to be made.

(2) Any right of a Member or Transferee to receive distributions of include a return on all or any part of the Member or Transferee's contributions.

(3) Any power of a Member or Transferee to grant the right to become an assignee of any part of the Member's or Transferee's interest, and the terms and condition of the power.

#### **9.10 Returns and Other Elections.**

The Managers shall cause the preparation and timely filing of tax returns required to be filed by the Company pursuant to the Code and all other tax returns deemed necessary and required in each jurisdiction in which the Company does business. Copies of such returns, and pertinent information therefrom, shall be furnished to the Members within a reasonable time after the end of the Company's fiscal year upon the Members' written request. All elections permitted to be made by the Company under federal or state laws shall be made by the Managers in their sole discretion. It is the intention of the Members that the Company shall be taxed as a "Partnership" for federal, state, and local income tax purposes.

#### **9.11 Tax Matters Partner.**

SIMON BERNSTEIN is designated the "Tax Matters Partner" (as defined in Code Section 6231), and is authorized and required to represent the Company (at the Company's expense), either directly, or through accounting or tax representatives, in connection with all examinations for the Company's affairs by tax authorities, including, without limitation administrative and judicial proceedings, and to expend Company funds for professional services and costs associated therewith. The Members agree to cooperate with each other and to do or refrain from doing any and all things reasonably required to conduct such proceedings.

### **ARTICLE X**

#### **TRANSFERABILITY**

##### **10.1 General.**

10.1.1. *Transferees Not Members, Generally.* Except as otherwise set forth in Section 10.1.2, or with the consent of all of the Members, neither a Member nor a Transferee shall have the right, as to all or any part of its Membership Interest or Transferee Interest to:

- (a) sell, assign, pledge, hypothecate, transfer, exchange or otherwise transfer for consideration (collectively, "sell" or, as context requires "selling"); or
- (b) gift, bequeath or otherwise transfer for no consideration (whether or not by operation of law, except in the case of bankruptcy) (collectively, "gift").

Absent the written consent of all Members to the contrary or otherwise provided by law, the Interest of the Transferee shall be a Non-Voting Interest.

10.1.2 *Transferees Who are Lineal Descendants of a Member.* Any Transferees who are lineal descendants of both SHIRLEY BERNSTEIN and SIMON BERNSTEIN, either directly, or indirectly, as beneficiaries of a Trust, or other entity beneficially owned solely for or by that Member (including, but not limited to a revocable trust established by a Member for the sole lifetime benefit of the Member or the Member's descendants) shall be Members upon their written agreement to be bound by the terms of this Agreement and shall be subject to the voting agreements described in Article V, hereinabove.

## 10.2 *Right of First Refusal.*

(a) If a Selling Member desires to sell all or any portion of its Membership Interest in the Company to a third party purchaser, the Selling Member shall obtain from such third party purchaser a bona fide written offer to purchase such Interest, stating the terms and conditions upon which the purchase is to be made and the consideration offered; provided, however, the offer shall include a "tag along" or "take along" provision, pursuant to which, all Members have the right to sell a pro-rata portion (determined in accordance with the Percentage Interests of all of the Members) of their Interests to the third party. The Selling Member or Transferee shall give written notification to the remaining Members, by certified mail or personal delivery, of its intention to so transfer such Interest, furnishing to the remaining Members a copy of the written offer to purchase such Interest.

(b) Each of the remaining Members, on a basis pro rata to their Percentage Interests or on a basis pro rata to the Percentage Interests of those remaining Members exercising their rights of first refusal, shall have the right to exercise a right of first refusal to purchase all (but not less than all) of the Interest proposed to be purchased by the third party and sold by the Selling Member and the "tag along Members" upon the same terms and conditions as stated in the aforesaid written offer to purchase by giving written notification to the Selling Member and the "tag along Members", by certified mail or personal delivery, of the intention to do so within thirty (30) days after receiving written notice from the Selling Member. Subject to the following paragraph, the failure of the remaining Members to so notify the Selling Member and the "tag along Members" of their desire to exercise this right of first refusal within said thirty (30) day period shall result in the termination of the right of the first refusal and the Selling Member and the "tag along Members" shall be entitled to consummate the sale of its Interest in the Company to such third party purchaser, provided that the sale shall be consummated within sixty (60) days following the expiration of the aforesaid thirty (30) day period. In the event the remaining



Members (or any one or more of the remaining Members) give written notice to the Selling Member and the "tag along Members" of their desire to exercise this right of first refusal and to purchase all of the Interests of the Selling Member and the "tag along Members" offered upon the same terms and conditions as are stated in the aforesaid written offer to purchase, the remaining Members shall have the right to designate the time, date and place of closing, provided that the date of closing shall be within sixty (60) days after written notification to the Selling Member of the remaining Member or Members' election to exercise their right of the first refusal. In the event that two (2) or more Members give written notice of their desire to exercise their right of first refusal, absent an agreement between all the Members so exercising such right, each such Member exercising their right of first refusal shall be entitled to purchase that percentage of the selling Member's share according to the proportion that their Percentage Interests bears to the total Percentage Interests exercising such right of first refusal. The Members shall communicate with each other during the pendency of any offer made in accordance with the terms of this Section 10.2 in order to effectuate the intent of this Section.

(c) As a condition to the Company recognizing the effectiveness of either the sale or gift of an Interest in the Company (including, in both cases, a Transferee Interest), the remaining Members may require the Selling Member, Gifting Member and/or the proposed purchaser, donee or successor-in-interest, as the case may be, to execute, acknowledge and deliver to the remaining Members such instruments of transfer, assignment and assumption and such other certificates, representations and documents, and to perform all such other acts which the remaining Members' may deem necessary or desirable to:

- (1) verify the purchase, gift or transfer, as the case may be;
- (2) confirm that the person desiring, to acquire an Interest in the Company, or to be admitted as a Member, has accepted, assumed and agreed to be subject and bound by all of the terms, obligations and conditions of the Agreement (whether such Person is to be admitted as a new Member or as a Transferee);
- (3) maintain the status of the Company as a partnership for federal tax purposes; and
- (4) assure compliance with any applicable state and federal laws including securities laws and regulations.

(d) Any sale or gift of a Membership Interest or Transferee Interest in compliance with this Article X shall be deemed effective upon the last day of the calendar month in which all the terms and conditions hereof relating thereto have been satisfied. The admission of a Member in compliance with this Article X shall be deemed effective as of the last day of the calendar month in which the remaining Members' consent thereto was given. The Selling Member hereby indemnifies the Company and the remaining Members against any and all loss, damage, or expense (including, without limitation, tax liabilities or loss of tax benefits) arising directly or indirectly as a result of any transfer or purported transfer in violation of this Article X.

### **10.3 *Permitted Transfer to Descendants & Spouse/Mandatory Offer at Death.***

**10.3.1 No Mandatory Offer At Death.** If a Member's Interest is Transferred to a lineal descendant of the Member or Member's spouse, to a Trust or other entity beneficially owned solely for or by that Member, that Member's spouse, or the lineal descendant of that Member or Member's spouse, the Transferee shall not be required to sell or offer to sell his or her Interest, shall be eligible to become a Member pursuant to Sections 10.1.1 and 10.1.2 above, and shall be subject to the voting agreements described in Article V, above. If Members of the Company are trusts for the lifetime benefit of the lineal descendants of a Member either directly or indirectly, then the successors in interest to the Interests in the Company pursuant to the terms of such trusts shall be considered as Members hereof (regardless of indirect ownership as trust beneficiaries) as long as the beneficial interests are owned by the lineal descendants of the Member or their spouses, and said persons shall be subject to the voting agreements described in Article V, above.

**10.3.2 Mandatory Offer At Death.** Except with transfers described in 10.3.1., above, the death of any Member or Transferee who owns an Interest shall constitute an offer by the Member's Estate, Trust, or other legal successor in interest, to sell all of the Member's Interest to the Company (the "Offer") at its fair market value (determined as of the date of death). The Company shall have one hundred eighty (180) days in which to accept the Offer at an agreed price, which acceptance shall be made by delivery of written notice thereof to the legal representative of the estate of the Member or Transferee, by certified mail or personal delivery, within said one hundred eighty (180) day period. If the Company does not elect to purchase the Interest within said one hundred eighty (180) day period, the remaining Members shall have the right, but are not required to, purchase the remaining part, or all, as the case may be, of the Interest at its fair market value (as determined herein) determined as of the date of death, in proportion to their existing Interests. Such right to purchase shall be exercised by delivery of written notice thereof, by certified mail or personal delivery, during the thirty (30) days immediately after the one hundred eighty (180) day period (the "30 Day Period"). If any such Member does not desire to purchase his/her or its full proportionate part of the Interest offered for sale, but the remaining Members desire to purchase all of the Interest offered for sale, said Members shall then have the right to purchase said Interest proportionally in accordance with their respective Interests and the Members shall communicate with each other during the 30 Day Period in order to effectuate the intent of this Section 10.3. Except as provided in Section 10.1.2 and 10.1.3, to the extent that any part, or all, of an Interest is not purchased under the provisions of this Section 10.3, the deceased's Member's Interest shall become a Transferee's Interest, if not owned beneficially or directly by another Member hereof. The purchase price shall be as agreed by the parties, and, unless otherwise agreed, shall be paid in cash at the closing, which shall occur no later than thirty (30) days after the end of the 30 Day Period. For purposes of this Agreement, the "fair market value" of an Interest is equal to its Percentage Interest multiplied by the value of the Company (as agreed by the parties). If the value of the Company is not agreed to by the parties, then for purposes of this Agreement "fair market value" of a Member's Interest shall be determined without reduction for minority, lack of marketability or other entity/Company level discounts, based upon a reasonable appraisal procedure to determine the fair market value of the Company's assets. The appraisal procedure shall be agreed upon by the Member and Company. If the parties cannot agree to an appraisal procedure, then an MAI appraiser shall be selected by the Personal Representative of the deceased Member's estate, and if the Company does not agree as to that appraiser, then the Company shall select its own appraiser and each MAI appraiser then shall select a third MAI appraiser and the average of all three (3) appraisals shall be the fair market value of the Interest. As set

forth hereinabove, fair market value" of a Member's Interest shall be determined without reduction for minority, lack of marketability or other entity/Company level discounts.

**10.4 Transferee Not Member in Absence of Unanimous Consent.**

(a) Except as provided in Section 10.1.2 and 10.1.3, if all of the remaining Members do not approve by unanimous written consent of the proposed, sale or gift of the Transferring Member's Membership Interest to a transferee or donee which is not a Member immediately prior to the sale or gift, then the proposed transferee or donee shall have no right to participate in the management of the business and affairs of the Company or to become a Member. The transferee or donee shall be merely a Transferee entitled solely to economic rights to profits, losses and distributions and shall have no voting rights under this Agreement or in matters relating to the Company and its business; provided, however, any sale of a Transferee's interest in the Company should be subject to Section 10.2. No transfer of a Member's Interest in the Company (including any transfer of the Transferee Interest or any other transfer which has not been approved by unanimous written consent of the Members) shall be effective unless and until written notice (including the name and address of the proposed transferee or donee and the date of such transfer) has been provided to the Company and the nontransferring Member(s).

(b) Upon and contemporaneously with any sale or gift of a Transferring Member's Interest in the Company which does not at the same time transfer the balance of the rights associated with the Transferee Interest transferred by the Transferring Member (including, without limitation, the rights of the Transferring Member to participate in the management of the business and affairs of the Company), all remaining rights and interest which were owned by the Transferring Member immediately prior to such sale or gift or which were associated with the transferred Interest shall immediately lapse until the remaining Members, by unanimous written consent, reinstate such rights to the Transferee who did not previously obtain the unanimous written consent, reinstating such rights to a successor or transferee of such Transferee.

**ARTICLE XI**

**ADDITIONAL MEMBERS**

From the date of the formation of the Company, any Person or Entity acceptable to the Members by their unanimous vote thereof may become a Member in this Company for such consideration as the Members by their unanimous votes shall determine, subject to the terms and conditions of this Agreement. No new Members shall be entitled to any retroactive allocation of profits losses, income or expense deductions incurred by the Company. The Manager(s) may, at their option, at the time a Member is admitted, close the Company books (as though the Company's tax year has ended) or make pro rata allocations of income, loss, and expense deductions to a new Member for that portion of the Company's tax year in which a Member was admitted in accordance with the provisions of Code Section 706(d) and the Treasury Regulations promulgated thereunder.

## ARTICLE XII

### DISSOLUTION AND TERMINATION

#### 12.1 *Dissolution.*

(a) The Company shall be dissolved upon the occurrence of any of the following events:

- (i) by the unanimous written consent of all Members; or
- (ii) the sale, transfer or assignment of substantially all of the assets of the Company; or
- (iii) as otherwise required by law.

#### 12.2 *Winding Up, Liquidation and Distribution of Assets.*

(a) Upon dissolution, an accounting shall be made by the Company's independent accountant of the accounts of the Company and of the Company's assets, liabilities and operations, from the date of the last previous accounting until the date of dissolution. The Managers shall immediately proceed to wind up the affairs of the Company.

(b) If the Company is dissolved and its affairs are to be wound up, the Managers shall:

- (1) Sell or otherwise liquidate all of the Company's assets as promptly as practicable (except to the extent the Managers may determine to distribute any assets to the Members in kind),
- (2) Allocate any profit or loss resulting from such sales to the Member's and Transferees' Capital Accounts in accordance with Article IX hereof.
- (3) Discharge all liabilities of the Company, including liabilities to Members and Transferees who are creditors, to the extent other-wise permitted by law, other than liabilities to Members and Transferees for Distributions, and establish such Reserves as may be reasonably necessary to provide for contingent liabilities of the Company (for purposes of determining the Capital Accounts of the Members and Transferees, the amounts of such Reserves shall be deemed to be an expense of the Company),
- (4) Distribute the remaining assets in the following order:
  - (i) If any assets of the Company are to be distributed in kind, the net fair market value of such assets as of the date of dissolution shall be determined by independent appraisal or by agreement of all of the Members. Such assets shall be deemed to have been sold as of the date of dissolution for their fair market value, and



the Capital Accounts of the Members and Transferees shall be adjusted pursuant to the provisions of Article IX and Section 8.3 of this Agreement to reflect such deemed sale.

(ii) To the Members and Transferees, pro rata, in accordance with the positive balance (if any) of each Member's and Transferee's Capital Account (as determined after taking into account all Capital Account adjustments for the Company's taxable year during, which the liquidation occurs) shall be distributed to the Members and Transferee either in cash or in kind, as determined by the Managers, with any assets distributed in kind being valued for this purpose at their fair market value as determined pursuant to Section 12.2(b)(i).

(iii) Thereafter, to the Members and Transferee's pro rata, in accordance with their respective Percentage Interests.

(c) Notwithstanding anything to the contrary in this Agreement, upon a liquidation within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Treasury Regulations, if any Member has a Deficit Capital Account (after giving effect to all contributions, distributions, allocations and other Capital Account adjustments for all taxable years, including the year during which such liquidation occurs), such Member shall have no obligation to make any Capital Contribution, and the negative balance of such Member's Capital Account shall not be considered a debt owed by such Member to the Company or to any other Person for any purpose whatsoever.

(d) Upon completion of the winding up, liquidation and distribution of the assets, the Company shall be deemed terminated.

(e) The Manager(s) shall comply with all requirements of applicable law pertaining to the winding up of the affairs of the Company and the final distribution of its assets.

### **12.3 Articles of Dissolution.**

When all debts, liabilities and obligations of the Company have been paid and discharged or adequate provisions have been made therefor and all of the remaining property and assets of the Company have been distributed among its members in accordance with their respective rights and interests, a Articles of Dissolution of the Company shall be filed with the Florida Department of State.

### **12.4 Effect of Filing Articles of Dissolution.**

Upon the filing of Articles of Dissolution with the Florida Department of State, and upon issuance of the Certificate of Dissolution by the Department of the State, the existence of the Company shall cease, except for the purpose of suits, of the proceedings and appropriate action as provided in the Act. The Managers shall have authority to distribute any Company property discovered after dissolution, convey real estate and take such other action as may be necessary on behalf of and in the name of the Company.

### **12.5 Return of Contribution Nonrecourse to Other Members.**

Except as provided by law or as expressly provided in this Agreement, upon dissolution, each Member and Transferee shall look solely to the assets of the Company for the return of its Capital Contribution. If the Company property remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return the cash contribution of one or more Members or Transferees, such Member(s) or Transferee(s) shall have no recourse against any other Member or Transferee, except as otherwise provided by law.

## ARTICLE XIII

### MISCELLANEOUS PROVISIONS

#### 13.1 *Notices.*

Any notice, demand, or communication required or permitted to be given by any provision of this Agreement shall be deemed to have been sufficiently given or served for all purposes if delivered personally or by express mail or courier service (with receipt acknowledged) to the party or to an executive officer of the party to whom the same is directed, if telecopied (with receipt acknowledged) to the party or an executive officer of the party to whom the same is directed or, if sent by registered or certified mail, postage and charges prepaid, addressed to the Member's and/or Company's address, as appropriate, which is set forth in this Agreement. Except as otherwise provided herein any such notice shall be deemed to be given two (2) business days after the date on which the same was deposited in the United States mail, addressed and sent as aforesaid, if sent by mail or upon confirmation of receipt if delivered by telecopier, personal delivery or courier service.

#### 13.2 *Books of Account and Records.*

Proper and complete records and books of account shall be kept or shall be caused to be kept by the Managers in which shall be entered fully and accurately all transactions relating to the Company's business in such detail and completeness as is customary and usual for businesses of the type engaged in by the Company. Such books and records shall be maintained as provided in Section 9.9. The books and records shall at all times be maintained at the principal place of business of the Company. Additionally, the Managers shall promptly distribute to all Members, copies of the Company's financial statements on an annual basis.

#### 13.3 *Application of Florida Law.*

This Agreement and its interpretation shall be governed exclusively by its terms and by the laws of the State of Florida, and specifically the Act.

#### 13.4 *Waiver of Action for Partition.*

Each Member and Transferee irrevocably waives during the term of the Company any right that it may have to maintain any action for partition with respect to the property of the Company.

#### 13.5 *Amendments.*

This Agreement may not be amended except in writing by the affirmative vote of a majority of the Members of the Company which vote must include the affirmative vote of the Manager. Any amendment changing either the Percentage Interests of the Members or any provision within Article V requires the unanimous vote of the Members.

**13.6 *Execution of Additional Instruments.***

Each Member hereby agrees to execute such other and further statements of interest and holdings, designations and other instruments necessary to comply with an laws, rules or regulations.

**13.7 *Construction.***

Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural and vice versa, and the masculine gender shall include the feminine and neuter genders and vice versa.

**13.8 *Headings.***

The headings in this Agreement are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent or intent of this Agreement or any provision thereof

**13.9 *Waivers.***

The failure of any party to seek redress for default of or to insist upon the strict performance of any covenant of condition of this Agreement shall not prevent a subsequent act, which would have originally constituted a default, from having the effect of an original default.

**13.10 *Rights and Remedies Cumulative.***

The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive the right to use any other remedy. Said rights and remedies are given in addition to any other legal rights that parties may have.

**13.11 *Severability.***

If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

**13.12 *Heirs, Successors and Assigns.***

Each and all of the covenants, terms, provisions and agreement herein contained shall be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by this Agreement, their respective heirs, legal representatives, successors and assigns.

**13.13 *Creditors.***



None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditors of the Company.

**13.14 Counterparts.**

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

**13.15 Conflict of Interest Waiver.** The Members and the Company acknowledge that the law firm of TESCHER & SPALLINA, P.A. has represented the Company in connection with the drafting of this Agreement and the formation and structuring of the Company, and that said law firm also represents one or more of the Managers and Trustees. The Company and its Members acknowledge that they have been advised that there are material income tax consequences and economic ramifications from being a Member in the Company, that they fully understand the tax consequences and economic ramifications of a Member's investment in the Company, and that they have been encouraged to consult with separate and independent counsel to advise them on Company and Member issues including this Agreement and the formation of the Company. The Company and the Members hereby waive any conflicts of interest with respect to the foregoing law firm's representation of the Company and the afore described Members and owners of interests in entity Members, in connection with the services set forth in this Section.

IN WITNESS WHEREOF, the parties hereto have caused their signatures to be set forth below on the day and year first above written.

Witnesses:

**COMPANY:**

BERNSTEIN FAMILY REALTY, LLC, a  
Florida limited liability company

By:

SIMON BERNSTEIN, Manager

**MEMBERS:**

DANIEL BERNSTEIN IRREVOCABLE  
TRUST dated September 7, 2006

STANFORD TRUST COMPANY, Trustee

By:

LOUIS B. FOURNER, PRESIDENT  
Name Title

JAKE BERNSTEIN IRREVOCABLE TRUST  
dated September 7, 2006

STANFORD TRUST COMPANY, Trustee

Raven Buss  
Eliska M. Lynch

By: [Signature]  
LOUIS B. FOURNET, PRESIDENT  
Name Title

JOSHUA Z. BERNSTEIN IRREVOCABLE  
TRUST dated September 7, 2006

STANFORD TRUST COMPANY, Trustee

Raven Buss  
Eliska M. Lynch

By: [Signature]  
LOUIS B. FOURNET, PRESIDENT  
Name Title

F:\WPDATA\Bernstein, Shirley & Simon\Bernstein Family Realty, LLC\Bernstein Family Realty LLC Operating Agreement.vpd

**BERNSTEIN FAMILY REALTY, LLC****OPERATING AGREEMENT***EXHIBIT A*

<u>Member(s)</u>	<u>Percentage Interest*</u>	<u>Capital Contributions</u>
DANIEL BERNSTEIN IRREVOCABLE TRUST dated September 7, 2006	33.34%	\$33.34
JAKE BERNSTEIN IRREVOCABLE TRUST dated September 7, 2006	33.33%	\$33.33
JOSHUA Z. BERNSTEIN IRREVOCABLE TRUST dated September 7, 2006	33.33%	\$33.33

The addresses of all of the Members is 950 Peninsula Corporate Circle, Suite 3010, Boca Raton, Florida 33487.

\*proportionate to capital accounts of Members

**AGREEMENT OF LIMITED PARTNERSHIP OF  
BERNSTEIN FAMILY INVESTMENTS, LLLP**

NOT A CERTIFIED COPY

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**AGREEMENT OF LIMITED PARTNERSHIP OF  
BERNSTEIN FAMILY INVESTMENTS, LLLP**

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This is an Agreement of Limited Partnership ("Agreement") dated this 20 day of May, 2008, by and between BERNSTEIN HOLDINGS, LLC, a Florida limited liability company (the "General Partner"); and SIMON L. BERNSTEIN, Trustee of the SIMON L. BERNSTEIN TRUST AGREEMENT dated May 20, 2008 and SHIRLEY BERNSTEIN, Trustee of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008, together with any individual, partnership, corporation, trust, estate or other entity subsequently admitted as Limited Partners, referred to as the "Limited Partners," and individually as a "Limited Partner". The General Partner and the Limited Partners are herein sometimes referred to individually as a "Partner" and collectively as "Partners."

The parties agree as follows:

**1. Formation.** BERNSTEIN FAMILY INVESTMENTS, LLLP, a limited partnership under the Revised Uniform Limited Partnership Act of Florida ("Act"), became effective on February 15, 2008, the date of filing of the Certificate of Limited Partnership with the Florida Secretary of State by the General Partner. Except as otherwise provided in this Agreement, the Act shall govern the rights and liabilities of the Partners. The limited partnership has elected to be a Florida limited liability limited partnership.

**2. Name.** The name of the Partnership is BERNSTEIN FAMILY INVESTMENTS, LLLP. The General Partner may, in its discretion, change the name of the Partnership and adopt such trade or fictitious names as it may deem appropriate.

**3. Definitions.** In this Agreement, the following terms have the following meanings unless the context otherwise requires:

3.1 "Act" means the Revised Uniform Limited Partnership Act of Florida, as amended from time to time.

3.2 "Adjusted Capital Account Deficit" means, with respect to any Partner, the deficit balance, if any, in such Partner's Capital Account as of the end of the relevant fiscal year, after giving effect to the following adjustments:

3.2.1 Credit to such Capital Account any amounts which such Partner is obligated to restore (pursuant to the terms of such Partner's promissory note or otherwise) or is deemed to be obligated to restore pursuant to the penultimate sentences of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5); and

3.2.2 Debit to such Capital Account the items described in Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), and 1.704-1(b)(2)(ii)(d)(6) of the Regulations.

The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Section 1.704-1(b)(2)(ii)(d) of the Regulations and shall be interpreted consistently therewith.

3.3 "Aggregate Capital Contribution" means the net fair market value of all contributions made to the capital of the Partnership by a Partner pursuant to Section 7.

3.4 "Agreement" means this Agreement of Limited Partnership, as it may be amended from time to time.

3.5 "Capital Account" means, with respect to any Partner, the Capital Account maintained for such Partner in accordance with the following provisions:

3.5.1 To each Partner's Capital Account there shall be credited such Partner's Capital Contributions, such Partner's distributive share of Profits and any items in the nature of income or gain which are specially allocated pursuant to Section 9.3 or Section 9.4 hereof, and the amount of any Partnership liabilities assumed by such Partner or which are secured by any Partnership Property distributed to such Partner.

3.5.2 To each Partner's Capital Account there shall be debited the amount of cash and the Gross Asset Value of any Partnership Property distributed to such Partner pursuant to any provision of this Agreement, such Partner's distributive share of Losses and any items in the nature of expenses or losses which are specially allocated pursuant to Section 9.3 or Section 9.4 hereof, and the amount of any liabilities of such Partner assumed by the Partnership or which are secured by any property contributed by such Partner to the Partnership.

3.5.3 In the event all or a portion of an Interest in the Partnership is transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred Interest.

3.5.4 In determining the amount of any liability for purposes of Sections 3.5.1, and 3.5.2 hereof, there shall be taken into account Code Section 752(c) and any other applicable provisions of the Code and Regulations.

The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Regulations Section 1.704-1(b), and shall be interpreted and applied in a manner consistent with such Regulations. In the event the General Partner shall determine that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto (including, without limitation, debits or credits relating to liabilities that are secured by contributed or distributed property or that are assumed by the Partnership, the General Partner, or Partners), are computed in order to comply with such Regulations, the General Partner may make such modification, provided that it is not likely to have a material effect on the amounts distributable to a Partner pursuant to Section 10.3 hereof upon the dissolution of the Partnership. The General Partner also



shall (i) make any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts of the Partners and the amount of Partnership capital reflected on the Partnership's balance sheet, as computed for book purposes, in accordance with Regulations Section 1.704-1(b)(2)(iv)(g), and (ii) make any appropriate modifications in the event unanticipated events (for example, the acquisition by the Partnership of oil or gas properties) might otherwise cause this Agreement not to comply with Regulations Section 1.704-1(b).

3.6 "Capital Contributions" means, with respect to a Partner, the amount of money and the initial Gross Asset Value of any property (other than money) contributed to the Partnership with respect to the Partnership Interest held by such Partner. The principal amount of a promissory note which is not readily traded on an established securities market and which is contributed to the Partnership by the maker of the note (or a person related to the maker of the note within the meaning of Regulations Section 1.704-1(b)(2)(ii)(c)) shall not be included in the Capital Account of any Partner until the Partnership makes a taxable disposition of the note or until (and to the extent) principal payments are made on the note, all in accordance with Regulations Section 1.704-1(b)(2)(iv)(d)(2).

3.7 "Certificate" means the certificate of limited partnership required by the Act to be filed with the Department of State of Florida, as it may be amended from time to time.

3.8 "Code" means the Internal Revenue Code of 1986, as amended, or subsequent revenue laws.

3.9 "Depreciation" means, for each Fiscal Year, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable with respect to an asset for such Fiscal Year, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such Fiscal Year, Depreciation shall be an amount which bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization, or other cost recovery deduction for such Fiscal Year bears to such beginning adjusted tax basis; provided, however, that if the adjusted basis for federal income tax purposes of an asset at the beginning of such Fiscal Year is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the General Partner.

3.10 "Event of Withdrawal" means an event described as such in Fla.Stats. §620.1603, or successor provision thereto.

3.11 "Fiscal Year" means (i) the period commencing on the effective date of this Agreement and ending on the last day of the Partnership's taxable year, (ii) any subsequent twelve (12) month period commencing on day after the last day of the partnership's taxable year and ending on the last day of the partnership's taxable year, or (iii) any portion of the period described in clause (ii) for which the Partnership is required to allocate Profits, Losses, and other items of Partnership income, gain, loss, or deduction pursuant to Section 9 hereof.

3.12 "General Partner" means BERNSTEIN HOLDINGS, LLC, and its successors as provided herein.



3.13 "Gross Asset Value" means, with respect to any asset, the asset's adjusted basis for federal income tax purposes, except as follows:

3.13.1 The initial Gross Asset Value of any asset contributed by a Partner to the Partnership shall be the gross fair market value of such asset, as determined by the contributing Partner and the General Partner, provided that, if the contributing Partner is a General Partner, the determination of the fair market value of a contributed asset shall be determined by appraisal;

3.13.2 The Gross Asset Values of all Partnership assets shall be adjusted to equal their respective gross fair market values, as determined by the General Partner, as of the following times: (a) the acquisition of an additional Interest in the Partnership by any new or existing Partner in exchange for more than a *de minimis* Capital Contribution; (b) the distribution by the Partnership to a General Partner or Partner of more than a *de minimis* amount of Partnership Property as consideration for an Interest in the Partnership; and (c) the liquidation of the Partnership within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g); provided, however, that the adjustments pursuant to clauses (a) and (b) above shall be made only if the General Partner reasonably determines that such adjustments are necessary or appropriate to reflect the relative economic interests of the General Partner and Partners in the Partnership;

3.13.3 The Gross Asset Value of any Partnership asset distributed to a Partner shall be adjusted to equal the gross fair market value of such asset on the date of distribution as determined by the distributee and the General Partner, provided that, if the distributee is a General Partner, the determination of the fair market value of the distributed asset shall be determined by appraisal; and

3.13.4 The Gross Asset Values of Partnership assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulations Section 1.704-1(b)(2)(iv)(m) and Sections 3.26.6 and 9.3.7 hereof; provided, however, that Gross Asset Values shall not be adjusted pursuant to this Section 3.13.4 to the extent the General Partner determines that an adjustment pursuant to Section 3.13.2 hereof is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this Section 3.13.4.

If the Gross Asset Value of an asset has been determined or adjusted pursuant to Section 3.13.1, Section 3.13.2, or Section 3.13.4 hereof, such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Profits and Losses.

3.14 "Involuntary Transfer" means any involuntary sale, transfer, encumbrance or other disposition, by or in which any Partner or assignee of a Partnership Interest shall be deprived or divested of any right, title or interest in or to any Partnership Interest, or portion thereof, to any Person or governmental entity other than a Partner, including, without limitation, (i) any sale in connection with the execution of a judgment pursuant to court order, (ii) a transfer or sale in connection with a bankruptcy or a transfer or sale by a receiver, (iii) any transfer to a judgment creditor pursuant to court

order, (iv) any transfer in connection with a reorganization, insolvency or similar proceeding, (v) any transfer to a public officer or agency pursuant to any abandoned property or escheat law, or (vi) any transfer to the spouse or former spouse of a Partner or assignee of a Partnership Interest as the result of or incident to any dissolution of marriage, marital separation, or similar event (notwithstanding such transfer is pursuant to a marital or property settlement agreement).

3.15 "Limited Partners" means those Persons identified on the Signature Pages of this Agreement as limited partners and all other Persons who shall be admitted to the Partnership as Substitute Limited Partners as provided in this Agreement and no other Person.

3.16 "Net Cash From Operations" means the gross cash proceeds from Partnership operations (including sales and dispositions in the ordinary course of business) less the portion thereof used to pay or establish reserves for all Partnership expenses, debt payments, capital improvements, replacements, and contingencies, all as determined by the General Partner. "Net Cash From Operations" shall not be reduced by depreciation, amortization, cost recovery deductions, or similar allowances, but shall be increased by any reductions of reserves previously established pursuant to the first sentence of this Section 3.16 and Section 3.17 hereof. Net Cash from Operations shall include income-type items derived from Partnership investment assets (e.g., dividends, interest, and partnership operating distributions).

3.17 "Net Cash From Sales or Refinancings" means the net cash proceeds from all sales and other dispositions (other than in the ordinary course of business) and all refinancings of Property, from any insurance payments or damage recoveries, other than under policies commonly referred to as a rent insurance paid to the Partnership in respect of its capital assets, and from any exercise by a governmental authority of any right of eminent domain, condemnation or similar right or power with respect to the capital assets of the Partnership, less any portion thereof used to establish reserves, all as determined by the General Partner. "Net Cash From Sales or Refinancings" shall include all principal and interest payments with respect to any note or other obligation received by the Partnership in connection with sales and other dispositions (other than in the ordinary course of business) of Partnership Property.

3.18 "Partner Nonrecourse Debt" has the meaning set forth in Section 1.704-2(b)(4) of the Regulations.

3.19 "Partner Nonrecourse Debt Minimum Gain" means an amount, with respect to each Partner Nonrecourse Debt, equal to the Partnership Minimum Gain that would result if such Partner Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with Section 1.704-2(i)(3) of the Regulations.

3.20 "Partner Nonrecourse Deductions" has the meaning set forth in Sections 1.704-2(i)(1) and 1.704-2(i)(2) of the Regulations.

3.21 "Partners" means collectively the General Partner and all Limited Partners.

3.22 "Partnership" means BERNSTEIN FAMILY INVESTMENTS, LLLP.



3.23 "Partnership Interest" means a Partner's percentage interest in the profits, losses, and property of the Partnership, which percentage is to be determined in accordance with the relative contributions to the capital of the Partnership as made by the Partner and the other Partners from time to time.

3.24 "Partnership Minimum Gain" has the meaning set forth in Sections 1.704-2(b)(2) and 1.704-2(d).

3.25 "Person" means an individual, corporation, partnership, association, trust, estate or any other entity.

3.26 "Profits" and "Losses" means, for each Fiscal Year, an amount equal to the Partnership's taxable income or loss for such year or period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

3.26.1 Any income of the Partnership that is exempt from federal income tax and not otherwise taken into account in computing Profits and Losses pursuant to this Section 3.26 shall be added to such taxable income or loss;

3.26.2 Any expenditures of the Partnership described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Regulations Section 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Profits or Losses pursuant to this Section 3.26 shall be subtracted from such taxable income or loss;

3.26.3 In the event the Gross Asset Value of any Partnership asset is adjusted pursuant to Section 3.13.2 or Section 3.13.3 hereof, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Profits or Losses;

3.26.4 Gain or loss resulting from any disposition of Partnership Property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Gross Asset Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Gross Asset Value;

3.26.5 In lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such fiscal year or other period, computed in accordance with Section 3.9 hereof;

3.26.6 To the extent an adjustment to the adjusted tax basis of any Partnership asset pursuant to Code Section 734(b) or Code Section 743(b) is required pursuant to Regulations Section 1.704-1(b)(2)(iv)(m)(4) to be taken into account in determining Capital Accounts as a result of a distribution other than in liquidation of a Partner's Interest in the Partnership, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss

(if the adjustment decreases the basis of the asset) from the disposition of the asset and shall be taken into account for purposes of computing Profits or Losses;

3.26.7 Notwithstanding any other provision of this Section 3.26, any items which are specially allocated pursuant to Section 9.3 or Section 9.4 hereof shall not be taken into account in computing Profits or Losses.

The amounts of the items of Partnership income, gain, loss, or deduction available to be specially allocated pursuant to Sections 9.3 or Section 9.4 hereof shall be determined by applying rules analogous to those set forth in Sections 3.26.1 through 3.26.6 above.

3.27 "Property" means the property described in Exhibit "A", and such other property as the Partners shall agree to submit to Partnership ownership.

3.28 "Regulatory Allocations" has the meaning set forth in Section 9.4 hereof.

3.29 "Special Limited Partners" has the meaning set forth in Section 16.5.2.

3.30 "Substitute Limited Partners" means Persons who have acquired Partnership Interests from Limited Partners and who have been substituted for such Limited Partners as provided in this Agreement. Solely for purposes of determining those Persons who are entitled to distributions and allocations under Sections 9 and 10, "Substitute Limited Partners" means Persons who have acquired Partnership Interests from Limited Partners and Special Limited Partners and their assignees, whether or not such Persons have been substituted as provided herein.

3.31 "Transfer" means the mortgage, pledge, hypothecation, transfer, gift, bequest, sale, assignment or other disposition of any part or all or any Partnership Interest including a general partnership interest in the Partnership, whether voluntarily, by operation of law or otherwise.

**4. Principal Place of Business and Recordkeeping Office and Agent for Service of Process.** The principal place of business and recordkeeping of the Partnership is at BERNSTEIN FAMILY INVESTMENTS, LLLP, 950 Peninsula Corporate Circle, Suite 310, Boca Raton, Florida 33487, or at such other location as the General Partner, in its discretion, may determine. DONALD R. TESCHER shall act as agent for service of process on the Partnership.

**5. Term.** The Partnership shall continue until December 31, 2058, unless sooner terminated as provided in Section 18.

**6. Business and Purposes.** The purpose and business of the Partnership shall be the ownership, investment, management and control of the Property and other investment properties (including, without limitation, investments in real property, loans, business enterprises, marketable securities, either directly or through interests in corporations, limited partnerships, limited liability companies, and other entities), to provide a means for the BERNSTEIN family to own investment property and preserve its assets, and





to conduct such other activities as may be necessary or appropriate to promote such business and purposes, it being agreed that each of the foregoing is an ordinary part of the Partnership's business. In addition to the foregoing, or as part thereof, the Partnership shall accomplish among other things the following: (a) maintain control over BERNSTEIN family assets contributed to it, (b) consolidate fractional interests in BERNSTEIN family assets, (c) seek to increase BERNSTEIN family wealth, (d) establish a method by which gifts can be made without fractionalizing BERNSTEIN family assets, (e) provide protection to BERNSTEIN family assets from future claims against members of the families, (f) facilitate the administration and reduce the costs associated with the disability or probate of the estate of members of the BERNSTEIN family, (g) provide a mechanism to resolve BERNSTEIN family disputes, and (h) if applicable, hold restricted securities until such securities become unrestricted and free of underwriting limitations of the Securities and Exchange Commission. The Partnership shall not engage in any other business without the prior consent of Limited Partners owning (in the aggregate) at least eighty (80%) percent of the limited partnership Interests owned by the Limited Partners.

## **7. Capital Contributions and Capital Accounts.**

**7.1 Contribution of General Partners.** The General Partner shall, as soon as practicable after the execution of this Agreement, contribute to the Partnership the cash and property set forth on Schedule "A" attached hereto and made a part hereof. The value of said capital contribution shall be allocated to the capital account of the General Partner. In addition, the General Partner shall contribute its efforts as managing partner.

**7.2 Contribution of Limited Partners.** The Limited Partners shall contribute to the Partnership the cash and property set forth on Schedule "A" attached hereto and made a part hereof. The value of each such contribution shall be allocated to the respective capital accounts of the Limited Partners as reflected on Schedule "A."

**7.3 Withdrawal of Capital.** Except as specifically provided in this Agreement, no Partner shall be entitled to withdraw any part of his capital account or to receive any distribution from the Partnership, and no Partner shall be required to make any additional capital contribution to the Partnership.

**7.4 Partner's Loans.** Loans by any Partner to the Partnership shall not be considered contributions to the capital of the Partnership and shall not increase the capital account of the lending Partner.

**7.5 Interest on Capital Contribution.** No interest shall be paid on any capital contributed to the Partnership.

## **8. Compensation and Expenses of General Partner.**

**8.1 Compensation and Reimbursement.** The Partnership shall pay to the General Partner or its affiliates reasonable fees as compensation for services and reimbursement for sums advanced. The Partnership is authorized to enter into business agreements, contracts, and other transactions with the

General Partner or its affiliates and is authorized to pay fees, commissions or other consideration to the General Partner, or its affiliates on an arms length basis, including without limitation, real estate brokerage commissions, development fees, insurance premiums, rent, property management fees, leasing commissions and mortgage brokerage fees.

**8.2 Expenses.** The General Partner may charge the Partnership for any reasonable expenses actually incurred by it in connection with the Partnership's business and all allocable portions of expenses incurred in connection with both Partnership and other activities, such allocation to be determined on any equitable basis selected by the General Partner consistent with generally accepted accounting principles. Such expenses shall include, but are not limited to, payment of fees and expenses to attorneys, accountants, property managers and property management companies and other consultants.

## **9. Allocations of Profit and Loss, Cash Distributions.**

**9.1 Allocations of Profits.** After giving effect to the special allocations set forth in Sections 9.3 and 9.4 hereof, Profits for any Fiscal Year shall be allocated in the following order and priority:

9.1.1 First, to the Partners in an amount equal and in proportion to the excess, if any, of the cumulative Losses allocated to the Partners pursuant to Section 9.2.2 hereof for the current and all prior Fiscal Years, reduced by the cumulative Profits allocated to the Partners pursuant to this Section 9.1.1 hereof for the current and all prior Fiscal Years;

9.1.2 The balance, if any, pro-rata to the Partners or in proportion to their Partnership Interests.

**9.2 Allocation of Losses.** After giving effect to the special allocations set forth in Sections 9.3 and 9.4, Losses for any Fiscal Year shall be allocated as set forth in Section 9.2.1 below, subject to the limitations in Section 9.2.2 below.

9.2.1 To the Partners in proportion to their Partnership Interests.

9.2.2 The Losses allocated pursuant to Section 9.2.1 hereof shall not exceed the maximum amount of Losses that can be so allocated without causing any Partner who is not a General Partner to have an Adjusted Capital Account Deficit at the end of any Fiscal Year. In the event some but not all of the Partners who are not General Partners would have Adjusted Capital Account Deficits as a consequence of an allocation of Losses pursuant to Section 9.2.1, the limitation set forth in this Section 9.2.2 shall be applied on a Partner by Partner basis so as to allocate the maximum permissible Losses to each Partner who is not a General Partner under Section 1.704-1(b)(2)(ii)(d) of the Regulations. All Losses in excess of the limitation previously set forth in this Section 9.2.2 shall be allocated to the General Partner.

**9.3 Special Allocations.** The following special allocations shall be made in the following order:



**9.3.1 Minimum Gain Chargeback.** Except as otherwise provided in Section 1.704-2(f) of the Regulations, notwithstanding any other provision of this Section 9, if there is a net decrease in Partnership Minimum Gain during any Partnership Fiscal Year, each Partner shall be specially allocated items of Partnership income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Partner's share of the net decrease in Partnership Minimum Gain, determined in accordance with Regulations Section 1.704-2(g). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Partner pursuant thereto. The items to be so allocated shall be determined in accordance with Sections 1.704-2(f)(6) and 1.704-2(j)(2) of the Regulations. This Section 9.3.1 is intended to comply with the minimum gain chargeback requirement in Section 1.704-2(f) of the Regulations and shall be interpreted consistently therewith.

**9.3.2 Partner Minimum Gain Chargeback.** Except as otherwise provided in Section 1.704-2(i)(4) of the Regulations, notwithstanding any other provision of this Section 9, if there is a net decrease in Partner Nonrecourse Debt Minimum Gain attributable to a Partner Nonrecourse Debt during any Partnership Fiscal Year, each Partner who has a share of the Partner Nonrecourse Debt Minimum Gain attributable to such Partner Nonrecourse Debt, determined in accordance with Section 1.704-2(i)(5) of the Regulations, shall be specially allocated items of Partnership income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Partner's share of the net decrease in Partner Nonrecourse Debt Minimum Gain attributable to such Partner Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i)(4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Partner pursuant thereto. The items to be so allocated shall be determined in accordance with Sections 1.704-2(i)(4) and 1.704-2(j)(2) of the Regulations. This Section 9.3.2 is intended to comply with the minimum gain chargeback requirement in Section 1.704-2(i)(4) of the Regulations and shall be interpreted consistently therewith.

**9.3.3 Qualified Income Offset.** In the event any Partner who is not a General Partner unexpectedly receives any adjustments, allocations, or distributions described in Regulations Section 1.704-1(b)(2)(ii)(d)(4), Regulations Section 1.704-1(b)(2)(ii)(d)(5), or Regulations Section 1.704-1(b)(2)(ii)(d)(6), items of Partnership income and gain shall be specially allocated to each such Partner in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the Adjusted Capital Account Deficit of such Partner as quickly as possible, provided that an allocation pursuant to this Section 9.3.3 shall be made if and only to the extent that such Partner would have an Adjusted Capital Account Deficit after all other allocations provided for in this Section 9 have been tentatively made as if this Section 9.3.3 were not in the Agreement.

**9.3.4 Gross Income Allocation.** In the event any Partner who is not a General Partner has a deficit Capital Account at the end of any Partnership Fiscal Year which is in excess of the sum of (i) the amount such Partner is obligated to restore (pursuant to the terms of such Partner's promissory note or otherwise), and (ii) the amount such Partner is deemed to be obligated to restore pursuant to the penultimate sentences of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5), each such Partner shall be specially allocated items of Partnership income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this Section 9.3.4 shall be made if and only to the extent

that such Partner would have a deficit Capital Account in excess of such sum after all other allocations provided for in this Section 9 have been tentatively made as if this Section 9.3.4 and Section 9.3.3 hereof were not in the Agreement.

**9.3.5 Nonrecourse Deductions.** Nonrecourse Deductions for any Fiscal Year shall be specially allocated to the Limited Partners.

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

**9.3.7 Section 754 Adjustment.** To the extent an adjustment to the adjusted tax basis of any Partnership asset pursuant to Code Section 734(b) or Code Section 743(b) is required, pursuant to Regulations Section 1.704-1(b)(2)(iv)(m)(2) or Regulations Section 1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts as the result of a distribution to a General Partner or Partner in complete liquidation of his Interest in the Partnership, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the General Partner and the Partners in accordance with their Interests in the Partnership in the event that Regulations Section 1.704-1(b)(2)(iv)(m)(2) applies, or to the Partners to whom such distribution was made in the event that Regulations Section 1.704-1(b)(2)(iv)(m)(4) applies.

**9.3.8 Allocations Relating to Taxable Issuance of Partnership Interests.** Any income, gain, loss, or deduction realized as a direct or indirect result of the issuance of an Interest in the Partnership by the Partnership to a Partner (the "Issuance Items") shall be allocated among the Partners so that, to the extent possible, the net amount of such Issuance Items, together with all other allocations under this Agreement to each Partner, shall be equal to the net amount that would have been allocated to each such Partner if the Issuance Items had not been realized.

**9.4 Curative Allocations.** The allocations set forth in Sections 9.2.2, 9.3.1, 9.3.2, 9.3.3, 9.3.4, 9.3.5, 9.3.6 and 9.3.7 hereof (the "Regulatory Allocations") are intended to comply with certain requirements of the Regulations. It is the intent of the Partners that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Partnership income, gain, loss, or deduction pursuant to this Section 9.4. Therefore, notwithstanding any other provision of this Section 9 (other than the Regulatory Allocations), the General Partner shall make such offsetting special allocations of Partnership income, gain, loss, or deduction in whatever manner it determines appropriate so that, after such offsetting allocations are made, each Partner's Capital Account balance is, to the extent possible, equal to the Capital Account balance such General Partner or Partner would have had if the Regulatory Allocations were not part of the Agreement and all Partnership items were allocated pursuant to Sections 9.1, 9.2.1, 9.3.8, and 9.5. In exercising its discretion under this Section 9.4, the General Partner shall take into account future Regulatory Allocations under Sections 9.3.1 and 9.3.2 that, although not yet made, are likely to offset other Regulatory Allocations previously made under Sections 9.3.5 and 9.3.6.



## 9.5 Other Allocation Rules.

9.5.1 Generally, unless otherwise explicitly provided, all Profits and Losses allocated to the Partners shall be allocated among them in proportion to the Partnership Interest held by each. In the event additional Limited Partners are admitted to the Partnership on different dates during any Fiscal Year, the Profits (or Losses) allocated to the Partners for each such Fiscal Year shall be allocated among the Partners in proportion to the Partnership Interest each holds from time to time during such Fiscal Year in accordance with Code Section 706, using any convention permitted by law and selected by the General Partner.

9.5.2 The Partners are aware of the income tax consequences of the allocations made by this Section 9 and hereby agree to be bound by the provisions of this Section 9 in reporting their shares of Partnership income and loss for income tax purposes.

9.5.3 Solely for purposes of determining a General Partner's or Partner's proportionate share of the "excess nonrecourse liabilities" of the Partnership within the meaning of Regulations Section 1.752-3(a)(3), the Partner's Interests in Partnership profits are as follows: Limited Partners one hundred percent (100%) (in proportion to their Partnership Interests).

9.5.4 To the extent permitted by Sections 1.704-2(h)(3) of the Regulations, the General Partner shall endeavor to treat distributions of Net Cash From Operations or Net Cash From Sales or Refinancings as having been made from the proceeds of a Nonrecourse Liability or a Partner Nonrecourse Debt only to the extent that such distributions would cause or increase an Adjusted Capital Account Deficit for any Partner who is not a General Partner.

**9.6 Tax Allocations: Code Section 704(c).** In accordance with Code Section 704(c) and the Regulations thereunder, income, gain, loss, and deduction with respect to any property contributed to the capital of the Partnership shall, solely for tax purposes, be allocated among the General Partner and Partners so as to take account of any variation between the adjusted basis of such property to the Partnership for federal income tax purposes and its initial Gross Asset Value (computed in accordance with Section 3.13.1 hereof). In the event the Gross Asset Value of any Partnership asset is adjusted pursuant to Section 3.13.2 hereof, subsequent allocations of income, gain, loss, and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Gross Asset Value in the same manner as under Code Section 704(c) and the Regulations thereunder. Any elections or other decisions relating to such allocations shall be made by the General Partner in any manner that reasonably reflects the purpose and intention of this Agreement. Allocations pursuant to this Section 9.6 are solely for purposes of federal, state, and local taxes and shall not affect, or in any way be taken into account in computing, any Partner's Capital Account or share of Profits, Losses, other items, or distributions pursuant to any provision of this Agreement.

## 10. Distributions.



**10.1 Net Cash From Operations.** Except as otherwise provided in Section 10.3 hereof, Net Cash From Operations not needed in the General Partner's determination for the reasonable needs of the Partnership business, shall be distributed to the Partners in proportion to their respective Partnership Interests.

To the extent such cash is comprised in whole or in part of nonrental income-type items derived from Partnership passive investment assets (e.g., dividends, interest, and partnership operating distributions), reinvestments of such proceeds in other investment assets shall constitute expenditures for the reasonable needs of the business in the determination of the General Partner.

**10.2 Net Cash From Sales or Refinancings.** Except as otherwise provided in Section 10.3 hereof, Net Cash From Sales or Refinancings not needed in the General Partner's determination for the reasonable needs of the Partnership business, shall be distributed in the following order and priority:

10.2.1 First, proportionally to the Partners until their aggregate Capital Account balances are reduced to zero; and

10.2.2 thereafter, to the Partners in proportion to their Partnership Interests.

To the extent such cash is comprised in whole or in part of cash from the sale of Partnership non-real property passive investment assets (e.g., marketable securities), reinvestments of such proceeds in other investment assets shall constitute expenditures for the reasonable needs of the business in the determination of the General Partner.

**10.3 Liquidating Distributions.** Notwithstanding the distribution provisions, liquidating distributions of the partnership, including all distributions made pursuant to a liquidation described in Regulations Section 1.704-1(b)(2)(ii)(g), shall be distributed as follows:

10.3.1 First, to the payment and discharge of all of the Partnership's debts and liabilities to creditors other than the General Partners;

10.3.2 Second, to the payment and discharge of all of the Partnership's debts and liabilities to General Partners; and

10.3.3 The balance, if any, proportionally to the Partners until their aggregate Capital Account balances are reduced to zero; and

10.3.4 thereafter, to the Partners in proportion to their Partnership Interests.

The foregoing liquidating distributions are intended to be made in compliance with Regulations Section 1.704-1(b)(2)(ii)(b)(2) and subsequent to a revaluation of Partnership property and corresponding adjustment of Capital Accounts under Treas. Regs. §1.704-1(b)(2)(iv)(f). If any General Partner's Capital Account has a deficit balance (after giving effect to all contributions, distributions, and allocations for all Fiscal Years, including the Fiscal Year during which such liquidation occurs), such General Partner

shall contribute to the capital of the Partnership the amount necessary to restore such deficit balance to zero in compliance with Regulations Section 1.704-1(b)(2)(ii)(b)(3). If any Limited Partner who is not a General Partner has a deficit balance in his Capital Account (after giving effect to all contributions, distributions, and allocations for all Fiscal Years, including the Fiscal Year during which such liquidation occurs), such Limited Partner shall have no obligation to make any contribution to the capital of the Partnership with respect to such deficit, and such deficit shall not be considered a debt owed to the Partnership or to any other Person for any purpose whatsoever. In the discretion of the General Partner, a pro rata portion of the distributions that would otherwise be made to the General Partner and Limited Partners pursuant to this subsection may be (a) distributed to a trust established for the benefit of the General Partner and Limited Partners for the purposes of liquidating Partnership assets, collecting amounts owed to the Partnership, and paying any contingent or unforeseen liabilities or obligations of the Partnership or of the General Partner arising out of or in connection with the Partnership. The assets of any such trust shall be distributed to the General Partner and Limited Partners from time to time, in the reasonable discretion of the General Partner, in the same proportions as the amount distributed to such trust by the Partnership would otherwise have been distributed to the General Partner and Limited Partners pursuant to this Subsection 10.3; or (b) withheld to provide a reasonable reserve for Partnership liabilities (contingent or otherwise) and to reflect the unrealized portion of any installment obligations owed to the Partnership, provided that such withheld amounts shall be distributed to the Partners as soon as practicable.

**10.4 Division Among Partners.** Except as otherwise provided above, all distributions to the Partners pursuant to this Section 10 shall be divided among them in proportion to the Partnership Interest held by each.

**10.5 Amounts Withheld.** All amounts withheld pursuant to the Code or any provision of any state or local tax law with respect to any payment, distribution, or allocation to the Partnership, the General Partner, or the Partners shall be treated as amounts distributed to the General Partner and the Partners pursuant to this Section 10 for all purposes under this Agreement. The General Partner is authorized to withhold from distributions, or with respect to allocations, to the General Partner and Partners and to pay over to any federal, state, or local government any amounts required to be so withheld pursuant to the Code or any provisions of any other federal, state, or local law and shall allocate such amounts to the General Partner and Partners with respect to which such amount was withheld.

**10.6 Special Tax Elections.** At the written request of any Partner the Partnership shall make an election pursuant to Section 754 of the Code upon a distribution of property described in Code Section 734 or a transfer described in Code Section 743 of a Partnership Interest in accordance with this Agreement. Each Partner shall, upon request, supply the General Partner with the information necessary to make such election.

**10.7 General Elections and Limitations.** The General Partner is authorized, in its sole discretion, to make any other elections required or permitted with respect to Federal or state taxes in any Partnership tax return; provided, however, no election shall be made by either the Partnership or the Partners to be excluded from the application of the provisions of Subchapter K, Chapter I of Subtitle A of the Code or from any similar provisions of any state tax laws.

**10.8 Distribution in Kind.** If any assets of the Partnership are distributed in kind, such assets shall be distributed to the Partners entitled to participate in the distribution as tenants-in-common in the same proportions as such Partners would have been entitled to cash distributions.

**10.9 Rights of Partners to Property.** No Partner shall have the right to withdraw or reduce his capital contribution to the Partnership except as a result of the dissolution of the Partnership or as otherwise provided by law. No Partner shall be entitled to demand and receive property other than cash in return for his capital contribution to the Partnership, and, to the maximum extent permissible under applicable law, each Partner hereby waives all right to partition the Partnership Property.

**10.10 Priorities of Limited Partners.** No Limited Partner shall have any priority over any other Limited Partner as to the return of his contribution to the capital of the Partnership or as to compensation by way of income.

**10.11 Minimum Interest of General Partner.** Notwithstanding the allocations contained in these Sections 9 and 10, it is the intent of this Agreement that in no event shall the General Partner be allocated less than 1% of Profits, Losses, Net Cash from Operations or Net Cash From Sales or Refinancings allocated to the Partners.

## **11. Rights, Duties and Powers of the General Partner and Limited Partners.**

**11.1 Management.** The General Partner shall be solely responsible for the management of and shall use its best efforts to manage and control the Partnership business with all rights and powers generally conferred by law or necessary, advisable or consistent with such responsibility.

**11.2 Rights.** In addition to any other rights and powers which it may possess, the General Partner shall have all specific rights and powers required or appropriate to the management of the Partnership business which, by way of illustration, but not by way of limitation, shall include the right and power:

**11.2.1** To evaluate, select, negotiate for, acquire, purchase, operate, hold, trade, sell, exchange, convey or lease the Partnership Property, and any real property which is or may become a part of the Partnership property, as well as personal or other property connected with it, and except as may be limited by this Agreement to acquire or grant options for the purchase or sale of or sell the Partnership property from or to any Person, including, without limitation, the General Partner for such price, cash or otherwise, and upon such terms as the General Partner in its sole discretion deems to be in the best interests of the Partnership.

**11.2.2** To manage, develop, improve, maintain and service Partnership properties; to form corporations or acquire shares of stock in corporations to carry out any of the purposes of the Partnership and to acquire title to property in the name of such corporations and to guarantee or otherwise secure the obligations of such corporations in furtherance of Partnership purposes.

11.2.3 To borrow and lend money and, if security is required for a borrowing, to mortgage or subject to any other security device any portion of the property of the Partnership, to execute replacements of any mortgage or other security device, and to prepay, in whole or in part, refinance, increase, modify and consolidate such indebtedness as determined in their discretion to be in the best interest of the Partnership.

11.2.4 To place of record, title to, or the right to use, Partnership assets in the name or names of a nominee or nominees, including, but not limited to, the General Partner, or a land trustee, for any purpose convenient or beneficial to the Partnership.

11.2.5 To acquire and to enter into any contract of liability and other insurance which the General Partner deems necessary and proper for the protection of the Partners and Partnership, for the conservation of its assets or for any purpose convenient or beneficial to the Partnership.

11.2.6 To employ from time to time persons, firms or corporations for the operation and management of the Partnership business, including, but not limited to, attorneys, accountants, advisors, administrators, property managers and personnel, managing and supervising agents, construction, maintenance and repair contractors, independent contractors furnishing full service components, architects, land planners, financial consultants, engineers, insurance brokers, real estate brokers and loan brokers on such terms and for such compensation as the General Partner may determine. The General Partner is hereby specifically authorized in its sole discretion to employ the General Partner as provided in, and subject to, the provisions of this Agreement. Compensation connected with any such employment shall be an expense of the Partnership.

11.2.7 To make elections under the tax laws of the United States or any state as to the treatment of Partnership income, gain, loss, deduction and credit, and as to all other relevant matters.

11.2.8 To determine the Profits, Losses, Net Cash from Operations and Net Cash From Sales or Refinancings of the Partnership for any period and from any transaction.

11.2.9 To transfer all or part of the real or personal property belonging to the Partnership to one or more general or limited partnerships or corporations in exchange for partnership interests or shares of stock which the Partnership may hold or distribute among the Partners in accordance with their respective Interests in the Partnership.

11.2.10 To perform any and all other acts or activities customary or incidental to the Partnership purposes and businesses.

11.2.11 Adjust Partner Capital Account balances to reflect a revaluation of Partnership property on the books of the Partnership in accordance with and as permitted by the provisions of Treas.Reg. §1.704-1(b)(2)(iv)(f).

**11.3 Certain Limitations.** The General Partner shall have all of the rights and powers and be subject to all of the restrictions and liabilities of a partner in a partnership without limited partners,



except that without the written consent of all of the Limited Partners as provided in this Agreement, or as otherwise provided by law, the General Partner shall not have authority to do any of the following:

11.3.1 Any act in contravention of the Certificate or this Agreement.

11.3.2 Confess a judgment against the Partnership.

11.3.3 Possess Partnership property, or assign the rights of the Partnership in specific Partnership property, for other than a Partnership purpose.

11.3.4 Admit a Person as a General Partner, except as otherwise provided in this Agreement.

11.3.5 Admit a Person as a Limited Partner, except as otherwise provided in this Agreement.

11.3.6 Require any Limited Partner to make any contribution to the capital of the Partnership not provided in Section 7.

**11.4 Other Interests.** Any of the Partners and any affiliates of the Partners, or any shareholder or any other Person holding a legal or beneficial interest in an entity which is a Partner or an affiliate of the General Partner, may engage in or possess an interest in other business ventures which may be competitive with the business of, or which may transact business with, the Partnership. Neither the Partnership nor the Partners shall have any right by virtue of this Agreement in and to such independent ventures or to the income or profits derived from them.

**11.5 Agreement Beyond the Partnership Term.** Agreements entered into by the Partnership, including, but not limited to, security agreements, mortgages and leases, may extend for terms in excess of the term of the Partnership.

**11.6 General Partner as Limited Partner.** The General Partner or its affiliates may acquire and own Interests as Limited Partners, in addition to its Interest as General Partner. In addition, the General Partner may become a Limited Partner in accordance with the provisions of Section 16.5.2.

**11.7 Time Devoted to Partnership Business.** The General Partner shall devote only such time to the business of the Partnership as it, in its sole discretion, shall deem to be necessary to manage and supervise the Partnership business.

**11.8 General Partner's Liability.** The General Partner shall not be liable for the return of any portion of the Aggregate Capital Contributions of the Limited Partners.

**11.9 Exculpation and Indemnification of General Partner.** No General Partner shall be liable, responsible or accountable in damages or otherwise to the Partnership or any other Partner for





any act performed or failure to act by it unless such act or failure to act is attributable to willful misconduct or gross negligence. The Partnership shall indemnify and hold harmless the General Partner from and against any and all loss, damage, liability, cost or expense, including reasonable attorneys' fees, arising out of any act or failure to act by the General Partner if such act or failure to act is in good faith within the scope of this Agreement and is not attributable to willful misconduct or gross negligence. The General Partner shall indemnify and hold harmless the Partnership and the Partners for any loss, damage, liability, cost or expense (including reasonable attorneys' fees) arising out of any act or failure to act by the General Partner, where such act or failure to act is attributable to willful misconduct or gross negligence.

**11.10 Tax Matters Partner.** BERNSTEIN HOLDINGS, LLC, shall be the Tax Matters Partner; provided, however, if it is no longer General Partner then it shall be a successor appointed by Limited Partners owning in the aggregate 51% of the Limited Partnership Interests. The Tax Matters Partner shall notify all Partners as to the beginning of any administrative proceedings at the Partnership level with respect to Partnership items and shall further notify the Partners as to any final Partnership administrative adjustment resulting from any such proceeding. The Tax Matters Partner shall be entitled to reimbursement for all costs and expenses incurred in connection with its services to the Partnership as Tax Matters Partner, and shall be indemnified and held harmless by the Partners with respect to such services, except with respect to willful misconduct or gross negligence.

**11.11 Powers of Limited Partners.** The Limited Partners shall take no part in or interfere in any manner with the conduct or control of the Partnership business and shall have no right or authority to act for or to bind the Partnership. The Partnership may engage Limited Partners or persons associated with them for specific purposes and may otherwise deal with such Limited Partners on terms and for compensation to be agreed upon by any such Limited Partner and the Partnership. The exercise of any of the rights and powers of the Limited Partners pursuant to the terms of this Agreement shall not be deemed taking part in the day-to-day affairs of the Partnership or the exercise of control over Partnership affairs.

**11.12 Liability of Limited Partners.** A Limited Partner shall not be bound by, or personally liable for, any of the debts, contracts, liabilities, or other obligations of the Partnership or the General Partner, or for any losses of the Partnership in excess of their required capital contribution, and the liability of each Limited Partner shall be limited solely to the amount of his contribution to the capital of the Partnership required by the provisions of Section 7. Notwithstanding any of the foregoing to the contrary, and only to the extent otherwise required by applicable law, a Partner receiving a distribution in part or full return of his aggregate Capital Contribution shall be liable to the Partnership for any sum, not in excess of such amount returned plus interest, necessary to discharge the liabilities of the Partnership to creditors who extended credit or whose claims arose before such distribution, excluding liabilities of the Partnership represented by debt, the repayment of which is secured solely by the Partnership Property.

**12. Loans to the Partnership.** From time to time any Partner, including the General Partner, upon the request of the General Partner, may make optional loans to the Partnership or advance money on its

behalf. Such loans and advances may be in the form of direct loans, payment of sums payable by the Partnership, payments of guarantees of Partnership indebtedness or otherwise. Loans and advances under this Section shall be accounted for as loans and not as capital contributions to the Partnership. All sums loaned or advanced, together with interest on such sums, shall be deemed an obligation of indebtedness from the Partnership to the lending Partner, and such loan or advance shall bear interest at a reasonable rate agreed to by the Partnership and the lending Partner.

### **13. Books, Records, Reports, Bank Accounts and Tax Elections.**

**13.1 Books of Account.** At all times during the existence of the Partnership, the General Partner shall keep, or cause to be kept, full and true books of account of the Partnership in accordance with generally accepted accounting principles. The books shall be maintained on such method of accounting, accrual or cash, as the General Partner determines in its discretion to be in the best interests of the Partnership. The books of the Partnership, together with a certified copy of the Certificate, shall be maintained at the principal place of business of the Partnership. During reasonable business hours the Limited Partners and their authorized representatives may inspect and copy the Partnership's books of account.

**13.2 Financial Statements.** At least annually, unaudited financial statements and an annual report of the business of the Partnership shall be prepared at the direction of the General Partner. If a Partner wishes to obtain an audited financial statement, he may cause it to be prepared, but he shall pay all fees and expenses for its preparation.

**13.3 Tax Returns.** In addition to the financial statement and annual report, the General Partner shall cause income tax returns for the Partnership to be prepared and filed with the appropriate authorities and the General Partner shall also cause such reports as may be required by regulatory agencies to be prepared, filed and distributed as required.

**13.4 Dissemination.** The General Partner shall distribute annual reports of the business of the Partnership, financial statements and income tax information to the Limited Partners as soon as is practicable after the close of each fiscal year of the Partnership.

**13.5 Fiscal Year.** The Partnership tax year shall be the calendar year, unless a General Partner elects another fiscal year and obtains the approval of the Internal Revenue Service to such year.

**13.6 Bank Accounts.** All funds of the Partnership shall be deposited in the Partnership name in such bank account or accounts as may be designated by the General Partner. Withdrawals from any such bank account or accounts shall be made upon such signature or signatures as the General Partner may designate.

### **14. Transfer of Limited Partnership Interest.**

**14.1 Method of Transfer.** No Transfer of all or part of a Limited Partner's Interest may be effected except as permitted in this Section 14, and then only if a counterpart of the instrument of Transfer, executed and acknowledged by the parties to the Transfer is delivered to the Partnership. A permitted Transfer shall be effective as of the date specified in the instruments of Transfer. This Partnership is formed by those who know and trust one another, who have surrendered certain management rights (in exchange for limited liability in the case of a Limited Partner), or who have assumed management responsibility and risk (in the case of a General Partner) based upon their relationship and trust. Capital is material to the business and investment objectives of the Partnership and its federal tax status. An unauthorized Transfer of a Limited Partner's Interest could create a substantial hardship to the Partnership, jeopardize its capital base, and adversely affect its tax structure. The restrictions on Transfers set forth in this Section are not intended as a penalty, but as a method to protect and preserve existing relationships based upon trust and the Partnership's capital and its financial ability to continue.

**14.2 Transfers by Limited Partners.** Except as expressly provided herein, no Limited Partner may Transfer any part or all of his Interest. Notwithstanding the foregoing and without being subject to the right of first refusal provisions of Section 14.3, a Partner may Transfer all or any part of his Interest to (i) another Partner, (ii) a lineal descendant of both SIMON L. BERNSTEIN and SHIRLEY BERNSTEIN, (iii) a trust of which a majority in interest of the beneficiaries are Partners and/or lineal descendants of both SIMON L. BERNSTEIN and SHIRLEY BERNSTEIN; or (iv) to another partnership or corporation provided that a majority of the voting stock of the corporation or the general partnership interest in the case of a limited partnership or the interest in capital in a general partnership are owned and controlled by SIMON L. BERNSTEIN and/or lineal descendants of SIMON L. BERNSTEIN and SHIRLEY BERNSTEIN.

**14.3 Right of First Refusal.** Notwithstanding the above restrictions on Transfer of Interest, a Limited Partner may Transfer all or any part of his Interest, other than by gift or devise, pursuant to a Bona Fide offer as defined in Section 14.3.2, and in such instance the Partnership shall have a right of first refusal to purchase any Interest which any Limited Partner may wish to Transfer, on the terms and subject to the conditions set forth in Section 14.3.1 through 14.3.3:

**14.3.1** In the event that any Limited Partner receives a Bona Fide Offer, as herein defined, from a third party (the "Proposed Assignee") to purchase all or any portion of his Interest and he is willing to accept such Bona Fide offer, that Limited Partner (the "Offeror-Limited Partner") shall promptly send written notice (the "Notice") to the General Partner, offering to sell his Interest to the Partnership at the same price and upon the same terms and conditions that are contained in the Bona Fide Offer. The Notice shall contain a true and complete copy of the Bona Fide Offer, the price, the portion of the Interest to be sold, and all terms and conditions and the name and addresses, both home and office, and businesses or other occupations of the Proposed Assignee.

**14.3.2** As used in this Agreement, "Bona Fide Offer" means an offer in writing, signed by the Proposed Assignee, who must be a Person financially capable of carrying out the terms of the Bona Fide Offer, in a form legally enforceable against the Proposed Assignee.



14.3.3 Whenever an Offeror-Limited Partner gives the Partnership notice of a Bona Fide Offer to purchase his Interest, the following procedure shall be complied with:

14.3.3.1 For a period of ten days from its receipt of the Notice, the Partnership shall have the option to notify the Offeror-Limited Partner that it intends to purchase the Interest.

14.3.3.2 If the Partnership does not give the Offeror-Limited Partner notice within the prescribed time period that it will purchase the Interest covered by the Bona Fide Offer, the Offeror-Limited Partner shall have the right to accept the Bona Fide Offer and sell the Interest subject to the provisions and restrictions of this Agreement, but only in strict accordance with all of the terms of the Bona Fide Offer and only if the sale is fully consummated within 45 days after the mailing of the Notice. If the Interest is not sold to the Proposed Assignee pursuant to the Bona Fide Offer within that 45 day period, then, before disposing of the Interest the Offeror-Limited Partner shall again be obligated to reoffer the Interest to the Partnership pursuant to the terms of this Section.

14.3.3.3 If the Partnership exercises its option to purchase the Interest a closing shall be held within 15 days after the Partnership gives notice of its election to exercise the option to purchase. The closing shall be on the basis of the terms and other provisions of the Bona Fide Offer.

**14.4 Rights of Transferees.** No transferee of the Interest of any Limited Partner, including transferees described in Sections 14.2 or 14.3, shall have the right to become a Substitute Limited Partner, unless:

14.4.1 His transferor has stated such intention in the instrument of assignment.

14.4.2 The transferee has executed an instrument reasonably satisfactory to the General Partner accepting and adopting the terms and provisions of this Agreement.

14.4.3 The transferor or transferee pays to the Partnership any reasonable expenses in connection with the admission of the transferee as a Limited Partner.

14.4.4 The transferor and transferee furnish the Partnership with the transferee's tax identification number, sufficient information to determine the transferee's initial tax basis in the Interest transferred, and any other information reasonably necessary to permit the Partnership to file all required federal and state tax returns and other legally required information statements or returns. Without limiting the generality of the foregoing, the Partnership shall not be required to make any distribution otherwise provided for in this Agreement with respect to any transferred Partnership Interest (without regard to whether the transferee is admitted as a Substitute Limited Partner) until it has received such information.

14.4.5 In the case of an assignee or transferee who is not otherwise a Partner, the General Partner, in its sole, absolute and unfettered discretion, consents to such person becoming a





Substitute Limited Partner, including assignees of Partnership Interests whose interest arises by reason of the death of a Partner.

The assignor of a Limited Partnership Interest shall not act for or on behalf of the assignee of the Limited Partnership Interest who does not become a Substitute Limited Partner, and until an assignee of a Limited Partnership Interest is admitted as a Substitute Limited Partner, both the Partnership and the Partners shall be entitled, but not required, to treat the transferor of the Partnership Interest as the absolute owner thereof in all respects. An assignee of a Limited Partnership Interest who does not become a Substitute Limited Partner, unless otherwise a Partner, does not become a Partner and is not entitled to exercise the rights of a Partner.

**14.5 General Partner's Acquisition of Limited Partner Interest.** If a General Partner should acquire any Limited Partner Interest, that General Partner with respect to that Interest shall become a Limited Partner and enjoy all of the rights and be subject to all of the obligations and duties of a Limited Partner to the extent of such Interest.

**14.6 Income/Loss Allocations Upon Transfer.** Unless otherwise agreed between the transferor and the transferee, upon the Transfer of an Interest the Profits and Losses attributable to the Interest transferred shall be allocated between the transferor and the transferee as of the date set forth in the instrument of Transfer, and such allocation shall be based upon the number of days during the applicable fiscal year of the Partnership that the Interest transferred was held by each of them, without regard to the results of Partnership activities during the period in which each was the holder. All distributions with respect to such Interest shall be made only to the holder of record of the Interest on the date of distribution.

## **15. Death, Incompetency, Bankruptcy or Dissolution of a Limited Partner.**

**15.1 Individual Limited Partner.** Upon the death, adjudication of bankruptcy, insolvency or legal incompetency of an individual Limited Partner, his personal representative shall have all the rights of a Limited Partner for the purposes of settling or managing his estate and such power as the decedent, bankrupt or incompetent possessed to constitute a successor as an assignee of his Interest in the Partnership and to join with such assignee in making application to the General Partner to have such assignee become a Substitute Limited Partner.

**15.2 Other Limited Partners.** Upon the adjudication of bankruptcy, insolvency, dissolution or other cessation to exist as a legal entity of a Limited Partner not an individual, the authorized representative of such entity shall have all of the rights of a Limited Partner for the purpose of effecting the orderly winding up and dissolution of the business of such entity and such power as such entity possessed to constitute a successor as an assignee of its Interest in the Partnership and to join with such assignee in making application to the General Partner to have such assignee become a Substitute Limited Partner.

## **16. Resignation, Removal and Election of a General Partner; Assignment; Transfer.**

**16.1 Substitution for a General Partner.** The General Partner may not admit any Person as a substitute General Partner.

**16.2 Resignation of a General Partner.** A General Partner may resign as such by delivering thirty (30) days advance written notice of its resignation to all Partners.

**16.3 Removal of a General Partner.** A General Partner shall be removed and cease to be a General Partner of the Partnership:

**16.3.1** If (a) the General Partner being removed is in default of a material provision of this Agreement and (b) has not cured such default within 30 days after written notice of such fact is given to the General Partner sought to be removed and to all other Partners by Limited Partners owning at least 75% of the Interests owned by the Limited Partners. Written notice pursuant to this section shall set forth the day upon which the removal is to become effective if the default is not cured. However, the removal of a General Partner shall not take effect unless and until that General Partner is released from all liability by all lenders who have made loans to the Partnership, including loans made to the General Partner, on behalf of the Partnership. Such release shall be evidenced by written instruments executed by the lenders and any releases of liability shall extend to such General Partner in his capacity as such and individually. The removal of a General Partner shall be effective on the later of the date set forth in the notice or the date of delivery of the releases to the General Partner.

**16.3.2** The occurrence of an Event of Withdrawal.

**16.4 Liability of General Partner After Resignation or Removal.** If a General Partner resigns or is removed in accordance with the provisions of this Agreement, his liability as a General Partner shall cease upon resignation or removal as provided in the Act, and the Partnership shall promptly take all actions reasonably necessary under the Act to cause such cessation of liability. The Partnership shall indemnify the General Partner with respect to any such liability. However, claims, demands, liabilities, costs and damages held against or incurred by the General Partner in violation of the terms of this Agreement shall be held as an offset against the General Partner's Interest.

**16.5 Interest of a General Partner After Resignation or Removal.**

**16.5.1** The resignation or removal of a General Partner shall not affect its rights as the owner of any Limited Partnership Interest.

**16.5.2** Subject to the provisions of Section 16.5.3, upon the resignation or removal of a General Partner, the Interest which he had as a General Partner in Profits and Losses and distributions of Net Cash from Operations and Net Cash From Sales or Refinancings shall be retained by him and be converted into a "Special Limited Partner's" Interest and the Partnership shall take all actions necessary to admit such General Partner as a Special Limited Partner with respect to such converted Interest. Such conversion shall not, however, result in the General Partner becoming a Substituted Limited Partner with respect to such Interest. As a Special Limited Partner, the former General Partner shall be sent copies

of all notices, reports and other information furnished to Limited Partners by the General Partner or the Partnership.

**16.5.3 Upon the resignation or removal of:**

**16.5.3.1** A General Partner leaving the Partnership with one or more General Partners whose total Interest in the Profits and Losses of the Partnership would be less than 1%, the Interest of the resigned or removed General Partner in such portion of the Partnership's Profits and Losses which is necessary to bring the total Interest of the remaining General Partners in the Profits and Losses of the Partnership up to 1% shall be automatically transferred to the remaining General Partner without any payment.

**16.5.3.2** One or more General Partners leaving the Partnership without a General Partner and the election of a successor General Partner pursuant to Section 16.6, the rights and interest in 1% of the Partnership's Profits and Losses of the last General Partner who has resigned or been removed, shall be sold to and purchased by his successor as of the date of such resignation or removal at such price as shall be agreed upon between them; provided, however, that if no such agreement is reached within 30 days of the election of a successor then such price shall be determined by arbitration in the State of Florida under the rules of the American Arbitration Association. Within 60 days after the determination of such price it shall be paid in cash together with interest at the then prevailing short-term applicable federal rate under Internal Revenue Code Section 1274. The cost of arbitration shall be paid equally by the successor and the departing General Partner. If any sums payable under this Section to the resigned or removed General Partner are not paid to him when due, then such sums shall be paid to him by the Partnership.

**16.6 Election of a Substitute General Partner.** If there is only one General Partner and he resigns, or is removed in accordance with this Agreement, and if, pursuant to Section 18.1.2, the Limited Partners unanimously elect to continue the business of the Partnership, then a substitute General Partner shall be elected by an Eighty (80%) percent vote of the Limited Partners, and he shall take all actions necessary to continue the business of the Partnership. Notwithstanding the foregoing, if in the written opinion of counsel for the Partnership it is more likely than not that all Limited Partners must agree on a substitute General Partner to avoid a dissolution under the Act, then in lieu of the foregoing Eighty (80%) percent vote, all Limited Partners shall agree to the election of each substitute General Partner. Such election shall be accomplished in the following manner: Any one or more of the Limited Partners shall, promptly after the election to continue, nominate a person or entity for election as the substitute General Partner. Such nominee shall not become the General Partner unless elected by a vote of Eighty (80%) percent (or, One Hundred (100%) percent, as provided above) of the Interests owned by the Limited Partners. In the event that such nominee is not elected, then any one or more of the Limited Partners shall as soon as practicable nominate another substitute General Partner and such procedure shall continue until a substitute General Partner is elected or the Partnership is dissolved pursuant to Section 18.1.

**16.7 Transfer of Interest of a General Partner.** No General Partner may transfer, assign, encumber or otherwise dispose of his Interest as a General Partner in the Partnership except as provided for in this Section 16. All General Partners' Interests in the Partnership pursuant to Section 9 transferred pursuant to Section 16, including for this purpose, but not limited to, conversions to a Special Limited Partner's Interest, are included in the allocations to and distributive shares of the Partners in Section 9 as a Partner's Interest and shall be allocated and distributed to the transferees of such Interest.

**17. Involuntary Transfers of Partnership Interests.** In the event of any Involuntary Transfer, which for this purpose shall include a charging order, by any Partner or assignee of any Partnership Interest, the following procedures shall apply:

**17.1** The Partner or assignee deprived or divested of any Partnership Interest by the Involuntary Transfer (the "Transferor") promptly shall give written notice of such Involuntary Transfer in reasonable detail to the Partnership and all Partners other than the Transferor, and the Person(s) who take or propose to take any interest in such Partnership Interest (for purposes of this Section 17, such Person(s) are referred to hereinafter as the "Transferee" and such Partnership Interest referred to hereinafter as the "Subject Partnership Interest") as a result of such Involuntary Transfer shall hold such interest subject to the rights of the Partnership as set forth in this Section 17.

**17.2** Upon receipt of the notice referred to in the preceding subparagraph or upon discovery by the General Partner of such Involuntary Transfer by the General Partner, the Partnership shall have the irrevocable option, exercisable at the sole discretion of the General Partner, but not the obligation, for a period of sixty (60) days following receipt of such notice or such discovery, to purchase all or any part of the Subject Partnership Interest, pursuant to the terms set forth in this Section 17. All exercises of such option shall be in writing, shall specify the portion of the Subject Partnership Interest to be purchased, and shall be effective upon receipt thereof by the Transferee.

**17.3** The closing for any such sale of the Subject Partnership Interest to the Partnership shall be held at the offices of the Partnership no later than forty-five (45) days after the receipt by the Transferee of the notice exercising the Partnership's irrevocable option to purchase such Subject Partnership Interest. The purchase price of any Subject Partnership Interest purchased pursuant to this Section 17 shall be the fair market value of the Subject Partnership Interest, taking into account all potential discounts for lack of control, lack of marketability and other relevant valuation factors that would be applicable to a sale of the Subject Partnership Interest to a party unrelated and unaffiliated with any existing Partner or assignee, as determined by a reasonably qualified appraiser selected by the Partnership.

**17.4** The valuation date for the determination of the purchase price shall be the first day of the month following the month in which notice is given pursuant to Section 17.2 above.

**17.5** The purchase price shall be paid by the Partnership by making and delivering to the Transferor or the Transferee, as the case may be, of an unsecured ten (10) year nonrecourse promissory note. Interest on such note shall be payable at the long-term applicable federal rate under Internal



Revenue Code Section 1274. The first installment will be due and payable on the first day of the calendar year following the closing, and subsequent annual installments, with accrued interest, will be due and payable on the first day of each succeeding calendar year until the entire amount of the obligation is paid. The Partnership shall have the right to prepay all or any part of the note at any time without penalty.

17.6 If the Partnership does not exercise its option to purchase all or part of the Subject Partnership Interest under this Section 17, the remaining Partners within the same sixty day exercise period shall have the right but not the obligation to purchase as set forth in this Section 17 in proportion to their Partnership Interests in the manner so set forth. However, to the extent that one or more of the Partners declines to exercise such Partner's right, the remaining Partners shall be offered the right but not the obligation, on a pro-rata basis, to purchase the remaining portion of the Subject Partnership Interest. Such Partners may provide written notice of exercise prior to the expiration of the period notwithstanding that the Partnership may still exercise its option, and such notice may provide that the portion sought to be purchased is the maximum portion available to be purchased by such Partner, with such notice to be effective only if and to the extent that the Partnership does not preempt such Partner by exercising its option.

17.7 In the event the Partnership and the Partners do not purchase all of the Subject Partnership Interest involved in an Involuntary Transfer, the Transferee shall become an assignee of the Subject Partnership Interest, except as admitted as a Substitute Limited Partner in accordance with the terms of this Agreement, provided, however, if a third party obtains a charging order, its rights shall be limited accordingly.

17.8 For purposes of this Section 17, the term "Partner or Assignee" shall include the beneficiaries of a trust that is a Partner or assignee of a Partnership Interest, and the term "Partnership Interest" shall include the beneficial interests of the beneficiaries of a trust that is a Partner or assignee of a Partnership Interest.

17.9 Neither the Transferee of an Involuntary Transfer nor the Transferor will have the right to vote on Partnership matters during the period when the option to purchase granted under this Section 17 may be exercised nor during the period subsequent to exercise and prior to the closing thereunder, and in regard to such voting and any particular voting threshold percentages described in this Agreement such Partnership Interest shall be deemed not to exist.

## **18. Dissolution and Winding up of Partnership.**

**18.1 Dissolution of Partnership.** The Partnership shall be dissolved upon the first to occur of any of the following events:

18.1.1 December 31, 2058.

18.1.2 The happening of an Event of Withdrawal of a General Partner authorized hereunder to carry on the business of the Partnership, unless

18.1.2.1 at the time there is at least one other General Partner authorized hereunder to carry on the business of the Partnership and such General Partner does carry on the business of the Partnership; or

18.1.2.2 within ninety (90) days of the Event of Withdrawal, (a) all of the then Partners agree in writing to continue the business of the Partnership and to elect one or more additional General Partners under the procedures of Section 16.6, and (b) one or more additional General Partners are elected under the procedures of Section 16.6.

18.1.3 The Partnership becoming insolvent or bankrupt.

18.1.4 The unanimous vote to dissolve of all Partners.

**18.2 Winding Up of Partnership.** Upon the dissolution of the Partnership pursuant to Section 18.1, the General Partner, or if there is no General Partner, a substitute General Partner elected by vote of 51% of the Interests owned by the Limited Partners, shall take full account of the Partnership's assets and liabilities and the assets shall be liquidated as promptly as is consistent with obtaining their fair value, and the proceeds of such liquidation therefor shall be applied and distributed as provided in Section 10.3.

**18.3 Survival of Obligations.** Except as otherwise provided in this Agreement, no dissolution of the Partnership shall relieve, release or discharge any Partner or any of his successors, assigns, heirs or legal representatives, from any previous breach or default of, or any obligation previously incurred or accrued under, any provision of this Agreement, and any and all such liabilities, claims, demands or causes of action arising from any such breaches, defaults and obligations shall survive such dissolution and termination.

**18.4 Termination.** Upon compliance with Section 18.2, the General Partner shall file or cause to be filed a certificate of cancellation of the Certificate and the Partnership shall then be terminated.

## **19. Amendment of the Certificate and Agreement.**

**19.1 When Required.** This Agreement and the Certificate shall be amended by the General Partner without any additional consent of the Limited Partners when required by law whenever:

19.1.1 There is a change in the name of the Partnership or the amount or character of the contribution of any Partner including, but not limited to, withdrawal or reduction, pursuant to this Agreement.

19.1.2 A person ceases to be, is substituted as, or becomes a General or Limited Partner.



**19.1.3** There is a false or erroneous statement in the Certificate, provided the amendment does not adversely affect the interest of the Limited Partners and the General Partner has obtained an opinion of its counsel to that effect.

**19.1.4** In the opinion of counsel for the Partnership, it is necessary or appropriate to satisfy a requirement of the Code with respect to partnerships, provided such amendments do not adversely affect the interests of the Limited Partners, and the General Partner has obtained an opinion of its counsel to that effect, and any amendment in this regard shall have retroactive effect to the date of this Agreement.

**19.2 Limitation.** Except as provided in Section 19.1, amendments shall only be made with the approval of Limited Partners as provided in Section 19.3. No amendment shall be made under Section 19 which would adversely affect the federal income tax treatment to be afforded Partners or adversely affect the liabilities of the Limited Partners or change the method of the allocation of Profits and Losses or preferences or distributive shares without full disclosure to the Partners and unless all of the Partners consent to such amendment.

**19.3 Consent of Limited Partners.** The General Partner shall obtain the written consent or approval or vote of Limited Partners owning in the aggregate at least Eighty (80%) percent of the Limited Partnership Interests with respect to any amendment other than an amendment allowed or permitted by Sections 19.1 and 19.2.

**20. Conflict of Interest Waiver.** The Partners and the Partnership acknowledge that the law firm of Tescher & Spallina, P.A. has represented the Partnership in connection with the drafting of this Agreement and the formation and structuring of the Partnership, and that said law firm also represents one or more of the Partners and owners of interests in entity Partners both in context of this Partnership and other matters (namely, SIMON L. BERNSTEIN, SHIRLEY BERNSTEIN, SHIRLEY BERNSTEIN FAMILY FOUNDATION, INC., and BERNSTEIN HOLDINGS, LLC). The Partnership and the Partners acknowledge that they have been advised that there are material income tax consequences and economic ramifications from being a Partner in the Partnership, that they fully understand the tax consequences and economic ramifications of a Partner's investment in the Partnership, and that they have been encouraged to consult with separate and independent counsel to advise them on Partnership and Partner issues including this Agreement and the formation of the Partnership. The Partnership and the Partners hereby waive any conflicts of interest with respect to the foregoing law firm's representation of the Partnership and the afore described Partners and owners of interests in entity Partners, in connection with the services set forth in this Section.

## **21. Miscellaneous.**

**21.1 Notices.** Any notices, payments, demand, offer or communication required or permitted to be given by any provision of this Agreement shall be deemed to have been delivered and given for all purposes (a) if the same is delivered personally, or (b) whether or not the same is actually received, if sent by registered or certified mail, postage and charges prepaid, addressed as follows:

21.1.1 If to a General Partner, at BERNSTEIN HOLDINGS, LLC, 950 Peninsula Corporate Circle, Suite 310, Boca Raton, Florida 33487, or such other address as the General Partner may from time to time specify by written notice to the other Partners.

21.1.2 If to a Limited Partner, at BERNSTEIN FAMILY INVESTMENTS, LLLP, 950 Peninsula Corporate Circle, Suite 310, Boca Raton, Florida 33487, or to such other address as such Partner may from time to time specify by written notice to the General Partner, which other address shall be noted by the General Partner on the records of the Partnership.

21.1.3 If to any other Person, at the address of such person as shown by the Partnership's records.

**21.2 Captions.** Captions contained in this Agreement are for reference purposes only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any of its provisions.

**21.3 Severability.** Every provision of this Agreement is severable. If any term or provision is held to be illegal or invalid for any reason, such illegality or invalidity shall not affect the validity of the remainder of this Agreement or any other provision.

**21.4 Right to Rely Upon the Authority of the General Partner.** No person dealing with a General Partner shall be required to determine his authority to make any commitment or undertaking on behalf of the Partnership, nor to determine any fact or circumstance bearing upon the existence of his authority. In addition, no purchaser of any asset owned by the Partnership shall be required to determine the sole and exclusive authority of the General Partner to sign and deliver on behalf of the Partnership any such instrument of transfer, or to see to the application or distribution of revenues or proceeds paid or credited to the Partnership, unless such purchasers shall have received written notice from the Partnership affecting the same.

**21.5 Litigation.** The General Partner shall prosecute, defend and settle such actions at law or in equity as they may deem in their sole and absolute discretion to be necessary to enforce or protect the interest of the Partnership. The Partnership and the General Partner shall respond to any final decree, judgment or decision of a court of competent jurisdiction or board or authority having jurisdiction in the matter.

**21.6 Applicable Law.** The laws of the State of Florida shall govern the validity of this Agreement, the construction of its terms and the interpretation of the rights and duties of the parties.

**21.7 Counterpart Execution.** This Agreement may be executed in any number of counterparts with the same effect as if all parties had signed the same document. All counterparts shall be construed together and shall constitute but one Agreement.

**21.8 Binding Effect.** Each and every covenant, term, provision and agreement contained in this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective parties.

**21.9 Right to Rely Upon Authority of Person Signing Agreement.** In the event that a Limited Partner is an estate, a trust with or without disclosed beneficiaries, partnership, limited partnership, joint venture, corporation, or any entity other than a natural person, the Partnership and the General Partner shall (a) not be required to determine the authority of the Person signing this Agreement or any amendment to make any commitment or undertaking on behalf of such entity, nor to determine any fact or circumstance bearing upon the existence of his authority; (b) not be required to see to the application or distribution of revenues or proceeds paid or credited to the Person signing the Agreement or any amendment on behalf of such entity; (c) be entitled to rely upon the authority of the Person signing this Agreement or any amendment with respect to voting of the Partnership Interests of such entity and with respect to the giving of consent on behalf of such entity or any other Person in connection with any matter for which consent is permissible or required under this Agreement; and (d) be entitled to rely upon the authority of any general partner, joint venturer, co-or successor trustee or president, vice president, or other officer, as the case may be of any such entity the same as though such Person were the Person originally executing this Agreement or any amendment on behalf of such entity.

**21.10 Rights of Nonrecourse Creditors.** A creditor who makes a nonrecourse loan to the Partnership shall not have or acquire, at any time as a result of making any loan or advance, any direct or indirect interest in the profits, capital, or property of the Partnership other than, if applicable, as a secured creditor.



**21.11 Number and Gender.** Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders.



**21.12 Entire Agreement.** This Agreement constitutes the entire Agreement of the parties with respect to matters set forth in this Agreement and supersedes any prior understanding or agreement, oral or written, with respect thereto.



---

IN WITNESS WHEREOF, this Agreement of Limited Partnership has been executed as of the date set forth in the preamble.

Witnessed by (as to all):

  
Print Name: Robert Spelling  
  
Print Name: Diana Banks

  
Print Name: Robert Spelling  
  
Print Name: Diana Banks

  
Print Name: Robert Spelling  
  
Print Name: Diana Banks

GENERAL PARTNER:

BERNSTEIN HOLDINGS, LLC, a Florida limited liability company

By:   
SIMON L. BERNSTEIN, Manager

LIMITED PARTNERS:

SIMON L. BERNSTEIN TRUST AGREEMENT dated May 20, 2008

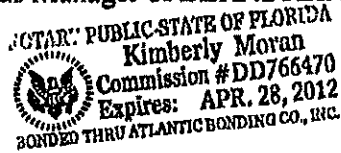
By:   
SIMON L. BERNSTEIN, Trustee

SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008

By:   
SHIRLEY BERNSTEIN, Trustee

STATE OF FLORIDA :  
: SS.  
COUNTY OF PALM BEACH:

The foregoing instrument was acknowledged before me this 20 day of May, 2008, by SIMON L. BERNSTEIN, Trustee of the SIMON L. BERNSTEIN TRUST AGREEMENT dated May 20, 2008, and as Manager of BERNSTEIN HOLDINGS, LLC.



Kimberly Moran  
Signature - Notary Public

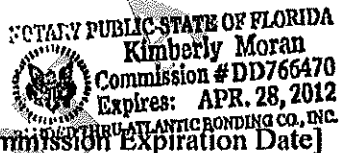
[Seal with Commission Expiration Date]

Print, type or stamp name of Notary Public

Personally Known ✓ or Produced Identification \_\_\_\_\_  
Type of Identification Produced \_\_\_\_\_

STATE OF FLORIDA :  
: SS.  
COUNTY OF PALM BEACH:

The foregoing instrument was acknowledged before me this 20 day of May, 2008, by SHIRLEY BERNSTEIN, Trustee of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008.



Kimberly Moran  
Signature - Notary Public

[Seal with Commission Expiration Date]

Print, type or stamp name of Notary Public

Personally Known ✓ or Produced Identification \_\_\_\_\_  
Type of Identification Produced \_\_\_\_\_

F:\WPDATA\dt\Bernstein, Shirley & Simon\Bernstein Family Investments, LLLP\Bernstein Investments, LLLP Partnership Agreement.vpd

**SCHEDULE "A"**

<b><u>Name:</u></b>	<b><u>% Interest</u></b>	<b><u>Cash</u></b>
<b><u>General Partner:</u></b>		
BERNSTEIN HOLDINGS, LLC	<u>1 %</u>	<u>\$10.00</u>
<b><u>Limited Partners:</u></b>		
SIMON L BERNSTEIN, Trustee of the SIMON L. BERNSTEIN TRUST AGREEMENT dated May 20, 2008	<u>49.5 %</u>	<u>\$495.00</u>
SHIRLEY BERNSTEIN, Trustee of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008	<u>49.5 %</u>	<u>\$495.00</u>

NOTE: The foregoing valuations and percentage interests are subject to adjustment based on variations in value of contributed property from the values scheduled here and the actual fair market value of such contributed property on the date of transfer to the Partnership.



IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL

IN RE: ESTATE OF

PROBATE DIVISION

SHIRLEY BERNSTEIN

File No. 502011CP000653XXXX SB

Deceased.

### INVENTORY

The undersigned personal representative of the estate of SHIRLEY BERNSTEIN, deceased, who died on December 8, 2010, and whose social security number is [REDACTED], submits this inventory of all the property of the estate, that has come into the hands, possession, control, or knowledge of these personal representatives:

#### REAL ESTATE IN FLORIDA – Exempt (Protected) Homestead:

##### Description

NONE

#### REAL ESTATE IN FLORIDA – Non-Exempt Homestead:

##### Description

##### Estimated Fair Market Value

NONE

*(Whether homestead property is exempt from the claims of creditors, whether it is properly devised and whether it is a probate asset may have to be determined by appropriate proceedings.)*

#### OTHER REAL ESTATE IN FLORIDA:

##### Description

##### Estimated Fair Market Value

NONE

\$

Total Real Estate in Florida – Except Exempt (Protected) Homestead

\$



Estate of Shirley Bernstein  
File No. 502011CP000653XXXX SB  
INVENTORY

PERSONAL PROPERTY WHEREVER LOCATED:

<u>Description</u>	<u>Estimated Fair Market Value</u>
Furniture, furnishings, household goods and personal effects	\$ 25,000.00 (est.)
TOTAL OF ALL PERSONAL PROPERTY AND FLORIDA REAL ESTATES	\$ 25,000.00

All real estate located outside the State of Florida owned by the decedent of which the personal representative is aware, if any, is described on a schedule attached hereto. [If none, so indicate]

NONE

*NOTICE: Each residuary beneficiary in a testate estate or heir in an intestate estate has the right to request a written explanation of how the inventory value of any asset was determined, including whether the personal representative obtained an independent appraisal for that asset and from whom the appraisal was obtained. Any other beneficiary may request this information regarding all assets distributed to or proposed to be distributed to that beneficiary.*

Under penalties of perjury, I declare that I have read the foregoing, and the facts alleged are true to the best of my knowledge and belief.

Signed on this 29th day of August, 2011.

ROBERT L. SPALLINA, Esq.  
Attorney for Personal Representative  
Florida Bar No. 497381  
Tescher & Spallina, P.A.  
4855 Technology Way, Suite 720  
Boca Raton, FL 33431  
Telephone: (561) 997-7008

SIMON BERNSTEIN, Personal Representative



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Inventory was furnished by U.S. certified mail to:

Florida Department of Revenue  
5050 W. Tennessee St., Bldg. K  
Tallahassee, FL 32399-0100

on this 8 day of SEP, 2011.

TESCHER & SPALLINA, P.A.  
Attorneys for the Personal Representative  
of the Estate of Shirley Bernstein  
4855 Technology Way, Suite 720  
Boca Raton, Florida 33431  
Telephone: (561) 997-7008

BY: [Signature]  
ROBERT L. SPALLINA, ESQ.  
Florida Bar No. 497381



**LIMITED LIABILITY COMPANY**

**OPERATING AGREEMENT**

**of**

**BERNSTEIN HOLDINGS, LLC**

**a Florida limited liability company**

NOT A CERTIFIED COPY

## OPERATING AGREEMENT OF BERNSTEIN HOLDINGS, LLC

This Limited Liability Company Agreement (the "Agreement") is made and entered into as of the 20 day of May, 2008, by and among BERNSTEIN HOLDINGS, LLC (the "Company"); and SIMON L. BERNSTEIN, Trustee of the SIMON L. BERNSTEIN TRUST AGREEMENT dated May 20, 2008, SHIRLEY BERNSTEIN, Trustee of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008, SIMON L. BERNSTEIN and SHIRLEY BERNSTEIN, Co-Trustees and ROBERT L. SPALLINA, Independent Trustee of the ELIOT BERNSTEIN FAMILY TRUST dated May 20, 2008, SIMON L. BERNSTEIN and SHIRLEY BERNSTEIN, Co-Trustees, and ROBERT L. SPALLINA, Independent Trustee of the JILL IANTONI FAMILY TRUST dated May 20, 2008, and SIMON L. BERNSTEIN and SHIRLEY BERNSTEIN, Co-Trustees, and ROBERT L. SPALLINA, Independent Trustee of the LISA S. FRIEDSTEIN FAMILY TRUST dated May 20, 2008, and any subsequent transferee as the Members ("Members"). The Members are herein sometimes referred to individually as a "Member" and collectively as "Members."

### WITNESSETH:

WHEREAS, Articles of Organization for **BERNSTEIN HOLDINGS, LLC** were filed with the Florida Department of State on February 6, 2008.

WHEREAS, the Members desire to reduce their agreements to writing, to set forth the rights and obligations of the Members and the Manager.

NOW, THEREFORE, the Members and the Company hereby agree as follows:

### ARTICLE I

#### DEFINITIONS

The following terms used in this Agreement shall have the following meanings:

(a) "**Act**" shall mean the Florida Limited Liability Company Act at F.S. § 608.401, *et seq* and all amendments to the Act.

(b) "**Articles of Organization**" shall mean the Articles of Organization of **BERNSTEIN HOLDINGS, LLC**, as filed with the Department of State of Florida on February 6, 2008, and as may be amended from time to time.

(c) "**Capital Contribution**" shall mean any contribution to the capital of the Company in cash or the fair market value of property by a Member whenever made, net of any liabilities secured by such contributed property.

(d) **"Capital Account"** as of any given date shall mean the Capital Contribution to the Company by a Member as adjusted up to such date pursuant to Article VIII.

(e) **"Code"** shall mean the Internal Revenue Code of 1986 or corresponding provisions of subsequent superseding federal revenue laws.

(f) **"Company"** shall refer to **BERNSTEIN HOLDINGS, LLC**, a limited liability company formed under the laws of the State of Florida.

(g) **"Distributable Cash"** shall mean all cash, revenues and funds received by the Company from Company operations, less the sum of the following to the extent paid or set aside by the Company: (i) all principal and interest payments on indebtedness of the Company and all other sums paid to lenders; (ii) all cash expenditures incurred in the normal operation of the Company's business; and (iii) such Reserves as the Managers deem reasonably necessary for the proper operation of the Company's business.

(h) **"Entity"** shall mean any general partnership, limited liability partnership, limited partnership, limited liability limited partnerships, limited liability company, corporation, joint venture, trust, business trust, cooperative, association, foreign trust or foreign business organization.

(i) **"Gifting Member"** shall mean any Member who gifts, bequeaths or otherwise transfers for no consideration (by operation of law or otherwise, except with respect to bankruptcy) all or any part of its Membership Interest.

(j) **"Initial Capital Contribution"** shall mean the initial contribution to the capital of the Company pursuant to this Agreement.

(k) **"Interest"** shall mean "Percentage Interest" unless otherwise specifically agreed or in the case of special allocations.

(l) **"Majority Interest"** shall mean the Interests of Members, which in the aggregate exceed 50% of all Interests.

(m) **"Manager"** shall mean one or more managers designated as such pursuant to this Agreement or by subsequent vote of the Members. References to the Manager in the singular or as him, her, it, itself, or other like references shall also, where the context so requires, be deemed to include the plural or the masculine or feminine reference, as the case may be. Any Person may be named a Manager pursuant to this Agreement.

(n) **"Member"** shall mean each of the parties who executes a counterpart of this Agreement as a Member and each of the parties who may hereafter become Members. To the extent a Manager has purchased a Membership Interest in the Company, he will have all the rights of a Member with respect to such Membership Interest, and the term "Member" as used herein shall include a Manager to the extent he has purchased such Membership Interest in the Company. If a Person is a Member immediately prior to the purchase or other acquisition by such Person of an Transferee Interest, such Person shall



have all the rights of a Member with respect to such purchased or otherwise acquired Membership Interest or Transferee Interest, as the case may be.

(o) **"Membership Interest"** shall mean a Member's entire interest in the Company including such Member's Transferee Interest and, the right to participate in the management of the business and affairs of the Company, including the right to vote on, consent to, or otherwise participate in any decision or action of or by the Members granted pursuant to this Agreement and the Act.

(p) **"Net Income"** and **"Net Losses"** shall mean the income, gain, loss, deductions and credits of the Company in the aggregate or separately stated, as appropriate, determined in accordance with sound accounting principles employed under the cash method of accounting at the close of each fiscal year on the Company's tax return filed for federal income tax purposes.

(q) **"Operating Agreement" (or "Agreement")** shall mean this Operating Agreement of **BERNSTEIN HOLDINGS, LLC**, as originally executed and as amended from time to time.

(r) **"Percentage Interest"** shall mean, for any Member, the percentage interest that the Capital Account of the Member bears to the total Capital Accounts of all of the Members of the Company, as set forth at Section 9.1 herein, and Exhibit A, as may be changed from time to time by the unanimous vote of the Members.

(s) **"Person"** shall mean any individual or Entity, and the heirs, executors, administrators, legal representatives, successors, and assigns of such "Person" where the context so permits.

(t) **"Reserves"** shall mean funds set aside or amounts allocated to reserves which shall be maintained in amounts reasonably deemed sufficient by the Managers for working capital and to pay taxes, insurance, debt service or other costs or expenses incident to the ownership or operation of the Company's business.

(u) **"Selling Member"** shall mean any Member or Transferee which sells, assigns, pledges, hypothecates or otherwise transfers for consideration all or any portion of its Membership Interest or Transferee Interest.

(v) **"Transferee"** shall be person who has not been admitted by the Company as a Member Partner, but, by virtue of a Transfer of an Interest in the Company to said person, said person is entitled to a pro rata share of one or more of the Company's items of income, losses, credits, and distributions of the Company's assets pursuant to this Agreement and the Act, but said person shall not have, and is not entitled to any right to participate in the management or affairs of the Company, including, the right to vote on, consent to or otherwise participate in any decision of the Members or Manager.

(w) **"Transferring Member"** shall collectively mean a Selling Member and a Gifting Member.

(x) **"Treasury Regulations"** shall include proposed, temporary and final regulations promulgated under the Code.

## ARTICLE II

### FORMATION OF COMPANY

#### 2.1 *Organization.*

**BERNSTEIN HOLDINGS, LLC**, has been organized as a Florida limited liability company by executing and delivering the Articles of Organization to the Florida Department of State in accordance with and pursuant to the Act.

#### 2.2 *Name.*

The name of the Company is **BERNSTEIN HOLDINGS, LLC**, and all business of the Company shall be conducted under that name unless a majority of the Members agree to the filing and use of a fictitious name.

#### 2.3 *Principal Place of Business.*

The initial principal place of business of the Company shall be 950 Peninsula Corporate Circle, Suite 310, Boca Raton, Florida 33487. The Company may locate its places of business and registered office at any other place or places as the Manager may deem advisable.

#### 2.4 *Registered Office and Registered Agent.*

The Company's initial registered office shall be at the office of its registered agent in Florida, and the name of its initial registered agent shall be Donald R. Tescher, Esq. 2101 Corporate Blvd., Suite 107, Boca Raton, Florida, 33431. The registered office and registered agent may be changed by filing the address of the new registered office and/or the name of the new registered agent with the Florida Department of State pursuant to the Act.

#### 2.5 *Term.*

The term of the Company has filed Articles of Organization with the Florida Department of State, and shall have perpetual existence, unless the Company is earlier dissolved in accordance with either the provisions of this Agreement or the Act.

## ARTICLE III

### BUSINESS OF COMPANY

The business of the Company shall be to engage in management of investments, and closely-held business or real estate ventures, and such lawful activities as are reasonably necessary or useful to the furtherance of the forgoing purpose (the "Business").

## ARTICLE IV

### NAMES AND ADDRESSES OF MEMBERS

The names of the Members are listed on Exhibit A attached hereto and incorporated herein, and the addresses of the members are 950 Peninsula Corporate Circle, Suite 310, Boca Raton, Florida 33487, as amended from time to time.

## ARTICLE V

### RIGHTS AND DUTIES OF MANAGERS

#### 5.1 *Management.*

5.1.1 *General.* The business and affairs of the Company shall be managed by its Managers. The Managers shall direct, manage, and control the business of the Company. Except for situations in which the approval of the Members is expressly required by this Agreement or by nonwaivable provisions of the Act, the Managers shall have exclusive, sole, full and complete authority, power and discretion to manage and control the business, affairs and properties of the Company, to make all decisions regarding those matters, and to perform any and all other acts or activities customary or incident to the management of the Company's business. At any time when there is more than one Manager, any one Manager may take any action permitted to be taken by the Managers, unless the approval of more than one of the Managers is expressly required pursuant to this Agreement or the Act. The Managers may create a Board of Directors, and may also appoint individuals with or without titles, including the titles of General Manager, Executive Director, President, Vice President, Treasurer, Secretary, and Assistant Secretary, to act on behalf of the Company with such power and authority as the Managers or Board of Directors may delegate to any such Person.

5.1.2 *Initial Managers/Designation of Managers/Voting.* The Members agree that the initial Manager of the Company is SIMON L. BERNSTEIN. Unless otherwise specifically agreed herein, business decisions of the Company shall be made by said Manager. The Members shall vote their Interests such that only the aforementioned person is Manager of the Company. In all events, an individual shall be a Manager only while she or he is a Member who owns voting Interests (and is not a mere Transferee), either directly or indirectly. After proper notice, in the event of death or mental disability or incompetence of the Manager, the Members shall vote on and elect a new Manager.

#### 5.2 *Certain Powers of Managers.*

Without limiting the generality of Section 5.01, the Manager (or, if more than one Manager, then the Managers) shall have power and authority, on behalf of the Company to do the following:

- (a) To acquire or lease property from any Person as the Managers may determine, whether or not such Person is directly or indirectly affiliated or connected with any Manager or Member;
- (b) To borrow money for the Company from banks, other lending institutions, the Managers, Members, or affiliates of the Managers or Members on such terms as the Managers deem appropriate, and in connection therewith, to hypothecate, encumber and grant security interests in the assets of the Company to secure repayment of the borrowed sums. No debt shall be contracted or liability incurred by or on behalf of the Company except by the Managers, or to the extent permitted under the Act, by agents or employees of the Company expressly authorized to contract such debt or incur such liability by the Managers;

- (c) To purchase liability and other insurance to protect the Company's property and business;
- (d) To hold and own Company real and personal properties in the name of the Company;
- (e) To invest Company funds in time deposits, short-term governmental obligations, commercial paper or other investments;
- (f) To sell or otherwise dispose of all or substantially all of the assets of the Company as part of a single transaction or plan as long as such disposition is not in violation of or a cause of a default under any other agreement to which the Company may be bound;
- (g) To execute on behalf of the Company all instruments and documents, including, without limitation, checks; drafts; notes and other negotiable instruments; mortgages or deeds of trust; security agreements; financing statements; documents providing for the acquisition, mortgage or disposition of the Company's property; assignments, bills of sale; leases; and any other instruments or documents necessary to the business of the Company;
- (h) To employ accountants, legal counsel, managing agents or other experts to perform services for the Company;
- (i) To enter into any and all other agreements on behalf of the Company, in such forms as the Managers may approve; and
- (j) To do and perform all other acts as may be necessary or appropriate to the conduct of the Company's business.

Unless authorized to do so by this Agreement or by the Manager of the Company, no attorney-in-fact, employee or other agent of the Company shall have any power or authority to bind the Company in any way, to pledge its credit or to render it liable for any purpose. No Member shall have any power or authority to bind the Company unless the Member has been authorized by the Manager to act as an agent of the Company in accordance with the previous sentence.

### 5.3 *Liability for Certain Acts.*

Each Manager shall perform his duties as Manager in good faith, in a manner he or she reasonably believes to be in the best interests of the Company, and with such care as an ordinarily prudent person in a like position would use under similar circumstances. A Manager shall not be liable to the Company or to any Member for any loss or damage sustained by the Company or any Member, unless the loss or damage shall have been the result of fraud, deceit, gross negligence, willful misconduct, unlawful acts, or a wrongful taking by the Manager.

### 5.4 *No Exclusive Duty to Company.*

A Member or Manager shall not be required to manage the Company as his or her sole and exclusive function and may have other business interests and engage in activities in addition to those relating to the Company. Neither the Company nor any Member shall have any right, by virtue of this

Agreement, to share or participate in such other investments or activities of a Manager or to the income or proceeds derived therefrom.

#### 5.5 *Bank Accounts.*

The Manager may from time to time open bank accounts in, the name of the Company, and the Manager shall be the sole signatory thereon, unless Members owning a Majority Interest determine otherwise.

#### 5.6 *Indemnity of the Managers, Employees and Other Agents.*

The Company shall, to the maximum extent permitted under the Act, indemnify and make advances for expenses to Managers, its employees, and other agents.

#### 5.7 *Resignation.*

Any Manager of the Company may resign at any time by giving written notice to the Members of the Company. The resignation of any Manager shall take effect upon receipt of notice thereof or at such later date specified in such notice; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. The resignation of a Manager who is also a Member shall not affect the Manager's rights as a Member and shall not constitute a withdrawal of a Member.

#### 5.8 *Removal.*

A Manager shall not be subject to removal by vote of the Members except, if at all, pursuant to the provisions of this Agreement, as it may be amended by agreement of all of the Members.

#### 5.9 *Vacancies.*

To the extent not expressly provided for in Section 5.1.2 "Voting Agreement of Members," and only to said extent, if any: Any vacancy occurring for any reason in the number of Managers of the Company may be filled by the affirmative vote of Members holding a majority of the Percentage Interests present at an election at a meeting of Members called for that purpose or by the Members' unanimous written consent. A Manager elected to fill a vacancy shall be elected for the unexpired term of their predecessor in office and shall hold office until the expiration of such term and until their successor shall be elected and qualified or until the Manager's earlier death, resignation or removal. A Manager chosen to fill a position resulting from an increase in the number of Managers shall hold office until his successor shall be elected and qualified, or until his earlier death, resignation or removal.

#### 5.10 *Salaries.*

Each Manager shall receive annual compensation (the "Management Fee") if such compensation is agreed to by a majority of the Percentage Interest of the Members in writing, and and shall be entitled to reimbursement of reasonable and necessary expenses advanced on behalf of the Company.

### ARTICLE VI



## **RIGHTS AND OBLIGATIONS OF MEMBERS**

### **6.1 *Limitation of Liability.***

Each Member's liability to the Company shall be limited as set forth in this Agreement, the Act and other applicable law.

**6.2 *Company Liability.*** A Member will not be personally liable for any debts, obligations, liabilities or losses of the Company, whether arising in contract, tort, or otherwise, solely by reason of being a Member, beyond his respective Capital Contributions or any obligation of the Member under Sections 8.1 and 8.2 hereunder, except as provided in Section 6.7 or as otherwise required by law.

### **6.3 *List of Members.***

Upon the written request of any Member, the Managers shall provide a list showing all of the names, addresses and Membership Interests and Transferee Interests in the Company.

**6.4 *Approval of Sale of All Assets.*** The Managers shall have the right, to approve the sale, exchange or other disposition of all, or substantially all, of the Company's assets which is to occur as part of a single transaction or plan.

### **6.5 *Company Books.***

The Managers shall maintain and preserve, during the term of the Company, the accounts, books, and other relevant Company documents described in Section 9.9. Upon reasonable written request, each Member and Transferee shall have the right, at any time during ordinary business hours, as reasonably determined by the Manager, to inspect and copy, at the requesting Member's or Transferee's expense, the Company documents required to be maintained under Section 608.4101 of the Act, and such other documents which the Managers, in their reasonable discretion, deem appropriate.

### **6.6 *Priority and Return of Capital.***

Except as may be expressly provided in Article IX, no Member or Transferee shall have priority over any other Member or Transferee, either as to the return of Capital Contributions or as to Net Profits, Net Losses or distributions; provided that this Section shall not apply to loans which a Member has made to the Company.

### **6.7 *Liability of a Member to the Company.***

A Member who receives a distribution or return in whole or in part of its contribution is liable to the Company only to the extent provided by the Act.

## **ARTICLE VII**

## **MEETINGS OF MANAGERS AND MEMBERS**

### **7.1 *Meetings.***



Meetings of the Managers, for any purpose or purposes, may be called by any Manager. Meetings of the Members for any purpose or purposes, may be called by any Members holding at least 51% of the Percentage Interests of the Members.

## **7.2 *Place of Meetings.***

The Managers may designate any location within the U.S., either within or outside the State of Florida, as the place of meeting for any meeting of the Members. If no designation is made, or if a special meeting be otherwise called, the place of meeting shall be the principal place of business of the Company.

## **7.3 *Notice of Meetings.***

Except as provided in Section 7.04, written notice stating the place, day and hour of the meeting and the purpose or purposes for which the meeting is called shall be delivered not less than five (5) nor more than thirty (30) days before the date of the meeting, either personally or by mail, by or at the direction of the Managers or Member or Members calling the meeting, to each Member or Manager entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered two (2) calendar days after being deposited in the United States mail, certified mail return receipt requested, addressed to the Member or to the Manager at its address as it appears on the books of the Company, with postage therein prepaid. Notice may also be given by telegram, teletype or facsimile, or other form of electronic communication. Managers and Members may participate in and hold meetings whereby all conference telephone or similar communications equipment whereby all persons participating in the meeting can hear each other. Participation by communications equipment shall constitute presence at the meeting, unless a Member or Manager is participating in the meeting for the express purpose of objecting to the transaction of any business on the ground the meeting is not lawfully called or convened.

**7.4 *Meeting of All Members and Meetings of All Managers.*** If all of the Members or all of the Managers shall meet at any time and place, and consent to the holding of a meeting at such time and place, such meeting shall be valid without call or notice, and at such meeting lawful action may be taken.

## **7.5 *Record Date.***

For the purpose of determining Members entitled to notice of or to vote at any meeting of Members or any adjournment thereof, or Members entitled to receive payment of any distribution, or in order to make a determination of Members for any other purpose, the date on which notice of the meeting is mailed or the date on which the resolution declared such distribution is adopted, as the case may be, shall be the record date for such determination of Members. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this Section, such determination shall apply to any adjournment thereof.

## **7.6 *Quorum.***

Members holding at least fifty percent (50%) of all Percentage Interests, represented in person or by proxy, shall constitute a quorum at any meeting of Members, and if there is more than one Manager then serving, then a majority of the number of the then-serving Managers shall constitute a

quorum at a meeting of the Managers, who shall be represented in person, and shall constitute a quorum at any meeting.

#### **7.7 *Manner of Acting.***

If a quorum is present, the affirmative vote of a majority of all of the Members represented at the meeting, who must hold a majority Percentage Interest in the Company, shall be the act of the Members, unless the vote of a greater or lesser proportion or number is otherwise required by the Act, or by this Agreement. Unless otherwise expressly provided herein or required under applicable law, only Members who have a Membership Interest may vote or consent upon any matter and their vote or consent, as the case may be, shall be counted in the determination of whether the matter was approved by the Members.

#### **7.8 *Proxies.***

At all meetings of Members, a Member may vote in person or by proxy executed in writing by the Member or by a duly authorized attorney-in-fact. Such proxy shall be filed with the Managers of the Company before or at the time of the meeting. No proxy shall be valid after eleven (11) months from the date of its execution, unless otherwise provided in the proxy. Managers shall not be able to vote by Proxies.

#### **7.9 *Action by Members Without a Meeting.***

Action required or permitted to be taken at a meeting of Members may be taken without a meeting if the action is evidenced by one or more written consents describing the action taken, signed by each Member entitled to vote and delivered to the Managers of the Company for inclusion in the minutes or for filing with the Company records. Action taken under this Section is effective when all Members entitled to vote have signed the consent, unless the consent specifies a different effective date.

#### **7.10 *Waiver of Notice.***

When any notice is required to be given to any Member, a waiver thereof in writing signed by the person entitled to such notice, whether before, at, or after the time stated therein, shall be equivalent to the giving of such notice.

### **ARTICLE VIII**

#### **CONTRIBUTIONS TO THE COMPANY AND CAPITAL ACCOUNTS**

##### **8.1 *Members' Initial Capital Contributions.***

Each Member shall contribute such amount as is set forth on the books and records of the Company. No interest shall accrue on any Capital Contribution and the Member shall not have the right to withdraw or be repaid any Capital Contribution except as provided in this Agreement.

##### **8.2 *Additional Contributions.***

A Member may, but shall not be obligated to, make such additional Capital Contributions as shall be determined by the Managers. Such additional Capital Contributions shall be reflected in the Account of the Contributing Member and shall not be a part of any other Member's Capital Account absent written agreement of the Members. After the making of any such determination, the Managers shall give written notice to each Member of the amount of required additional contribution, if any, and each Member may deliver to the Company its pro rata share thereof (in proportion to the *respective* Percentage Interest of the Member on the date such notice is given) no later than thirty (30) days following the date such notice is given. None of the terms, covenants, obligations or rights contained in this Section 8.2 is or shall be deemed to be for the benefit of any person or entity other than the Members and the Company, and no such third person shall under any circumstances have any right to compel any actions or payments by the Managers and/or the Members.

### 8.3 *Capital Accounts.*

(a) A separate Capital Account will be maintained for each Member. Each Member's Capital Account will be increased by (1) the amount of money contributed by such Member to the Company; (2) the fair market value of property contributed by such Member to the Company (net of liabilities secured by such contributed property that the Company is considered to assume or take subject to under Code Section 752); (3) allocations to such Member of Net Profits and Net Losses; and (4) allocations to such Member of income described in Code Section 705(a)(1)(B). Each Member's Capital Account will be decreased by (1) the amount of money distributed to such Member by the Company; (2) the fair market value of property distributed to such Member by the Company (net of liabilities secured by such distributed property that such Member is considered to assume or take subject to under Code Section 752); (3) allocations to such Member of expenditures described in Code Section 705(a)(2)(B); and (4) allocations to the account of such Member of Company loss and deduction as set forth in such Regulations, taking into account adjustments to reflect book value.

(b) In the event of a permitted sale or exchange of a Membership Interest or a Transferee Interest in the Company, the Capital Account of the transferor shall become the Capital Account of the Transferee to the extent it relates to the transferred Membership Interest or Transferee Interest in accordance with Section 1.704-1(b) (2) (iv) of the Treasury Regulations.

(c) The manner in which Capital Accounts are to be maintained pursuant to this Section 8.3 is intended to comply with the requirements of Code Section 704(b) and the Treasury Regulations promulgated thereunder. If the Company determines that the manner in which Capital Accounts are to be maintained pursuant to the preceding provisions of this Section 8.3 should be modified in order to comply with Code Section 704(b) and the Treasury Regulations, then notwithstanding anything to the contrary contained in the preceding provisions of this Section 8.3, the method in which Capital Accounts are maintained shall be so modified; provided, however, that any change in the manner of maintaining Capital Accounts shall not materially alter the economic agreement between or among the Members as set forth in this Agreement.

(d) Except as otherwise required in the Act (and subject to Sections 8.1 and 8.2), no Member or Transferee shall have any liability to restore all or any portion of a deficit balance in such Member's or Transferee's Capital Account.

#### 8.4 *Withdrawal or Reduction of Members' Contributions to Capital.*

(a) A Member or Transferee Interest Holder shall not receive out of the Company's property any part of its Capital Contribution until all liabilities of the Company, except liabilities to Members on account of their Capital Contributions, have been paid or there remains property of the Company sufficient to pay them.

(b) A Member or Transferee Interest Holder, irrespective of the nature of its Capital Contribution, has only the right to demand and receive cash in return for its Capital Contribution.

(c) Notwithstanding anything to the contrary in this Agreement, a Member may withdraw from the Company only at the time or upon the occurrence of an event specified in this Agreement or in the Articles of Organization. No such event is specified in either the Articles of Organization or in this Agreement at the date hereof. A Member which violates the withdrawal prohibition in this Section shall be liable for breach of this Agreement and shall become a Transferee. A withdrawing Member shall not have a right to receive the fair value of receive the withdrawing member's Interest in the Company as of the date of the resignation but rather, shall have only such rights as a Transferee would have to receive distributions as are made by the Company in the discretion of the Managers.

### ARTICLE IX

#### ALLOCATIONS, INCOME TAX, DISTRIBUTIONS, ELECTIONS AND REPORTS

##### 9.1 *Allocations of Income and Losses from Operations.*

The Net Income and Net Losses of the Company for each fiscal year, and each Member or Transferee's share of Cash Flow, will be allocated in accordance with the Percentage Interests schedule set forth in Exhibit A attached hereto, and, except as provided therein, the Percentage Interests of Members shall be proportionate to the amount of their Capital Accounts as determined hereinabove.

##### 9.2 *Special Tax Provisions As to Extraordinary Allocations, if Any, to Capital*

Allocations of Net Income and Net Losses other than those set forth above shall be made based upon the determinations of the tax accountants and attorneys employed by the Company, giving regard to the intention expressed hereinabove and otherwise herein, with respect to special or priority allocations if any, and with regard to federal partnership tax and capital accounting principles described in Section 8.3 hereinabove.

##### 9.3 *Distributions.*

Within the discretion of the Managers as to amounts, if any, and as to timing, the Managers may distribute Cash Flow to the Members, in accordance with their Percentage Interests .



**9.4 Limitation upon Distributions.**

(a) No distributions or return of contributions shall be made and paid if, after the distribution or return of distribution is made either

- (1) the Company would be insolvent; or
- (2) the net assets of the Company would be less than zero.

(b) The Managers may base a determination that a distribution or return of contribution may be made under Section 9.4(a) in good faith reliance upon a balance sheet and profit and loss statement of the Company represented to be correct by the person having charge of its books of account or certified by an independent public or certified public accountant or firm of accountants to fairly reflect the financial condition of the Company.

**9.5 Tax Accounting Principles.**

The income and losses of the Company shall be determined in accordance with sound tax accounting principles applied on a consistent basis using generally accepted tax accounting principles as applied consistent with the Code.

**9.6 Interest on and Return of Capital Contributions.**

No Member shall be entitled to interest on its Capital Contribution or to a return of its Capital Contribution, except as otherwise provided in this Agreement.

**9.7 Loans to Company.**

Nothing in this Agreement shall prevent any Member from making secured or unsecured loans to the Company by agreement with the Company, provided that such loans are arms-length transactions, containing terms customary in the lending industry at the time such loans were made.

**9.8 Accounting Period.**

The Company's accounting period shall be the calendar year ("Fiscal Year").

**9.9 Records, Audits and Reports.**

At the expense of the Company, the Managers shall maintain records and accounts of the operations and expenditures of the Company. At a minimum, the Company shall keep at its principal place of business the following records:

(a) A current list of the full name and last known address of each Member and Transferee setting forth the amount of cash each Member and Transferee has contributed, a description and statement of the agreed value of the other property or services, each Member and Transferee has contributed or has agreed to contribute in the future, and the date on which each became a Member or Transferee, and their respective Percentage Interest in the Company;

(b) A copy of the Articles of Organization of the Company and all amendments thereto together with executed copies of any powers of attorney pursuant to which any amendment has been executed;

(c) Copies of the Company's federal, state, and local income tax returns and reports, if any, for the three most recent years;

(d) Copies of the Company's currently effective written Agreement, all amendments thereto, and copies of any financial statements of the Company for the three most recent years;

(e) Notices of and minutes of every Member and Managers meeting;

(f) Any written consents obtained from Members for actions taken by Members without a meeting; and

(g) Unless contained in the Articles of Organization or the Agreement, a writing prepared by the Managers setting out the following:

(1) The times at which or events on the happening of which any additional contributions agreed to be made by each Member and Transferee are to be made.

(2) Any right of a Member or Transferee to receive distributions of include a return on all or any part of the Member or Transferee's contributions.

(3) Any power of a Member or Transferee to grant the right to become an assignee of any part of the Member's or Transferee's interest, and the terms and condition of the power.

#### 9.10 *Returns and Other Elections.*

The Managers shall cause the preparation and timely filing of tax returns required to be filed by the Company pursuant to the Code and all other tax returns deemed necessary and required in each jurisdiction in which the Company does business. Copies of such returns, and pertinent information therefrom, shall be furnished to the Members within a reasonable time after the end of the Company's fiscal year upon the Members' written request. All elections permitted to be made by the Company under federal or state laws shall be made by the Managers in their sole discretion. It is the intention of the Members that the Company shall be taxed as a "Partnership" for federal, state, and local income tax purposes.

#### 9.11 *Tax Matters Partner.*

SIMON L. BERNSTEIN is designated the "Tax Matters Partner" (as defined in Code Section 6231), and is authorized and required to represent the Company (at the Company's expense), either directly, or through accounting or tax representatives, in connection with all examinations for the Company's affairs by tax authorities, including, without limitation administrative and judicial proceedings, and to expend Company funds for professional services and costs associated therewith. The



Members agree to cooperate with each other and to do or refrain from doing any and all things reasonably required to conduct such proceedings.

## ARTICLE X

### TRANSFERABILITY

#### 10.1 *General.*

10.1.1. *Transferees Not Members, Generally.* Except as otherwise set forth in Section 10.1.2, or with the consent of all of the Members, neither a Member nor a Transferee shall have the right, as to all or any part of its Membership Interest or Transferee Interest to:

(a) sell, assign, pledge, hypothecate, transfer, exchange or otherwise transfer for consideration (collectively, "sell" or, as context requires "selling"); or

(b) gift, bequeath or otherwise transfer for no consideration (whether or not by operation of law, except in the case of bankruptcy) (collectively, "gift").

Absent the written consent of all Members to the contrary or otherwise provided by law, the Interest of the Transferee shall be a Non-Voting Interest.

10.1.2 *Transferees Who are Lineal Descendants of a Member.* Any Transferees who are lineal descendants of both SIMON L. BERNSTEIN and SHIRLEY BERNSTEIN, either directly, or indirectly, as beneficiaries of a Trust, or other entity beneficially owned solely for or by that Member (including, but not limited to a revocable trust established by a Member for the sole lifetime benefit of the Member or the Member's descendants) shall be Members upon their written agreement to be bound by the terms of this Agreement and shall be subject to the voting agreements described in Article V, hereinabove.

#### 10.2 *Right of First Refusal.*

(a) If a Selling Member desires to sell all or any portion of its Membership Interest in the Company to a third party purchaser, the Selling Member shall obtain from such third party purchaser a bona fide written offer to purchase such Interest, stating the terms and conditions upon which the purchase is to be made and the consideration offered; provided, however, the offer shall include a "tag along" or "take along" provision, pursuant to which, all Members have the right to sell a pro-rata portion (determined in accordance with the Percentage Interests of all of the Members) of their Interests to the third party. The Selling Member or Transferee shall give written notification to the remaining Members, by certified mail or personal delivery, of its intention to so transfer such Interest, furnishing to the remaining Members a copy of the written offer to purchase such Interest.

(b) Each of the remaining Members, on a basis pro rata to their Percentage Interests or on a basis pro rata to the Percentage Interests of those remaining Members exercising their rights of first refusal, shall have the right to exercise a right of first refusal to purchase all (but not less than all) of the Interest proposed to be purchased by the third party and sold by the Selling Member and the "tag along Members" upon the same terms and conditions as stated in the aforesaid written offer to purchase

by giving written notification to the Selling Member and the "tag along Members", by certified mail or personal delivery, of the intention to do so within thirty (30) days after receiving written notice from the Selling Member. Subject to the following paragraph, the failure of the remaining Members to so notify the Selling Member and the "tag along Members" of their desire to exercise this right of first refusal within said thirty (30) day period shall result in the termination of the right of the first refusal and the Selling Member and the "tag along Members" shall be entitled to consummate the sale of its Interest in the Company to such third party purchaser, provided that the sale shall be consummated within sixty (60) days following the expiration of the aforesaid thirty (30) day period. In the event the remaining Members (or any one or more of the remaining Members) give written notice to the Selling Member and the "tag along Members" of their desire to exercise this right of first refusal and to purchase all of the Interests of the Selling Member and the "tag along Members" offered upon the same terms and conditions as are stated in the aforesaid written offer to purchase, the remaining Members shall have the right to designate the time, date and place of closing, provided that the date of closing shall be within sixty (60) days after written notification to the Selling Member of the remaining Member or Members' election to exercise their right of the first refusal. In the event that two (2) or more Members give written notice of their desire to exercise their right of first refusal, absent an agreement between all the Members so exercising such right, each such Member exercising their right of first refusal shall be entitled to purchase that percentage of the selling Member's share according to the proportion that their Percentage Interests bears to the total Percentage Interests exercising such right of first refusal. The Members shall communicate with each other during the pendency of any offer made in accordance with the terms of this Section 10.2 in order to effectuate the intent of this Section.

(c) As a condition to the Company recognizing the effectiveness of either the sale or gift of an Interest in the Company (including, in both cases, a Transferee Interest), the remaining Members may require the Selling Member, Gifting Member and/or the proposed purchaser, donee or successor-in-interest, as the case may be, to execute, acknowledge and deliver to the remaining Members such instruments of transfer, assignment and assumption and such other certificates, representations and documents, and to perform all such other acts which the remaining Members' may deem necessary or desirable to:

- (1) verify the purchase, gift or transfer, as the case may be;
- (2) confirm that the person desiring, to acquire an Interest in the Company, or to be admitted as a Member, has accepted, assumed and agreed to be subject and bound by all of the terms, obligations and conditions of the Agreement (whether such Person is to be admitted as a new Member or as a Transferee);
- (3) maintain the status of the Company as a partnership for federal tax purposes; and
- (4) assure compliance with any applicable state and federal laws including securities laws and regulations.

(d) Any sale or gift of a Membership Interest or Transferee Interest in compliance with this Article X shall be deemed effective upon the last day of the calendar month in which all the terms and conditions hereof relating thereto have been satisfied. The admission of a Member in compliance with this Article X shall be deemed effective as of the last day of the calendar month in

which the remaining Members' consent thereto was given. The Selling Member hereby indemnifies the Company and the remaining Members against any and all loss, damage, or expense (including, without limitation, tax liabilities or loss of tax benefits) arising directly or indirectly as a result of any transfer or purported transfer in violation of this Article X.

### 10.3 *Permitted Transfer to Descendants/Mandatory Offer at Death.*

**10.3.1 *No Mandatory Offer At Death.*** If a Member's Interest is Transferred to a lineal descendant of the Member, to a Trust or other entity beneficially owned solely for or by that Member or the lineal descendant of that Member, the Transferee shall not be required to sell or offer to sell his or her Interest, shall be eligible to become a Member pursuant to Sections 10.1.1 and 10.1.2 above, and shall be subject to the voting agreements described in Article V, above. If Members of the Company are trusts for the lifetime benefit of the lineal descendants of a Member either directly or indirectly, then the successors in interest to the Interests in the Company pursuant to the terms of such trusts shall be considered as Members hereof (regardless of indirect ownership as trust beneficiaries) as long as the beneficial interests are owned by the lineal descendants of the Member, and said persons shall be subject to the voting agreements described in Article V, above.

**10.3.2 *Mandatory Offer At Death.*** Except with transfers described in 10.3.1., above, the death of any Member or Transferee who owns an Interest shall constitute an offer by the Member's Estate, Trust, or other legal successor in interest, to sell all of the Member's Interest to the Company (the "Offer") at its fair market value (determined as of the date of death). The Company shall have one hundred eighty (180) days in which to accept the Offer at an agreed price, which acceptance shall be made by delivery of written notice thereof to the legal representative of the estate of the Member or Transferee, by certified mail or personal delivery, within said one hundred eighty (180) day period. If the Company does not elect to purchase the Interest within said one hundred eighty (180) day period, the remaining Members shall have the right, but are not required to, purchase the remaining part, or all, as the case may be, of the Interest at its fair market value (as determined herein) determined as of the date of death, in proportion to their existing Interests. Such right to purchase shall be exercised by delivery of written notice thereof, by certified mail or personal delivery, during the thirty (30) days immediately after the one hundred eighty (180) day period (the "30 Day Period"). If any such Member does not desire to purchase his/her or its full proportionate part of the Interest offered for sale, but the remaining Members desire to purchase all of the Interest offered for sale, said Members shall then have the right to purchase said Interest proportionally in accordance with their respective Interests and the Members shall communicate with each other during the 30 Day Period in order to effectuate the intent of this Section 10.3. Except as provided in Section 10.1.2 and 10.1.3, to the extent that any part, or all, of an Interest is not purchased under the provisions of this Section 10.3, the deceased's Member's Interest shall become a Transferee's Interest, if not owned beneficially or directly by another Member hereof. The purchase price shall be as agreed by the parties, and, unless otherwise agreed, shall be paid in cash at the closing, which shall occur no later than thirty (30) days after the end of the 30 Day Period. For purposes of this Agreement, the "fair market value" of an Interest is equal to its Percentage Interest multiplied by the value of the Company (as agreed by the parties). If the value of the Company is not agreed to by the parties, then for purposes of this Agreement "fair market value" of a Member's Interest shall be determined without reduction for minority, lack of marketability or other entity/Company level discounts, based upon a reasonable appraisal procedure to determine the fair market value of the Company's assets. The appraisal procedure shall be agreed upon by the Member and Company. If the

parties cannot agree to an appraisal procedure, then an MAI appraiser shall be selected by the Personal Representative of the deceased Member's estate, and if the Company does not agree as to that appraiser, then the Company shall select its own appraiser and each MAI appraiser then shall select a third MAI appraiser and the average of all three (3) appraisals shall be the fair market value of the Interest. As set forth hereinabove, fair market value" of a Member's Interest shall be determined without reduction for minority, lack of marketability or other entity/Company level discounts.

#### 10.4 *Transferee Not Member in Absence of Unanimous Consent.*

(a) Except as provided in Section 10.1.2 and 10.1.3, if all of the remaining Members do not approve by unanimous written consent of the proposed, sale or gift of the Transferring Member's Membership Interest to a transferee or donee which is not a Member immediately prior to the sale or gift, then the proposed transferee or donee shall have no right to participate in the management of the business and affairs of the Company or to become a Member. The transferee or donee shall be merely a Transferee entitled solely to economic rights to profits, losses and distributions and shall have no voting rights under this Agreement or in matters relating to the Company and its business; provided, however, any sale of a Transferee's interest in the Company should be subject to Section 10.2. No transfer of a Member's Interest in the Company (including any transfer of the Transferee Interest or any other transfer which has not been approved by unanimous written consent of the Members) shall be effective unless and until written notice (including the name and address of the proposed transferee or donee and the date of such transfer) has been provided to the Company and the nontransferring Member(s).

(b) Upon and contemporaneously with any sale or gift of a Transferring Member's Interest in the Company which does not at the same time transfer the balance of the rights associated with the Transferee Interest transferred by the Transferring Member (including, without limitation, the rights of the Transferring Member to participate in the management of the business and affairs of the Company), all remaining rights and interest which were owned by the Transferring Member immediately prior to such sale or gift or which were associated with the transferred Interest shall immediately lapse until the remaining Members, by unanimous written consent, reinstate such rights to the Transferee who did not previously obtain the unanimous written consent, reinstating such rights to a successor or transferee of such Transferee.

### ARTICLE XI

#### ADDITIONAL MEMBERS

From the date of the formation of the Company, any Person or Entity acceptable to the Members by their unanimous vote thereof may become a Member in this Company for such consideration as the Members by their unanimous votes shall determine, subject to the terms and conditions of this Agreement. No new Members shall be entitled to any retroactive allocation of profits losses, income or expense deductions incurred by the Company. The Manager(s) may, at their option, at the time a Member is admitted, close the Company books (as though the Company's tax year has ended) or make pro rata allocations of income, loss, and expense deductions to a new Member for that portion of the Company's tax year in which a Member was admitted in accordance with the provisions of Code Section 706(d) and the Treasury Regulations promulgated thereunder.



## ARTICLE XII

### DISSOLUTION AND TERMINATION

#### 12.1 *Dissolution.*

(a) The Company shall be dissolved upon the occurrence of any of the following events:

- (i) by the unanimous written consent of all Members; or
- (ii) the sale, transfer or assignment of substantially all of the assets of the Company; or
- (iii) as otherwise required by law.

#### 12.2 *Winding Up, Liquidation and Distribution of Assets.*

(a) Upon dissolution, an accounting shall be made by the Company's independent accountant of the accounts of the Company and of the Company's assets, liabilities and operations, from the date of the last previous accounting until the date of dissolution. The Managers shall immediately proceed to wind up the affairs of the Company.

(b) If the Company is dissolved and its affairs are to be wound up, the Managers shall:

- (1) Sell or otherwise liquidate all of the Company's assets as promptly as practicable (except to the extent the Managers may determine to distribute any assets to the Members in kind),
- (2) Allocate any profit or loss resulting from such sales to the Member's and Transferees' Capital Accounts in accordance with Article IX hereof.
- (3) Discharge all liabilities of the Company, including liabilities to Members and Transferees who are creditors, to the extent other-wise permitted by law, other than liabilities to Members and Transferees for Distributions, and establish such Reserves as may be reasonably necessary to provide for contingent liabilities of the Company (for purposes of determining the Capital Accounts of the Members and Transferees, the amounts of such Reserves shall be deemed to be an expense of the Company),
- (4) Distribute the remaining assets in the following order:
  - (i) If any assets of the Company are to be distributed in kind, the net fair market value of such assets as of the date of dissolution shall be determined by independent appraisal or by agreement of all of the Members. Such assets shall be deemed to have been sold as of the date of dissolution for their fair market value, and

the Capital Accounts of the Members and Transferees shall be adjusted pursuant to the provisions of Article IX and Section 8.3 of this Agreement to reflect such deemed sale.

(ii) To the Members and Transferees, pro rata, in accordance with the positive balance (if any) of each Member's and Transferee's Capital Account (as determined after taking into account all Capital Account adjustments for the Company's taxable year during which the liquidation occurs) shall be distributed to the Members and Transferee either in cash or in kind, as determined by the Managers, with any assets distributed in kind being valued for this purpose at their fair market value as determined pursuant to Section 12.2(b)(i).

(iii) Thereafter, to the Members and Transferee's pro rata, in accordance with their respective Percentage Interests.

(c) Notwithstanding anything to the contrary in this Agreement, upon a liquidation within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Treasury Regulations, if any Member has a Deficit Capital Account (after giving effect to all contributions, distributions, allocations and other Capital Account adjustments for all taxable years, including the year during which such liquidation occurs), such Member shall have no obligation to make any Capital Contribution, and the negative balance of such Member's Capital Account shall not be considered a debt owed by such Member to the Company or to any other Person for any purpose whatsoever.

(d) Upon completion of the winding up, liquidation and distribution of the assets, the Company shall be deemed terminated.

(e) The Manager(s) shall comply with all requirements of applicable law pertaining to the winding up of the affairs of the Company and the final distribution of its assets.

### 12.3 *Articles of Dissolution.*

When all debts, liabilities and obligations of the Company have been paid and discharged or adequate provisions have been made therefor and all of the remaining property and assets of the Company have been distributed among its members in accordance with their respective rights and interests, a Articles of Dissolution of the Company shall be filed with the Florida Department of State.

### 12.4 *Effect of Filing Articles of Dissolution.*

Upon the filing of Articles of Dissolution with the Florida Department of State, and upon issuance of the Certificate of Dissolution by the Department of the State, the existence of the Company shall cease, except for the purpose of suits, of the proceedings and appropriate action as provided in the Act. The Managers shall have authority to distribute any Company property discovered after dissolution, convey real estate and take such other action as may be necessary on behalf of and in the name of the Company.

### 12.5 *Return of Contribution Nonrecourse to Other Members.*



Except as provided by law or as expressly provided in this Agreement, upon dissolution, each Member and Transferee shall look solely to the assets of the Company for the return of its Capital Contribution. If the Company property remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return the cash contribution of one or more Members or Transferees, such Member(s) or Transferee(s) shall have no recourse against any other Member or Transferee, except as otherwise provided by law.

## ARTICLE XIII

### MISCELLANEOUS PROVISIONS

#### 13.1 *Notices.*

Any notice, demand, or communication required or permitted to be given by any provision of this Agreement shall be deemed to have been sufficiently given or served for all purposes if delivered personally or by express mail or courier service (with receipt acknowledged) to the party or to an executive officer of the party to whom the same is directed, if telecopied (with receipt acknowledged) to the party or an executive officer of the party to whom the same is directed or, if sent by registered or certified mail, postage and charges prepaid, addressed to the Member's and/or Company's address, as appropriate, which is set forth in this Agreement. Except as otherwise provided herein any such notice shall be deemed to be given two (2) business days after the date on which the same was deposited in the United States mail, addressed and sent as aforesaid, if sent by mail or upon confirmation of receipt if delivered by telecopier, personal delivery or courier service.

#### 13.2 *Books of Account and Records.*

Proper and complete records and books of account shall be kept or shall be caused to be kept by the Managers in which shall be entered fully and accurately all transactions relating to the Company's business in such detail and completeness as is customary and usual for businesses of the type engaged in by the Company. Such books and records shall be maintained as provided in Section 9.9. The books and records shall at all times be maintained at the principal place of business of the Company. Additionally, the Managers shall promptly distribute to all Members, copies of the Company's financial statements on an annual basis.

#### 13.3 *Application of Florida Law.*

This Agreement and its interpretation shall be governed exclusively by its terms and by the laws of the State of Florida, and specifically the Act.

#### 13.4 *Waiver of Action for Partition.*

Each Member and Transferee irrevocably waives during the term of the Company any right that it may have to maintain any action for partition with respect to the property of the Company.

#### 13.5 *Amendments.*

This Agreement may not be amended except in writing by the affirmative vote of a majority of the Members of the Company which vote must include the affirmative vote of the Manager. Any amendment changing either the Percentage Interests of the Members or any provision within Article V requires the unanimous vote of the Members.

### 13.6 *Execution of Additional Instruments.*

Each Member hereby agrees to execute such other and further statements of interest and holdings, designations and other instruments necessary to comply with an laws, rules or regulations.

### 13.7 *Construction.*

Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural and vice versa, and the masculine gender shall include the feminine and neuter genders and vice versa.

### 13.8 *Headings.*

The headings in this Agreement are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent or intent of this Agreement or any provision thereof

### 13.9 *Waivers.*

The failure of any party to seek redress for default of or to insist upon the strict performance of any covenant of condition of this Agreement shall not prevent a subsequent act, which would have originally constituted a default, from having the effect of an original default.

### 13.10 *Rights and Remedies Cumulative.*

The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive the right to use any other remedy. Said rights and remedies are given in addition to any other legal rights that parties may have.

### 13.11 *Severability*

If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

### 13.12 *Heirs, Successors and Assigns.*

Each and all of the covenants, terms, provisions and agreement herein contained shall be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by this Agreement, their respective heirs, legal representatives, successors and assigns.

### 13.13 *Creditors.*

None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditors of the Company.

### 13.14 Counterparts.

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

**13.15 Conflict of Interest Waiver.** The Members and the Company acknowledge that the law firm of Tescher & Spallina, P.A. has represented the Company in connection with the drafting of this Agreement and the formation and structuring of the Company, and that said law firm also represents one or more of the Members (namely, SIMON L. BERNSTEIN, SHIRLEY BERNSTEIN, SHIRLEY BERNSTEIN FAMILY FOUNDATION, INC., and BERNSTEIN FAMILY INVESTMENTS, LLLP). The Company and its Members acknowledge that they have been advised that there are material income tax consequences and economic ramifications from being a Member in the Company, that they fully understand the tax consequences and economic ramifications of a Member's investment in the Company, and that they have been encouraged to consult with separate and independent counsel to advise them on Company and Member issues including this Agreement and the formation of the Company. The Company and the Members hereby waive any conflicts of interest with respect to the foregoing law firm's representation of the Company and the afore described Members and owners of interests in entity Members, in connection with the services set forth in this Section.

IN WITNESS WHEREOF, the parties hereto have caused their signatures, or the signatures of their duly authorized representatives, to be set forth below on the day and year first above written.

Witnesses:

MEMBERS:


SIMON L. BERNSTEIN TRUST  
AGREEMENT dated May 20, 2008

By:   
SIMON L. BERNSTEIN, Trustee

SHIRLEY BERNSTEIN TRUST  
AGREEMENT dated May 20, 2008

By:   
SHIRLEY BERNSTEIN, Trustee

ELIOT BERNSTEIN FAMILY TRUST dated  
May 20, 2008

By:   
SIMON L. BERNSTEIN, Co-Trustee

By:   
SHIRLEY BERNSTEIN, Co-Trustee

By:   
ROBERT L. SPALLINA, Independent Trustee

JILL IANTONI FAMILY TRUST dated May  
20, 2008

By:   
SIMON L. BERNSTEIN, Co-Trustee

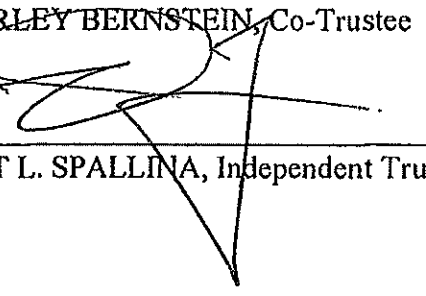
By:   
SHIRLEY BERNSTEIN, Co-Trustee

By:   
ROBERT L. SPALLINA, Independent Trustee

LISA S. FRIEDSTEIN FAMILY TRUST dated  
May 20, 2008



By:   
SIMON L. BERNSTEIN, Co-Trustee

By:   
SHIRLEY BERNSTEIN, Co-Trustee

By:   
ROBERT L. SPALLINA, Independent Trustee

COMPANY:

BERNSTEIN HOLDINGS, LLC, a Florida  
limited liability company

  
\_\_\_\_\_  
  
\_\_\_\_\_

By: \_\_\_\_\_

SIMON L. BERNSTEIN, Manager

F:\WPDATA\dr\Bernstein, Shirley & Simon\Bernstein Family Investments, LLLP\Bernstein Holdings, LLC\Bernstein Holdings, LLC Operating Agreement.wpd

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**BERNSTEIN HOLDINGS, LLC  
LIMITED LIABILITY COMPANY  
OPERATING AGREEMENT**

*EXHIBIT A*

<u>Member(s)</u>	<u>Percentage Interest*</u>	<u>Capital Contributions</u>
SIMON L. BERNSTEIN, Trustee of the SIMON L. BERNSTEIN TRUST AGREEMENT u/t/d May 20, 2008	48.5%	\$48.50
SHIRLEY BERNSTEIN, Trustee of the SHIRLEY BERNSTEIN TRUST AGREEMENT u/t/d May 20, 2008	48.5%	\$48.50
SIMON L. BERNSTEIN and SHIRLEY BERNSTEIN, Co-Trustees ROBERT L. SPALLINA, Independent Trustee of the ELIOT BERNSTEIN Family Trust dated May 20, 2008	1%	\$1.00
SIMON L. BERNSTEIN and SHIRLEY BERNSTEIN, Co-Trustees ROBERT L. SPALLINA, Independent Trustee of the JILL IANTONI Family Trust dated May 20, 2008	1%	\$1.00
SIMON L. BERNSTEIN and SHIRLEY BERNSTEIN, Co-Trustees ROBERT L. SPALLINA, Independent Trustee of the LISA S. FRIEDSTEIN Family Trust dated May 20, 2008	1%	\$1.00

\*proportionate to capital accounts of Members



Filing # 146674645 E-Filed 03/30/2022 07:36:23 AM

**EXHIBIT 1.530**

CASE NO.: 50-2018-CA-002317

Sahm Foreclosure v BFR, LLC et al

**TRUSTS ESTABLISHING JOSHUA, JACOB AND DANNY BERNSTEIN  
AS SOLE BENEFICIARIES OF TRUSTS OWNING BFR, LLC**

***TRUST AGREEMENT***  
***FOR THE***  
***JAKE BERNSTEIN IRREVOCABLE TRUST***

*September 7, 2006*

**TRUST AGREEMENT**  
**FOR THE**  
**JAKE BERNSTEIN IRREVOCABLE TRUST**

SIMON BERNSTEIN, as Settlor, hereby creates the Jake Bernstein Irrevocable Trust ("the Trust") on September 7, 2006. Tracy Kratish, P.A. is the trustee of this Trust and, in that capacity, he and his successors are collectively referred to in this Trust Agreement as the "Trustee."

**ARTICLE 1**  
**BENEFICIARY**

This Trust is for the benefit of the Settlor's Grandchild, JAKE BERNSTEIN.

**ARTICLE 2**  
**TRANSFERS TO TRUST**

The Settlor hereby conveys to the Trustee all his interest in the assets listed on Schedule A, which together with any assets later added to this Trust are referred to as the "Trust Estate." Any person may transfer assets to the Trust Estate, if the Trustee agrees to accept them. Assets do not have to be listed on Schedule A to be part of the Trust Estate. Unless otherwise specified in writing at the time of the transfer, those assets will be held as provided in this Trust Agreement. The Trustee acknowledges receipt of the current Trust assets and agrees to hold the Trust Estate as set forth in this Trust Agreement.

**ARTICLE 3**  
**IRREVOCABLE PROVISION**

The Settlor declares that he has no right to alter, amend, modify, or revoke this Trust Agreement; to withdraw assets from the Trust; or to require changes in the investments of the Trust. No part of the Trust may ever revert to the Settlor, be used for his benefit, or be distributed in discharge of his legal obligations.

**ARTICLE 4**  
**ADMINISTRATION OF TRUST**

The Trustee shall hold, administer, and distribute the Trust Estate in accordance with the powers granted under this Trust Agreement as follows:

**4.1 Discretionary Distributions.** The Trustee shall pay or apply such sums of principal from this Trust as in the Trustee's discretion are necessary or advisable for Beneficiary's health, education, support, and maintenance.

**4.2 Distribution of Principal.** When Beneficiary has reached age 21, the trustee shall distribute one-half (1/2) of the corpus of trust to Beneficiary plus accrued income. When Beneficiary has reached age 25 the Trustee shall distribute the entire remaining principal balance of the corpus of the trust to Beneficiary plus accrued income.

**4.3 Distribution Upon Death Before Age 25.** Upon the death of Beneficiary prior to age 25, the Trustee shall distribute the remaining assets in the trust to the estate of Beneficiary.

#### ARTICLE 5 PROVISIONS GOVERNING TRUSTEES

The following provisions apply to all Trustees appointed under this Trust Agreement:

**5.1 Incapacity of Trustee.** If any Trustee becomes disabled, he or she will immediately cease to act as Trustee. If a Trustee who ceases to serve because of a disability, or who is suspended, thereafter recovers from that disability or consents to the release of relevant medical information, he or she may elect to become a Trustee again by giving written notice to the then serving Trustee, and the last Trustee who undertook to serve will then cease to be a Trustee until another successor Trustee is required.

**5.2 Resignation.** Any Trustee may resign by giving 30 days' written notice delivered personally or by mail to any then serving Co-Trustee and to the Settlor if he is then living and not disabled; otherwise to the next named successor Trustee, or if none, to the persons having power to appoint successor Trustees.

**5.3 Power to Name Other Trustees.** Whenever a successor Trustee is required and that position is not filled under the terms specified in this Trust Agreement, an individual Trustee ceasing to serve (other than a Trustee being removed) may appoint his or her successor, but if none is appointed, the remaining Trustees, if any, or the beneficiary shall appoint a successor Corporate Trustee. The appointment will be by a written document (including a testamentary instrument) delivered to the appointed Trustee. In no event may the Settlor ever be appointed as the Trustee under this Trust Agreement nor shall a Successor trustee be appointed that will cause this trust to be a grantor trust.

**5.4 Powers of Successor Trustees.** Successor Trustees will have all powers granted to the original Trustee, except that only an Independent Trustee will succeed to the powers vested exclusively in the Independent Trustee.

**5.5 Accountings.** Accountings must be given to the beneficiary of each trust at least annually (quarterly if a Corporate Trustee is serving). The accountings must show the assets held in trust and all receipts and disbursements. A beneficiary's written approval of an accounting will be final and binding upon that beneficiary and all persons represented by him or her as to all matters disclosed in that accounting. In any event, if a

beneficiary fails to object to an accounting within six months of receiving it, his or her approval is conclusively presumed. A successor Trustee may require the prior Trustee to render a full and final accounting.

**5.6 Acts by Other Fiduciaries.** The Trustee is not required to question any acts or failures to act of the fiduciary of any other trust or estate, and will not be liable for any prior fiduciary's acts or failures to act. The Trustee can require a beneficiary who requests an examination of another fiduciary's actions or omissions to advance all costs and fees incurred in the examination, and if the beneficiary does not, the Trustee may elect not to proceed or may proceed and offset those costs and fees directly against any payment that would otherwise be made to that beneficiary.

**5.7 Court Supervision.** The Settlor waives compliance by the Trustee with any law requiring bond, registration, qualification, or accounting to any court.

**5.8 Compensation.** Each Trustee is entitled to be paid reasonable compensation for services rendered in the administration of the Trust. Reasonable compensation for a Corporate Trustee will be its published fee schedule in effect when its services are rendered unless otherwise agreed in writing, and except as follows. Any fees paid to a Corporate Trustee for making principal distributions, for termination of the trust, and upon termination of its services must be based solely on the value of its services rendered, not on the value of the trust principal. During the Settlor's lifetime the Trustee's fees are to be charged wholly against income (to the extent sufficient), unless directed otherwise by the Settlor in writing.

**5.9 Indemnity.** Any Trustee who ceases to serve for any reason will be entitled to receive (and the continuing Trustee shall make suitable arrangements to provide) reasonable indemnification and security to protect and hold that Trustee harmless from any damage or liability of any nature that may be imposed upon it because of its actions or omissions while serving as Trustee. This protection, however, does not extend to a Trustee's negligent actions or omissions that clearly and demonstrably result in damage or liability. A prior Trustee may enforce these provisions against the current Trustee or against any assets held in the Trust, or if the prior Trustee is an individual, against any beneficiary to the extent of distributions received by that beneficiary. This indemnification right will extend to the estate, personal representatives, legal successors, and assigns of a Trustee.

**5.10 Successor Trustee.** In the event the initial Trustee, Steven I. Greenwald, resigns or ceases to serve as Trustee, then and in that event, I hereby appoint Larry V. Bishins to serve as Trustee.

**ARTICLE 6**  
**PROTECTION OF INTERESTS**

The interest of any beneficiary under this Trust Agreement, in either income or principal, may not be anticipated, alienated, or in any other manner assigned by the beneficiary, whether voluntarily or involuntarily, and will not be subject to any legal process, bankruptcy proceedings, or the interference or control of the beneficiary's creditors or others.

**ARTICLE 7**  
**FIDUCIARY POWERS**

The Settlor grants to the Trustee full power to deal freely with any property in the Trust. The Trustee may exercise these powers independently and without the approval of any court. No person dealing with the Trustee need inquire into the propriety of any of its actions or into the application of any funds or assets. The Trustee shall, however, exercise all powers in a fiduciary capacity for the best interest of the beneficiary of this Trust or any trust created under it. Without limiting the generality of the foregoing, the Trustee is given the following discretionary powers in addition to any other powers conferred by law:

**7.1 Type of Assets.** Except as otherwise provided to the contrary, to hold funds uninvested for such periods as the Trustee deems prudent, and to invest in any assets the Trustee deems advisable even though they are not technically recognized or specifically listed in so-called "legal lists," without responsibility for depreciation or loss on account of those investments, or because those investments are non-productive, as long as the Trustee acts in good faith.

**7.2 Original Assets.** Except as otherwise provided to the contrary, to retain the original assets it receives for as long as it deems best, and to dispose of those assets when it deems advisable, even though such assets, because of their character or lack of diversification, would otherwise be considered improper investments for the Trustee.

**7.3 Tangible Personal Property.** To receive and hold tangible personal property; to pay or refrain from paying storage and insurance charges for such property; and to permit any beneficiaries to use such property without either the Trustee or beneficiaries incurring any liability for wear, tear, and obsolescence of the property.

**7.4 Specific Securities.** To invest in assets, securities, or interests in securities of any nature, including (without limit) commodities, options, futures, precious metals, currencies, and in domestic and foreign markets and in mutual or investment funds, including funds for which the Trustee or any affiliate performs services for additional fees, whether as custodian, transfer agent, investment advisor or otherwise, or in securities distributed, underwritten, or issued by the Trustee or by syndicates of which



It is a member; to trade on credit or margin accounts (whether secured or unsecured); and to pledge assets of the Trust Estate for that purpose.

**7.5 Property Transactions.** To buy, sell, pledge, exchange, or lease any real or personal property, publicly or privately, for cash or credit, without court approval and upon the terms and conditions that the Trustee deems advisable; to execute deeds, leases, contracts, bills of sale, notes, mortgages, security instruments, and other written instruments; to abandon or dispose of any real or personal property in the Trust which has little or no monetary or useful value; to improve, repair, insure, subdivide and vacate any property; to erect, alter or demolish buildings; to adjust boundaries; and to impose easements, restrictions, and covenants as the Trustee sees fit. A lease will be valid and binding for its full term even if it extends beyond the full duration of the Trust.

**7.6 Borrow Money.** To borrow money from any source (including the Trustee in its nonfiduciary capacity), to guarantee indebtedness, and to secure the loan or guaranty by mortgage or other security interest.

**7.7 Maintain Assets.** To expend whatever funds it deems proper for the preservation, maintenance, or improvement of assets. The Trustee in its discretion may elect any options or settlements or exercise any rights under all insurance policies that it holds. However, no fiduciary who is the insured of any insurance policy held in the Trust may exercise any rights or have any incidents of ownership with respect to the policy, including the power to change the beneficiary, to surrender or cancel the policy, to assign the policy, to revoke any assignment, to pledge the policy for a loan, or to obtain from the insurer a loan against the surrender value of the policy. All such power is to be exercised solely by the remaining Trustee, if any, or if none, by a special fiduciary appointed for that purpose by a court having jurisdiction.

**7.8 Advisors.** To employ and compensate attorneys, accountants, advisors, financial consultants, managers, agents, and assistants (including any individual or entity who provides investment advisory or management services, or who furnishes professional assistance in making investments for the Trust) without liability for any act of those persons, if they are selected and retained with reasonable care. Fees may be paid from the Trust Estate even if the services were rendered in connection with ancillary proceedings.

**7.9 Indirect Distributions.** To make distributions, whether of principal or income, to any person under age 21 or to any incapacitated person according to the terms of this Trust Agreement by making distributions directly to that person whether or not that person has a guardian; to the parent, guardian, or spouse of that person; to a custodial account established by the Trustee or others for that person under an applicable Uniform Gift to Minors Act or Uniform Transfers to Minors Act; to any adult who resides in the same household with that person or who is otherwise responsible for the care and well-being of that person; or by applying any distribution for the benefit of that person in any

manner the Trustee deems proper. The receipt of the person to whom payment is made will constitute full discharge of the Trustee with respect to that payment. No distributions may be made to the Settlor under this Section.

**7.10 Non-Pro Rata Distribution.** To make any division or distribution in money or in kind, or both, without allocating the same kind of property to all shares or distributees, and without regard to the income tax basis of the property. Any division will be binding and conclusive on all parties.

**7.11 Nominee.** Except as prohibited by law, to hold any assets in the name of a nominee without disclosing the fiduciary relationship; to hold the property unregistered, without affecting its liability; and to hold securities endorsed in blank, in street certificates, at a depository trust company, or in a book entry system.

**7.12 Custodian.** To employ a custodian or agent ("the Custodian") located anywhere within the United States, at the discretion of the Trustee but at the expense of the Trust, whether or not such Custodian is an affiliate of the Trustee or any person rendering services to the Trust; to register securities in the name of the Custodian or a nominee thereof without designation of fiduciary capacity; and to appoint the Custodian to perform such other ministerial functions as the Trustee may direct. While such securities are in the custody of the Custodian, the Trustee will be under no obligation to inspect or verify such securities nor will the Trustee be responsible for any loss by the Custodian.

**7.13 Settle Claims.** To contest, compromise, arbitrate, or otherwise adjust claims in favor of or against the Trust, to agree to any rescission or modification of any contract or agreement, and to refrain from instituting any suit or action unless indemnified for reasonable costs and expenses.

**7.14 Corporate Rights.** To vote and exercise any option, right, or privilege to purchase or to convert bonds, notes, stock (including shares or fractional shares of stock of any Corporate Trustee), securities, or other property; to borrow money for the purpose of exercising any such option, right, or privilege; to delegate those rights to an agent; to enter into voting trusts and other agreements or subscriptions; to participate in any type of liquidation or reorganization of any enterprise; and to write and sell covered call options, puts, calls, straddles, or other methods of buying or selling securities, as well as all related transactions.

**7.15 Partnership Interests.** To hold interests in sole proprietorships, general or limited partnerships, joint ventures, business trusts, land trusts, limited liability companies, and other domestic and foreign forms of organizations; and to exercise all rights in connection with such interests as the Trustee deems appropriate, including any powers applicable to a non-admitted transferee of any such interest.

**7.16 Self-Dealing.** To exercise all its powers even though it may also be acting individually or on behalf of any other person or entity interested in the same matters. The Trustee, however, shall exercise these powers at all times in a fiduciary capacity, primarily in the interest of the beneficiaries of the Trust. Despite any other provision of this Trust Agreement, no Trustee may participate in the decision to make a discretionary distribution that would discharge a legal support obligation of that Trustee. No Trustee who has made a disclaimer, either individually or as a Trustee, may exercise any discretion in determining the recipient of the disclaimed property. All power to make such distributions, or to determine recipients of disclaimed property, will be exercised solely by the remaining Trustees, if any, or if there are no other Trustees then serving, by the person or persons named to serve as the next successor Trustee, or if there are none, by a special Trustee appointed for that purpose by a court having jurisdiction.

**7.17 Expenses.** An Independent Trustee may determine how expenses of administration and receipts are to be apportioned between principal and income.

**7.18 Terminate Small Trusts.** To exercise its discretion to refrain from funding or to terminate any trust whenever the value of the principal of that trust would be or is too small to administer economically, and to distribute the remaining principal and all accumulated income of the trust as provided in Section 7.9 to the income beneficiary of that trust. The Trustee shall exercise this power to terminate in its discretion as it deems prudent for the best interest of the beneficiaries at that time. This power cannot be exercised by the Settlor or any beneficiary, either alone or in conjunction with any other Trustee, but must be exercised solely by the other Trustee, or if none, by a special Trustee appointed for that purpose by a court having jurisdiction.

**7.19 Allocations to Income and Principal.** To treat premiums and discounts on bonds and other obligations for the payment of money in accordance with either generally accepted accounting principles or tax accounting principles and, except as otherwise provided to the contrary, to hold nonproductive assets without allocating any principal to income, despite any laws or rules to the contrary. The Trustee in its discretion may exercise the power described in Section 738.104 of the Florida Statutes to adjust between principal and income, as appropriate, and, in addition, may convert any income interest into a unitrust interest, or a unitrust interest to an income interest, as it sees fit, all as provided in Section 738.1041 of the Florida Statutes, despite any provision of those sections to the contrary.

**7.20 Use of Income.** Except as otherwise provided in this Trust Agreement, and in addition to all other available sources, to exercise its discretion in the use of income from the assets of the Trust to satisfy the liabilities described in this Trust Agreement, without accountability to any beneficiary.

**7.21 Valuations.** In making distributions or allocations under the terms of this Trust Agreement to be valued as of a particular date, the Trustee may use asset valuations

obtained for a date reasonably close to that particular date (such as a quarterly closing date before or after that date) if, in the Trustee's judgment, obtaining appraisals or other determinations of value on that date would result in unnecessary expense, and if in the Trustee's judgment, the fair market value as determined is substantially the same as on that actual date. This paragraph will not apply if valuation on a specific date is required to preserve a qualification for a tax benefit, including any deduction, credit, or most favorable allocation of an exemption.

**7.22 Incorporation.** To incorporate any business or venture, and to continue any unincorporated business that the Trustee determines to be not advisable to incorporate.

**7.23 Delegation.** To delegate periodically among themselves the authority to perform any act of administration of any trust.

**7.24 Advances.** To make cash advances or loans to beneficiaries, with or without security.

**7.25 Investment Manager.** To employ any investment management service, financial institution, or similar organization to advise the Trustee and to handle all investments of the Trust and to render all accountings of funds held on its behalf under custodial, agency, or other agreements. If the Trustee is an individual, these costs may be paid as an expense of administration in addition to fees and commissions.

**7.26 Depreciation.** To deduct from all receipts attributable to depreciable property a reasonable allowance for depreciation, computed in accordance with generally accepted accounting principles consistently applied.

**7.27 Disclaim Assets or Powers.** To disclaim any assets otherwise passing or any fiduciary powers pertaining to any trust created hereunder, by execution of an instrument of disclaimer meeting the requirements of applicable law generally imposed upon individuals executing disclaimers. No notice to or consent of any beneficiary, other interested person, or any court is required for any such disclaimer, and the Trustee is to be held harmless for any decision to make or not make such a disclaimer.

**7.28 Transfer Situs.** To transfer the situs of any trust or any trust property to any other jurisdiction as often as the Trustee deems advisable, and if necessary to appoint a substitute or ancillary Trustee to act with respect to that property. The Trustee may delegate to the substitute Trustee any or all of the powers given to the Trustee; may elect to act as advisor to the substitute Trustee and receive reasonable compensation for that service; and may remove any acting or substitute Trustee and appoint another, or reappoint itself, at will.

**7.29 Related Parties.** To enter into any transaction on behalf of the Trust despite the fact that another party to that transaction may be: (i) a business or trust controlled by the Trustee, or of which the Trustee, or any director, officer, or employee of the Corporate Trustee, is also a director, officer, or employee; (ii) an affiliate or business associate of any beneficiary of the Trustee; or (iii) a beneficiary or Trustee under this Trust Agreement acting individually, or any relative of such a party.

**7.30 Additional Powers for Income-Producing Real Estate.** In addition to the other powers set forth above or otherwise conferred by law, the Trustee has the following powers with respect to any income-producing real property which is or may become a part of the Trust Estate:

- To retain and operate the property for as long as it deems advisable;
- To control, direct, and manage the property, determining the manner and extent of its active participation in these operations, and to delegate all or any part of its supervisory power to other persons that it selects;
- To hire and discharge employees, fix their compensation, and define their duties;
- To invest funds in other land holdings and to use those funds for all improvements, operations, or other similar purposes;
- Except as otherwise provided with respect to mandatory income distributions, to retain any amount of the net earnings for working capital and other purposes that it deems advisable in conformity with sound and efficient management; and
- To purchase and sell machinery, equipment, and supplies of all kinds as needed for the operation and maintenance of the land holdings.

#### ARTICLE 8 SUBCHAPTER S STOCK

Despite any other provisions of this Trust Agreement, if a trust created in this instrument is to become the owner of, or already owns, stock in a corporation that has an election in effect (or one that proposes to make an election) under Section 1362 of the Internal Revenue Code (an "S Corporation"), and that trust would not otherwise be permitted to be an S Corporation shareholder, the following provisions will apply:

**8.1 Electing Small Business Trust.** The Trustee in its discretion may elect for the trust to become an Electing Small Business Trust ("ESBT") as defined in the Internal Revenue Code.

**8.2 Qualified Subchapter S Trust.** If the Trustee does not cause the trust to become an ESBT, the Trustee shall set aside the S Corporation stock in a separate trust for the current income beneficiary of such trust, so that a Qualified Subchapter S Trust ("QSST") election under Section 1361 of the Internal Revenue Code can be filed with respect to that trust. The Trustee shall hold each share as a separate QSST for the persons described above, and each such person will be the sole beneficiary of his or her QSST. To the greatest extent possible, the Trustee shall administer each QSST under the terms of the trust from which it was derived, but subject to the following overriding provisions:

(a) **Consent.** The Trustee shall notify the beneficiary of each separate trust promptly that a QSST election must be filed with the Internal Revenue Service. Thereafter, each beneficiary shall file a timely and proper QSST election with the Internal Revenue Service. If a beneficiary fails or refuses to make the QSST election, the Trustee shall make an ESBT election for that trust. If the beneficiary does make the QSST election, then his or her separate trust will be administered as set forth below.

(b) **Income Payments.** During the beneficiary's life, the Trustee shall pay all net income of the trust to the beneficiary (and only to that beneficiary) in quarterly or more frequent installments. The beneficiary's income interest in the trust will terminate on the earlier of his or her death or the termination of the trust under its terms.

(c) **Principal Distributions.** If the beneficiary is otherwise entitled to receive principal distributions, the Trustee may distribute principal from that separate trust during the beneficiary's life only to or for the benefit of that beneficiary (and no one else).

(d) **Final Distribution.** If the QSST is terminated during the beneficiary's life, the Trustee shall distribute all remaining assets of that separate trust to that beneficiary. If the beneficiary dies before that trust's termination, all remaining assets of the QSST are to be distributed as provided in the original trust, but subject to this article.

(e) **Termination of QSST Status.** If a separate trust would cease to qualify as an S Corporation shareholder, the Trustee in its discretion may: (i) make an ESBT election for that separate trust, or (ii) distribute all S Corporation stock to the beneficiary. The Trustee in its discretion also may convert a QSST to an ESBT, whether or not the beneficiary has consented to QSST treatment and, if the beneficiary consents, may convert an ESBT into a QSST.



**ARTICLE 9**  
**PERPETUITIES PROVISION**

Despite any contrary provisions of this Trust Agreement, from the creation of this Trust and for up to 21 years after the death of the last of the Settlor's grandparents' descendants who are living at the creation of this Trust, a trust beneficiary (which includes persons succeeding to the interest of a deceased beneficiary) will be entitled to terminating distributions only at the ages specified in this Trust Agreement. In all events, however, the share of each beneficiary will vest (in the beneficiary or his or her estate) immediately prior to the expiration of the 21 year period described above.

**ARTICLE 10**  
**ADMINISTRATION AND CONSTRUCTION**

**10.1 Rules for Distributions.** In making distributions to beneficiaries under this Trust Agreement, the Trustee must use the following criteria.

(a) **Other Resources.** Whenever the Trustee has the authority to decide how much to distribute to or for the benefit of a beneficiary, the Trustee can make decisions without taking into account any information about the beneficiary's other available income and resources. The Trustee can make payments directly to a beneficiary or to other persons for the beneficiary's benefit, but it does not have to make payments to a court appointed guardian.

(b) **Trustee's Decision.** Absent clear and convincing evidence of bad faith, the Trustee's decisions as to amounts to be distributed will be final.

(c) **Standard of Living.** Distributions to a beneficiary for health, education, support, or maintenance are to be based on his or her standard of living, determined as of the date of the distribution.

**10.2 Funding Gifts.** The following rules will apply to funding gifts under this Trust Agreement.

(a) **Pecuniary Gifts.** All pecuniary gifts under this Trust Agreement that are paid by an in-kind distribution of assets must use values having an aggregate fair market value at the date or dates of distribution equal to the amount of this gift as finally determined for federal estate tax purposes.

(b) **Adjustments.** The Trustee shall select one or more dates of allocation or distribution for purposes of satisfying gifts and funding shares or trusts. The Trustee may make allocations before the final determination of federal estate tax, with those allocations being based upon the information then available to the Trustee,

and may thereafter adjust properties among the shares or trusts if it is determined that the allocation should have been made differently.

**10.3 Accumulated Income.** Any income not distributed to the beneficiaries pursuant to either a mandatory direction or a discretionary power is to be incorporated into principal, at such intervals as the Trustee deems convenient.

**10.4 Estate Tax on Included Property.** If assets of any trust created under this Trust Agreement are included in a beneficiary's estate for federal estate tax purposes, the following will apply.

(a) **Appointed Assets.** If the beneficiary exercises a power of appointment over those assets, the Trustee is authorized to withhold from those assets the amount of estate taxes apportioned to them by applicable law, if the beneficiary does not make provisions for the payment of those taxes from other sources.

(b) **Other Assets.** If the beneficiary does not have or does not exercise a power of appointment over those assets, the Trustee will pay the estate taxes attributable to those assets. The estate taxes attributable to those assets will be the amount that the beneficiary's estate taxes are increased over the amount those taxes would have been if those assets had not been included in the beneficiary's gross estate.

(c) **Certification and Payment.** The Trustee may rely upon a written certification by the beneficiary's personal representative of the amount of the estate taxes, and may pay those taxes directly or to the personal representative of the beneficiary's estate. The Trustee will not be held liable for making payments as directed by the beneficiary's personal representative.

**10.5 Transactions With Other Entities.** The Trustee may buy assets from other estates or trusts, or make loans to them, so that funds will be available to pay claims, taxes, and expenses. The Trustee can make those purchases or loans even if it serves as the fiduciary of that estate or trust, and on whatever terms and conditions the Trustee thinks are appropriate, except that the terms of any transaction must be commercially reasonable.

#### ARTICLE 11 MISCELLANEOUS PROVISIONS

**11.1 Definitions.** As used in this Trust Agreement, the following terms have the meanings set forth below:

(a) **Trustees.**

- (1) **Independent Trustee** means a trustee of a particular trust, either individual or corporate, who is not the Settlor or a beneficiary, and who is not a Related Person as to the Settlor or a beneficiary (if the Settlor or the beneficiary, respectively, is living and participated in that person's appointment). For purposes of this definition a beneficiary is a person who is a permissible distributee of income or principal, or someone with an interest in the trust in excess of five percent (5%) of its value, assuming a maximum exercise of discretion in his or her favor. Whenever this Trust Agreement requires an action be taken by, or in the discretion of, an Independent Trustee but no such Trustee is then serving, a court may appoint an Independent Trustee to serve as an additional Trustee whose sole function and duty will be to exercise the specified power.
- (2) **Corporate Trustee** means a trustee that is a bank, trust company, or other entity authorized to serve as a trustee under the laws of the United States or any state thereof that is not a Related Person to the Settlor. A bank or trust company that does not meet this requirement cannot serve as Trustee.

(b) **Internal Revenue Code Terms.**

- (1) **Internal Revenue Code** means the federal Internal Revenue Code of 1986, as amended from time to time, or successor provisions of future federal internal revenue laws.
- (2) The terms **health, education, support, and maintenance** are intended to set forth an "ascertainable standard," as described in the Internal Revenue Code and its associated Regulations. To the extent not inconsistent with the foregoing, "health" means a beneficiary's physical and mental health, including but not limited to payments for examinations, surgical, dental, or other treatment, medication, counseling, hospitalization, and health insurance premiums; "education" means elementary, secondary, post-secondary, graduate, or professional schooling in an accredited institution, public or private, or attendance at other formal programs in furtherance of the beneficiary's spiritual, athletic, or artistic education, including but not limited to payments for tuition, books,

*fees, assessments, equipment, tutoring, transportation, and reasonable living expenses.*

- (3) **Related Person** as to a particular individual is someone who is deemed to be "related or subordinate" to that individual under Section 672(c) of the Internal Revenue Code (as though that individual was a grantor).

(e) **Other Terms.**

- (1) Distributions that are to be made to a person's descendants, *per stirpes*, will be divided into equal shares, so that there will be one share for each living child (if any) of that person and one share for each deceased child who has then living descendants. The share of each deceased child will be further divided among his or her descendants on a *per stirpes* basis, by reapplying the preceding rule to that deceased child and his or her descendants as many times as necessary.
- (2) **Disabled or under a disability** means (i) being under the legal age of majority, (ii) having been adjudicated to be incompetent, or (iii) being unable to manage properly personal or financial affairs because of a mental or physical impairment (whether temporary or permanent in nature). A written certificate executed by an individual's attending physician confirming that person's impairment will be sufficient evidence of disability under item (iii) above, and all persons may rely conclusively on such a certificate.
- (3) Removal of a Trustee for cause includes, without limitation, the following: the willful or negligent mismanagement of the trust assets by that individual Trustee; the abuse or abandonment of, or inattention to, the trust by that individual Trustee; a federal or state charge against that individual Trustee involving the commission of a felony or serious misdemeanor; an act of theft, dishonesty, fraud, embezzlement, or moral turpitude by that individual Trustee; or the use of narcotics or excessive use of alcohol by that individual Trustee.
- (4) The words *will* and *shall* are used interchangeably in this Trust Agreement and mean, unless the context clearly indicates otherwise, that the Trustee must take the action

indicated; as used in this Trust Agreement, the word may means that the Trustee has the discretionary authority to take the action but is not automatically required to do so.

**11.2 Powers of Appointment.** The following provisions relate to all powers of appointment under this Trust Agreement.

- (a) A general power of appointment granted to a person is one that can be exercised in favor of that person or his or her estate, his or her creditors, or the creditors of his or her estate.
- (b) A special power of appointment is any power that is not a general power.
- (c) A testamentary power of appointment (either general or special) is exercisable upon the powerholder's death by his or her Last Will or by a revocable trust agreement established by that person, but only by specific reference to the instrument creating the power. A "testamentary power of appointment" may not be exercised in favor of the person possessing the power.
- (d) In determining whether a person has exercised a testamentary power of appointment, the Trustee may rely upon an instrument admitted to probate in any jurisdiction as that person's Last Will, or upon any trust agreement certified to be valid and authentic by sworn statement of the trustee who is serving under that trust agreement. If the Trustee has not received written notice of such an instrument within six months after the powerholder's death, the Trustee may presume that the powerholder failed to exercise that power and will not be liable for acting in accordance with that presumption.

**11.3 Notices.** Any person entitled or required to give notice under this Trust Agreement shall exercise that power by a written instrument clearly setting forth the effective date of the action for which notice is being given. The instrument may be executed in counterparts.

**11.4 Certifications.**

(a) **Facts.** A certificate signed and acknowledged by the Trustee stating any fact affecting the Trust Estate or the Trust Agreement will be conclusive evidence of such fact in favor of any transfer agent and any other person dealing in good faith with the Trustee. The Trustee may rely on a certificate signed and acknowledged by any beneficiary stating any fact concerning the Trust beneficiaries, including dates of

birth, relationships, or marital status, unless an individual serving as Trustee has actual knowledge that the stated fact is false.

(b) **Copy.** Any person may rely on a copy of this instrument (in whole or in part) certified to be a true copy by the Settlor; by any person specifically named as a Trustee (or successor Trustee); by any Corporate Trustee whether or not specifically named; or, if there are none of the above, by any then serving Trustee.

**11.5 Applicable Law.** All matters involving the validity and interpretation of this Trust Agreement are to be governed by Florida law. Subject to the provisions of this Trust Agreement, all matters involving the administration of a trust are to be governed by the laws of the jurisdiction in which the trust has its principal place of administration.

**11.6 Gender and Number.** Reference in this Trust Agreement to any gender includes either masculine or feminine, as appropriate, and reference to any number includes both singular and plural where the context permits or requires. Use of descriptive titles for articles and paragraphs is for the purpose of convenience only and is not intended to restrict the application of these provisions.

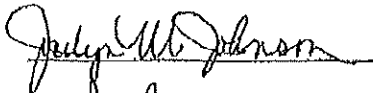
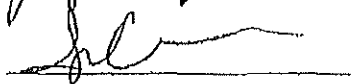
**11.7 Further Instruments.** The Settlor agrees to execute such further instruments as may be necessary to vest the Trustee with full legal title to the property transferred to this Trust.

**11.8 Binding Effect.** This Trust Agreement extends to and is binding upon the Settlor's Personal Representative, successors, and assigns, and upon the Trustee.



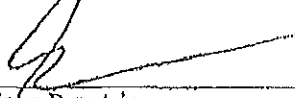
Executed as of the date first written above.

Signed in the presence of:


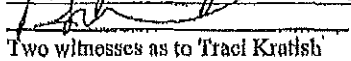
  


Two witnesses as to Simon Bernstein

SETTLOR

  
Simon Bernstein

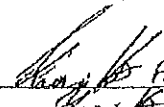
Signed in the presence of:

Two witnesses as to Traci Kratish

TRUSTEE

Traci Kratish, P.A.

  
FOR TRACI KRATISH, P.A.  
TRACI KRATISH, PRESIDENT  
Traci Kratish, President

**Schedule A**  
**Initial Transfers to Trust**

Transfer of 6 shares of LIC Holdings, Inc.

*TRUST AGREEMENT*  
*FOR THE*  
*JOSHUA Z. BERNSTEIN IRREVOCABLE TRUST*

*September 7, 2006*

**TRUST AGREEMENT**  
**FOR THE**  
**JOSHUA Z. BERNSTEIN IRREVOCABLE TRUST**

SIMON BERNSTEIN, as Settlor, hereby creates the Joshua Z. Bernstein Irrevocable Trust ("the Trust") on September 7, 2006. Traei Kratish, P.A., is the trustee of this Trust and, in that capacity, he and his successors are collectively referred to in this Trust Agreement as the "Trustee."

**ARTICLE 1**  
**BENEFICIARY**

This Trust is for the benefit of the Settlor's Grandchild, JOSHUA Z. BERNSTEIN ("Beneficiary").

**ARTICLE 2**  
**TRANSFERS TO TRUST**

The Settlor hereby conveys to the Trustee all his interest in the assets listed on Schedule A, which together with any assets later added to this Trust are referred to as the "Trust Estate." Any person may transfer assets to the Trust Estate, if the Trustee agrees to accept them. Assets do not have to be listed on Schedule A to be part of the Trust Estate. Unless otherwise specified in writing at the time of the transfer, those assets will be held as provided in this Trust Agreement. The Trustee acknowledges receipt of the current Trust assets and agrees to hold the Trust Estate as set forth in this Trust Agreement.

**ARTICLE 3**  
**IRREVOCABLE PROVISION**

The Settlor declares that he has no right to alter, amend, modify, or revoke this Trust Agreement; to withdraw assets from the Trust; or to require changes in the investments of the Trust. No part of the Trust may ever revert to the Settlor, be used for his benefit, or be distributed in discharge of his legal obligations.

**ARTICLE 4**  
**ADMINISTRATION OF TRUST**

The Trustee shall hold, administer, and distribute the Trust Estate in accordance with the powers granted under this Trust Agreement as follows:

**4.1 Discretionary Distributions.** The Trustee shall pay or apply such sums of principal from this Trust as in the Trustee's discretion are necessary or advisable for Beneficiary's health, education, support, and maintenance.

INITIALS \_\_\_\_\_  
JOSHUA Z. BERNSTEIN IRREVOCABLE TRUST

**4.2 Distribution of Principal.** When Beneficiary has reached age 21, the trustee shall distribute one-half (½) of the corpus of trust to Beneficiary plus accrued income. When Beneficiary has reached age 25 the Trustee shall distribute the entire remaining principal balance of the corpus of the trust to Beneficiary plus accrued income.

**4.3 Distribution Upon Death Before Age 25.** Upon the death of Beneficiary prior to age 25, the Trustee shall distribute the remaining assets in the trust to the estate of Beneficiary.

#### ARTICLE 5 PROVISIONS GOVERNING TRUSTEES

The following provisions apply to all Trustees appointed under this Trust Agreement:

**5.1 Incapacity of Trustee.** If any Trustee becomes disabled, he or she will immediately cease to act as Trustee. If a Trustee who ceases to serve because of a disability, or who is suspended, thereafter recovers from that disability or consents to the release of relevant medical information, he or she may elect to become a Trustee again by giving written notice to the then serving Trustee, and the last Trustee who undertook to serve will then cease to be a Trustee until another successor Trustee is required.

**5.2 Resignation.** Any Trustee may resign by giving 30 days' written notice delivered personally or by mail to any then serving Co-Trustee and to the Settlor if he is then living and not disabled; otherwise to the next named successor Trustee, or if none, to the persons having power to appoint successor Trustees.

**5.3 Power to Name Other Trustees.** Whenever a successor Trustee is required and that position is not filled under the terms specified in this Trust Agreement, an individual Trustee ceasing to serve (other than a Trustee being removed) may appoint his or her successor, but if none is appointed, the remaining Trustees, if any, or the beneficiary shall appoint a successor Corporate Trustee. The appointment will be by a written document (including a testamentary instrument) delivered to the appointed Trustee. In no event may the Settlor ever be appointed as the Trustee under this Trust Agreement nor shall a Successor trustee be appointed that will cause this trust to be a grantor trust.

**5.4 Powers of Successor Trustees.** Successor Trustees will have all powers granted to the original Trustee, except that only an Independent Trustee will succeed to the powers vested exclusively in the Independent Trustee.

**5.5 Accountings.** Accountings must be given to the beneficiary of each trust at least annually (quarterly if a Corporate Trustee is serving). The accountings must show the assets held in trust and all receipts and disbursements. A beneficiary's written approval of an accounting will be final and binding upon that beneficiary and all persons represented by him or her as to all matters disclosed in that accounting. In any event, if a beneficiary fails to object to an accounting within six months of receiving it, his or her

approval is conclusively presumed. A successor Trustee may require the prior Trustee to render a full and final accounting.

**5.6 Acts by Other Fiduciaries.** The Trustee is not required to question any acts or failures to act of the fiduciary of any other trust or estate, and will not be liable for any prior fiduciary's acts or failures to act. The Trustee can require a beneficiary who requests an examination of another fiduciary's actions or omissions to advance all costs and fees incurred in the examination, and if the beneficiary does not, the Trustee may elect not to proceed or may proceed and offset those costs and fees directly against any payment that would otherwise be made to that beneficiary.

**5.7 Court Supervision.** The Settlor waives compliance by the Trustee with any law requiring bond, registration, qualification, or accounting to any court.

**5.8 Compensation.** Each Trustee is entitled to be paid reasonable compensation for services rendered in the administration of the Trust. Reasonable compensation for a Corporate Trustee will be its published fee schedule in effect when its services are rendered unless otherwise agreed in writing, and except as follows. Any fees paid to a Corporate Trustee for making principal distributions, for termination of the trust, and upon termination of its services must be based solely on the value of its services rendered, not on the value of the trust principal. During the Settlor's lifetime the Trustee's fees are to be charged wholly against income (to the extent sufficient), unless directed otherwise by the Settlor in writing.

**5.9 Indemnity.** Any Trustee who ceases to serve for any reason will be entitled to receive (and the continuing Trustee shall make suitable arrangements to provide) reasonable indemnification and security to protect and hold that Trustee harmless from any damage or liability of any nature that may be imposed upon it because of its actions or omissions while serving as Trustee. This protection, however, does not extend to a Trustee's negligent actions or omissions that clearly and demonstrably result in damage or liability. A prior Trustee may enforce these provisions against the current Trustee or against any assets held in the Trust, or if the prior Trustee is an individual, against any beneficiary to the extent of distributions received by that beneficiary. This indemnification right will extend to the estate, personal representatives, legal successors, and assigns of a Trustee.

**5.10 Successor Trustee.** In the event the initial Trustee, Steven I. Greenwald, resigns or ceases to serve as Trustee, then and in that event, I hereby appoint Larry V. Bishins to serve as Trustee.

#### ARTICLE 6 PROTECTION OF INTERESTS

The interest of any beneficiary under this Trust Agreement, in either income or principal, may not be anticipated, alienated, or in any other manner assigned by the beneficiary, whether voluntarily or involuntarily, and will not be subject to any legal process,



bankruptcy proceedings, or the interference or control of the beneficiary's creditors or others.

#### ARTICLE 7 FIDUCIARY POWERS

The Settlor grants to the Trustee full power to deal freely with any property in the Trust. The Trustee may exercise these powers independently and without the approval of any court. No person dealing with the Trustee need inquire into the propriety of any of its actions or into the application of any funds or assets. The Trustee shall, however, exercise all powers in a fiduciary capacity for the best interest of the beneficiary of this Trust or any trust created under it. Without limiting the generality of the foregoing, the Trustee is given the following discretionary powers in addition to any other powers conferred by law:

**7.1 Type of Assets.** Except as otherwise provided to the contrary, to hold funds uninvested for such periods as the Trustee deems prudent, and to invest in any assets the Trustee deems advisable even though they are not technically recognized or specifically listed in so-called "legal lists," without responsibility for depreciation or loss on account of those investments, or because those investments are non-productive, as long as the Trustee acts in good faith.

**7.2 Original Assets.** Except as otherwise provided to the contrary, to retain the original assets it receives for as long as it deems best, and to dispose of those assets when it deems advisable, even though such assets, because of their character or lack of diversification, would otherwise be considered improper investments for the Trustee.

**7.3 Tangible Personal Property.** To receive and hold tangible personal property; to pay or refrain from paying storage and insurance charges for such property; and to permit any beneficiaries to use such property without either the Trustee or beneficiaries incurring any liability for wear, tear, and obsolescence of the property.

**7.4 Specific Securities.** To invest in assets, securities, or interests in securities of any nature, including (without limit) commodities, options, futures, precious metals, currencies, and in domestic and foreign markets and in mutual or investment funds, including funds for which the Trustee or any affiliate performs services for additional fees, whether as custodian, transfer agent, investment advisor or otherwise, or in securities distributed, underwritten, or issued by the Trustee or by syndicates of which it is a member; to trade on credit or margin accounts (whether secured or unsecured); and to pledge assets of the Trust Estate for that purpose.

**7.5 Property Transactions.** To buy, sell, pledge, exchange, or lease any real or personal property, publicly or privately, for cash or credit, without court approval and upon the terms and conditions that the Trustee deems advisable; to execute deeds, leases, contracts, bills of sale, notes, mortgages, security instruments, and other written instruments; to abandon or dispose of any real or personal property in the Trust which has little or no monetary or useful value; to improve, repair, insure, subdivide and vacate

any property; to erect, alter or demolish buildings; to adjust boundaries; and to impose easements, restrictions, and covenants as the Trustee sees fit. A lease will be valid and binding for its full term even if it extends beyond the full duration of the Trust.

**7.6 Borrow Money.** To borrow money from any source (including the Trustee in its nonfiduciary capacity), to guarantee indebtedness, and to secure the loan or guaranty by mortgage or other security interest.

**7.7 Maintain Assets.** To expend whatever funds it deems proper for the preservation, maintenance, or improvement of assets. The Trustee in its discretion may elect any options or settlements or exercise any rights under all insurance policies that it holds. However, no fiduciary who is the insured of any insurance policy held in the Trust may exercise any rights or have any incidents of ownership with respect to the policy, including the power to change the beneficiary, to surrender or cancel the policy, to assign the policy, to revoke any assignment, to pledge the policy for a loan, or to obtain from the insurer a loan against the surrender value of the policy. All such power is to be exercised solely by the remaining Trustee, if any, or if none, by a special fiduciary appointed for that purpose by a court having jurisdiction.

**7.8 Advisors.** To employ and compensate attorneys, accountants, advisors, financial consultants, managers, agents, and assistants (including any individual or entity who provides investment advisory or management services, or who furnishes professional assistance in making investments for the Trust) without liability for any act of those persons, if they are selected and retained with reasonable care. Fees may be paid from the Trust Estate even if the services were rendered in connection with ancillary proceedings.

**7.9 Indirect Distributions.** To make distributions, whether of principal or income, to any person under age 21 or to any incapacitated person according to the terms of this Trust Agreement by making distributions directly to that person whether or not that person has a guardian; to the parent, guardian, or spouse of that person; to a custodial account established by the Trustee or others for that person under an applicable Uniform Gift to Minors Act or Uniform Transfers to Minors Act; to any adult who resides in the same household with that person or who is otherwise responsible for the care and well-being of that person; or by applying any distribution for the benefit of that person in any manner the Trustee deems proper. The receipt of the person to whom payment is made will constitute full discharge of the Trustee with respect to that payment. No distributions may be made to the Settlor under this Section.

**7.10 Non-Pro Rata Distribution.** To make any division or distribution in money or in kind, or both, without allocating the same kind of property to all shares or distributees, and without regard to the income tax basis of the property. Any division will be binding and conclusive on all parties.

**7.11 Nominee.** Except as prohibited by law, to hold any assets in the name of a nominee without disclosing the fiduciary relationship; to hold the property

unregistered, without affecting its liability; and to hold securities endorsed in blank, in street certificates, at a depository trust company, or in a book entry system.

**7.12 Custodian.** To employ a custodian or agent ("the Custodian") located anywhere within the United States, at the discretion of the Trustee but at the expense of the Trust, whether or not such Custodian is an affiliate of the Trustee or any person rendering services to the Trust; to register securities in the name of the Custodian or a nominee thereof without designation of fiduciary capacity; and to appoint the Custodian to perform such other ministerial functions as the Trustee may direct. While such securities are in the custody of the Custodian, the Trustee will be under no obligation to inspect or verify such securities nor will the Trustee be responsible for any loss by the Custodian.

**7.13 Settle Claims.** To contest, compromise, arbitrate, or otherwise adjust claims in favor of or against the Trust, to agree to any rescission or modification of any contract or agreement, and to refrain from instituting any suit or action unless indemnified for reasonable costs and expenses.

**7.14 Corporate Rights.** To vote and exercise any option, right, or privilege to purchase or to convert bonds, notes, stock (including shares or fractional shares of stock of any Corporate Trustee), securities, or other property; to borrow money for the purpose of exercising any such option, right, or privilege; to delegate those rights to an agent; to enter into voting trusts and other agreements or subscriptions; to participate in any type of liquidation or reorganization of any enterprise; and to write and sell covered call options, puts, calls, straddles, or other methods of buying or selling securities, as well as all related transactions.

**7.15 Partnership Interests.** To hold interests in sole proprietorships, general or limited partnerships, joint ventures, business trusts, land trusts, limited liability companies, and other domestic and foreign forms of organizations; and to exercise all rights in connection with such interests as the Trustee deems appropriate, including any powers applicable to a non-admitted transferee of any such interest.

**7.16 Self-Dealing.** To exercise all its powers even though it may also be acting individually or on behalf of any other person or entity interested in the same matters. The Trustee, however, shall exercise these powers at all times in a fiduciary capacity, primarily in the interest of the beneficiaries of the Trust. Despite any other provision of this Trust Agreement, no Trustee may participate in the decision to make a discretionary distribution that would discharge a legal support obligation of that Trustee. No Trustee who has made a disclaimer, either individually or as a Trustee, may exercise any discretion in determining the recipient of the disclaimed property. All power to make such distributions, or to determine recipients of disclaimed property, will be exercised solely by the remaining Trustees, if any, or if there are no other Trustees then serving, by the person or persons named to serve as the next successor Trustee, or if there are none, by a special Trustee appointed for that purpose by a court having jurisdiction.

**7.17 Expenses.** An Independent Trustee may determine how expenses of administration and receipts are to be apportioned between principal and income.

**7.18 Terminate Small Trusts.** To exercise its discretion to refrain from funding or to terminate any trust whenever the value of the principal of that trust would be or is too small to administer economically, and to distribute the remaining principal and all accumulated income of the trust as provided in Section 7.9 to the income beneficiary of that trust. The Trustee shall exercise this power to terminate in its discretion as it deems prudent for the best interest of the beneficiaries at that time. This power cannot be exercised by the Settlor or any beneficiary, either alone or in conjunction with any other Trustee, but must be exercised solely by the other Trustee, or if none, by a special Trustee appointed for that purpose by a court having jurisdiction.

**7.19 Allocations to Income and Principal.** To treat premiums and discounts on bonds and other obligations for the payment of money in accordance with either generally accepted accounting principles or tax accounting principles and, except as otherwise provided to the contrary, to hold nonproductive assets without allocating any principal to income, despite any laws or rules to the contrary. The Trustee in its discretion may exercise the power described in Section 738.104 of the Florida Statutes to adjust between principal and income, as appropriate, and, in addition, may convert any income interest into a unitrust interest, or a unitrust interest to an income interest, as it sees fit, all as provided in Section 738.1041 of the Florida Statutes, despite any provision of those sections to the contrary.

**7.20 Use of Income.** Except as otherwise provided in this Trust Agreement, and in addition to all other available sources, to exercise its discretion in the use of income from the assets of the Trust to satisfy the liabilities described in this Trust Agreement, without accountability to any beneficiary.

**7.21 Valuations.** In making distributions or allocations under the terms of this Trust Agreement to be valued as of a particular date, the Trustee may use asset valuations obtained for a date reasonably close to that particular date (such as a quarterly closing date before or after that date) if, in the Trustee's judgment, obtaining appraisals or other determinations of value on that date would result in unnecessary expense, and if in the Trustee's judgment, the fair market value as determined is substantially the same as on that actual date. This paragraph will not apply if valuation on a specific date is required to preserve a qualification for a tax benefit, including any deduction, credit, or most favorable allocation of an exemption.

**7.22 Incorporation.** To incorporate any business or venture, and to continue any unincorporated business that the Trustee determines to be not advisable to incorporate.

**7.23 Delegation.** To delegate periodically among themselves the authority to perform any act of administration of any trust.

**7.24 Advances.** To make cash advances or loans to beneficiaries, with or without security.

**7.25 Investment Manager.** To employ any investment management service, financial institution, or similar organization to advise the Trustee and to handle all investments of the Trust and to render all accountings of funds held on its behalf under custodial, agency, or other agreements. If the Trustee is an individual, these costs may be paid as an expense of administration in addition to fees and commissions.

**7.26 Depreciation.** To deduct from all receipts attributable to depreciable property a reasonable allowance for depreciation, computed in accordance with generally accepted accounting principles consistently applied.

**7.27 Disclaim Assets or Powers.** To disclaim any assets otherwise passing or any fiduciary powers pertaining to any trust created hereunder, by execution of an instrument of disclaimer meeting the requirements of applicable law generally imposed upon individuals executing disclaimers. No notice to or consent of any beneficiary, other interested person, or any court is required for any such disclaimer, and the Trustee is to be held harmless for any decision to make or not make such a disclaimer.

**7.28 Transfer Situs.** To transfer the situs of any trust or any trust property to any other jurisdiction as often as the Trustee deems advisable, and if necessary to appoint a substitute or ancillary Trustee to act with respect to that property. The Trustee may delegate to the substitute Trustee any or all of the powers given to the Trustee; may elect to act as advisor to the substitute Trustee and receive reasonable compensation for that service; and may remove any acting or substitute Trustee and appoint another, or reappoint itself, at will.

**7.29 Related Parties.** To enter into any transaction on behalf of the Trust despite the fact that another party to that transaction may be: (i) a business or trust controlled by the Trustee, or of which the Trustee, or any director, officer, or employee of the Corporate Trustee, is also a director, officer, or employee; (ii) an affiliate or business associate of any beneficiary or the Trustee; or (iii) a beneficiary or Trustee under this Trust Agreement acting individually, or any relative of such a party.

**7.30 Additional Powers for Income-Producing Real Estate.** In addition to the other powers set forth above or otherwise conferred by law, the Trustee has the following powers with respect to any income-producing real property which is or may become a part of the Trust Estate:

- To retain and operate the property for as long as it deems advisable;
- To control, direct, and manage the property, determining the manner and extent of its active participation in these operations, and to delegate all or any part of its supervisory power to other persons that it selects;

- To hire and discharge employees, fix their compensation, and define their duties;
- To invest funds in other land holdings and to use those funds for all improvements, operations, or other similar purposes;
- Except as otherwise provided with respect to mandatory income distributions, to retain any amount of the net earnings for working capital and other purposes that it deems advisable in conformity with sound and efficient management; and
- To purchase and sell machinery, equipment, and supplies of all kinds as needed for the operation and maintenance of the land holdings.

**ARTICLE 8**  
**SUBCHAPTER S STOCK**

Despite any other provisions of this Trust Agreement, if a trust created in this instrument is to become the owner of, or already owns, stock in a corporation that has an election in effect (or one that proposes to make an election) under Section 1362 of the Internal Revenue Code (an "S Corporation"), and that trust would not otherwise be permitted to be an S Corporation shareholder, the following provisions will apply:

**8.1 Electing Small Business Trust.** The Trustee in its discretion may elect for the trust to become an Electing Small Business Trust ("ESBT") as defined in the Internal Revenue Code.

**8.2 Qualified Subchapter S Trust.** If the Trustee does not cause the trust to become an ESBT, the Trustee shall set aside the S Corporation stock in a separate trust for the current income beneficiary of such trust, so that a Qualified Subchapter S Trust ("QSST") election under Section 1361 of the Internal Revenue Code can be filed with respect to that trust. The Trustee shall hold each share as a separate QSST for the persons described above, and each such person will be the sole beneficiary of his or her QSST. To the greatest extent possible, the Trustee shall administer each QSST under the terms of the trust from which it was derived, but subject to the following overriding provisions:

(a) **Consent.** The Trustee shall notify the beneficiary of each separate trust promptly that a QSST election must be filed with the Internal Revenue Service. Thereafter, each beneficiary shall file a timely and proper QSST election with the Internal Revenue Service. If a beneficiary fails or refuses to make the QSST election, the Trustee shall make an ESBT election for that trust. If the beneficiary does make the QSST election, then his or her separate trust will be administered as set forth below.

(b) **Income Payments.** During the beneficiary's life, the Trustee shall pay all net income of the trust to the beneficiary (and only to that beneficiary) in quarterly or more frequent installments. The beneficiary's income interest in the trust



will terminate on the earlier of his or her death or the termination of the trust under its terms.

(c) **Principal Invasions.** If the beneficiary is otherwise entitled to receive principal distributions, the Trustee may distribute principal from that separate trust during the beneficiary's life only to or for the benefit of that beneficiary (and no one else).

(d) **Final Distribution.** If the QSST is terminated during the beneficiary's life, the Trustee shall distribute all remaining assets of that separate trust to that beneficiary. If the beneficiary dies before that trust's termination, all remaining assets of the QSST are to be distributed as provided in the original trust, but subject to this article.

(e) **Termination of QSST Status.** If a separate trust would cease to qualify as an S Corporation shareholder, the Trustee in its discretion may: (i) make an ESBT election for that separate trust, or (ii) distribute all S Corporation stock to the beneficiary. The Trustee in its discretion also may convert a QSST to an ESBT, whether or not the beneficiary has consented to QSST treatment and, if the beneficiary consents, may convert an ESBT into a QSST.

#### ARTICLE 9 PERPETUITIES PROVISION

Despite any contrary provisions of this Trust Agreement, from the creation of this Trust and for up to 21 years after the death of the last of the Settlor's grandparents' descendants who are living at the creation of this Trust, a trust beneficiary (which includes persons succeeding to the interest of a deceased beneficiary) will be entitled to terminating distributions only at the ages specified in this Trust Agreement. In all events, however, the share of each beneficiary will vest (in the beneficiary or his or her estate) immediately prior to the expiration of the 21 year period described above.

#### ARTICLE 10 ADMINISTRATION AND CONSTRUCTION

**10.1 Rules for Distributions.** In making distributions to beneficiaries under this Trust Agreement, the Trustee must use the following criteria.

(a) **Other Resources.** Whenever the Trustee has the authority to decide how much to distribute to or for the benefit of a beneficiary, the Trustee can make decisions without taking into account any information about the beneficiary's other available income and resources. The Trustee can make payments directly to a beneficiary or to other persons for the beneficiary's benefit, but it does not have to make payments to a court appointed guardian.

(b) **Trustee's Decision.** Absent clear and convincing evidence of bad faith, the Trustee's decisions as to amounts to be distributed will be final.

(c) **Standard of Living.** Distributions to a beneficiary for health, education, support, or maintenance are to be based on his or her standard of living, determined as of the date of the distribution.

**10.2 Funding Gifts.** The following rules will apply to funding gifts under this Trust Agreement.

(a) **Pecuniary Gifts.** All pecuniary gifts under this Trust Agreement that are paid by an in-kind distribution of assets must use values having an aggregate fair market value at the date or dates of distribution equal to the amount of this gift as finally determined for federal estate tax purposes.

(b) **Adjustments.** The Trustee shall select one or more dates of allocation or distribution for purposes of satisfying gifts and funding shares or trusts. The Trustee may make allocations before the final determination of federal estate tax, with those allocations being based upon the information then available to the Trustee, and may thereafter adjust properties among the shares or trusts if it is determined that the allocation should have been made differently.

**10.3 Accumulated Income.** Any income not distributed to the beneficiaries pursuant to either a mandatory direction or a discretionary power is to be incorporated into principal, at such intervals as the Trustee deems convenient.

**10.4 Estate Tax on Included Property.** If assets of any trust created under this Trust Agreement are included in a beneficiary's estate for federal estate tax purposes, the following will apply.

(a) **Appointed Assets.** If the beneficiary exercises a power of appointment over those assets, the Trustee is authorized to withhold from those assets the amount of estate taxes apportioned to them by applicable law, if the beneficiary does not make provisions for the payment of those taxes from other sources.

(b) **Other Assets.** If the beneficiary does not have or does not exercise a power of appointment over those assets, the Trustee will pay the estate taxes attributable to those assets. The estate taxes attributable to those assets will be the amount that the beneficiary's estate taxes are increased over the amount those taxes would have been if those assets had not been included in the beneficiary's gross estate.

(c) **Certification and Payment.** The Trustee may rely upon a written certification by the beneficiary's personal representative of the amount of the estate taxes, and may pay those taxes directly or to the personal representative of the beneficiary's estate. The Trustee will not be held liable for making payments as directed by the beneficiary's personal representative.

**10.5 Transactions With Other Entities.** The Trustee may buy assets from other estates or trusts, or make loans to them, so that funds will be available to pay claims, taxes, and expenses. The Trustee can make those purchases or loans even if it

serves as the fiduciary of that estate or trust, and on whatever terms and conditions the Trustee thinks are appropriate, except that the terms of any transaction must be commercially reasonable.

**ARTICLE 11**  
**MISCELLANEOUS PROVISIONS**

**11.1 Definitions.** As used in this Trust Agreement, the following terms have the meanings set forth below:

**(a) Trustees.**

- (1) **Independent Trustee** means a trustee of a particular trust, either individual or corporate, who is not the Settlor or a beneficiary, and who is not a Related Person as to the Settlor or a beneficiary (if the Settlor or the beneficiary, respectively, is living and participated in that person's appointment). For purposes of this definition a beneficiary is a person who is a permissible distributee of income or principal, or someone with an interest in the trust in excess of five percent (5%) of its value, assuming a maximum exercise of discretion in his or her favor. Whenever this Trust Agreement requires an action be taken by, or in the discretion of, an Independent Trustee but no such Trustee is then serving, a court may appoint an Independent Trustee to serve as an additional Trustee whose sole function and duty will be to exercise the specified power.
- (2) **Corporate Trustee** means a trustee that is a bank, trust company, or other entity authorized to serve as a trustee under the laws of the United States or any state thereof that is not a Related Person to the Settlor. A bank or trust company that does not meet this requirement cannot serve as Trustee.

**(b) Internal Revenue Code Terms.**

- (1) **Internal Revenue Code** means the federal Internal Revenue Code of 1986, as amended from time to time, or successor provisions of future federal internal revenue laws.
- (2) The terms **health, education, support, and maintenance** are intended to set forth an "ascertainable standard," as described in the Internal Revenue Code and its associated Regulations. To the extent not inconsistent with the foregoing, "health" means a beneficiary's physical and

mental health, including but not limited to payments for examinations, surgical, dental, or other treatment, medication, counseling, hospitalization, and health insurance premiums; "education" means elementary, secondary, post-secondary, graduate, or professional schooling in an accredited institution, public or private, or attendance at other formal programs in furtherance of the beneficiary's spiritual, athletic, or artistic education, including but not limited to payments for tuition, books, fees, assessments, equipment, tutoring, transportation, and reasonable living expenses.

- (3) **Related Person** as to a particular individual is someone who is deemed to be "related or subordinate" to that individual under Section 672(c) of the Internal Revenue Code (as though that individual was a grantor).

(c) **Other Terms.**

- (1) Distributions that are to be made to a person's descendants, per stirpes, will be divided into equal shares, so that there will be one share for each living child (if any) of that person and one share for each deceased child who has then living descendants. The share of each deceased child will be further divided among his or her descendants on a per stirpes basis, by reapplying the preceding rule to that deceased child and his or her descendants as many times as necessary.
- (2) **Disabled or under a disability** means (i) being under the legal age of majority, (ii) having been adjudicated to be incapacitated, or (iii) being unable to manage properly personal or financial affairs because of a mental or physical impairment (whether temporary or permanent in nature). A written certificate executed by an individual's attending physician confirming that person's impairment will be sufficient evidence of disability under item (iii) above, and all persons may rely conclusively on such a certificate.
- (3) **Removal of a Trustee for cause** includes, without limitation, the following: the willful or negligent mismanagement of the trust assets by that individual Trustee; the abuse or abandonment of, or inattention to, the trust by that individual Trustee; a federal or state charge against that individual Trustee involving the commission of a felony or serious misdemeanor; an act of theft,

dishonesty, fraud, embezzlement, or moral turpitude by that individual Trustee; or the use of narcotics or excessive use of alcohol by that individual Trustee.

- (4) The words will and shall are used interchangeably in this Trust Agreement and mean, unless the context clearly indicates otherwise, that the Trustee must take the action indicated; as used in this Trust Agreement, the word may means that the Trustee has the discretionary authority to take the action but is not automatically required to do so.

**11.2 Powers of Appointment.** The following provisions relate to all powers of appointment under this Trust Agreement.

- (a) A general power of appointment granted to a person is one that can be exercised in favor of that person or his or her estate, his or her creditors, or the creditors of his or her estate.
- (b) A special power of appointment is any power that is not a general power.
- (c) A testamentary power of appointment (either general or special) is exercisable upon the powerholder's death by his or her Last Will or by a revocable trust agreement established by that person, but only by specific reference to the instrument creating the power. A "testamentary power of appointment" may not be exercised in favor of the person possessing the power.
- (d) In determining whether a person has exercised a testamentary power of appointment, the Trustee may rely upon an instrument admitted to probate in any jurisdiction as that person's Last Will, or upon any trust agreement certified to be valid and authentic by sworn statement of the trustee who is serving under that trust agreement. If the Trustee has not received written notice of such an instrument within six months after the powerholder's death, the Trustee may presume that the powerholder failed to exercise that power and will not be liable for acting in accordance with that presumption.

**11.3 Notices.** Any person entitled or required to give notice under this Trust Agreement shall exercise that power by a written instrument clearly setting forth the effective date of the action for which notice is being given. The instrument may be executed in counterparts.

**11.4 Certifications.**

- (a) **Facts.** A certificate signed and acknowledged by the Trustee stating any fact affecting the Trust Estate or the Trust Agreement will be conclusive

evidence of such fact in favor of any transfer agent and any other person dealing in good faith with the Trustee. The Trustee may rely on a certificate signed and acknowledged by any beneficiary stating any fact concerning the Trust beneficiaries, including dates of birth, relationships, or marital status, unless an individual serving as Trustee has actual knowledge that the stated fact is false.

(b) **Copy.** Any person may rely on a copy of this instrument (in whole or in part) certified to be a true copy by the Settlor; by any person specifically named as a Trustee (or successor Trustee); by any Corporate Trustee whether or not specifically named; or, if there are none of the above, by any then serving Trustee.

**11.5 Applicable Law.** All matters involving the validity and interpretation of this Trust Agreement are to be governed by Florida law. Subject to the provisions of this Trust Agreement, all matters involving the administration of a trust are to be governed by the laws of the jurisdiction in which the trust has its principal place of administration.

**11.6 Gender and Number.** Reference in this Trust Agreement to any gender includes either masculine or feminine, as appropriate, and reference to any number includes both singular and plural where the context permits or requires. Use of descriptive titles for articles and paragraphs is for the purpose of convenience only and is not intended to restrict the application of those provisions.



**11.7 Further Instruments.** The Settlor agrees to execute such further instruments as may be necessary to vest the Trustee with full legal title to the property transferred to this Trust.

**11.8 Binding Effect.** This Trust Agreement extends to and is binding upon the Settlor's Personal Representative, successors, and assigns, and upon the Trustee.



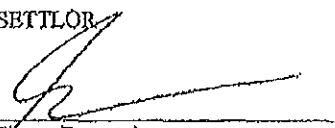
Executed as of the date first written above.

Signed in the presence of:

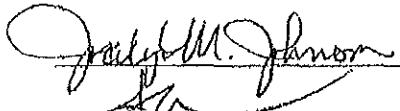
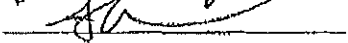
  


Two witnesses as to Simon Bernstein

SETTLOR

  
Simon Bernstein

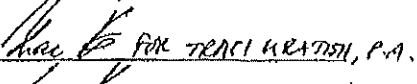
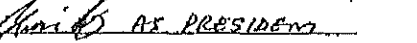
Signed in the presence of:

Two witnesses as to Traci Kratish

TRUSTEE

Traci Kratish, P.A.

Traci Kratish, ~~Settlor~~, President

INITIALS \_\_\_\_\_  
JOSHUA Z. BERNSTEIN IRREVOCABLE TRUST

**Schedule A**  
**Initial Transfers to Trust**

Transfer of 6 shares of LIC Holdings, Inc.

*TRUST AGREEMENT*  
*FOR THE*  
*DANIEL BERNSTEIN IRREVOCABLE TRUST*

*September 7, 2006*

**TRUST AGREEMENT  
FOR THE  
DANIEL BERNSTEIN IRREVOCABLE TRUST**

SIMON BERNSTEIN, as Settlor, hereby creates the Daniel Bernstein Irrevocable Trust ("the Trust") on September 7, 2006. Traci Kratish, P.A. is the trustee of this Trust and, in that capacity, he and his successors are collectively referred to in this Trust Agreement as the "Trustee."

**ARTICLE 1  
BENEFICIARY**

This Trust is for the benefit of the Settlor's Grandchild, DANIEL BERNSTEIN ("Beneficiary").

**ARTICLE 2  
TRANSFERS TO TRUST**

The Settlor hereby conveys to the Trustee all his interest in the assets listed on Schedule A, which together with any assets later added to this Trust are referred to as the "Trust Estate." Any person may transfer assets to the Trust Estate, if the Trustee agrees to accept them. Assets do not have to be listed on Schedule A to be part of the Trust Estate. Unless otherwise specified in writing at the time of the transfer, those assets will be held as provided in this Trust Agreement. The Trustee acknowledges receipt of the current Trust assets and agrees to hold the Trust Estate as set forth in this Trust Agreement.

**ARTICLE 3  
IRREVOCABLE PROVISION**

The Settlor declares that he has no right to alter, amend, modify, or revoke this Trust Agreement; to withdraw assets from the Trust; or to require changes in the investments of the Trust. No part of the Trust may ever revert to the Settlor, be used for his benefit, or be distributed in discharge of his legal obligations.

**ARTICLE 4  
ADMINISTRATION OF TRUST**

The Trustee shall hold, administer, and distribute the Trust Estate in accordance with the powers granted under this Trust Agreement as follows:

INITIALS \_\_\_\_\_  
DANIEL BERNSTEIN IRREVOCABLE TRUST

**4.1 Discretionary Distributions.** The Trustee shall pay or apply such sums of principal from this Trust as in the Trustee's discretion are necessary or advisable for Beneficiary's health, education, support, and maintenance.

**4.2 Distribution of Principal.** When Beneficiary has reached age 21, the trustee shall distribute one-half (½) of the corpus of trust to Beneficiary plus accrued income. When Beneficiary has reached age 25 the Trustee shall distribute the entire remaining principal balance of the corpus of the trust to Beneficiary plus accrued income.

**4.3 Distribution Upon Death Before Age 25.** Upon the death of Beneficiary prior to age 25, the Trustee shall distribute the remaining assets in the trust to the estate of Beneficiary.

#### ARTICLE 5 PROVISIONS GOVERNING TRUSTEES

The following provisions apply to all Trustees appointed under this Trust Agreement:

**5.1 Incapacity of Trustee.** If any Trustee becomes disabled, he or she will immediately cease to act as Trustee. If a Trustee who ceases to serve because of a disability, or who is suspended, thereafter recovers from that disability or consents to the release of relevant medical information, he or she may elect to become a Trustee again by giving written notice to the then serving Trustee, and the last Trustee who undertook to serve will then cease to be a Trustee until another successor Trustee is required.

**5.2 Resignation.** Any Trustee may resign by giving 30 days' written notice delivered personally or by mail to any then serving Co-Trustee and to the Settlor if he is then living and not disabled; otherwise to the next named successor Trustee, or if none, to the persons having power to appoint successor Trustees.

**5.3 Power to Name Other Trustees.** Whenever a successor Trustee is required and that position is not filled under the terms specified in this Trust Agreement, an individual Trustee ceasing to serve (other than a Trustee being removed) may appoint his or her successor, but if none is appointed, the remaining Trustees, if any, or the beneficiary shall appoint a successor Corporate Trustee. The appointment will be by a written document (including a testamentary instrument) delivered to the appointed Trustee. In no event may the Settlor ever be appointed as the Trustee under this Trust Agreement nor shall a Successor trustee be appointed that will cause this trust to be a grantor trust.

**5.4 Powers of Successor Trustees.** Successor Trustees will have all powers granted to the original Trustee, except that only an Independent Trustee will succeed to the powers vested exclusively in the Independent Trustee.

**5.5 Accountings.** Accountings must be given to the beneficiary of each trust at least annually (quarterly if a Corporate Trustee is serving). The accountings must show the assets held in trust and all receipts and disbursements. A beneficiary's written approval of an accounting will be final and binding upon that beneficiary and all persons represented by him or her as to all matters disclosed in that accounting. In any event, if a beneficiary fails to object to an accounting within six months of receiving it, his or her approval is conclusively presumed. A successor Trustee may require the prior Trustee to render a full and final accounting.

**5.6 Acts by Other Fiduciaries.** The Trustee is not required to question any acts or failures to act of the fiduciary of any other trust or estate, and will not be liable for any prior fiduciary's acts or failures to act. The Trustee can require a beneficiary who requests an examination of another fiduciary's actions or omissions to advance all costs and fees incurred in the examination, and if the beneficiary does not, the Trustee may elect not to proceed or may proceed and offset those costs and fees directly against any payment that would otherwise be made to that beneficiary.

**5.7 Court Supervision.** The Settlor waives compliance by the Trustee with any law requiring bond, registration, qualification, or accounting to any court.

**5.8 Compensation.** Each Trustee is entitled to be paid reasonable compensation for services rendered in the administration of the Trust. Reasonable compensation for a Corporate Trustee will be its published fee schedule in effect when its services are rendered unless otherwise agreed in writing, and except as follows. Any fees paid to a Corporate Trustee for making principal distributions, for termination of the trust, and upon termination of its services must be based solely on the value of its services rendered, not on the value of the trust principal. During the Settlor's lifetime the Trustee's fees are to be charged wholly against income (to the extent sufficient), unless directed otherwise by the Settlor in writing.

**5.9 Indemnity.** Any Trustee who ceases to serve for any reason will be entitled to receive (and the continuing Trustee shall make suitable arrangements to provide) reasonable indemnification and security to protect and hold that Trustee harmless from any damage or liability of any nature that may be imposed upon it because of its actions or omissions while serving as Trustee. This protection, however, does not extend to a Trustee's negligent actions or omissions that clearly and demonstrably result in damage or liability. A prior Trustee may enforce these provisions against the current Trustee or against any assets held in the Trust, or if the prior Trustee is an individual, against any beneficiary to the extent of distributions received by that beneficiary. This indemnification right will extend to the estate, personal representatives, legal successors, and assigns of a Trustee.



**5.10 Successor Trustee.** In the event the initial Trustee, Steven I. Greenwald, resigns or ceases to serve as Trustee, then and in that event, I hereby appoint Larry V. Bishins to serve as Trustee.

**ARTICLE 6**  
**PROTECTION OF INTERESTS**

The interest of any beneficiary under this Trust Agreement, in either income or principal, may not be anticipated, alienated, or in any other manner assigned by the beneficiary, whether voluntarily or involuntarily, and will not be subject to any legal process, bankruptcy proceedings, or the interference or control of the beneficiary's creditors or others.

**ARTICLE 7**  
**FIDUCIARY POWERS**

The Settlor grants to the Trustee full power to deal freely with any property in the Trust. The Trustee may exercise these powers independently and without the approval of any court. No person dealing with the Trustee need inquire into the propriety of any of its actions or into the application of any funds or assets. The Trustee shall, however, exercise all powers in a fiduciary capacity for the best interest of the beneficiary of this Trust or any trust created under it. Without limiting the generality of the foregoing, the Trustee is given the following discretionary powers in addition to any other powers conferred by law:

**7.1 Type of Assets.** Except as otherwise provided to the contrary, to hold funds uninvested for such periods as the Trustee deems prudent, and to invest in any assets the Trustee deems advisable even though they are not technically recognized or specifically listed in so-called "legal lists," without responsibility for depreciation or loss on account of those investments, or because those investments are non-productive, as long as the Trustee acts in good faith.

**7.2 Original Assets.** Except as otherwise provided to the contrary, to retain the original assets it receives for as long as it deems best, and to dispose of those assets when it deems advisable, even though such assets, because of their character or lack of diversification, would otherwise be considered improper investments for the Trustee.

**7.3 Tangible Personal Property.** To receive and hold tangible personal property; to pay or refrain from paying storage and insurance charges for such property; and to permit any beneficiaries to use such property without either the Trustee or beneficiaries incurring any liability for wear, tear, and obsolescence of the property.

**7.4 Specific Securities.** To invest in assets, securities, or interests in securities of any nature, including (without limit) commodities, options, futures, precious metals, currencies, and in domestic and foreign markets and in mutual or investment

funds, including funds for which the Trustee or any affiliate performs services for additional fees, whether as custodian, transfer agent, investment advisor or otherwise, or in securities distributed, underwritten, or issued by the Trustee or by syndicates of which it is a member; to trade on credit or margin accounts (whether secured or unsecured); and to pledge assets of the Trust Estate for that purpose.

**7.5 Property Transactions.** To buy, sell, pledge, exchange, or lease any real or personal property, publicly or privately, for cash or credit, without court approval and upon the terms and conditions that the Trustee deems advisable; to execute deeds, leases, contracts, bills of sale, notes, mortgages, security instruments, and other written instruments; to abandon or dispose of any real or personal property in the Trust which has little or no monetary or useful value; to improve, repair, insure, subdivide and vacate any property; to erect, alter or demolish buildings; to adjust boundaries; and to impose easements, restrictions, and covenants as the Trustee sees fit. A lease will be valid and binding for its full term even if it extends beyond the full duration of the Trust.

**7.6 Borrow Money.** To borrow money from any source (including the Trustee in its nonfiduciary capacity), to guarantee indebtedness, and to secure the loan or guaranty by mortgage or other security interest.

**7.7 Maintain Assets.** To expend whatever funds it deems proper for the preservation, maintenance, or improvement of assets. The Trustee in its discretion may elect any options or settlements or exercise any rights under all insurance policies that it holds. However, no fiduciary who is the insured of any insurance policy held in the Trust may exercise any rights or have any incidents of ownership with respect to the policy, including the power to change the beneficiary, to surrender or cancel the policy, to assign the policy, to revoke any assignment, to pledge the policy for a loan, or to obtain from the insurer a loan against the surrender value of the policy. All such power is to be exercised solely by the remaining Trustee, if any, or if none, by a special fiduciary appointed for that purpose by a court having jurisdiction.

**7.8 Advisors.** To employ and compensate attorneys, accountants, advisors, financial consultants, managers, agents, and assistants (including any individual or entity who provides investment advisory or management services, or who furnishes professional assistance in making investments for the Trust) without liability for any act of those persons, if they are selected and retained with reasonable care. Fees may be paid from the Trust Estate even if the services were rendered in connection with ancillary proceedings.

**7.9 Indirect Distributions.** To make distributions, whether of principal or income, to any person under age 21 or to any incapacitated person according to the terms of this Trust Agreement by making distributions directly to that person whether or not that person has a guardian; to the parent, guardian, or spouse of that person; to a custodial account established by the Trustee or others for that person under an applicable Uniform

Gift to Minors Act or Uniform Transfers to Minors Act; to any adult who resides in the same household with that person or who is otherwise responsible for the care and well-being of that person; or by applying any distribution for the benefit of that person in any manner the Trustee deems proper. The receipt of the person to whom payment is made will constitute full discharge of the Trustee with respect to that payment. No distributions may be made to the Settlor under this Section.

**7.10 Non-Pro Rata Distribution.** To make any division or distribution in money or in kind, or both, without allocating the same kind of property to all shares or distributees, and without regard to the income tax basis of the property. Any division will be binding and conclusive on all parties.

**7.11 Nominee.** Except as prohibited by law, to hold any assets in the name of a nominee without disclosing the fiduciary relationship; to hold the property unregistered, without affecting its liability; and to hold securities endorsed in blank, in street certificates, at a depository trust company, or in a book entry system.

**7.12 Custodian.** To employ a custodian or agent ("the Custodian") located anywhere within the United States, at the discretion of the Trustee but at the expense of the Trust, whether or not such Custodian is an affiliate of the Trustee or any person rendering services to the Trust; to register securities in the name of the Custodian or a nominee thereof without designation of fiduciary capacity; and to appoint the Custodian to perform such other ministerial functions as the Trustee may direct. While such securities are in the custody of the Custodian, the Trustee will be under no obligation to inspect or verify such securities nor will the Trustee be responsible for any loss by the Custodian.

**7.13 Settle Claims.** To contest, compromise, arbitrate, or otherwise adjust claims in favor of or against the Trust, to agree to any rescission or modification of any contract or agreement, and to refrain from instituting any suit or action unless indemnified for reasonable costs and expenses.

**7.14 Corporate Rights.** To vote and exercise any option, right, or privilege to purchase or to convert bonds, notes, stock (including shares or fractional shares of stock of any Corporate Trustee), securities, or other property; to borrow money for the purpose of exercising any such option, right, or privilege; to delegate those rights to an agent; to enter into voting trusts and other agreements or subscriptions; to participate in any type of liquidation or reorganization of any enterprise; and to write and sell covered call options, puts, calls, straddles, or other methods of buying or selling securities, as well as all related transactions.

**7.15 Partnership Interests.** To hold interests in sole proprietorships, general or limited partnerships, joint ventures, business trusts, land trusts, limited liability companies, and other domestic and foreign forms of organizations; and to exercise all

rights in connection with such interests as the Trustee deems appropriate, including any powers applicable to a non-admitted transferee of any such interest.

**7.16 Self-Dealing.** To exercise all its powers even though it may also be acting individually or on behalf of any other person or entity interested in the same matters. The Trustee, however, shall exercise these powers at all times in a fiduciary capacity, primarily in the interest of the beneficiaries of the Trust. Despite any other provision of this Trust Agreement, no Trustee may participate in the decision to make a discretionary distribution that would discharge a legal support obligation of that Trustee. No Trustee who has made a disclaimer, either individually or as a Trustee, may exercise any discretion in determining the recipient of the disclaimed property. All power to make such distributions, or to determine recipients of disclaimed property, will be exercised solely by the remaining Trustees, if any, or if there are no other Trustees then serving, by the person or persons named to serve as the next successor Trustee, or if there are none, by a special Trustee appointed for that purpose by a court having jurisdiction.

**7.17 Expenses.** An Independent Trustee may determine how expenses of administration and receipts are to be apportioned between principal and income.

**7.18 Terminate Small Trusts.** To exercise its discretion to refrain from funding or to terminate any trust whenever the value of the principal of that trust would be or is too small to administer economically, and to distribute the remaining principal and all accumulated income of the trust as provided in Section 7.9 to the income beneficiary of that trust. The Trustee shall exercise this power to terminate in its discretion as it deems prudent for the best interest of the beneficiaries at that time. This power cannot be exercised by the Settlor or any beneficiary, either alone or in conjunction with any other Trustee, but must be exercised solely by the other Trustee, or if none, by a special Trustee appointed for that purpose by a court having jurisdiction.

**7.19 Allocations to Income and Principal.** To treat premiums and discounts on bonds and other obligations for the payment of money in accordance with either generally accepted accounting principles or tax accounting principles and, except as otherwise provided to the contrary, to hold nonproductive assets without allocating any principal to income, despite any laws or rules to the contrary. The Trustee in its discretion may exercise the power described in Section 738.104 of the Florida Statutes to adjust between principal and income, as appropriate, and, in addition, may convert any income interest into a unitrust interest, or a unitrust interest to an income interest, as it sees fit, all as provided in Section 738.1041 of the Florida Statutes, despite any provision of those sections to the contrary.

**7.20 Use of Income.** Except as otherwise provided in this Trust Agreement, and in addition to all other available sources, to exercise its discretion in the use of income from the assets of the Trust to satisfy the liabilities described in this Trust Agreement, without accountability to any beneficiary.

INITIALS \_\_\_\_\_  
DANIEL BRANSTEN JARBYOABLE TRUST

**7.21 Valuations.** In making distributions or allocations under the terms of this Trust Agreement to be valued as of a particular date, the Trustee may use asset valuations obtained for a date reasonably close to that particular date (such as a quarterly closing date before or after that date) if, in the Trustee's judgment, obtaining appraisals or other determinations of value on that date would result in unnecessary expense, and if in the Trustee's judgment, the fair market value as determined is substantially the same as on that actual date. This paragraph will not apply if valuation on a specific date is required to preserve a qualification for a tax benefit, including any deduction, credit, or most favorable allocation of an exemption.

**7.22 Incorporation.** To incorporate any business or venture, and to continue any unincorporated business that the Trustee determines to be not advisable to incorporate.

**7.23 Delegation.** To delegate periodically among themselves the authority to perform any not of administration of any trust.

**7.24 Advances.** To make cash advances or loans to beneficiaries, with or without security.

**7.25 Investment Manager.** To employ any investment management service, financial institution, or similar organization to advise the Trustee and to handle all investments of the Trust and to render all accountings of funds held on its behalf under custodial, agency, or other agreements. If the Trustee is an individual, these costs may be paid as an expense of administration in addition to fees and commissions.

**7.26 Depreciation.** To deduct from all receipts attributable to depreciable property a reasonable allowance for depreciation, computed in accordance with generally accepted accounting principles consistently applied.

**7.27 Disclaim Assets or Powers.** To disclaim any assets otherwise passing or any fiduciary powers pertaining to any trust created hereunder, by execution of an instrument of disclaimer meeting the requirements of applicable law generally imposed upon individuals executing disclaimers. No notice to or consent of any beneficiary, other interested person, or any court is required for any such disclaimer, and the Trustee is to be held harmless for any decision to make or not make such a disclaimer.

**7.28 Transfer Situs.** To transfer the situs of any trust or any trust property to any other jurisdiction as often as the Trustee deems advisable, and if necessary to appoint a substitute or ancillary Trustee to act with respect to that property. The Trustee may delegate to the substitute Trustee any or all of the powers given to the Trustee; may elect to act as advisor to the substitute Trustee and receive reasonable compensation for that service; and may remove any acting or substitute Trustee and appoint another, or reappoint itself, at will.

**7.29 Related Parties.** To enter into any transaction on behalf of the Trust despite the fact that another party to that transaction may be: (i) a business or trust controlled by the Trustee, or of which the Trustee, or any director, officer, or employee of the Corporate Trustee, is also a director, officer, or employee; (ii) an affiliate or business associate of any beneficiary or the Trustee; or (iii) a beneficiary or Trustee under this Trust Agreement acting individually, or any relative of such a party.

**7.30 Additional Powers for Income-Producing Real Estate.** In addition to the other powers set forth above or otherwise conferred by law, the Trustee has the following powers with respect to any income-producing real property which is or may become a part of the Trust Estate:

- To retain and operate the property for as long as it deems advisable;
- To control, direct, and manage the property, determining the manner and extent of its active participation in these operations, and to delegate all or any part of its supervisory power to other persons that it selects;
- To hire and discharge employees, fix their compensation, and define their duties;
- To invest funds in other land holdings and to use those funds for all improvements, operations, or other similar purposes;
- Except as otherwise provided with respect to mandatory income distributions, to retain any amount of the net earnings for working capital and other purposes that it deems advisable in conformity with sound and efficient management; and
- To purchase and sell machinery, equipment, and supplies of all kinds as needed for the operation and maintenance of the land holdings.

#### ARTICLE 8 SUBCHAPTER S STOCK

Despite any other provisions of this Trust Agreement, if a trust created in this instrument is to become the owner of, or already owns, stock in a corporation that has an election in effect (or one that proposes to make an election) under Section 1362 of the Internal Revenue Code (an "S Corporation"), and that trust would not otherwise be permitted to be an S Corporation shareholder, the following provisions will apply:

**8.1 Electing Small Business Trust.** The Trustee in its discretion may elect for the trust to become an Electing Small Business Trust ("ESBT") as defined in the Internal Revenue Code.



**8.2 Qualified Subchapter S Trust.** If the Trustee does not cause the trust to become an ESBT, the Trustee shall set aside the S Corporation stock in a separate trust for the current income beneficiary of such trust, so that a Qualified Subchapter S Trust ("QSST") election under Section 1361 of the Internal Revenue Code can be filed with respect to that trust. The Trustee shall hold each share as a separate QSST for the persons described above, and each such person will be the sole beneficiary of his or her QSST. To the greatest extent possible, the Trustee shall administer each QSST under the terms of the trust from which it was derived, but subject to the following overriding provisions:

(a) **Consent.** The Trustee shall notify the beneficiary of each separate trust promptly that a QSST election must be filed with the Internal Revenue Service. Thereafter, each beneficiary shall file a timely and proper QSST election with the Internal Revenue Service. If a beneficiary fails or refuses to make the QSST election, the Trustee shall make an ESBT election for that trust. If the beneficiary does make the QSST election, then his or her separate trust will be administered as set forth below.

(b) **Income Payments.** During the beneficiary's life, the Trustee shall pay all net income of the trust to the beneficiary (and only to that beneficiary) in quarterly or more frequent installments. The beneficiary's income interest in the trust will terminate on the earlier of his or her death or the termination of the trust under its terms.

(c) **Principal Distributions.** If the beneficiary is otherwise entitled to receive principal distributions, the Trustee may distribute principal from that separate trust during the beneficiary's life only to or for the benefit of that beneficiary (and no one else).

(d) **Final Distribution.** If the QSST is terminated during the beneficiary's life, the Trustee shall distribute all remaining assets of that separate trust to that beneficiary. If the beneficiary dies before that trust's termination, all remaining assets of the QSST are to be distributed as provided in the original trust, but subject to this article.

(e) **Termination of QSST Status.** If a separate trust would cease to qualify as an S Corporation shareholder, the Trustee in its discretion may: (i) make an ESBT election for that separate trust, or (ii) distribute all S Corporation stock to the beneficiary. The Trustee in its discretion also may convert a QSST to an ESBT, whether or not the beneficiary has consented to QSST treatment and, if the beneficiary consents, may convert an ESBT into a QSST.

**ARTICLE 9**  
**PERPETUITIES PROVISION**

Despite any contrary provisions of this Trust Agreement, from the creation of this Trust and for up to 21 years after the death of the last of the Settlor's grandparents' descendants who are living at the creation of this Trust, a trust beneficiary (which includes persons succeeding to the interest of a deceased beneficiary) will be entitled to terminating distributions only at the ages specified in this Trust Agreement. In all events, however, the share of each beneficiary will vest (in the beneficiary or his or her estate) immediately prior to the expiration of the 21 year period described above.

**ARTICLE 10**  
**ADMINISTRATION AND CONSTRUCTION**

**10.1 Rules for Distributions.** In making distributions to beneficiaries under this Trust Agreement, the Trustee must use the following criteria.

(a) **Other Resources.** Whenever the Trustee has the authority to decide how much to distribute to or for the benefit of a beneficiary, the Trustee can make decisions without taking into account any information about the beneficiary's other available income and resources. The Trustee can make payments directly to a beneficiary or to other persons for the beneficiary's benefit, but it does not have to make payments to a court appointed guardian.

(b) **Trustee's Decision.** Absent clear and convincing evidence of bad faith, the Trustee's decisions as to amounts to be distributed will be final.

(c) **Standard of Living.** Distributions to a beneficiary for health, education, support, or maintenance are to be based on his or her standard of living, determined as of the date of the distribution.

**10.2 Funding Gifts.** The following rules will apply to funding gifts under this Trust Agreement.

(a) **Pecuniary Gifts.** All pecuniary gifts under this Trust Agreement that are paid by an in-kind distribution of assets must use values having an aggregate fair market value at the date or dates of distribution equal to the amount of this gift as finally determined for federal estate tax purposes.

(b) **Adjustments.** The Trustee shall select one or more dates of allocation or distribution for purposes of satisfying gifts and funding shares or trusts. The Trustee may make allocations before the final determination of federal estate tax, with those allocations being based upon the information then available to the Trustee,

and may thereafter adjust properties among the shares or trusts if it is determined that the allocation should have been made differently.

**10.3 Accumulated Income.** Any income not distributed to the beneficiaries pursuant to either a mandatory direction or a discretionary power is to be incorporated into principal, at such intervals as the Trustee deems convenient.

**10.4 Estate Tax on Included Property.** If assets of any trust created under this Trust Agreement are included in a beneficiary's estate for federal estate tax purposes, the following will apply:

(a) **Appointed Assets.** If the beneficiary exercises a power of appointment over those assets, the Trustee is authorized to withhold from those assets the amount of estate taxes apportioned to them by applicable law, if the beneficiary does not make provisions for the payment of those taxes from other sources.

(b) **Other Assets.** If the beneficiary does not have or does not exercise a power of appointment over those assets, the Trustee will pay the estate taxes attributable to those assets. The estate taxes attributable to those assets will be the amount that the beneficiary's estate taxes are increased over the amount those taxes would have been if those assets had not been included in the beneficiary's gross estate.

(c) **Certification and Payment.** The Trustee may rely upon a written certification by the beneficiary's personal representative of the amount of the estate taxes, and may pay those taxes directly or to the personal representative of the beneficiary's estate. The Trustee will not be held liable for making payments as directed by the beneficiary's personal representative.

**10.5 Transactions With Other Entities.** The Trustee may buy assets from other estates or trusts, or make loans to them, so that funds will be available to pay claims, taxes, and expenses. The Trustee can make those purchases or loans even if it serves as the fiduciary of that estate or trust, and on whatever terms and conditions the Trustee thinks are appropriate, except that the terms of any transaction must be commercially reasonable.

## ARTICLE 11 MISCELLANEOUS PROVISIONS

**11.1 Definitions.** As used in this Trust Agreement, the following terms have the meanings set forth below:

(a) **Trustees.**

- (1) **Independent Trustee** means a trustee of a particular trust, either individual or corporate, who is not the Settlor or a beneficiary, and who is not a Related Person as to the Settlor or a beneficiary (if the Settlor or the beneficiary, respectively, is living and participated in that person's appointment). For purposes of this definition a beneficiary is a person who is a permissible distributee of income or principal, or someone with an interest in the trust in excess of five percent (5%) of its value, assuming a maximum exercise of discretion in his or her favor. Whenever this Trust Agreement requires an action be taken by, or in the discretion of, an Independent Trustee but no such Trustee is then serving, a court may appoint an Independent Trustee to serve as an additional Trustee whose sole function and duty will be to exercise the specified power.
- (2) **Corporate Trustee** means a trustee that is a bank, trust company, or other entity authorized to serve as a trustee under the laws of the United States or any state thereof that is not a Related Person to the Settlor. A bank or trust company that does not meet this requirement cannot serve as Trustee.

(b) **Internal Revenue Code Terms.**

- (1) **Internal Revenue Code** means the federal Internal Revenue Code of 1986, as amended from time to time, or successor provisions of future federal internal revenue laws.
- (2) The terms **health, education, support, and maintenance** are intended to set forth an "ascertainable standard," as described in the Internal Revenue Code and its associated Regulations. To the extent not inconsistent with the foregoing, "health" means a beneficiary's physical and mental health, including but not limited to payments for examinations, surgical, dental, or other treatment, medication, counseling, hospitalization, and health insurance premiums; "education" means elementary, secondary, post-secondary, graduate, or professional schooling in an accredited institution, public or private, or attendance at other formal programs in furtherance of the beneficiary's spiritual, athletic, or artistic education, including but not limited to payments for tuition, books,

fees, assessments, equipment, tutoring, transportation, and reasonable living expenses.

- (3) **Related Person** as to a particular individual is someone who is deemed to be "related or subordinate" to that individual under Section 672(o) of the Internal Revenue Code (as though that individual was a grantor).

(c) **Other Terms.**

- (1) Distributions that are to be made to a person's descendants, *per stirpes*, will be divided into equal shares, so that there will be one share for each living child (if any) of that person and one share for each deceased child who has then living descendants. The share of each deceased child will be further divided among his or her descendants on a *per stirpes* basis, by reapplying the preceding rule to that deceased child and his or her descendants as many times as necessary.
- (2) **Disabled or under a disability** means (i) being under the legal age of majority, (ii) having been adjudicated to be incapacitated, or (iii) being unable to manage properly personal or financial affairs because of a mental or physical impairment (whether temporary or permanent in nature). A written certificate executed by an individual's attending physician confirming that person's impairment will be sufficient evidence of disability under item (iii) above, and all persons may rely conclusively on such a certificate.
- (3) **Removal of a Trustee for cause** includes, without limitation, the following: the willful or negligent mismanagement of the trust assets by that individual Trustee; the abuse or abandonment of, or inattention to, the trust by that individual Trustee; a federal or state charge against that individual Trustee involving the commission of a felony or serious misdemeanor; an act of theft, dishonesty, fraud, embezzlement, or moral turpitude by that individual Trustee; or the use of narcotics or excessive use of alcohol by that individual Trustee.
- (4) The words *will* and *shall* are used interchangeably in this Trust Agreement and mean, unless the context clearly indicates otherwise, that the Trustee must take the action

indicated; as used in this Trust Agreement, the word may means that the Trustee has the discretionary authority to take the action but is not automatically required to do so.

**11.2 Powers of Appointment.** The following provisions relate to all powers of appointment under this Trust Agreement.

- (a) A general power of appointment granted to a person is one that can be exercised in favor of that person or his or her estate, his or her creditors, or the creditors of his or her estate.
- (b) A special power of appointment is any power that is not a general power.
- (c) A testamentary power of appointment (either general or special) is exercisable upon the powerholder's death by his or her Last Will or by a revocable trust agreement established by that person, but only by specific reference to the instrument creating the power. A "testamentary power of appointment" may not be exercised in favor of the person possessing the power.
- (d) In determining whether a person has exercised a testamentary power of appointment, the Trustee may rely upon an instrument admitted to probate in any jurisdiction as that person's Last Will, or upon any trust agreement certified to be valid and authentic by sworn statement of the trustee who is serving under that trust agreement. If the Trustee has not received written notice of such an instrument within six months after the powerholder's death, the Trustee may presume that the powerholder failed to exercise that power and will not be liable for acting in accordance with that presumption.

**11.3 Notices.** Any person entitled or required to give notice under this Trust Agreement shall exercise that power by a written instrument clearly setting forth the effective date of the action for which notice is being given. The instrument may be executed in counterparts.

**11.4 Certifications.**

- (a) **Facts.** A certificate signed and acknowledged by the Trustee stating any fact affecting the Trust Estate or the Trust Agreement will be conclusive evidence of such fact in favor of any transfer agent and any other person dealing in good faith with the Trustee. The Trustee may rely on a certificate signed and acknowledged by any beneficiary stating any fact concerning the Trust beneficiaries, including dates of



birth, relationships, or marital status, unless an individual serving as Trustee has actual knowledge that the stated fact is false.

(h) **Copy.** Any person may rely on a copy of this instrument (in whole or in part) certified to be a true copy by the Settlor; by any person specifically named as a Trustee (or successor Trustee); by any Corporate Trustee whether or not specifically named; or, if there are none of the above, by any then serving Trustee.

**11.5 Applicable Law.** All matters involving the validity and interpretation of this Trust Agreement are to be governed by Florida law. Subject to the provisions of this Trust Agreement, all matters involving the administration of a trust are to be governed by the laws of the jurisdiction in which the trust has its principal place of administration.

**11.6 Gender and Number.** Reference in this Trust Agreement to any gender includes either masculine or feminine, as appropriate, and reference to any number includes both singular and plural where the context permits or requires. Use of descriptive titles for articles and paragraphs is for the purpose of convenience only and is not intended to restrict the application of those provisions.

**11.7 Further Instruments.** The Settlor agrees to execute such further instruments as may be necessary to vest the Trustee with full legal title to the property transferred to this Trust.

**11.8 Binding Effect.** This Trust Agreement extends to and is binding upon the Settlor's Personal Representative, successors, and assigns, and upon the Trustee.

**Schedule A**  
**Initial Transfers to Trust**

Transfer of 6 shares of LIC Holdings, Inc.

***From the Desk of :***

***Joshua Ennio Zander Bernstein***

2753 NW 34th Street, Boca Raton, FL 33434

July 11, 2017

ADR & MEDIATIONS SERVICES, LLC

Diana Lewis

2765 Tecumseh Drive

West Palm Beach, FL 33409

(561) 758-3017 Telephone

dzlewis@aol.com

(Fla. Bar No. 351350)

**RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD LITEM OF JOSHUA BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF**

Attention Diana Lewis, Esq.,

My name is Joshua Ennio Zander Bernstein and it has come to my attention that you are an attorney and former Judge in Palm Beach County and Officer of the Court, allegedly acting as Guardian Ad Litem for me since since April 07, 2016 allegedly as a "minor child" of Eliot Ivan Bernstein and Candice Michelle Bernstein.

I make this voluntary request for you to now Cease and Desist all actions allegedly as my Guardian Ad Litem, turn over all records, discovery and information obtained in the course of your actions as my alleged Guardian and correct any and all frauds in all Courts or elsewhere impacted by this illegal Guardianship, including but not limited to, the Estate and Trust cases of my deceased grandparents, Simon and Shirley Bernstein.

(Page 1 of 2)

**RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD LITEM OF JOSHUA BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF**

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As I show in this letter, at all times relevant in these Estate and Trust cases both Ted Bernstein who is my uncle, his lawyer Alan Rose, lawyer Steven Lessne and yourself have all had actual knowledge that I was over the age of 18 before this Guardianship via a Guardian Ad Litem for minors was ever established and thus was never a "Minor". Therefore, since I was over the age of 18 years at the time of the "Guardianship" this could only occur after a "competency hearing" which of course has never occurred and you, Ted Bernstein, Alan Rose, Brian O'Connell and Steven Lessne have at all times had actual knowledge of these facts and the illegality of the Guardianship which appears to have been used as a predatory weapon against my family to interfere in proper rights of Inheritance and to cover up frauds in the cases.

Further, all of you actually know and have known that no "competency hearing" was ever held against me nor have I ever been provided ANY Due Process Notice or been served to appear in any proceeding or have an Opportunity to be heard at any of the relevant proceedings to date.

What is even more egregious about your conduct as a former Judge and done as an "Officer of the Court" is that you not only have continued in your actions as alleged Guardian in this illegal Guardianship despite being specifically advised that I was over the age of 18 years prior to the Guardianship itself, but have even gone as far as to give alleged "Consents" on my behalf to various actions by Ted Bernstein and Alan Rose and entered into "Settlements" on my behalf again giving "Consent" all without my knowledge, without my Consent and without any Notice of Opportunity to be heard provided to myself. In fact, as you actually know, you and I have never even spoken to one another.

**RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD  
LITEM OF JOSHUA BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF**

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I have come to learn that under Federal law under Title 18 USC Sec.242 it is a Federal Criminal Offense for Civil Rights Violations for 2 or more persons to conspire to Violate my US Constitutional rights, which have been violated by your actions in this case together in common with Attorney Alan Rose and Steven Lessne, Fiduciary Ted Bernstein and with the compliance and acquiescence of attorney Brian O'Connell as current Personal Representative of my grandfather Simon's Estate.

Please take notice that I have copied the US Dept of Justice Civil Rights Division head Tom Wheeler and offices of the FBI and US Attorney on this request.

I have further learned the following from the US Dept. of Justice Website:

**"Section 242 of Title 18 makes it a crime for a person acting under color of any law to willfully deprive a person of a right or privilege protected by the Constitution or laws of the United States.**

**For the purpose of Section 242, acts under "color of law" include acts not only done by federal, state, or local officials within the their lawful authority, but also acts done beyond the bounds of that official's lawful authority, if the acts are done while the official is purporting to or pretending to act in the performance of his/her official duties. Persons acting under color of law within the meaning of this statute include police officers, prisons guards and other law enforcement officials, as well as judges, care providers in public health facilities, and others who are acting as public officials. It is not necessary that the crime be motivated by animus toward the race, color, religion, sex, handicap, familial status or national origin of the victim.**

A handwritten signature in black ink is written over a circular stamp. The stamp contains the text "Page 3 of 49" and "FILED 04/19/22".

**RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD LITEM OF JOSHUA BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF**

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The offense is punishable by a range of imprisonment up to a life term, or the death penalty, depending upon the circumstances of the crime, and the resulting injury, if any.” See, <https://www.justice.gov/crt/deprivation-rights-under-color-law>.

Ted Bernstein, who is my uncle by blood, and his attorney Alan Rose have at all times known my Birthdate particularly in relation to exorbitant and fraudulent legal Fees billed after the passing of my grandfather Simon Bernstein and the refusal to release my car Registration to me, which had been a birthday gift to me from my Grandfather only days before he passed that Ted and others tried to claim was an asset of the Estate of my grandfather. My birthdate was specifically raised in those proceedings and the Guardian Ad Litem proceedings and thus, these parties at all times knew that I was not a “minor” at the time the predatory Guardian Ad Litem was approved.

You apparently accepted Guardian Ad Litem over me as a “minor”, however, I have been Sui Juris since my 18th birthday on August 27, 2015 having been born on August 27, 1997.

Having been over the age of 18 years and thus not a “minor” under Florida law as of August 27, 2015, the Petitions filed on January 04, 2016 in the Shirley Trust case and January 07, 2017 in the Oppenheimer case and the Orders appointing you as Guardian Ad Litem on March 01, 2016 in the Shirley Trust case and March 03, 2016 in the Oppenheimer case, and your Acceptance of the appointments in both cases on April 07, 2016 all were done illegally and with knowledge that I was Sui Juris at the time and therefore every action taken on my behalf through the Guardian Ad Litem must now be corrected to reflect your lack of proper and legal jurisdiction over me.

I have never spoken with you, met with you, granted you any authority over me and in any way enabled or allowed your acting in any capacity and in any matter on my behalf as an adult. This is a Cease and Desist demand to stop all further illegal acts on my behalf.

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10/27/2017



**RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD LITEM OF JOSHUA BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF**

On March 01, 2016, while I was Sui Juris, in CASE NO.: 502014CP003698XXXX (NB)

“Shirley Bernstein Trust” styled,

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Plaintiff,

v.

ALEXANDRA BERNSTEIN; ERIC  
BERNSTEIN; MICHAEL BERNSTEIN;  
MOLLY SIMON;  
PAMELA B. SIMON, Individually and  
as Trustee f/b/o Molly Simon under the  
Simon L. Bernstein Trust Dtd 9/13/12;  
ELIOT BERNSTEIN, individually, as  
Trustee f/b/o D.B., Ja. B. and Jo. B. under  
the Simon L. Bernstein Trust Dtd  
9/13/12, and on behalf of his minor  
children D.B., Ja. B. and Jo. B. [emphasis added]; JILL  
IANTONI, Individually, as Trustee f/b/o  
J.I. under the Simon L. Bernstein Trust  
Dtd 9/13/12, and on behalf of her Minor  
child J.I.; MAX FRIEDSTEIN; LISA  
FRIEDSTEIN, Individually, as Trustee  
f/b/o Max Friedstein and C.F., under the  
Simon L. Bernstein Trust Dtd 9/13/12,  
and on behalf of her minor child, C.F.,

Defendants.

in the Florida Probate Court an Order (SEE EXHIBIT 1 – GAL ORDER) was issued for  
Guardian Ad Litem based on pleadings filed that represented that the GAL was for minor  
children of Eliot and Candice. The Order states in part,

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**RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD LITEM OF JOSHUA BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF**

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"2. Eliot Bernstein's three children are among the class of Trust beneficiaries. Eliot seeks to use his role as parent and natural guardian of three trust beneficiaries to give him standing to continue his involvement in this case. The primary issue now raised is whether Eliot Bernstein should be permitted to continuing representing the interests of his minor children, as their parent and natural guardian, in this Trust Proceeding." **[emphasis added]**

"4. ...Eliot's individual interests are in conflict with the interests of his children. Under Florida law, a court should appoint a guardian ad litem when a parent's interest conflicts with the interest of her or her minor child. *Mistretta v. Mistretta*, 566 So. 2d 836, 83 7-38, (Fla. 1st DCA 1990) (best interests of a minor are not fully protected when adverse to the interests of the parent); *Florida Natl. Bank & Trust Co. at Miami v. Blake*, 155 So. 2d 798 (Fla. 3d DCA 1963) (court should have appointed a guardian ad litem for minor child when it was apparent that the interests of the minor conflicted with the interests of the mother and father); *Gilbertson v. Boggs*, 743 So. 2d 123 (Fla. 4th DCA 1999) (guardian ad litem should have been appointed when the parents' interests were adverse to the minor childs)." **[emphasis added]**

"5. ...Second, Fla. Stat. 731.303 (4) provides: "If the court determines that representation of the interest would otherwise be inadequate, the court may, at any time, appoint a guardian ad litem to represent the interests of ... a minor ..." **[emphasis added]**

On April 04, 2016, while I was Sui Juris, you were appointed as the Guardian Ad Litem to represent the interests of Eliot Bernstein's **MINOR** children. See (SEE EXHIBIT 2 –SHIRLEY TRUST GAL Order)

On March 03, 2016, while I was Sui Juris, in CASE NO.: 502014CP002815XXXXNB (IH) titled,

"OPPENHEIMER TRUST COMPANY OF DELAWARE,  
in its capacity as Resigned Trustee of the Simon  
Bernstein Irrevocable Trusts created for the benefit  
of Joshua, Jake and Daniel Bernstein,

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04/19/2022

**RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD LITEM OF JOSHUA BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF**

Petitioner,

vs.

ELIOT AND CANDICE BERNSTEIN,  
in their capacity as parents and natural  
guardians of JOSHUA, JAKE AND  
DANIEL BERNSTEIN, minors, [emphasis added]

Respondents.

in the Florida Probate Court an Order (SEE EXHIBIT 3 – GAL ORDER OPPENHEIMER) was issued. That Order states in part the following;

“...(the "Motion") filed by Petitioner, Oppenheimer Trust Company Of Delaware ("Oppenheimer"), in its capacity as the resigned trustee of three Irrevocable Trusts settled by Simon Bernstein on September 7, 2006 for the benefit of his grandchildren, minors, Joshua, Jake and Daniel Bernstein (the "Grandchildren Trusts").” [emphasis added]

“1. The sole beneficiaries of the Grandchildren Trusts, and the only real parties in interest in this litigation (other than Oppenheimer), are Joshua, Jake and Daniel Bernstein (the "Minor Beneficiaries"). Neither Eliot nor Candice Bernstein (the "Bernsteins") were sued in their individual capacities by Oppenheimer, nor have they moved for, or been granted, permission to intervene in their individual capacities. They have been afforded standing in these proceedings, to date, solely as the parents and natural guardians of the Minor Beneficiaries. [emphasis added]

“2. The Bernsteins have been shown to have multiple conflicts of interest with the Minor Beneficiaries...All of the above, and certainly in combination, render the Bernsteins inappropriate and inadequate representatives for the Minor Beneficiaries in this litigation. [emphasis added]

On April 07, 2016, while I was Sui Juris, you filed a “NOTICE OF ACCEPTANCE OF APPOINTMENT AS GUARDIAN AD LITEM FOR Jo.B., Ja.B. AND D.B.IN THE ABOVE STYLED CASE” in the Shirley Trust Construction case (Filing # 40000163 E-Filed 04/07/2016 04:06:21 PM) (SEE EXHIBIT 4 – NOTICE) which states in part;

FILED  
APR 19 2022  
CLERK OF COURT  
JUDICIAL CIRCUIT IN AND FOR  
DADE COUNTY, FLORIDA

**RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD LITEM OF JOSHUA BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF**

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"NOTICE OF ACCEPTANCE OF APPOINTMENT AS GUARDIAN AD LITEM FOR Jo.B., Ja.B. AND D.B. IN THE ABOVE STYLED CASE COMES NOW Diana Lewis and notifies the court of her acceptance of appointment as Guardian ad litem for Eliot Bernstein's minor children, Jo.B., Ja.B. and D.B. pursuant to this court's order dated April 4, 2016, and the terms and conditions set forth therein." **[emphasis added]**

Similarly, on April 07, 2016, while I was Sui Juris, you filed a "NOTICE OF ACCEPTANCE OF APPOINTMENT AS GUARDIAN AD LITEM FOR JOSHUA, JAKE AND DANIEL BERNSTEIN IN THE ABOVE STYLED CASE" in the Oppenheimer Case (Filing # 39999717 E-Filed 04/07/2016 04:03:08 PM), which states in part;

COMES NOW Diana Lewis and notifies the court of her acceptance of appointment as Guardian ad litem for JOSHUA, JAKE and DANIEL BERNSTEIN (the "Minor Beneficiaries") pursuant to this court's order dated April 4, 2016. **[emphasis added]**

I am unaware of any Guardian Ad Litem Orders entered in the Simon and Shirley Probate Cases ( Case # 502012CP004391XXXXSB – Simon Bernstein Estate and Case # 502011CP000653XXXXSB – Shirley Bernstein Estate) giving you any guardianship powers over me to make any representations or take any actions on my behalf in those cases.

The March 01, 2016 Oppenheimer Order states,

"4. For the above reasons, the guardian ad /item appointed in Case No.: 502014CP003698XXXXNB shall be deemed appointed simultaneously as the guardian ad /item for the Minor Beneficiaries in this case, with sole and exclusive authority to represent the Minor Beneficiaries' interests in this case Jo.B., Ja.B. AND D.B. IN THE ABOVE STYLED CASE" **[emphasis added]**

The Shirley Bernstein Trust Order Appointing Guardianship is similarly limited to legal authority of the guardianship in that case only and only for MINOR CHILDREN.

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July 11, 2022

**RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD LITEM OF JOSHUA BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF**

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As you can see from my birthday listed above I turned 18 on August 27, 2015 and AT NO TIME IN THESE PROCEEDINGS WAS I A MINOR AND I WAS SUI JURIS WHEN ORDERS WERE ISSUED AND PLEADINGS WERE MADE BY ATTORNEYS AT LAW ALAN B. ROSE and STEVEN LESSNE to gain a predatory guardianship on me while I was an Adult by falsely pleading to the Court that I was a Minor and I have been advised that this guardianship is in violation of Florida Criminal and Civil Statutes and perhaps Federal law.

The 2016 Florida Statutes - Title XLIII - DOMESTIC RELATIONS - Chapter 744 - GUARDIANSHIP

744.521 Termination of guardianship.—**When a ward becomes sui juris** or is restored to capacity, when the guardian has been unable to locate the ward through diligent search, or, for a guardian of the property, when the property subject to the guardianship has been exhausted, the guardian shall file a final report and receive his or her discharge. A guardian of the person is discharged without further proceeding upon filing a certified copy of the ward's death certificate. The court may require proof of the removal of incapacity.

History.—s. 1, ch. 74-106; ss. 21, 26, ch. 75-222; s. 4, ch. 86-120; s. 89, ch. 89-96; s. 63, ch. 90-271; s. 1110, ch. 97-102.

Note.—Created from former s. 746.12.

"Minor Ward Reaches 18 Unless the minor is incapacitated, at the age of 18 he or she is no longer a minor and is deemed to be legally old enough to manage his or her own finances or property. The guardianship is terminated and the assets are distributed to the minor."

[https://umshare.miami.edu/web/wda/ethics/guardianship\\_rev1-07.pdf](https://umshare.miami.edu/web/wda/ethics/guardianship_rev1-07.pdf)

No adult Guardianship proceedings under The 2016 Florida Statutes - Title XLIII - DOMESTIC RELATIONS GUARDIANSHIP Chapter 744 took place for me as legally required as I was an adult at the time guardianship was sought for and gained over me and no capacity hearing was held at any time. As you can see from the Pleadings and Orders submitted in the case and outlined herein the Guardian Ad Litem was ILLEGALLY gained over me while an adult and I

Page 9 of 20  
4/19/20



**RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD LITEM OF JOSHUA BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF**

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was misrepresented to the Court as a minor by Officers of the Court, Alan B. Rose, Esq. and Steven Lessne, Esq. and Fiduciary of the Estates and Trusts of my grandparents Simon and Shirley Bernstein, my uncle Ted Bernstein. I have been made aware that my uncle Ted and all other parties knew at the time my legal age and that I was Sui Juris.

Therefore, due to your lack of legal authority over me despite any Court Orders gained through simulated legal process, immediately;

1. **CEASE AND DESIST** from any further representations of myself, Joshua Bernstein, in any proceedings, settlements or other matters involving me.
2. **NOTIFY** the Florida Court that ALL OF YOUR PRIOR REPRESENTATIONS AND ACTS ON BEHALF OF JOSHUA BERNSTEIN are and always have been improper and illegal and cease and desist this KNOWINGLY, GROSS, WILLFUL, WANTON and RECKLESS criminal violation of your fiduciary duties as a Guardian Ad Litem .
3. **WITHDRAW** any and all Consent you have given in any matters relating to Joshua Bernstein.
4. **FILE** immediately within or without the final report the fact that I, Joshua Bernstein, was placed as an adult illegally in a guardianship for minors and that no legal adult guardianship proceedings were held giving you legal authority from the onset of your legal representations on my behalf, receive discharge and turn over all records and properties regarding the guardianships as required.
5. **MAKE NO** further appearances in Court on my behalf or state in any pleadings consent on my behalf or take any any action whatsoever on my behalf claiming that you are a acting as Guardian Ad Litem for me.

FILED  
APR 19 2022  
CLERK OF COURT  
JOSHUA BERNSTEIN

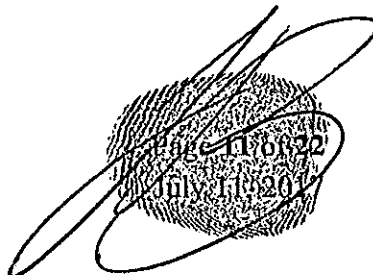


**RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD LITEM OF JOSHUA BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF**

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6. **NOTIFY ALAN ROSE AND STEVEN LESSNE** to similarly take all actions to remove and strike all pleadings, orders, settlements, etc. in any court cases made on my behalf as a minor and cease and desist any further acts on my behalf.
7. **NOTIFY ALL COURTS** affected by your actions that you have never had proper guardianship for me as an adult.
8. **NOTIFY ALL COURTS** that you have made improper representations in pleadings and hearings in the Simon and Shirley Bernstein Estate cases and the Oppenheimer cases where you have never been granted a legal guardianship over me. The Courts to be notified and cases related to your actions that have been affected by the misconduct shall include but not be limited to,
- a. The Florida Probate Court – HONORABLE Judge Rosemarie Scher, cases:
- i. Case # 502012CP004391XXXXSB – Simon Bernstein Estate
  - ii. Case # 502015CP001162XXXXNB – Simon Bernstein Trust to Remove Ted Bernstein
    - 1. OLD CASE # Was Civil but Colin transferred to Probate ?  
502014CA014637XXXXMB
  - iii. Case # 502011CP000653XXXXSB – Shirley Bernstein Estate
  - iv. Case # 502014CP003698XXXXNB – Shirley Trust Construction
  - v. Case # 502014CP002815XXXXSB – Oppenheimer v. Bernstein Minor Children
  - vi. Case # 502015CP002717XXXX Colin Closed and transferred to Coates Eliot Bernstein v. Simon Estate Case for Claims
  - vii. Case # 502014CA014637XXXXMB BERNSTEIN, ELIOT I VS BERNSTEIN, THEODORE S
  - viii. Case # 50-2010-CP-003128-XXXX-SB – Joshua Bernstein alleged 2010 Trust Case Colin
  - ix. Case # 50-2010-CP-003125-XXXX-SB – Jacob Jake Bernstein alleged 2010 Trust Case Colin
  - x. Case # 50-2010-CP-003123-XXXX-SB – Daniel Danny Bernstein alleged 2010 Trust Case Colin

Page 11 of 49  
04/19/22



**RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD LITEM OF JOSHUA BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF**

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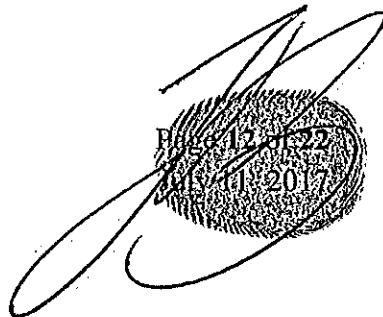
b. The Florida 15th Judicial Civil Circuit Court and HONORABLE JUDGE

Cymonie Rowe, case:

i. Case # 502012CA013933XXXXMB William E. Stansbury v. Ted S. Bernstein et al. -

c. The Florida 4<sup>th</sup> District Court of Appeals – Note – Do not submit any information to Chief Judge Corey Ciklin who is conflicted in these matters already as being a former law partner of Personal Representative of the Estate of Simon Bernstein, Brian O'Connell's law firm, Ciklin Lubitz Martens & O'Connell, where Judge Ciklin already has Sua Sponte removed himself from proceedings he was involved with in these matters and removed his name from several prior issued Orders at that court.

- i. Case 15-3849 ELIOT BERNSTEIN ESTATE OF SIMON BERNSTEIN
- ii. Case 16-1449 ELIOT IVAN BERNSTEIN OPPENHEIMER TRUST CO. OF DELAWARE, ET AL.
- iii. Case 16-1476 ELIOT IVAN BERNSTEIN OPPENHEIMER TRUST CO. OF DELAWARE, ET AL.
- iv. Case 16-2249 ELIOT IVAN BERNSTEIN OPPENHEIMER TRUST CO. OF DELAWARE, ET AL.
- v. Case 16-0222 ELIOT IVAN BERNSTEIN TED BERNSTEIN, AS TRUSTEE, ET AL.
- vi. Case 16-1478 ELIOT IVAN BERNSTEIN TED BERNSTEIN, AS TRUSTEE, ETC., ET AL.
- vii. Case 16-3314 ELIOT IVAN BERNSTEIN TED BERNSTEIN, AS TRUSTEE, ETC., ET AL.
- viii. Case 16-0064 ELIOT IVAN BERNSTEIN TED BERNSTEIN, AS TRUSTEE, ET AL.
- ix. Case 16-3162 ELIOT IVAN BERNSTEIN WILLIAM E. STANSBURY, et al.
- x. Case 16-4120 ELIOT IVAN BERNSTEIN WILLIAM E. STANSBURY, et al.



04/19/2022

**RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD LITEM OF JOSHUA BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF**

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d. The Florida Supreme Court – Note – Do not submit any information to Chief Judge Jorge Labarga as he is conflicted with the Eliot Bernstein family in these matters.

i. SC16-29

e. The United States District Court Northern District of Illinois Case 1:13-cv-03643 Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 v. Heritage Union Life Insurance Company – HONORABLE Judge John Robert Blakey and Chief Judge Ruben Castillo.

i. Case # 13-cv-03643 - Federal Lawsuit in the US District Court of Eastern Illinois

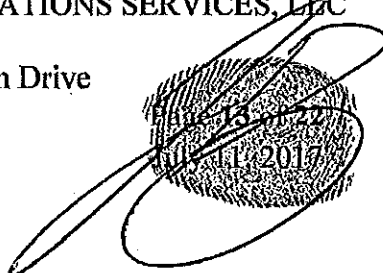
f. United States Court of Appeals for the Seventh Circuit - Chief Judge Diane P. Wood in relation to the Lower Court Case 1:13-cv-03643 Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 v. Heritage Union Life Insurance Company.

i. Case No. 17-1461 APPEAL UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

9. **TURN OVER** all of your professional and individual insurance policies and bonding information to me as claims against you individually and professionally and your firm, will be forthcoming for the massive damages caused to me from your breaches of fiduciary duties and other misconduct. Your firm appears as follows and I believe it was set up specifically for liability purposes for these matters with my family, immediately prior to your acceptance of Guardian Ad Litem for me:

ADR & MEDIATIONS SERVICES, LLC  
Diana Lewis  
2765 Tecumseh Drive

10/11/2017



**RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD LITEM OF JOSHUA BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF**

---

West Palm Beach, FL 33409  
(561) 758-3017 Telephone  
Email: [dzlewis@aol.com](mailto:dzlewis@aol.com)  
By: /s/ Diana Lewis  
(Fla. Bar No. 351350)

10. **TURN OVER** all records, documents, emails, faxes, information of any kind regarding me obtained by and during these illegal actions to my attention at my permanent address of, 2753 NW 34<sup>th</sup> Street, Boca Raton, FL 33434.

I have been notified that on repeated occasions over the past year my father and mother Eliot and Candice Bernstein have notified you directly of my Sui Juris status and you have refused to take any actions to end the improper Guardian Ad Litem and continue to make representations, agreements and settlements on my behalf and hopefully this notice will cause you to **IMMEDIATELY CEASE AND DESIST THIS ILLEGAL CONDUCT.**

I have also been made aware that my father and mother, Eliot and Candice Bernstein have notified state and federal authorities of your misconduct on my behalf, including but not limited to acts such as,

1. Dissolving various Trusts in my name set up by my grandparents,
2. Dissolving Bernstein Family Realty, LLC, set up by my grandparents of which I am a 33% owner,
3. Making appearances in various court and legal proceedings illegally on my behalf,
4. Consenting to various legal agreements illegally on my behalf,
5. Consenting to various settlements illegally on my behalf.

I have learned that in Case # 502014CP003698XXXXNB – Shirley Bernstein Trust in the Fifteenth Judicial Probate Court you are acting under an alleged Trust created in my name that I

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CLERK OF COURT  
JUDICIAL CIRCUIT IN AND FOR  
THE FIFTEENTH JUDICIAL CIRCUIT  
WEST PALM BEACH, FLORIDA

**RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD LITEM OF JOSHUA BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF**

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was sued as a defendant under with my father, Eliot Bernstein, as Trustee and where I have never received formal notice of any such trust, nor do I believe my parents or any other party, including the courts have received, although I am a beneficiary allegedly under this trust. The Trust I am sued under is titled,

ELIOT BERNSTEIN, individually, as  
Trustee f/b/o D.B., Ja. B. and Jo. B. under  
the Simon L. Bernstein Trust Dtd  
**9/13/12, and on behalf of his minor**  
**children D.B., Ja. B. and Jo. B.**

Please provide a copy of the "Simon L. Bernstein Trust Dtd 9/13/12" and any subtrusts held thereunder in my name supposedly created on 9/13/12 the date of my grandfather's death. If you are in possession of any such trust or subtrust OR ANY OTHER TRUST in my name, please instantly turn over all records regarding this legal entity I have been sued under and that you are acting illegally as a Guardian Ad Litem over my person in such legal action under such trust.

I have done preliminary research into your name online since learning of this predatory Guardian Ad Litem placed knowingly upon me as an adult and have learned that you are a FORMER Judge and no longer a Florida Registered Judge who has lost her judgeship to Jennifer Ticktin since on or about 2014<sup>1 2 3</sup> where I learned from the attached articles, "But Ticktin, a 35-year-old

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<sup>1</sup> "Ugly PBC judicial campaign pits Diana Lewis and Jessica Ticktin" By Jane Musgrave - Palm Beach Post Staff Writer

Updated: 12:41 p.m. Friday, August 08, 2014 | Posted: 7:00 a.m. Friday, August 08, 2014

<http://www.mypalmbeachpost.com/news/local-govt--politics/ugly-pbc-judicial-campaign-pits-diana-lewis-and-jessica-ticktin/NczV3oHgQuXksyXpl11Jdi>

<sup>2</sup> "Race for Palm Beach County Circuit Judge Group 14 seat is personal" July 19, 2014 | By Brittany Shammass, Sun Sentinel

[http://articles.sun-sentinel.com/2014-07-19/news/fl-election-palm-circuit-judges-14-20140719\\_1\\_lewis-incumbent-judge-ticktin-law-group](http://articles.sun-sentinel.com/2014-07-19/news/fl-election-palm-circuit-judges-14-20140719_1_lewis-incumbent-judge-ticktin-law-group)





**RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD LITEM OF JOSHUA BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF**

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partner at Ticktin Law Group and a Boca Raton resident, says she targeted Lewis for a reason. She cited a 2013 Palm Beach County Bar poll in which Lewis ranked last among 34 circuit court judges in categories including knowledge and application of the law, impartiality and judicial demeanor. "I think that right now we have an issue with the incumbent judge," Ticktin said. "Last time she was given a second chance, and I don't think that she did well with that second chance. I think it's time for change." In noting your bar association number above I believe that as both a former judge and current registered attorney at law I need not educate you on your obligations to notify all tribunals, criminal and civil and all parties with any liabilities resulting from your and others you worked in conspire with actions, as required by both State and Federal - Civil, Criminal and Ethical Rules and Statutes.

That these Knowingly, Gross, Willful, Wanton and Reckless Acts, which appear as Financial Exploitation of an Adult through an ILLEGAL GUARDIAN AD LITEM FOR A MINOR and further appear part of a larger conspiracy against the rights of my father, my mother and my brothers are simultaneously being forwarded to state and federal criminal authorities to investigate and prosecute any prior and future criminal acts, so please **govern yourself accordingly** in any future actions you may take in any matters relating to my family and myself.

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<sup>3</sup> "Palm Beach Judge Diana Lewis Loses Judicial Seat to Challenger Raising Issues with Demeanor" Florida You Judge Wednesday, August 27th, 2014 at 5:26 pm by admin by Haydee Oropesa  
<http://www.floridayoujudge.com/palm-beach-judge-diana-lewis-loses-judicial-seat-to-challenger-raising-issues-with-demeanor/>





**RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD  
LITEM OF JOSHUA BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF**

I authorize this Statement and Cease and Desist Request to be filed in any and all state and federal proceedings as relevant and necessary.

Sincerely,

X: \_\_\_\_\_

  
Joshua Ennio Zander Bernstein  
2753 NW 34th Street  
Boca Raton, FL 33434  


Dated: \_\_\_\_\_

7/11/17

Witness:

X: \_\_\_\_\_

  
Name: Jacob Bernstein  
2753 NW 34th Street  
Boca Raton, FL 33434  


Dated: \_\_\_\_\_

7/11/17

NOT A CERTIFIED COPY

EXHIBIT 1

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**IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA**

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXNB

Plaintiff,

v.

ALEXANDRA BERNSTEIN; ERIC BERNSTEIN;  
MICHAEL BERNSTEIN; MOLLY SIMON;  
PAMELA B. SIMON, Individually and as Trustee  
f/b/o Molly Simon under the Simon L. Bernstein  
Trust Dtd 9/13/12; ELIOT BERNSTEIN,  
individually, as Trustee f/b/o D.B., Ja. B. and Jo. B.  
under the Simon L. Bernstein Trust Dtd 9/13/12, and  
on behalf of his minor children D.B., Ja. B. and Jo.  
B.; JILL IANTONI, Individually, as Trustee f/b/o J.I.  
under the Simon L. Bernstein Trust Dtd 9/13/12, and  
on behalf of her Minor child J.I.; MAX  
FRIEDSTEIN; LISA FRIEDSTEIN, Individually, as  
Trustee f/b/o Max Friedstein and C.F., under the  
Simon L. Bernstein Trust Dtd 9/13/12, and on behalf  
of her minor child, C.F.,

Defendants.

**ORDER ON SUCCESSOR TRUSTEE'S MOTION TO  
APPOINT A GUARDIAN AD LITEM; FOR A GAG ORDER TO PROTECT THE  
GUARDIAN AND OTHERS; AND TO STRIKE ELIOT BERNSTEIN'S FILINGS**

THIS CAUSE came before the Court for evidentiary hearing on February 25, 2016, on  
Successor Trustee's Motion for Appointment of a Guardian Ad Litem to Represent the Interests of  
Eliot Bernstein's Children etc. (the "Motion"). The Court, having considered the record, heard  
argument of counsel and being otherwise fully advised in the premises, hereby

**ORDERS AND ADJUDGES:**

1. This Court determined after a trial held on December 15, 2015 that the beneficiaries of The Shirley Bernstein Trust Agreement dated 5/20/2008 (the "Trust") are Simon Bernstein's "then living grandchildren." Under that ruling, Simon's children – including Eliot Bernstein – are not beneficiaries of the Trust. This Court entered a written order dated February 1, 2016, determining Eliot Bernstein lacks standing to participate in this proceeding and striking his individual filings.

2. Eliot Bernstein's three children are among the class of Trust beneficiaries. Eliot seeks to use his role as parent and natural guardian of three trust beneficiaries to give him standing to continue his involvement in this case. The primary issue now raised is whether Eliot Bernstein should be permitted to continuing representing the interests of his minor children, as their parent and natural guardian, in this Trust Proceeding.

3. ~~Despite his status as natural guardian, Eliot will not be permitted to do so, and~~ The Court will appoint a Guardian ad Litem, because there is a conflict of interest between the parent and the children, and because Eliot Bernstein has proven to be an inadequate representative of the best interests of his children. jrp

4. First, as to the conflict, Eliot's position throughout the case and at trial was that he was a beneficiary of the Trust. He continued advancing that position after trial by prosecuting an appeal of the December 16, 2015 Final Judgment. Eliot's individual interests are in conflict with the interests of his children. Under Florida law, a court should appoint a guardian ad litem when a parent's interest conflicts with the interest of her or her minor child. *Mistretta v. Mistretta*, 566 So. 2d 836, 837-38 (Fla. 1st DCA 1990) (best interests of a minor are *not* fully protected when adverse to the interests of the parent); *Florida Nat. Bank & Trust Co. at Miami v. Blake*, 155 So. 2d 798 (Fla. 3d DCA 1963) (court should have appointed a guardian ad litem for minor child when it was

apparent that the interests of the minor conflicted with the interests of the mother and father); *Gilbertson v. Boggs*, 743 So. 2d 123 (Fla. 4th DCA 1999) (guardian ad litem should have been appointed <sup>when</sup> ~~then~~ the parents' interests were adverse to the minor child).

5. Second, Fla. Stat. 731.303(4) provides: "If the court determines that representation of the interest would otherwise be inadequate, the court may, at any time, appoint a guardian ad litem to represent the interests of ... a minor ..." Based upon the evidence presented and the Court's observations at the trial in December 2015 and at the evidentiary hearing on February 25, 2016, and

based upon the Court's review of various motions filed by Eliot Bernstein since the trial, it is <sup>in fact, his actions are adverse & destructive to the children's interest</sup> apparent Eliot Bernstein is not an adequate representative of the best interests of his children. <sup>JB</sup>

6. Eliot Bernstein states that his agenda includes ridding the court system of corruption among judges, lawyers and fiduciaries, regardless of the cost <sup>to</sup> the beneficiaries. He appears to have no interest in the swift and efficient administration of the Shirley Bernstein Trust. He has taken actions to hinder and delay the administration of the Trust, and caused waste of Trust assets to respond to his assertions.

7. To the extent not already covered by this Court's Order dated February 1, 2016, Eliot Bernstein is barred from any further participation in this action, whether individually or as purported parent and natural guardian. Any and all pending motions, claims, or other filings by Eliot Bernstein,

In addition, under section 744.3025, the court may appoint a guardian ad litem to represent a minor's interest before approving a settlement of the minor's portion of any cause of action in which the gross settlement of the claim exceeds \$15,000 if the court believes a guardian ad litem is necessary to protect the minor's interest, and "shall appoint a guardian ad litem to represent the minor's interest before approving a settlement of the minor's claim in a case in which the gross settlement involving a minor equals or exceeds \$50,000." Here, it is likely that there will be a settlement at some point in which each of minors receives a substantial distribution, and it is likely Eliot will oppose any such settlement.

on behalf of his children, <sup>are</sup> ~~is~~ hereby stricken from the record, without prejudice to the rights of the Guardian Ad Litem to take whatever actions are deemed appropriate.

8. The parties shall attempt to mutually agree on a guardian ad litem. The Court will appoint whomever the parties agree upon within the next three business days. Eliot Bernstein may participate in such discussions. To the extent the parties, including Eliot Bernstein, are unable to agree on a guardian ad litem, upon notice from the Trustee's counsel the Court shall randomly ~~select~~ <sup>each of the parties shall submit a list of three names of potential Guardian Ad Litem's, each of whom has agreed to appoint a guardian ad litem for Ja.B., Jo.B. and D.B. or schedule a further hearing to appoint a</sup> ~~accept the appointment if selected. These lists shall be filed with the Clerk with courtesy copy to the undersigned, no later than 10 days from the date of~~

9. The Guardian Ad Litem will have full power and autonomy to represent the interests of the children of Eliot Bernstein, subject to the jurisdiction and review of this Court. The Guardian Ad Litem will be entitled to petition the Court for an award of attorneys' fees to be paid out of the gross proceeds of any recovery, distributions or inheritance to be received by Ja.B., Jo.B. and/or D.B.

10. To protect the integrity and independence of the guardian, Eliot Bernstein and all persons acting in concert with him: (a) shall <sup>not</sup> ~~make no effort to~~ contact, email or otherwise communicate with the Guardian Ad Litem except at the request of the Guardian Ad Litem; (b) shall ~~make no statement of any kind about the guardian, nor post information about the guardian on the internet in any fashion; and (c) shall not in any way threaten or harass the guardian. This Court alone shall supervise the guardian, and all information concerning this guardianship shall be treated as private and confidential. Any violation of this order may subject the violator to severe sanctions for contempt of court. The Court will use the full measure of its coercive powers to ensure compliance with this Order.~~

<sup>proposed</sup>  
 \* Parties shall furnish a <sup>proposed</sup> Order appointing G.A.L. with the lists. The Court will act without further hearing on the appointment, if possible.





11. The Court reserves jurisdiction to enforce all terms of this Order, and to oversee the service of the guardian ad litem appointed.

DONE and ORDERED in Chambers, North County Courthouse on 3-1-16, 2016.

  
HONORABLE JOHN L. PHILLIPS

cc: Attached service list

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SERVICE LIST Case No.: 502014CP003698XXXXNBIJ

Eliot Bernstein, individually  
and Eliot and Candice Bernstein,  
as Parents and Natural Guardians of  
D.B., Ja. B. and Jo. B., Minors

2753 NW 34th Street  
Boca Raton, FL 33434  
(561) 245-8588 - Telephone  
(561) 886-7628 - Cell  
(561) 245-8644 - Facsimile

Email: Eliot I. Bernstein ([iviewit@iviewit.tv](mailto:iviewit@iviewit.tv))

John P. Morrissey, Esq.  
330 Clematis Street, Suite 213  
West Palm Beach, FL 33401

(561) 833-0866 - Telephone  
(561) 833-0867 - Facsimile

Email: John P. Morrissey  
([john@jmorrisseylaw.com](mailto:john@jmorrisseylaw.com))

Counsel for Molly Simon, Alexandra Bernstein,  
Eric Bernstein, Michael Bernstein

Lisa Friedstein, individually and as trustee for  
her children, and as natural guardian for M.F.  
and C.F., Minors; and Max Friedstein  
[lisa.friedstein@gmail.com](mailto:lisa.friedstein@gmail.com)

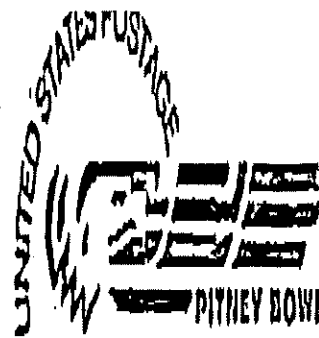
Jill Iantoni, individually and as trustee for her  
children; and as natural guardian for J.I. a minor  
[jilliantoni@gmail.com](mailto:jilliantoni@gmail.com)

Alan Rose, Esq.  
Mrachek Fitzgerald Rose  
Konopka Thomas & Weiss, P.A.  
505 S Flagler Drive, Suite 600  
West Palm Beach, FL 33401  
(561) 655-2250 - Telephone  
(561) 655-5537 - Facsimile  
Email: [arose@mrachek-law.com](mailto:arose@mrachek-law.com)

Pamela Beth Simon  
303 E. Wacker Drive, Suite 2725  
Chicago, IL 60601  
Email: [psimon@stpcorp.com](mailto:psimon@stpcorp.com)

Brian M. O'Connell, Esq.  
Joielle A. Foglietta, Esq.  
Ciklin Lubitz Martens & O'Connell  
515 N. Flagler Dr., 20th Floor  
West Palm Beach, FL 33401  
561-832-5900 - Telephone  
561-833-4209 - Facsimile  
Email: [boconnell@ciklinlubitz.com](mailto:boconnell@ciklinlubitz.com);  
[jfoglietta@ciklinlubitz.com](mailto:jfoglietta@ciklinlubitz.com);  
[service@ciklinlubitz.com](mailto:service@ciklinlubitz.com);  
[slobdell@ciklinlubitz.com](mailto:slobdell@ciklinlubitz.com)

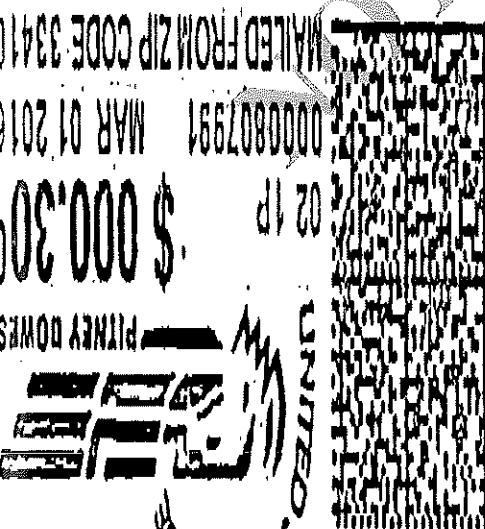
JOHN L. PHILLIPS  
CIRCUIT JUDGE  
NORTH COUNTY COURTHOUSE  
3188 PGA BOULEVARD  
PALM BEACH GARDENS, FL 33410



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Eliot Bernstein and Candice Bernstein  
2753 NW 34<sup>th</sup> Street  
Boca Raton, FL 33434



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EXHIBIT 2

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**IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA**

**TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,**

**Probate Division  
Case No.: 502014CP003698XXXXNBIH**

**Plaintiff,**

**v.**

**ALEXANDRA BERNSTEIN; ERIC BERNSTEIN;  
MICHAEL BERNSTEIN; MOLLY SIMON;  
PAMELA B. SIMON, Individually and as Trustee  
f/b/o Molly Simon under the Simon L. Bernstein  
Trust Dtd 9/13/12; ELIOT BERNSTEIN,  
individually, as Trustee f/b/o D.B., Ja. B. and Jo. B.  
under the Simon L. Bernstein Trust Dtd 9/13/12, and  
on behalf of his minor children D.B., Ja. B. and Jo.  
B.; JILL IANTONI, Individually, as Trustee f/b/o J.I.  
under the Simon L. Bernstein Trust Dtd 9/13/12, and  
on behalf of her Minor child J.I.; MAX  
FRIEDSTEIN; LISA FRIEDSTEIN, Individually, as  
Trustee f/b/o Max Friedstein and C.F., under the  
Simon L. Bernstein Trust Dtd 9/13/12, and on behalf  
of her minor child, C.F.,**

**Defendants.**

**ORDER APPOINTING DIANA LEWIS AS GUARDIAN AD LITEM FOR  
ELIOT BERNSTEIN'S CHILDREN, IO.B.: JA. B.: and D.B.**

THIS CAUSE came before the Court at an evidentiary hearing held on February 25, 2016, on Successor Trustee's Motion for Appointment of a Guardian Ad Litem to Represent the Interests of Eliot Bernstein's Children etc. (the "Motion"). Having considered the Motion and the arguments of the parties, taken judicial notice of the matters requested in the Motion, and being otherwise duly advised in the premises, the Court entered an Order in this matter, and a companion order in Case No. 502014CP002815XXXXNB, granting motions to appoint a guardian ad litem for Eliot's

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children, Jo.B., Ja.B. and D.B., and setting forth a protocol for selecting a guardian ad litem. Having received the parties' notices contemplated under the companion order, the Court hereby appoints a guardian ad litem as follows:

1. Diana Lewis is hereby appointed as the guardian ad litem for Jo.B., Ja.B. and D.B. in this case, with sole and exclusive authority to represent their interests in this case. The guardian ad litem shall be entitled to petition the Court for reasonable compensation for his/her services, to be paid out of the gross proceeds of any recovery, distributions or inheritance to be received by the Jo.B., Ja.B. and D.B. from the Shirley Bernstein Trust u/a/d May 20, 2008, as amended, the Simon Bernstein Trust, and/or the Estates of Simon or Shirley Bernstein.

2. The guardian ad litem shall file an acceptance of appointment with this Court, with a copy to the parties listed at the end of this Order, within 5 business of the date of this Order; otherwise, the parties shall notify the Court by letter that the appointment has not been accepted, in which case the Court will either appoint an alternate guardian ad litem without further hearing or hold an additional hearing to select an alternate guardian ad litem.

3. The guardian ad litem shall have sufficient time after his/her acceptance of this appointment to within which to prepare necessary court filings and prepare for mediation as ordered by the Court at a hearing held on March 7, in the related case of Estate of Simon Bernstein.

4. Trustee and the guardian ad litem shall confer in good faith regarding a resolution of this matter and/or a time frame within which to try any unresolved issues.

5. Pursuant to the Order dated March 1, 2016, the Guardian Ad Litem will have full power and autonomy to represent the interests of the children of Elliot Bernstein, subject to the jurisdiction and review of this Court. The Guardian Ad Litem will be entitled to petition the Court

for an award of attorneys' fees to be paid out of the gross proceeds of any recovery, distributions or inheritance to be received by Ja.B., Jo.B, and/or D.B,

6. To protect the integrity and independence of the guardian, Elliot Bernstein and all persons acting in concert with him: (a) shall not contact, email or otherwise communicate with the Guardian Ad Litem except at the request of the Guardian Ad Litem; and (b) shall not in any way threaten or harass the guardian. This Court alone shall supervise the guardian. Any violation of this order may subject the violator to severe sanctions for contempt of court. The Court will use the full measure of its coercive powers to ensure compliance with this Order.

7. The guardian ad litem shall notify this Court and Trustee of any actions taken by Eliot and/or Candice Bernstein which interfere with the guardian ad litem's duties hereunder.

DONE and ORDERED in Chambers, North County Courthouse on 4-4, 2016.

  
HONORABLE JOHN L. PHILLIPS

cc: Attached service list

**SERVICE LIST** Case No.: 502014CP003698XXXXNBIH

Eliot Bernstein and Candice Bernstein,  
as Parents of  
D.B., Ja. B. and Jo. B, Minors  
2753 NW 34th Street  
Boca Raton, FL 33434  
(561) 245-8588 - Telephone  
(561) 886-7628 - Cell  
(561) 245-8644 - Facsimile  
Email: Eliot I. Bernstein ([iviewit@iviewit.tv](mailto:iviewit@iviewit.tv))

John P. Morrissey, Esq.  
330 Clematis Street, Suite 213  
West Palm Beach, FL 33401  
(561) 833-0866 - Telephone  
(561) 833-0867 - Facsimile  
Email: John P. Morrissey  
([john@jmorrisseylaw.com](mailto:john@jmorrisseylaw.com))  
Counsel for Molly Simon, Alexandra Bernstein,  
Eric Bernstein, Michael Bernstein.

Lisa Friedstein, individually and as trustee for  
her children, and as natural guardian for M.F.  
and C.F., Minors; and Max Friedstein  
[lisa.friedstein@gmail.com](mailto:lisa.friedstein@gmail.com)

Jill Iantoni, individually and as trustee for her  
children, and as natural guardian for J.I. a minor  
[jilliantoni@gmail.com](mailto:jilliantoni@gmail.com)

Alan Rose, Esq.  
Mrachek Fitzgerald Rose  
Konopka Thomas & Weiss, P.A.  
505 S Flagler Drive, Suite 600  
West Palm Beach, FL 33401  
(561) 655-2250 - Telephone  
(561) 655-5537 - Facsimile  
Email: [arose@mrachek-law.com](mailto:arose@mrachek-law.com)

Pamela Beth Simon  
303 E. Wacker Drive, Suite 2725  
Chicago, IL 60601  
Email: [psimon@stpcorp.com](mailto:psimon@stpcorp.com)

Brian M. O'Connell, Esq.  
Joielle A. Foglietta, Esq.  
Ciklin Lubitz Martens & O'Connell  
515 N. Flagler Dr., 20th Floor  
West Palm Beach, FL 33401  
(561) 832-5900 - Telephone  
(561) 833-4209 - Facsimile  
Email: [boconnell@ciklinlubitz.com](mailto:boconnell@ciklinlubitz.com);  
[jfoglietta@ciklinlubitz.com](mailto:jfoglietta@ciklinlubitz.com);  
[service@ciklinlubitz.com](mailto:service@ciklinlubitz.com);  
[slobdell@ciklinlubitz.com](mailto:slobdell@ciklinlubitz.com)



STATE OF FLORIDA • PALM BEACH COUNTY

I hereby certify that the  
foregoing is a true copy  
of the record in my office.

THIS 18 DAY OF May 2016  
SHARON R. BOCK  
CLERK & COMPTROLLER

By *Victoria Hanger*  
DEPUTY CLERK

EXHIBIT 3

NOT A CERTIFIED COPY

IN THE CIRCUIT COURT OF THE  
FIFTEENTH JUDICIAL CIRCUIT, IN AND  
FOR PALM BEACH COUNTY, FLORIDA

PROBATE DIVISION

CASE NO.: 502014CP002815XXXXNB (IH)

OPPENHEIMER TRUST COMPANY  
OF DELAWARE, in its capacity as  
Resigned Trustee of the Simon Bernstein  
Irrevocable Trusts created for the benefit  
of Joshua, Jake and Daniel Bernstein,

Petitioner,

vs.

ELIOT AND CANDICE BERNSTEIN,  
in their capacity as parents and natural  
guardians of JOSHUA, JAKE AND  
DANIEL BERNSTEIN, minors,

Respondents.

**ORDER APPOINTING GUARDIAN AD LITEM FOR MINORS,  
JOSHUA, JAKE AND DANIEL BERNSTEIN**

THIS CAUSE came before the Court at an evidentiary hearing held on February 25, 2016 upon the *Omnibus Motion (I) To Appoint A Guardian Ad Litem For The Minor Beneficiaries Of The "Grandchildren Trusts;" (II) To Hold Eliot And Candice Bernstein In Contempt Of Court For Their Continued Violation Of A Court Order And Repeated Statements Assaulting The Dignity Of The Court; And (III) To Establish A Schedule And Protocol For Accounting And Turnover Proceedings* (the "Motion") filed by Petitioner, Oppenheimer Trust Company Of Delaware ("Oppenheimer"), in its capacity as the resigned trustee of three Irrevocable Trusts settled by Simon Bernstein on September 7, 2006 for the benefit of his grandchildren, minors, Joshua, Jake and Daniel Bernstein (the "Grandchildren Trusts"). Having considered the Motion



and the arguments of the parties, taken judicial notice of the matters requested in the Motion, and being otherwise duly advised in the premises, the Court rules as follows:

1. The sole beneficiaries of the Grandchildren Trusts, and the only real parties in interest in this litigation (other than Oppenheimer), are Joshua, Jake and Daniel Bernstein (the "Minor Beneficiaries"). Neither Eliot nor Candice Bernstein (the "Bernsteins") were sued in their individual capacities by Oppenheimer, nor have they moved for, or been granted, permission to intervene in their individual capacities. They have been afforded standing in these proceedings, to date, solely as the parents and natural guardians of the Minor Beneficiaries.

2. The Bernsteins have been shown to have multiple conflicts of interest with the Minor Beneficiaries. For example, in their pleadings, they repeatedly allege that the trusts created for the Minor Beneficiaries' benefit are fraudulent and that they, and not their children, are the true beneficiaries. *Counter-Complaint*, ¶¶ 44-50, 52-60, 65, 109-110, 186 and 253; *Objection to Oppenheimer Accountings*, pp. 1 and 20. In addition, the Bernsteins insist that their overarching goal in this litigation "is to bring about a change in the legal system in efforts to root out systemic corruption at the highest levels by a rogue group of criminals disguised as attorneys at law, judges, politicians and more." *Counter-Complaint*, ¶ 212. No reasonable inference can be drawn that the Minor Beneficiaries have a similar interest or agenda, or that pursuing such an agenda at the risk of dissipating their own inheritance is in their best interest.

3. Eliot Bernstein also has a history of vexatious litigation and public disrespect for and disobedience to the judicial system and its officers, as detailed in Oppenheimer's Motion. Eliot Bernstein was adjudicated a vexatious litigant by the United States District Court for the Southern District of New York and enjoined from filing further specified claims in any court without its prior permission. Yet, Eliot Bernstein asserted those enjoined claims in his Counter-

Complaint in apparent violation of the injunction. The Bernsteins are in continued violation of a May 4, 2015 Order entered by Judge Martin Colin, which required compliance over nine months ago, and in recent filings with Florida appellate courts, the Bernsteins insist that all orders entered in this case "are void as a matter of law, and are of no legal force and effect." *Petition for All Writs* (dated January 29, 2016), ¶ 101. Further, the Bernsteins have repeatedly alleged that multiple judges have committed fraud in their official capacities in these proceedings and that all Florida judges have conflicts of interest which prohibit them from presiding over these proceedings. *Id.*, ¶ 106-107. All of the above, and certainly in combination, render the Bernsteins inappropriate and inadequate representatives for the Minor Beneficiaries in this litigation.

4. For the above reasons, the guardian *ad litem* appointed in Case No.: 502014CP003698XXXXNB shall be deemed appointed simultaneously as the guardian *ad litem* for the Minor Beneficiaries in this case, with sole and exclusive authority to represent the Minor Beneficiaries' interests in this case. The guardian *ad litem* shall be entitled to petition for reasonable compensation for his/her services; to be paid out of the gross proceeds of any recovery, distributions or inheritance to be received by the Minor Beneficiaries from the Shirley Bernstein Trust u/a/d May 20, 2008, as amended, the Simon Bernstein Trust, and/or the Estates of Simon or Shirley Bernstein.

5. The Answer and Counter-Complaint filed by Eliot and Candice Bernstein (which they purport to file (i) "Individually, PRO SE;" (ii) "as the Natural Guardians of [the Minor Beneficiaries];" (iii) "as Guardians of the members of Bernstein Family Realty, LLC;" and (iii) "as beneficiaries of [sixteen (16) Trusts, two (2) Estates, and multiple] Corporate Entities set up by Simon and Shirley Bernstein"), and the "Objection to Final Accounting; Petition for Formal, Detailed Audited and Forensic Accounting and Document Production" (the "Objection") filed by

Oppenheimer v. Bernstein,  
Case No. 502014CP002815XXXXSB (IH)

Eliot and Candice Bernstein, "individually and on behalf of [their] minor children, who are alleged qualified beneficiaries of Settlor's Estate and Trusts," are hereby stricken.

6. The guardian *ad litem* shall have 45 days from his/her appointment within which to file a response to Oppenheimer's Petition and objections, if any, to Oppenheimer's accountings.

7. Oppenheimer and the guardian *ad litem* shall confer in good faith regarding a resolution of this matter and/or a timeframe within which to try any unresolved issues.

8. Neither Eliot nor Candice Bernstein shall take any action which interferes with the guardian *ad litem*'s duties.

*The pending Motion for Contempt as to*  
9. <sup>^</sup> Eliot and Candice Bernstein ~~are also held to be in contempt of court for their~~  
~~willful violation of Judge Martin Colin's May 4, 2015 Order. The Court withholds coercive~~  
~~sanctions based upon the appointment of a guardian *ad litem* and striking of the Bernsteins'~~  
~~pleadings, which renders the Bernsteins' compliance moot.~~

DONE AND ORDERED in Chambers, Palm Beach County, Florida on

3-1-, 2016.

  
Hon. John L. Phillips, Circuit Judge

Copies furnished to:

Steven A. Lessne, Esq.  
Gunster, Yoakley & Stewart, P.A.  
4855 Technology Way, Suite 630  
Boca Raton, FL 33431

Eliot and Candice Bernstein  
2753 N.W. 34<sup>th</sup> Street  
Boca Raton, FL 33434

EXHIBIT 4

NOT A CERTIFIED COPY

**IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA**

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXNBIH

Plaintiff,

v.

ALEXANDRA BERNSTEIN; ERIC BERNSTEIN;  
MICHAEL BERNSTEIN; MOLLY SIMON;  
PAMELA B. SIMON, Individually and as Trustee  
f/b/o Molly Simon under the Simon L. Bernstein Trust  
Dtd 9/13/12; ELIOT BERNSTEIN, individually, as  
Trustee f/b/o D.B., Ja. B. and Jo. B. under the Simon  
L. Bernstein Trust Dtd 9/13/12, and on behalf of his  
minor children D.B., Ja. B. and Jo. B.; JILL  
IANTONI, Individually, as Trustee f/b/o J.I. under the  
Simon L. Bernstein Trust Dtd 9/13/12, and on behalf  
of her Minor child J.I.; MAX FRIEDSTEIN; LISA  
FRIEDSTEIN, Individually, as Trustee f/b/o Max  
Friedstein and C.F., under the Simon L. Bernstein  
Trust Dtd 9/13/12, and on behalf of her minor child,  
C.F.,

Defendants.

---

**NOTICE OF FILING AND OF SERVING NOTICE OF ACCEPTANCE**

Plaintiff, Ted S. Bernstein (the "Trustee"), as Successor Trustee of the Shirley Bernstein Trust Agreement dated May 20, 2008, as amended, hereby gives notice of filing the attached, *Notice of Acceptance of Appointment as Guardian Ad Litem for Jo.B., Ja.B., and D.B.* as requested by appointed Guardian Ad Litem, Diana Lewis.

**CERTIFICATE OF SERVICE**

I CERTIFY that a copy of the foregoing has been furnished to parties listed on attached Service List by: ☐ Facsimile and U.S. Mail; ☐ U.S. Mail; ☒ Email Electronic Transmission; ☐ FedEx; ☐ Hand Delivery this 7<sup>th</sup> day of April, 2016.

MRACHEK, FITZGERALD, ROSE, KONOPKA,  
THOMAS & WEISS, P.A.  
505 South Flagler Drive, Suite 600  
West Palm Beach, FL 33401  
(561) 655-2250 Telephone / (561) 655-5537 Facsimile  
Email: [arose@mrachek-law.com](mailto:arose@mrachek-law.com)  
Secondary: [mchandler@mrachek-law.com](mailto:mchandler@mrachek-law.com)  
*Attorneys for Ted S. Bernstein*

By: /s/ Alan B. Rose  
Alan B. Rose (Fla. Bar No. 961825)

NOT A CERTIFIED COPY



**SERVICE LIST Case No.: 502014CP003698XXXXNBIH**

Eliot Bernstein and Candice Bernstein,  
as Parents of D.B., Ja. B. and Jo. B, Minors  
2753 NW 34th Street  
Boca Raton, FL 33434  
(561) 245-8588 - Telephone  
(561) 886-7628 - Cell  
(561) 245-8644 - Facsimile  
Email: Eliot I. Bernstein ([iviewit@iviewit.tv](mailto:iviewit@iviewit.tv))

John P. Morrissey, Esq.  
330 Clematis Street, Suite 213  
West Palm Beach, FL 33401  
(561) 833-0866 - Telephone  
(561) 833-0867 - Facsimile  
Email: John P. Morrissey  
([john@jmorrisseylaw.com](mailto:john@jmorrisseylaw.com))  
Counsel for Molly Simon, Alexandra Bernstein,  
Eric Bernstein, Michael Bernstein

Lisa Friedstein, individually and as trustee for her  
children, and as natural guardian for M.F. and  
C.F., Minors; and Max Friedstein  
[lisa.friedstein@gmail.com](mailto:lisa.friedstein@gmail.com)

Jill Iantoni, individually and as trustee for her  
children, and as natural guardian for J.I. a minor  
[jilliantoni@gmail.com](mailto:jilliantoni@gmail.com)

Alan Rose, Esq.  
Mrachek Fitzgerald Rose  
Konopka Thomas & Weiss, P.A.  
505 S Flagler Drive, Suite 600  
West Palm Beach, FL 33401  
(561) 655-2250 - Telephone  
(561) 655-5537 - Facsimile  
Email: [arose@mrachek-law.com](mailto:arose@mrachek-law.com)

Pamela Beth Simon  
303 E. Wacker Drive, Suite 2725  
Chicago, IL 60601  
Email: [psimon@stpcorp.com](mailto:psimon@stpcorp.com)

Brian M. O'Connell, Esq.  
Joielle A. Foglietta, Esq.  
Ciklin Lubitz Martens & O'Connell  
515 N. Flagler Dr., 20th Floor  
West Palm Beach, FL 33401  
561-832-5900 - Telephone  
561-833-4209 - Facsimile  
Email: [boconnell@ciklinlubitz.com](mailto:boconnell@ciklinlubitz.com);  
[jfoglietta@ciklinlubitz.com](mailto:jfoglietta@ciklinlubitz.com);  
[service@ciklinlubitz.com](mailto:service@ciklinlubitz.com);  
[slobdell@ciklinlubitz.com](mailto:slobdell@ciklinlubitz.com)

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT IN AND FOR  
PALM BEACH COUNTY, FLORIDA

TED BERNSTEIN, as Trustee  
Of the Shirley Bernstein Trust Agreement  
Dated May 20, 2008, as amended.

Plaintiff,

v.

Probate Division  
Case No.:2014CP003698 (IH)

ALEXANDRA BERNSTEIN; ERIC BERNSTEIN;  
MICHAEL BERNSTEIN; MOLLY SIMO;  
PAMELA B. SIMON, Individually and as  
Trustee f/b/o Molly Simon under the  
Simon L. Bernstein Trust Dtd. 9/13/12;  
ELIOT BERNSTEIN, individually as Trustee  
f/b/o D.B., Ja. B and Jo. B. under the  
Simon L. Bernstein Trust Dtd. 9/13/12  
and on behalf of his minor children  
D.B., Ja.B. and Jo.B.; JILL IANTONI,  
individually, as Trustee f/b/o of J.I.,  
under the Simon L. Bernstein Trust Dtd.  
9/13/12, and on behalf of her Minor child  
J.I.; MAX FRIEDSTEIN; LISA FRIEDSTEIN,  
individually, as Trustee f/b/o Max  
Friedman and C.F., under the Simon L.  
Bernstein Trust Dtd 9/13/12, and on  
bealf of her minor child C.F.,

Defendants.

NOTICE OF ACCEPTANCE OF APPOINTMENT AS GUARDIAN AD LITEM FOR  
Jo.B., Ja.B. AND D.B. IN THE ABOVE STYLED CASE

COMES NOW Diana Lewis and notifies the court of her  
**acceptance** of appointment as Guardian *ad litem* for Eliot  
Bernstein's minor children, Jo.B., Ja.B. and D.B. pursuant to  
this court's order dated April 4, 2016, and the terms and  
conditions set forth therein.

Page Two

Case no.: 2014CP003698 (IH)

**CERTIFICATE OF SERVICE**

I CERTIFY that a true and correct copy of the foregoing has been furnished to the parties by E-mail Electronic Transmission on the attached Service List for Case No.: 2014CP003698 (IH) this 7<sup>th</sup> day of April, 2016.

ADR & MEDIATIONS SERVICES, LLC  
Diana Lewis  
2765 Tecumseh Drive  
West Palm Beach, FL 33409  
(561) 758-3017 Telephone  
Email: dzlewis@aol.com

By: /s/ Diana Lewis  
Diana Lewis (Fla. Bar No. 351350)  
(Mediator No.: 32461 R)

Page Three  
2014CP003698

**SERVICE LIST** Case No.: 502014CP003698XXXXNBIH

Eliot Bernstein and Candice Bernstein,  
as Parents of  
D.B., Ja. B. and Jo. B, Minors  
2753 NW 34th Street  
Boca Raton, FL 33434  
(561) 245-8588 - Telephone  
(561) 886-7628 - Cell  
(561) 245-8644 - Facsimile  
Email: Eliot I. Bernstein ([iviewit@iviewit.tv](mailto:iviewit@iviewit.tv))

John P. Morrissey, Esq.  
330 Clematis Street, Suite 213  
West Palm Beach, FL 33401  
(561) 833-0866 - Telephone  
(561) 833-0867 - Facsimile  
Email: John P. Morrissey  
([john@jmorrisseylaw.com](mailto:john@jmorrisseylaw.com))  
Counsel for Molly Simon, Alexandra Bernstein,  
Eric Bernstein, Michael Bernstein

Lisa Friedstein, individually and as trustee for  
her children, and as natural guardian for M.F.  
and C.F., Minors; and Max Friedstein  
[lisa.friedstein@gmail.com](mailto:lisa.friedstein@gmail.com)

Jill Iantoni, individually and as trustee for her  
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[jilliantoni@gmail.com](mailto:jilliantoni@gmail.com)

Alan Rose, Esq.  
Mrachek Fitzgerald Rose  
Konopka Thomas & Weiss, P.A.  
505 S Flagler Drive, Suite 600  
West Palm Beach, FL 33401  
(561) 655-2250 - Telephone  
(561) 655-5537 - Facsimile  
Email: [arose@mrachek-law.com](mailto:arose@mrachek-law.com)

Pamela Beth Simon  
303 E. Wacker Drive, Suite 2725  
Chicago, IL 60601  
Email: [psimon@stpcorp.com](mailto:psimon@stpcorp.com)

Brian M. O'Connell, Esq.  
Joielle A. Foglietta, Esq.  
Ciklin Lubitz Martens & O'Connell  
515 N. Flagler Dr., 20th Floor  
West Palm Beach, FL 33401  
561-832-5900 - Telephone  
561-833-4209 - Facsimile  
Email: [boconnell@ciklinlubitz.com](mailto:boconnell@ciklinlubitz.com);  
[jfoglietta@ciklinlubitz.com](mailto:jfoglietta@ciklinlubitz.com);  
[service@ciklinlubitz.com](mailto:service@ciklinlubitz.com);  
[slobdell@ciklinlubitz.com](mailto:slobdell@ciklinlubitz.com)

**IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA**

OPPENHEIMER TRUST COMPANY OF  
DELAWARE, in its Capacity As Resigned  
Trustee of the Simon Bernstein Irrevocable Trusts  
Created for the Benefit of of Jo. B., Ja. B., and D.B.,  
Minors

Probate Division  
Case No.: 502014CP002815XXXXSB(IY)

Petitioner,

v.

ELIOT AND CANDICE BERNSTEIN, in their  
Capacity as Parents and Natural Guardians of Jo. B.,  
Ja. B., and D.B., Minors  
Respondents.

---

**NOTICE OF FILING AND OF SERVING NOTICE OF ACCEPTANCE**

Ted S. Bernstein (the "Trustee"), as Successor Trustee of the Shirley Bernstein Trust Agreement dated May 20, 2008, as amended, hereby gives notice of filing the attached, *Notice of Acceptance of Appointment as Guardian Ad Litem for Jo.B., Ja.B., and D.B.* as requested by appointed Guardian Ad Litem, Diana Lewis.

**CERTIFICATE OF SERVICE**

I CERTIFY that a copy of the foregoing has been furnished to parties listed on attached Service List by: ☐ Facsimile and U.S. Mail; ☐ U.S. Mail; ☒ Email Electronic Transmission; ☐ FedEx; ☐ Hand Delivery this 7<sup>th</sup> day of April, 2016.

MRACHEK, FITZGERALD, ROSE, KONOPKA,  
THOMAS & WEISS, P.A.  
505 South Flagler Drive, Suite 600  
West Palm Beach, FL 33401  
(561) 655-2250 Telephone | (561) 655-5537 Facsimile  
Email: [arose@mrachek-law.com](mailto:arose@mrachek-law.com)  
Secondary: [mchandler@mrachek-law.com](mailto:mchandler@mrachek-law.com)

By: /s/ Alan B. Rose  
Alan B. Rose (Fla. Bar No. 961825)

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**SERVICE LIST**

Eliot Bernstein  
Candice Bernstein,  
as Parents and Natural Guardians of  
D.B., Ja. B. and Jo. B, Minors  
2753 NW 34th Street  
Boca Raton, FL 33434  
(561) 245-8588 - Telephone  
(561) 886-7628 - Cell  
(561) 245-8644 - Facsimile  
Email: Eliot I. Bernstein ([iviewit@iviewit.tv](mailto:iviewit@iviewit.tv))

Alan Rose, Esq.  
Mrachek Fitzgerald Rose  
Konopka Thomas & Weiss, P.A.  
505 S Flagler Drive, Suite 600  
West Palm Beach, FL 33401  
(561) 655-2250 - Telephone  
(561) 655-5537 - Facsimile  
Email: [arose@mrachek-law.com](mailto:arose@mrachek-law.com)

Steven A. Lessne, Esq.  
GrayRobinson, P.A.  
225 N.E. Mizner Blvd., Suite 500  
Boca Raton, FL 33432  
(561) 368-3808  
Email: [steven.lessne@gray-robinson.com](mailto:steven.lessne@gray-robinson.com)  
*Counsel for Petitioner*

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT IN AND FOR  
PALM BEACH COUNTY, FLORIDA

OPPENHEIMER TRUST COMPANY OF DELAWARE,  
in its capacity as Resigned Trustee of  
the Simon Bernstein Irrevocable Trusts  
created for the benefit of Joshua, Jake  
and Daniel Bernstein,

Petitioner,

vs.

Probate Division  
Case No.: 2014CP002815 (IH)

ELIOT AND CANDICE BERNSTEIN,  
in their capacity as parents and  
natural guardians of JOSHUA, JAKE  
AND DANIEL BERNSTEIN, minors,

Respondents.

---

**NOTICE OF ACCEPTANCE OF APPOINTMENT AS GUARDIAN AD LITEM FOR  
JOSHUA, JAKE AND DANIEL BERNSTEIN IN THE ABOVE STYLED CASE**

COMES NOW Diana Lewis and notifies the court of her  
**acceptance** of appointment as Guardian ad litem for JOSHUA, JAKE  
and DANIEL BERNSTEIN (the "Minor Beneficiaries") pursuant to  
this court's order dated April 4, 2016.

**CERTIFICATE OF SERVICE**

I CERTIFY that a true and correct copy of the foregoing has  
been furnished to the parties by E-mail Electronic Transmission  
on the attached Service List for Case No.: 2014CP002815 (IH)  
this 7<sup>th</sup> day of April, 2016.

ADR & MEDIATIONS SERVICES, LLC  
Diana Lewis  
2765 Tecumseh Drive  
West Palm Beach, FL 33409  
(561) 758-3017 Telephone  
Email: [dzlewis@aol.com](mailto:dzlewis@aol.com)  
By: /s/ Diana Lewis  
(Fla. Bar No. 351350)

Page Two

**SERVICE LIST Case No.: 2014CP002815**

Steven A. Lessne  
Gunster, Yoakley & Stuart, P.A.  
4855 Technology Way, Suite 630  
Boca Raton, FL 33431

Eliot and Candice Bernstein  
2753 N.W. 34<sup>th</sup> Street  
Boca Raton, FL 33434

NOT A CERTIFIED COPY

Filing # 146674645 E-Filed 03/30/2022 07:36:23 AM

**EXHIBIT 1.530**

CASE NO.: 50-2018-CA-002317

Sahm Foreclosure v BFR, LLC et al

SEE WALT AND PAT SAHM HANDWRITTEN LETTERS TO ELIOT AND CANDICE BERNSTEIN AND TED BERNSTEIN FROM 2013 ENTERED AS EXHIBIT 6 IN OCT. 2013 FILING BEFORE JUDGE MARTIN COLIN IN THE SIMON ESTATE CASE - SAHM LETTERS SHOW ELIOT-CANDICE INTEREST IN THE HOME, SAHM KNEW IDENTITIES. SAHM HAVING PROBLEMS WITH TED BERNSTEIN, TESCHER -SPALLINA GETTING PAID ON MORTGAGE ETC.

**COPY**  
SOUTH COUNTY BRANCH OFFICE  
ORIGINAL RECEIPT

OCT 10 2013

IN THE CIRCUIT COURT OF THE FIFTEEN JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

SHARON R. BOCK  
CLERK & COMPTROLLER  
PALM BEACH COUNTY

IN RE: THE ESTATE OF

CASE NO. 502012CP004391XXXXSB

SIMON BERNSTEIN,

NOTICE OF MOTION

Deceased

HON. JUDGE MARTIN H. COLIN

\_\_\_\_\_  
ELIOT IVAN BERNSTEIN, PRO SE

PETITIONER,

V.

TESCHER & SPALLINA, P.A., (AND ALL PARTNERS,  
ASSOCIATES AND OF COUNSEL),  
ROBERT L. SPALLINA, ESQ., PERSONALLY,  
ROBERT L. SPALLINA, ESQ., PROFESSIONALLY,  
DONALD R. TESCHER, ESQ., PERSONALLY,  
DONALD R. TESCHER, ESQ., PROFESSIONALLY,  
THEODORE STUART BERNSTEIN, INDIVIDUALLY,  
THEODORE STUART BERNSTEIN, AS ALLEGED  
PERSONAL REPRESENTATIVE,  
THEODORE STUART BERNSTEIN, AS ALLEGED  
TRUSTEE AND SUCCESSOR TRUSTEE PERSONALLY,  
THEODORE STUART BERNSTEIN, AS ALLEGED  
TRUSTEE AND SUCCESSOR TRUSTEE,  
PROFESSIONALLY  
JOHN AND JANE DOE'S (I-5000)

RESPONDENTS

**ADDITIONAL RESPONDENTS TO BE ADDED**

THEODORE STUART BERNSTEIN, AS TRUSTEE FOR  
HIS CHILDREN,  
LISA SUE FRIEDSTEIN, INDIVIDUALLY AS A  
BENEFICIARY,  
LISA SUE FRIEDSTEIN, AS TRUSTEE FOR HER  
CHILDREN,  
JILL MARLA IANTONI, INDIVIDUALLY AS A  
BENEFICIARY,

<b>EXHIBIT 5 - SEPTEMBER 27, 2013 – OCTOBER 07, 2013 LETTER EXCHANGE ELIOT AND OPPENHEIMER .....</b>	<b>215</b>
<b>EXHIBIT 6 - SAHM LETTER TO ELIOT AND SAHM LETTERS TO TED AND SPALLINA .....</b>	<b>216</b>
<b>EXHIBIT 7 - ELIOT ANSWER AND COUNTER CLAIM TO JACKSON NATIONAL LAWSUIT .....</b>	<b>217</b>
<b>EXHIBIT 8 – INCOMPLETE OPPENHEIMER TRUST PAPERS AND BERNSTEIN FAMILY REALTY LLC PAPERS SENT TO ELIOT .....</b>	<b>218</b>
<b>EXHIBIT 9 - COPY OF THE COMPLETE 2012 IMPROPERLY NOTARIZED SIMON BERNSTEIN AMENDED TRUST AGREEMENT .....</b>	<b>219</b>
<b>EXHIBIT 10 - COPY OF THE COMPLETE 2012 IMPROPERLY NOTARIZED SIMON BERNSTEIN WILL.....</b>	<b>220</b>



requests, a common thread of their Willful, Wanton, Reckless, and Grossly Negligent behavior in disregard of law by the alleged fiduciaries of the estate and estate counsel .

See **EXHIBIT 6 - SAHM LETTER TO ELIOT AND SAHM LETTERS TO TED AND SPALLINA.**

362. That Sahm stated that he retained an attorney and they refused to even contact his Attorney at Law to arrange payment and he felt like TSPA, SPALLINA and TED et al. were trying to force him to foreclose on the home through their continued ignoring of his requests. Sahm further stated that he was aware when he sold the home to SIMON, that SIMON and SHIRLEY were so happy to get ELIOT and his children a home and worked to make sure no creditors of ELIOT or those he was involved in a RICO action against, could use dubious tactics to take the home and he did not want to file a foreclosure without first talking directly to CANDICE and ELIOT as indicated in his letter. That Sahm in his letter states that what is going on to harm ELIOT and his family would leave SIMON and SHIRLEY "**MORTIFIED.**"

363. That SIMON put a Balloon Mortgage apparently to himself of approximately \$365,000.00 to further secure the home, on top of Sahm's \$100,000.00 carry over loan that was left over from the sale of the home by Sahm to SIMON, when SIMON bought Sahm's long established business from him. That this made loans and mortgages against the home to Sahm and SIMON approximately \$465,000.00 and where the home was only purchased for \$360,000.00? Unless one understands the nature of what was happening to ELIOT and his family, including a CAR BOMBING of his family's minivan in Del Ray Beach, FL and why these elaborate steps were taken to protect his family by SIMON and SHIRLEY, the

transactions make no sense and these reasons are further defined herein and in Petition 1, Section "The Elephant in the Room."

364. That for months, TSPA, SPALLINA, TESCHER and TED et al. claimed to ELIOT that he should stop making problems or they would foreclose on his home using the Balloon Mortgage to SIMON and then later that Sahn was threatening foreclosure and he better hurry and sign off on all the fraud to get monies or he and his family would be homeless soon, despite the fact that SPALLINA originally told ELIOT that SIMON'S loan was to be waived by the estate, thrown in the garbage, as it was a sham note to protect the home that he could easily waive if ELIOT cooperated.
365. That SPALLINA informed YATES that there was imminent foreclosure from Sahn and SIMON as well and that she should advise ELIOT to take the money from an insurance beneficiary and trust fraud scheme to convert a policy owned on SIMON that ELIOT refused to partake in, on advice that the insurance scheme appeared an artifice to defraud, see **EXHIBIT 7 - ELIOT ANSWER AND COUNTER CLAIM TO JACKSON NATIONAL LAWSUIT @** [www.iviewit.tv/20130921AnswerJacksonSimonEstateHeritage.pdf](http://www.iviewit.tv/20130921AnswerJacksonSimonEstateHeritage.pdf), hereby incorporated by reference in entirety, and in Petition 1.
366. That SPALLINA and TED claimed that ELIOT either sign the proposed sham trust agreement for the policy to pay off Sahn's and SIMON'S notes or else they would take from ELIOT and his children's inheritance the amount of the sham Balloon Mortgage, that is also legally defective in the documents for a variety of reasons and make sure ELIOT and his children would be left with nothing and SIMON and Sahn would foreclose on his children's home and leave them homeless. Of course, a foreclosure by SIMON and Sahn

is what SPALLINA and TED claim are the wishes and desires of SIMON, SHIRLEY and Sahm and one need only read Sahm's letter exhibited herein to know that nothing could be further from the truth.

367. That in fact Sahm claims that he has been trying to get payment or even accrual of payment of interest on his note agreed to with the managers of Bernstein Family Realty LLC, who he was led to believe was either SPALLINA or TED, when in fact it was Oppenheimer until just recently and they never told Sahm the truth of who was Manager of the LLC and they then blew off Sahm's calls and letters and even contact by his attorney he had to hire and tried apparently to leave Sahm with no choice but to foreclose over \$3,800.00 or even \$0.00 if they chose to accrue the interest. These acts further support ELIOT'S claims in Petition 7 of extortion through threatened foreclosure.
368. That almost all of the necessary documents used to attempt to effectuate changes in beneficiaries in both SIMON and SHIRLEY'S estates are defective and legally should be null and void and now appear to be part of a much more dubious set of criminal acts.
369. That after some bantering from Your Honor at the Hearing of why ELIOT refuses to take money from a Condominium sale that he alleges took place using fraudulent documents with fraudulent fiduciary powers and is converting monies from the proper beneficiaries, interesting things were learned that could help alleviate the financial burdens being intentionally heaped upon ELIOT and his family by estate counsel.

**A RATIONALE AND IMMEDIATE SOLUTION TO THE EMERGENCY RELIEF REQUESTED FOR ELIOT, CANDICE AND THEIR CHILDREN UNTIL THE COURT CAN DETERMINE THE EFFECTS OF FRAUD ON THE BENEFICIARIES AND FRAUD ON THE COURT ADMITTED TO BY ESTATE COUNSEL ALREADY**

**EXHIBIT 6 - SAHM LETTER TO ELIOT AND SAHM LETTERS TO TED AND  
SPALLINA**

EXHIBITS  
Motion to Freeze Estates and More

---

9/22/13

↓  
This letter is a text transcription of the hand written letter on the next page.

Dear Eliot and Candy (Candace),

As we discussed on Friday evening, my calling you makes me very uncomfortable. This situation would never have transpired had Si not passed away.

You can see that he paid the first renewal interests as of June, 2012. The hand-written letter to Ted is self-explanatory. I forwarded the enclosed to him in early June 2013. He told me he would refer everything to Spallina (SP, Spallina and Tescher, SP?). We've heard nothing. Our attorney, John Cappeller, has left two phone messages of inquiry asking in essence, what they are doing to honor this mortgage and terms. Apparently Nothing!

For your edification, I've instructed Mr. Cappeller to take no action until we see if there is any movement on their part to honor the mortgage terms what is a shame is that your mom put \$90,000 + of renovations into your home and now this insane greed interfamilial in-fighting is occurring. I feel very badly for you both and your family. Si and Shirley would be mortified.

Eventually, I'll have to take some action. However, it won't happen until I've given you a "heads-up" before doing so. I hope you get your problems legally remedied. What a bitch you're going through!

Best regards and wishes,

Walt Sahm for Pat Sahm as well

(cell) 561-373-1126

(h) 352-751-2632

9/22/13

Dear Clint and CANDY (CANDACE),

As we discussed on Friday evening, my calling you makes me very uncomfortable. This situation would never have TRANSPARENT if it wasn't passed away.

You can see that he paid the first Renewal interest as of June 2012. The hand-written letter to Ted is self-explanatory. I forwarded the enclosed to him in early June 2013. He told me he would refer everything to SPALLINA & Tescher (Sp?), who he heard nothing. Our attorney, John Cappeller, has left two phone messages of inquiring asking in essence, what they are doing to honor this mortgage terms. Apparently nothing!

For your information, I've instructed Mr. Cappeller to take no action until we see if there is any movement on their part to honor the mortgage terms. What is a shame is that your mom put \$90,000 of renovations into your home & now this insanity, greedily intrafamily is fighting is occurring. I feel very badly for you both & for your family. I think you would be mortified.

Eventually, you have to take some action; however, it won't happen until I've given you a "heads-up" before doing so. I hope you get your problems legally resolved. What a ditch you're going through!

Best regards & wishes,  
Walt Lahm for Pat Lahm

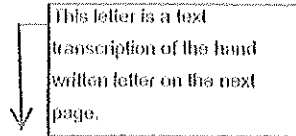
AS usual

(Cell) 561-373-1121

(H) 352-751-2632



6/3/13- COPY



Mr. Ted Bernstein, Pres  
Life Insurance Concepts, Inc  
950 Peninsula Corporate Circle, #3010  
Boca Raton, FL 33487

Dear Ted,

We hope that you, Debra and your family are all doing well and that all of your kids are striving forward in their academic and or vocational pursuits. Several must be graduated from college by now.

If you'll recall we spoke one evening before the election re: what I was to do going forward in the protocol to be followed in future mortgage renewals between us (Walt and Pat) and Bernstein Family Realty, LLC.

At that time, you told me that all financial matters are now being handled by the attorneys for the Shirley and Simon Bernstein Estates. Do I still send the mortgage note renewal to you and, then, you'll send it on to the estate representative? I'll presume that this is the case.

This is the next-to-last renewal statement that we'll be sending. Next year, if not sooner, we'd like to have the balloon payment plus any accrued interest paid in full. Do you feel that Elliott and Candace will be able to obtain a mortgage if necessary? It was originally Si's stated intention to utilize his and your mother's personal annual exclusions payable to Candy, Elliott and their three children over two years to provide the \$110,000 to retire the mortgage balance.

Perhaps you might shed some light on this issue. Are you now the successor "manager" of the Bernstein Family Realty, LLC? One last request, Ted, would you have the estate Representative mail us a copy of the current "Proof of Insurance?" Thanks for your attention to this request. Stay Healthy!

Best wishes,  
Walt  
pjpaws@embarqmail.com  
(Cell) 561-373-1126  
(H) 352-751-2632

4/3/12

Mr. Ted Bernstein, Pres  
Life Insurance Concepts Inc  
950 Peninsula Corporate Ctr., #3010  
Boca Raton, FL 33487

Copy

Dear Ted,

We hope that you, Debra and your family are all doing well and that all of your kids are striding forward in their academic and/or Vocational pursuits. Several must be graduated from College by now.

If you'll recall, we spoke one evening before the election re: what I was to do going forward in the protocol to be followed in future mortgage Renewals between us (Walt and Pat) and Bernstein Family Realty, Ltd C.

At that time, you told me that all financial matters are now handled by the attorneys for the Shirley and Arnon Bernstein estates. As I still own the mortgage note Renewal to you and, thus, would send it on to the estate Representative? I'll presume that this is the case.

This is the next to last Renewal statement that we'll be sending. Next year, if not sooner, will be to have the balloon payment plus any accrued interest paid in full. Do you feel that Elliott and Candy will be able to obtain a mortgage if necessary? It was originally Eli's stated intention to utilize his and your mother's personal Annual exclusions payable to Candy, Elliott and their three children over two years to provide the \$110,000 to Retire the mortgage balance.

Perhaps you might shed some light on this point. Do you know the successor "Manager" of the Bernstein Family Realty, Ltd C? One last request, Ted. Would you have the estate Representative mail us a copy of the current "Proof of Insurance". Thank you for attention to this Request. Stay healthy!

Best wishes,

Walt  
Pat [laure@embargmail.com](mailto:laure@embargmail.com)  
P.O. Box 512, Boca Raton, FL 33432  
(407) 352-251-2632

NC 159



CFN 20120143493  
OR BK 25132 PG 1051  
RECORDED 04/12/2012 09:21:00  
Palm Beach County, Florida  
Sharon R. Bock, CLERK & COMPTROLLER  
Pgs 1051 - 1054; (4pgs)

Prepared by and return to:

John M. Cappeller, Jr.  
Cappeller Law  
John M. Cappeller, Jr.  
350 Camino Gardens Blvd., Suite 303  
Boca Raton, FL 33432

**AMENDMENT TO MORTGAGE AND PROMISSORY NOTE**

This AMENDMENT TO MORTGAGE AND PROMISSORY NOTE (this "Amendment") is entered into effective the 15 day of February, 2012, among **BERNSTEIN FAMILY REALTY, LLC**, a Florida limited liability company, having an address at 950 Peninsula Corporate Circle, Suite 3010, Boca Raton, FL 33487 (the "Mortgagor"), and **WALTER E. SAHM and PATRICIA SAHM**, having an address at 8230 SE 177<sup>th</sup> Winterthru Loop, The Villages, FL 32162 ("Mortgagee").

**WITNESSETH**

WHEREAS, Mortgagee granted Mortgagor a purchase money mortgage in the amount of \$110,000.00, evidenced by that certain Promissory Note dated June 20, 2008, (the "Promissory Note"); and

WHEREAS, the Promissory Note is secured, inter alia, by that certain Mortgage dated June 20, 2008 from Mortgagor in favor of Mortgagee, recorded on June 26, 2008 in Official Records Book 22723, Page 691, of the Public Records of Palm Beach County, Florida (the "Mortgage"); and

WHEREAS, Mortgagor has asked Mortgagee to extend the term of the Mortgage and the Promissory Note (the "Amendment"); and

WHEREAS, to document the Amendment, Mortgagor is executing and delivering to Mortgagee this Amendment to Mortgage and Promissory Note;

**DOCUMENTARY STAMP TAXES AND INTANGIBLE TAXES ON THE ORIGINAL INDEBTEDNESS OF \$110,000.00 WERE PAID IN FULL UPON THE RECORDING OF THE MORTGAGE AND SECURITY AGREEMENT DATED JUNE 20, 2008 AND RECORDED ON JUNE 26, 2008 IN OFFICIAL RECORDS BOOK 22723 PAGE 691, IN THE PUBLIC RECORDS OF PALM BEACH, FLORIDA.**

CAPPELLER LAW  
ATTORNEYS AT LAW

350 CAMINO GARDENS BOULEVARD  
SUITE 303  
BOCA RATON, FLORIDA 33432

JOHN M. CAPPELLER, JR., P.A.  
JCAPPELLER@CAPPELLERLAW.COM

TELEPHONE 561-620-2599  
FACSIMILE 561-620-2565

June 20, 2012

Mr. and Mrs. Walter Sahn  
8230 SE 177<sup>th</sup> Winterthru Loop  
The Villages, FL 32162

Re: Amendment to Mortgage and Promissory Note

Dear Mr. and Mrs. Sahn:

Enclosed, please find your originally signed and recorded Amendment to Mortgage and Promissory Note.

Please call with any questions.

Very truly yours,



John M. Cappeller, Jr.

JMC:az  
Enclosures

6/3/13 - COPY

↓ This letter is a text transcription of the hand written letter on the next page.

\_\_\_\_\_, Representative

Bernstein Family Realty, LLC  
950 Peninsula Corporate Circle, # 3010  
Boca Raton, FL 33487

RE: Second Anniversary of Mortgage and Promissory Note Amendment on Residence at

2753 NW 34<sup>th</sup> St., Boca Raton, FL Effective June 19, 2014

Dear Sirs,

Referencing the amendment to the original note, we offer three (3) options

- 1.) \_\_\_\_\_ Pay the loan balance of \$110,000 + (1) one year's interest ( $\$110,000 \times .035 = \$3850 =$   
\$113,850);
- 2.) \_\_\_\_\_ Pay the interest due for this renewal year only ( $\$110,000 \times .035 = \$3850$
- 3.) \_\_\_\_\_ Pay no (zero) interest on principal this year and allow the interest to accrue and compound  
until the final balloon payments are due: June 19, 2014.

If you wish to pay the balloon plus interest prematurely, I'll direct our attorney, John Cappeller, who prepared the mortgage amendment, to draw up a "Satisfaction of Mortgage" document. Would you please check the box that represents the option that you are currently choosing, sign it and retain a copy to use in the enclosed, self-addressed envelope? Please print your name clearly under your signature.

Thank you,

X \_\_\_\_\_, mortgagee,

Walter E. Sahm, Jr.

X \_\_\_\_\_, mortgagee,

Patricia A. Sahm

X \_\_\_\_\_, Representative

\_\_\_\_\_ Print Name,

Bernstein Family Realty, LLC

6/3/13

Representative Copy  
 BERNSTEIN Family Realty, LLC  
 950 PENINSULA Corporate Circle, # 3010  
 Boca RATON, FL 33487

RE: SECOND ANNIVERSARY of MORTGAGE AND PROMISSORY NOTE AMENDMENT ON  
 RESIDENCE AT 2253 N.W. 34th St., Boca RATON, FL Effective: June 19, 2013

Dear Sirs

Referencing the amendment to the original NOTE, we offer the following (3) options:

- 1.) ☐ Pay the loan balance of \$110,000 + (1) ONE YEARLY INTEREST (\$110,000 X .035 = \$3850 = \$113,850);
- 2.) ☐ Pay the interest due for this renewal year only (\$110,000 X .035) = \$3850.
- 3.) ☐ Pay NO (ZERO) INTEREST ON PRINCIPAL this year AND ALLOW the interest to ACCRUE AND COMPOUND until the final balloon payment is due & June 19, 2014.

If you wish to pay the balloon plus interest prematurely, I'll direct our attorney, John Cappella, who prepared the mortgage amendment, to draw up a "Satisfaction of Mortgage" document. Would you please check the box that represents the option that you are currently choosing, sign it and return a copy to us in the enclosed, self-addressed, stamped envelope? Please print your name clearly under your signature.

Thank you,

X \_\_\_\_\_ Mortgage Agent  
 Walter E. Sahm, Jr.

X \_\_\_\_\_ Mortgage  
 Patricia A. Sahm

X \_\_\_\_\_ Representative  
 \_\_\_\_\_ Print Name  
 Bernstein Family Realty, LLC



NOW THEREFORE, in consideration of the foregoing premises and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. Amendment to Mortgage and Promissory Note. Effective June 19, 2011, the parties hereto amend the Mortgage and Promissory Note to provide that by agreement the date on which all principal is due and payable is hereby extended to June 19, 2014. Annual payments of interest only at the rate of 3.5% per annum shall continue to be due on the anniversary date of the Promissory Note until June 19, 2014 when all unpaid principal and accrued interest shall be due and payable in full.

2. Confirmation and Ratification. Mortgagor hereby ratifies and confirms all its obligations set forth in the Mortgage and Promissory Note. Mortgagor hereby certifies to Mortgagee that no event of default has occurred under such documents, nor any event which, with the giving of notice or the passage of time or both, would constitute such an event of default. Mortgagor hereby represents and warrants to Mortgagee that Mortgagor has no defense or offsets against the payment of any amounts due, or the performance of any obligations required by, the Loan Documents.

3. Miscellaneous.

(a) Except as expressly amended herein, the Mortgage and Promissory Note remain in full force and effect.

(b) This Amendment may be executed in multiple counterparts each of which, when taken together, shall constitute one and the same instrument.

(c) In the event of any inconsistency between the terms contained herein, and the provisions of Mortgage and Promissory Note, the terms of this Amendment shall govern.

(d) The individual executing this document hereby certifies that he has authority to engage in and execute this Amendment to Mortgage and Promissory Note.

**SEE EXECUTION BLOCK ON NEXT PAGE**

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the day and year first above written.

Signed, sealed and delivered  
in the presence of:

WITNESSES:

MORTGAGOR:

BERNSTEIN FAMILY REALTY, LLC,  
a Florida limited liability company

...  
D Banks  
Print Name: Diana Banks

By: [Signature]  
Simon Bernstein, Manager

(Shari Durham)  
Print Name: Shari Durham

STATE OF FLORIDA  
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of February, 2012, by Simon Bernstein, as Manager of Bernstein Family Realty, LLC, a Florida limited liability company. He ✓ is personally known to me or        has produced a driver's license as identification.

(Seal)

[Signature]  
Notary Public, State of Florida  
Name: Kelly Michele Buchanan  
Commission Expires: 7-1-2015  
Commission No.: EE 86156



**Eliot Ivan Bernstein**

**From:** Alan Rose <ARose@mrachek-law.com>  
**Sent:** Friday, February 17, 2017 3:37 PM  
**To:** 'Peter M. Feaman'; 'iviewit@iviewit.tv'; 'Eliot Ivan Bernstein'; 'Eliot Bernstein'; 'Eliot Ivan Bernstein'; 'iviewit@gmail.com'; 'O'Connell, Brian M.'  
**Subject:** Bernstein Family Realty, LLC  
**Attachments:** Tescher to ABR 02-16-17 re Resignation as Registered Agent tfor Bernstei....pdf

See attached correspondence mistakenly sent to me. I am forwarding this as a courtesy only. Please do not communicate with me regarding this. We will take no action.

I have no involvement with BFR, formed by Simon Bernstein as Manager, other than the knowledge that BFR owns real estate; is the mortgagor on a second mortgage held by the Estate of Simon Bernstein; and is a defendant in the case by Stansbury, in which Stansbury is seeking to take for himself BFR's real property as part of the claim against Simon's Estate.

Alan B. Rose, Esq.  
[arose@Mrachek-Law.com](mailto:arose@Mrachek-Law.com)  
561.355.6991



MRACHEK  
FITZGERALD  
ROSE  
KONOPKA  
THOMAS  
& WEISS, P.A.

505 South Flagler Drive  
Suite 600  
West Palm Beach, Florida 33401  
561.655.2250 Phone  
561.655.5537 Fax

**CONFIDENTIALITY NOTE:** THE INFORMATION CONTAINED IN THIS TRANSMISSION IS LEGALLY PRIVILEGED AND CONFIDENTIAL, INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION, OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU RECEIVE A COPY OF THIS COMMUNICATION IN ERROR, PLEASE **IMMEDIATELY** (1) REPLY BY E-MAIL TO US, AND (2) DELETE THIS MESSAGE.

**TAX DISCLOSURE NOTE:** To ensure compliance with requirements imposed by the Internal Revenue Service (Circular 230), we inform and advise you that any tax advice contained in this communication (including any attachments), unless otherwise specifically stated, was not intended or written to be used, and cannot be used, by any taxpayer for the purpose of (1) avoiding penalties that may be imposed under the Internal Revenue Code or (2) promoting, marketing or recommending to another party any transactions or matters addressed herein.

If there any documents attached to this email with the suffix .pdf, those documents are in Adobe PDF format, If you have difficulty viewing these attachments, you may need to download the free version of Adobe Acrobat Reader, available at: <http://www.adobe.com>

LAW OFFICES

**TESCHER & ASSOCIATES, P.A.**

WELLS FARGO PLAZA  
925 SOUTH FEDERAL HIGHWAY, SUITE 500  
BOCA RATON, FLORIDA 33432

TEL: 561-997-7008  
FAX: 561-997-7308  
TOLL FREE: 888-997-7008  
WWW.TESCHERLAW.COM

February 16, 2017

**VIA U.S. MAIL**

Alan Rose, Esq.  
Mrachek Law  
505 S. Flagler Drive, Suite 600  
West Palm Beach, FL 33401

**Re: Bernstein Family Realty, LLC**

Dear Alan:

Enclosed is a document evidencing the resignation of T&S Registered Agents, LLC as registered agent for Bernstein Family Realty, LLC. I am unsure as to who is actually representing or has authority to represent Bernstein Family Realty, LLC but I assume you will get it to the appropriate parties for them to file and appoint a successor registered agent.

Please note that there is an \$85.00 filing fee in connection with filing the resignation.

Should you have any questions, please give me a call.

Sincerely,

DONALD R. TESCHER

DRT/ac

Enclosures

RECEIVED FEB 17 2017

**COVER LETTER**

**TO:** Registration Section  
Division of Corporations

**SUBJECT:** BERNSTEIN FAMILY REALTY, LLC

Name of Limited Liability Company

**DOCUMENT NUMBER:** L08000054043

The enclosed Resignation of Registered Agent for a Limited Liability Company and fee are submitted for filing.

Please return all correspondence concerning this matter to the following:

Donald R. Tescher

Name of Person

Tescher & Associates, P.A.

Name of Firm/Company

925 South Federal Highway, Suite 500

Address

Boca Raton, FL 33432

City/State and Zip Code

dtescher@tescherlaw.com

E-mail address: (to be used for future annual report notification)

For further information concerning this matter, please call:

Donald R. Tescher

at ( 561 ) 997-7008

Name of Person

Area Code

Daytime Telephone Number

Enclosed is a check made payable to the Florida Department of State for \$85.00 for an active limited liability company or \$25.00 for an administratively dissolved, voluntarily dissolved or withdrawn limited liability company.

**MAILING ADDRESS:**

Registration Section  
Division of Corporations  
P.O. Box 6327  
Tallahassee, FL 32314

**STREET ADDRESS:**

Registration Section  
Division of Corporations  
Clifton Building  
2661 Executive Center Circle  
Tallahassee, FL 32301

## STATEMENT OF RESIGNATION OF REGISTERED AGENT FOR A LIMITED LIABILITY COMPANY

Pursuant to the provisions of section 605.0115, Florida Statutes, the undersigned,

**T & S REGISTERED AGENTS, LLC**

\_\_\_\_\_  
Name of Registered Agent

, hereby resigns as

Registered Agent for **BERNSTEIN FAMILY REALTY, LLC**


\_\_\_\_\_  
Name of Limited Liability Company

**L08000054043**

\_\_\_\_\_  
Document Number, if known

A copy of this resignation was mailed to the above listed limited liability company at its last known address.

The agency is terminated and the office discontinued on the 31st day after the date on which this statement is filed.

  
\_\_\_\_\_  
Signature of Resigning Agent

If signing on behalf of an entity:

**DONALD R. TESCHER**

\_\_\_\_\_  
Typed or Printed Name

**MGMR**

\_\_\_\_\_  
Capacity

### FILING FEES:

\$ 85.00	Active limited liability company
\$ 25.00	Administratively dissolved/ voluntarily dissolved/ withdrawn limited liability company

Make checks payable to Florida Department of State and mail to:  
Division of Corporations  
P.O. Box 6327  
Tallahassee, FL 32314



**TESCHER & SPALLINA, P.A.**

BOCA VILLAGE CORPORATE CENTER I  
4855 TECHNOLOGY WAY, SUITE 720  
BOCA RATON, FLORIDA 33431

**ATTORNEYS**  
DONALD R. TESCHER  
ROBERT L. SPALLINA  
LAUREN A. GALVANI

TEL: 561-997-7008  
FAX: 561-997-7308  
TOLL FREE: 888-997-7008  
WWW.TESCHERSPALLINA.COM

**SUPPORT STAFF**  
DIANE DUSTIN  
KIMBERLY MORAN  
SUANN TESCHER

January 14, 2014

**VIA U.S. MAIL AND EMAIL**

Ted S. Bernstein  
880 Berkeley Street  
Boca Raton, FL 33487

Eliot Bernstein  
2753 NW 34<sup>th</sup> Street  
Boca Raton, FL 33434

Lisa S. Friedstein  
2142 Churchill Lane  
Highland Park, IL 60035

Pamela B. Simon  
950 North Michigan Ave.  
Suite 2603  
Chicago, IL 60606

Jill Iantoni  
2101 Magnolia Lane  
Highland Park, IL 60035

**Re: Estates and Trusts of Shirley Bernstein and Simon Bernstein**

Dear Ladies and Gentlemen:

It has been brought to my attention that a document was prepared in our office that altered the disposition of the Shirley Bernstein Trust subsequent to Simon Bernstein's death. Information provided to me appears to indicate that there were two versions of the First Amendment to the Shirley Bernstein Trust Agreement, both executed on November 18, 2008. Under one version the children of Pam Simon and Ted Bernstein would not be permissible appointees of Simon Bernstein's exercise of the power of appointment while under the second version that restriction was removed. As you all know, Simon Bernstein's dispositive plan, expressed to all of you during his lifetime on a conference call, was to distribute the Estate to all ten of his grandchildren. That was the basis upon which the administration was moving forward.

Under the Shirley Bernstein Trust, there is a definition of children and lineal descendants. That definition excluded Pam Simon, Ted Bernstein and their respective children from inheriting. The document also contained a special Power of Appointment for Simon wherein he could appoint the assets of the Trust for Shirley's lineal descendants. Based upon the definition of children and lineal descendants, the Power of Appointment could not be exercised in favor of Pam Simon, Ted Bernstein or their respective children, although we believe it was Simon Bernstein's wish to provide equally for all of his grandchildren.

On November 18, 2008, it does appear from the information that I have reviewed that Shirley Bernstein executed a First Amendment to her trust agreement. The document as executed appears to make only one relatively minor modification to her trust disposition by eliminating a specific gift to Ted

Bernstein Family  
January 14, 2014  
Page 2

Bernstein's stepson. In January of 2013 a First Amendment to the Shirley Bernstein Trust Agreement was provided to Christine Yates, Esq. who, at that time, was representing Eliot Bernstein. The document provided contained a paragraph number 2 which modified the definitional language in Shirley's document so as to permit, by deleting the words "and their respective lineal descendants" from the definition, an exercise of the power of appointment by Simon Bernstein over the Shirley Bernstein Trust to pass equally to all ten grandchildren rather than only six of the grandchildren.

By virtue of The Florida Bar Rules of Professional Conduct, I am duty bound to provide this information to you. Obviously, as a result of the issues and ramifications raised by the allegations, my firm must resign from further representation in all matters relating to the Estates and Trusts of Simon Bernstein and Shirley Bernstein. Furthermore, it is my intent, and I assume also the intent of Robert Spallina, to tender our resignations as personal representatives of the Simon Bernstein Estate and as trustees of the Simon Bernstein Trust. If the majority of the Bernstein family is in agreement, I would propose to exercise the power to designate a successor trustee by appointing Ted Bernstein in that capacity. With regard to the Simon Bernstein Estate, the appointment of the successor would require a court proceeding.

I am obviously upset and distraught over this chain of events and will do all that I reasonably can to correct and minimize any damages to the Bernstein family. As I believe you know, to date there has only been a modest funding of some, but not all, of the continuing trusts for the grandchildren emanating from Shirley's Trust assets.

Very truly yours,

DONALD R. TESCHER

DRT/km

cc: Alan Rose, Esq.

**IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL**

**IN RE: ESTATE OF SIMON L. BERNSTEIN,**

**PROBATE DIVISION**

**Deceased.**

**CASE NO. 502012CP004391XXXXSB**

**ELIOT IVAN BERNSTEIN, PRO SE**

**DIVISION: IY (COLIN)**

**Petitioner**

**vs.**

**TESCHER & SPALLINA, P.A., (and all parties, associates and of counsel); ROBERT L. SPALLINA (both personally and professionally); DONALD R. TESCHER (both personally and professionally); THEODORE STUART BERNSTEIN (as alleged personal representative, trustee, successor trustee) (both personally and professionally); et. al.**

**Respondents.**

**PETITION FOR RESIGNATION AND DISCHARGE**

Petitioners, Donald R. Tescher and Robert L. Spallina, as co-Personal Representatives of the Estate of Simon L. Bernstein, hereby file their Petition for Resignation and Discharge and state:

1. Donald R. Tescher and Robert L. Spallina are the named co-Personal Representatives under the Last Will and Testament of Simon L. Bernstein admitted to probate on October 2, 2012, with Letters of Administration issued on that same day.

2. As a result of irreconcilable differences with the children and grandchildren of Simon L. Bernstein, it is necessary for the Petitioners to resign, and the Petitioners hereby seek leave to resign pursuant to § 733.502 of the Florida Statutes. The family members have indicated that they are amenable to this voluntary resignation of the co-Personal Representatives.

3. The interests of the estate will not be jeopardized by the resignation of the co - Personal Representatives.

4. The Petitioners will co-operate with the duly appointed successor Personal Representative or court-appointed curator pending appointment of a successor Personal Representative pursuant to § 733.5061 of the Florida Statutes and will immediately make available all relevant documents and materials, subject to retaining such access as necessary to permit the Petitioners to fulfill their accounting obligations under § 733.5061 and § 733.508 of the Florida Statutes.

5. Upon rendering a final accounting and fulfilling their obligations and responsibilities outlined in § 733.502, § 733.5035, § 733.5036, § 733.508, and § 733.509 of the Florida statutes, as well as related Probate Rules, the Petitioners request that this Court discharge the Petitioners as co-Personal Representatives.

WHEREFORE, Petitions request this court issue an Order accepting their resignation as co-Personal Representatives and revoking their Letters of Administration pursuant to § 733.502 of the Florida Statutes, reserving any and all issues as to discharge pending the rendering of their final accounting and the fulfillment of such other responsibilities outlined herein pursuant to the Florida Statutes.

DATED this 22 day of January, 2014.

Respectfully Submitted,  
TESCHER & SPALLINA, P.A.

By: ROBERT L. SPALLINA, ESQUIRE  
Florida Bar No. 497381  
4855 Technology Way, St. 720  
Boca Raton, FL 33431  
Telephone: 561-997-7008  
rspallina@tescherspallina.com  
kmoran@tescherspallina.com

ROBERT L. SPALLINA, Petitioner

DONALD R. TESCHER, Petitioner

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-mail to the designated address(es) and U.S. Mail, as noted, to all parties on the following Service List, this 28 day of January, 2014.

  
Robert L. Spallina, Esq.

**SERVICE LIST**

Theodore Stuart Bernstein (e-mail)  
Life Insurance Concepts  
950 Peninsula Corporate Circle, Suite 3010  
Boca Raton, Florida 33487

Alan B. Rose, Esq. (E-mail)  
Page Mrachek Fitzgerald Rose Konopka &  
Dow PA  
505 S Flagler Dr Ste 600  
West Palm Beach, Florida 33401

Eliot Bernstein (U.S. Mail)  
2753 NW 34<sup>th</sup> Street  
Boca Raton, Florida 33434

Lisa Sue Friedstein (U.S. Mail)  
2142 Churchill Lane  
Highland Park, Illinois 60035

Pamela Beth Simon (U.S. Mail)  
950 North Michigan Avenue, Suite 2603  
Chicago, Illinois 60611

Jill Iantoni (U.S. Mail)  
2101 Magnolia Lane  
Highland Park, Illinois 60035

Donald R. Tescher (E-mail)  
4855 Technology Way, Suite 720  
Boca Raton, Florida 33431

Mark R. Manceri, Esq. (E-mail)  
Mark R. Manceri, P.A.  
2929 East Commercial Boulevard, Ste. 702  
Fort Lauderdale, Florida 33308

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY,  
FL

IN RE: ESTATE OF PROBATE DIVISION

SHIRLEY BERNSTEIN, File No.502011CP000653XXXXSB

Deceased,

**MOTION TO WITHDRAW AS COUNSEL**

COME NOW, Robert L. Spallina, Esq., and Tescher & Spallina, P.A., pursuant to Rule 2.505 of the Florida Rules of Judicial Administration, hereby file this Motion to Withdraw as Counsel and, in support thereof, state as follows:

1. TESCHER & SPALLINA, P.A. was retained by Ted S. Bernstein as successor Personal Representative (hereinafter, the "Client") to represent him in these proceedings.
2. ROBERT L. SPALLINA, ESQ. of TESCHER & SPALLINA, P.A. was the attorney responsible for rendering services to the Client.
3. Irreconcilable differences have arisen which prevent the continued representation of the Client.
4. The mailing address, e-mail address and telephone number of the Client are as follows:

Mailing Address:	950 Peninsula Corporate Circle, Suite 3010 Boca Raton, Florida 33487
E-Mail Address:	tbernstein@lifeinsuranceconcepts.com
Telephone Number:	(561) 988-8994

WHEREFORE, TESCHER & SPALLINA, P.A. and ROBERT L. SPALLINA, ESQ., hereby respectfully request that this Honorable Court enter an Order consistent with the relief requested herein allowing TESCHER & SPALLINA, P.A. and ROBERT L. SPALLINA, ESQ.



to withdraw and any other relief this Honorable Court deems just, equitable and proper.

Signed on 22 Apr, 2014.

TESCHER & SPALLINA, P.A.

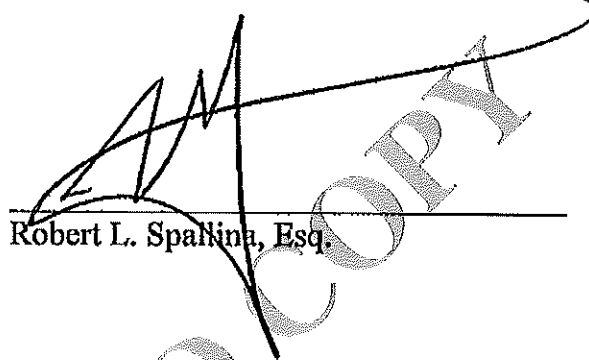
By: 

ROBERT L. SPALLINA, ESQUIRE  
Florida Bar No. 49738  
4855 Technology Way, St. 720  
Boca Raton, FL 33431  
Telephone: 561-997-7008  
rspallina@tescherspallina.com  
kmoran@tescherspallina.com

NOT A CERTIFIED COPY

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-mail to the designated address(es) and U.S. Mail, as noted, to all parties on the following Service List, this 28 day of January, 2014.

  
Robert L. Spallina, Esq.

**SERVICE LIST**

Theodore Stuart Bernstein (e-mail)  
Life Insurance Concepts  
950 Peninsula Corporate Circle, Suite 3010  
Boca Raton, Florida 33487

Eliot Bernstein (U.S. Mail)  
2753 NW 34<sup>th</sup> Street  
Boca Raton, Florida 33434

Lisa Sue Friedstein (U.S. Mail)  
2142 Churchill Lane  
Highland Park, Illinois 60035

Pamela Beth Simon (U.S. Mail)  
950 North Michigan Avenue, Suite 2603  
Chicago, Illinois 60611

Jill Iantoni (U.S. Mail)  
2101 Magnolia Lane  
Highland Park, Illinois 60035

Alan B. Rose, Esq. (E-mail)  
Page Mrachek Fitzgerald Rose Konopka &  
Dow PA  
505 S Flagler Dr Ste 600  
West Palm Beach, Florida 33401

Mark R. Manceri, Esq. (E-mail)  
Mark. R. Manceri, P.A.  
2929 East Commercial Boulevard, Ste. 702  
Fort Lauderdale, Florida 33308

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL

IN RE: ESTATE OF SIMON L. BERNSTEIN,

PROBATE DIVISION

Deceased.

CASE NO. 502012CP004391XXXXSB

\_\_\_\_\_  
ELIOT IVAN BERNSTEIN, PRO SE

DIVISION: IY (COLIN)

Petitioner

vs.

TESCHER & SPALLINA, P.A., (and all parties, associates and of counsel); ROBERT L. SPALLINA (both personally and professionally); DONALD R. TESCHER (both personally and professionally); THEODORE STUART BERNSTEIN (as alleged personal representative, trustee, successor trustee) (both personally and professionally); et. al.

Respondents.  
\_\_\_\_\_

**CONSENT AND JOINDER**  
**TO MOTION TO WITHDRAW AS COUNSEL OF RECORD**

I, ROBERT L. SPALLINA, ESQ., as co-personal representative of the above-referenced estate, as counsel for the co-personal representative, Donald R. Tescher, and as a respondent, both personally and professionally, hereby consent to and join in the Motion to Withdraw as Counsel of Record filed by Mark R. Manceri, Esq. and Mark. R. Manceri, P.A., on January 10, 2014, which motion has been set for hearing on January 23, 2014, at 8:45 a.m.

DATED this 23 day of January, 2014.

TESCHER & SPALLINA, P.A.

By: \_\_\_\_\_

ROBERT L. SPALLINA, ESQUIRE  
Florida Bar No. 497381  
4855 Technology Way, St. 720  
Boca Raton, FL 33431  
Telephone: 561-997-7008  
rspallina@tescherspallina.com  
kmoran@tescherspallina.com

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-mail to the designated address(es) and U.S. Mail, as noted, to all parties on the following Service List, this 28 day of January, 2014.

  
Robert L. Spallina, Esq.

**SERVICE LIST**

Theodore Stuart Bernstein (e-mail)  
Life Insurance Concepts  
950 Peninsula Corporate Circle, Suite 3010  
Boca Raton, Florida 33487

Alan B. Rose, Esq. (E-mail)  
Page Mrachek Fitzgerald Rose Konopka &  
Dow PA  
505 S Flagler Dr Ste 600  
West Palm Beach, Florida 33401

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Jill Iantoni (U.S. Mail)  
2101 Magnolia Lane  
Highland Park, Illinois 60035

Donald R. Tescher (E-mail)  
4855 Technology Way, Suite 720  
Boca Raton, Florida 33431

Mark R. Manceri, Esq. (E-mail)  
Mark. R. Manceri, P.A.  
2929 East Commercial Boulevard, Ste. 702  
Fort Lauderdale, Florida 33308

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL

IN RE: ESTATE OF SHIRLEY BERNSTEIN,

PROBATE DIVISION

Deceased.

CASE NO. 502011CP000653XXXXSB

ELIOT IVAN BERNSTEIN, PRO SE

DIVISION: IY (COLIN)

Petitioner

vs.

TESCHER & SPALLINA, P.A., (and all parties, associates and of counsel); ROBERT L. SPALLINA (both personally and professionally); DONALD R. TESCHER (both personally and professionally); THEODORE STUART BERNSTEIN (as alleged personal representative, trustee, successor trustee) (both personally and professionally); et. al.

Respondents.

**CONSENT AND JOINDER**  
**TO MOTION TO WITHDRAW AS COUNSEL OF RECORD**

I, ROBERT L. SPALLINA, ESQ., as counsel for the successor personal representative, Ted S. Bernstein, and as a respondent, both personally and professionally, hereby consent to and join in the Motion to Withdraw as Counsel of Record filed by Mark R. Manceri, Esq. and Mark. R. Manceri, P.A., on January 10, 2014, which motion has been set for hearing on January 23, 2014, at 8:45 a.m.

DATED this 22 day of January, 2014.

TESCHER & SPALLINA, P.A.

By:

ROBERT L. SPALLINA, ESQUIRE

Florida Bar No. 497381

4855 Technology Way, St. 720

Boca Raton, FL 33431

Telephone: 561-997-7008

rspallina@tescherspallina.com

kmoran@tescherspallina.com

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-mail to the designated address(es) and U.S. Mail, as noted, to all parties on the following Service List, this 28 day of January, 2014.

  
Robert L. Spallina, Esq.

**SERVICE LIST**

Theodore Stuart Bernstein (e-mail)  
Life Insurance Concepts  
950 Peninsula Corporate Circle, Suite 3010  
Boca Raton, Florida 33487

Alan B. Rose, Esq. (E-mail)  
Page Mrachek Fitzgerald Rose Konopka &  
Dow PA  
505 S Flagler Dr Ste 600  
West Palm Beach, Florida 33401

Eliot Bernstein (U.S. Mail)  
2753 NW 34<sup>th</sup> Street  
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2101 Magnolia Lane  
Highland Park, Illinois 60035

Donald R. Tescher (E-mail)  
4855 Technology Way, Suite 720  
Boca Raton, Florida 33431

Mark R. Manceri, Esq. (E-mail)  
Mark. R. Manceri, P.A.  
2929 East Commercial Boulevard, Ste. 702  
Fort Lauderdale, Florida 33308



**IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA**

**WILLIAM E. STANSBURY,**

**CIVIL DIVISION**

**Plaintiff,**

**CASE NO: 502012CA013933 MB AA**

**DIVISION: BLANC**

**vs.**

**TED S. BERNSTEIN; DONALD TESCHER  
and ROBERT SPALLINA, as Co-Personal  
Representatives of the ESTATE OF SIMON  
L. BERNSTEIN and as Co-Trustees of the  
SHIRLEY BERNSTEIN TRUST AGREEMENT  
dated May 20, 2008; LIC HOLDINGS, INC.;  
ARBITRAGE INTERNATIONAL  
MANAGEMENT, LLC, f/k/a ARBITRAGE  
INTERNATIONAL HOLDINGS, LLC;  
BERNSTEIN FAMILY REALTY, LLC,**

**Defendants.**

**MOTION TO WITHDRAW AS COUNSEL OF RECORD**

COME NOW, Mark R. Manceri, Esq., and Mark R. Manceri, P.A., pursuant to Rule 2.505 of the Florida Rules of Judicial Administration and hereby file this their Motion to Withdraw as Counsel of Record and in support thereof state, as follows:

1. MARK R. MANCERI, P.A. was retained by Donald R. Tescher and Robert L. Spallina, as Co-Personal Representatives of the Estate of Simon Bernstein; and Bernstein Family Realty LLC (hereinafter the "Clients") to represent them in these proceedings.
2. MARK R. MANCERI, ESQ. of MARK R. MANCERI, P.A. was the attorney responsible for rendering the legal services to the Clients.

3. Professional consideration(s) has arisen which prevent(s) the continued

FILE NO.:502012CA013933 MB AA

representation of the Clients.

4. The mailing and e-mail addresses and the telephone numbers of the Clients are as follows:

Donald R. Tescher, Co-Personal Representative, 4855 Technology Way, Suite 720, Boca Raton, Florida 33431, e-mail: [dtescher@tescherspallina.com](mailto:dtescher@tescherspallina.com); telephone number (561) 997-7008.

Robert L. Spallina, Co-Personal Representative, 4855 Technology Way, Suite 720, Boca Raton, Florida 33431, e-mail: [rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com); telephone number (561) 997-7008.

Bernstein Family Realty, LLC, c/o Janet Craig, CTFA, Senior Vice President & Compliance Office, Oppenheimer Trust Company, 18 Columbia Turnpike, Florham Park, NJ 07932, e-mail: [Janet.Craig@opco.com](mailto:Janet.Craig@opco.com); telephone number (973) 245-4635..

WHEREFORE, MARK R. MANCERI, P.A. and MARK R. MANCERI, ESQ., hereby request that this Honorable Court enter an Order consistent with the relief requested herein allowing MARK R. MANCERI, P.A. and MARK R. MANCERI, ESQ. to withdraw and any other relief this Honorable Court deems just, equitable and proper.

MARK R. MANCERI, P.A.  
Attorney for Donald R. Tescher and Robert L.  
Spallina, as Co-Personal Representatives and  
Bernstein Family Realty, LLC  
2929 East Commercial Blvd., Suite 702  
Ft. Lauderdale, FL 33308  
Telephone: (954) 491-7099  
E-mail: [mrmlaw@comcast.net](mailto:mrmlaw@comcast.net)  
[mrmlaw1@gmail.com](mailto:mrmlaw1@gmail.com)

By: 

Mark R. Manceri, Esq.  
Florida Bar No. 444560

502012CA013933 MB AA

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-mail to the designated address(es) to all parties on the following Service List, this 10<sup>th</sup> day of January, 2014.

---

Mark R. Manceri, Esq.

**SERVICE LIST**

Peter M. Feaman, Esq.  
Peter M. Feaman, P.A.  
3615 West Boynton Beach Blvd.  
Boynton Beach, Florida 33436

Alan B. Rose, Esq.  
Page, Mrachek, Fitzgerald, et.al.  
505 South Flagler Drive, Suite 600  
West Palm Beach, Florida 33401

Donald R. Tescher, Co-Personal Representative  
4855 Technology Way, Suite 720  
Boca Raton, Florida 33431

Robert L. Spallina, Co-Personal Representative  
4855 Technology Way, Suite 720  
Boca Raton, Florida 33431

Bernstein Family Realty, LLC  
c/o Janet Craig, CTFA  
Senior Vice President & Compliance Office  
Oppenheimer Trust Company  
18 Columbia Turnpike  
Florham Park, NJ 07932

**IN THE CIRCUIT COURT FOR  
PALM BEACH COUNTY, FLORIDA**

**PROBATE DIVISION**

**FILE NO.: 502012CP004391XXXXSB IV**

**DIVISION: COLIN**

**IN RE: ESTATE OF**

**SIMON BERNSTEIN**

**Deceased.**

---

**MOTION TO WITHDRAW AS COUNSEL OF RECORD**

COME NOW, Mark R. Manceri, Esq., and Mark R. Manceri, P.A., pursuant to Rule 2.505 of the Florida Rules of Judicial Administration and hereby file this their Motion to Withdraw as Counsel of Record and in support thereof state, as follows:

1. MARK R. MANCERI, P.A. was retained by Donald R. Tescher and Robert L. Spallina, as Co-Personal Representatives of the Estate of Simon Bernstein (hereinafter the "Clients") to represent them in these proceedings.

2. MARK R. MANCERI, ESQ. of MARK R. MANCERI, P.A. was the attorney responsible for rendering the legal services to the Clients.

3. Professional consideration(s) has arisen which prevent(s) the continued representation of the Clients.

4. The mailing and e-mail addresses and the telephone numbers of the Clients are as follows:

FILE NO.: 502012CP004391XXXXSB IY

Donald R. Tescher, Co-Personal Representative, 4855 Technology Way, Suite 720, Boca Raton, Florida 33431, e-mail: dtescher@tescherspallina.com; telephone number (561) 997-7008.

Robert L. Spallina, Co-Personal Representative, 4855 Technology Way, Suite 720, Boca Raton, Florida 33431, e-mail: rspallina@tescherspallina.com; telephone number (561) 997-7008.

WHEREFORE, MARK R. MANCERI, P.A. and MARK R. MANCERI, ESQ., hereby request that this Honorable Court enter an Order consistent with the relief requested herein allowing MARK R. MANCERI, P.A. and MARK R. MANCERI, ESQ. to withdraw and any other relief this Honorable Court deems just, equitable and proper.

MARK R. MANCERI, P.A.  
Attorney for Donald R. Tescher and Robert L.  
Spallina, as Co-Personal Representatives  
2929 East Commercial Blvd., Suite 702  
Ft. Lauderdale, FL 33308  
Telephone: (954) 491-7099  
E-mail: mrmlaw@comcast.net  
mrmlaw1@gmail.com

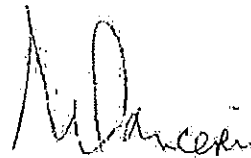
By: 

Mark R. Manceri, Esq.  
Florida Bar No. 444560

FILE NO.: 502012CP004391XXXXSB IX

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-mail to the designated address(es) and U.S. mail, as noted, to all parties on the following Service List, this 10<sup>th</sup> day of January, 2014.



Mark R. Manceri, Esq.

SERVICE LIST

Peter M. Feaman, Esq. (e-mail)  
Peter M. Feaman, P.A.  
3615 West Boynton Beach Blvd.  
Boynton Beach, Florida 33436

Eliot Bernstein (U.S. mail)  
2753 NW 34<sup>th</sup> Street  
Boca Raton, Florida 33434

Theodore Stuart Bernstein (e-mail)  
Life Insurance Concepts  
950 Peninsula Corporate Circle, Suite 3010  
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Lisa Sue Friedstein (U.S. mail)  
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950 North Michigan Avenue, Suite 2603  
Chicago, IL 60611

Jill Iantoni (U.S. mail)  
2101 Magnolia Lane  
Highland Park, IL 60035



Filing # 146674645 E-Filed 03/30/2022 07:36:23 AM

**EXHIBIT**

CASE NO.: 50-2018-CA-002317

Sahm Foreclosure v BFR, LLC et al

SWORN STATEMENT OF WILLIAM J. STANSBURY

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT, IN AND FOR  
PALM BEACH COUNTY, FLORIDA

CASE NO.: 50-2018-CA-002317

WALTER E. SAHM and  
PATRICIA SAHM,

Plaintiffs,

v.

BERNSTEIN FAMILY REALTY, LLC and  
ALL UNKNOWN TENANTS.

Defendants

---

SWORN STATEMENT OF WILLIAM E. STANSBURY  
WALTER AND PATRICIA SAHM PROPERTY SALE

1. My name is William E. Stansbury and I make this Statement under oath about matters within my own personal knowledge and belief about the circumstances of the sale of real property by Walter and Patricia Sahn involving Simon Bernstein and related parties.
2. I live in Boynton Beach, Florida where I have resided for approximately 16 years.
3. I have worked as a professional in the Life Insurance industry for approximately 45 years which is how I came to know Walter Sahn and

Simon Bernstein and their respective wives Patricia Sahm and Shirley Bernstein.

4. I came to know the Plaintiffs Walter and Patricia Sahm quite a few years before meeting and working with Simon Bernstein, first meeting Walter Sahm around 1984. Prior to meeting Walt, I had been appointed as the Agency Manager for John Hancock Insurance Company covering Palm Beach, Martin, Indian River, and St. Lucie Counties. Prior to this appointment, I was employed by John Hancock in Pittsburgh, Pennsylvania. My new job required me to relocate to Boca Raton, Fl. I had recently earned the Chartered Life Underwriter (CLU) and Chartered Financial Consultant (ChFC) professional designations from the American College. Walt was the General Agent for Transamerica Insurance Company and a member of the Palm Beach County CLU, ChFC Association and he invited me to join the professional organization. I accepted his invitation to join, and we remained friends and professional colleagues ever since. This organization is now known as the Society of Financial Service Professionals, and it was my honor to serve two years as president.
5. For personal family reasons, I retired in 2000 from my position as John Hancock's Director of Agency Operations for the southeastern United States. By 2002 my family crisis had resolved, and I began looking for

something to do that would be in the field of insurance and estate planning. In 2003, I had lunch with Ted Bernstein, and he shared with me that his father, Simon Bernstein, was in the insurance business, and had been introduced to a new estate planning strategy developed by the law firm of Kirkland and Ellis in Chicago. Ted asked me if I would like to speak with him about it. Simon and I met several times and we agreed that I would start working with his company – Life Insurance Concepts (LIC) located on Congress Avenue in Boca Raton, Fl. We generally enjoyed a strong and profitable relationship that ultimately resulted in me having a partnership interest in the business. Over time, I got to know his wife Shirley and learn things about their family through our business relationship.

6. In around 2007, Walt Sahm decided to retire from the position of General Agent for Transamerica. Walt had several long-term, key employees in his agency that he was concerned about if he left. LIC was doing very well and was looking for additional underwriting staff. I suggested that Walt and Simon meet to see what we could do at LIC for his staff. Walt discussed and finally agreed with Simon to move his staff to the same building and floor where LIC was located in Boca Raton. It was a win-win for both parties and, during this process, they got to know each other better. Walt mentioned to Simon that he would be selling his Boca Raton home and moving to the

Villages in Central Florida. At that same time, Simon and Shirley were looking to secure a home for their son Eliot to come live in with his wife Candice and three boys Joshua, Jacob, and Danny Bernstein. In addition to the layout of the house being perfect for the family, the home borders the St. Andrews School which Simon and Shirley thought would be a great choice for their grandchildren to attend. Simon agreed to facilitate the purchase of the house from Walt and Pat Sahn.

7. I recall how happy Shirley Bernstein was to know that her son Eliot and wife Candice and grandchildren would be living nearby, and it was always my understanding and belief from Simon that his son Eliot and his family would have that home to live in for as long as they ever chose.
8. By this time in 2008 I had developed a position of trust and respect with Simon Bernstein to such a degree that Simon Bernstein made me a named Successor Trustee in both his Irrevocable Trust of 2008 and his Revocable Trust of 2008, and I had also become a Trust Protector for Simon Bernstein's Delaware Asset Protection Trust.
9. While I did not know the "ins and outs" of what was going on with Eliot Bernstein and his Technology interests at that time, I knew enough from Simon Bernstein to know that he had a direct concern about protecting the home for his son Eliot Bernstein and family including Eliot's sons, the

grandchildren Josh, Jake, and Danny. The entire transaction for the purchase of the Sahm property was set up by Simon Bernstein as asset protection for the benefit of Eliot Bernstein and family - his wife Candice, and their sons.

10. Simon Bernstein shared with me that he had sufficient assets at that time to pay for the Sahm home in full. Both the Note and Mortgage to Walt and Pat Sahm for \$110,000.00 and the "Second Mortgage" from BFR, LLC back to Simon Bernstein were done specifically and only as asset protection to create an additional layer to protect the property against potential adversaries or creditors against Eliot. My recollection is that Walt and Pat agreed to accept interest only on the mortgage for a period of time and then the terms would be renegotiated.

11. Since I was Simon's business partner and friend, I knew from direct conversation with Simon that he had the more than enough assets to pay off in full the Note and Mortgage to the Sahms. I asked Simon directly what I was supposed to do if I was acting as Trustee regarding the 2 mortgages. I was instructed by Simon that, upon his death, to immediately pay off the Sahms in full plus applicable interest. I was also instructed to "tear up" the Second Mortgage as this was only created as an asset protection vehicle and no repayment or consideration was ever expected.



12. I further knew from direct conversations with Simon Bernstein that neither the payoff in full to the Sahms on the Note and Mortgage nor the “paper tiger” Second Mortgage were in any way to reduce or diminish the amounts Eliot Bernstein and Family would receive from the respective Estates and inheritance from Shirley or Simon Bernstein.
13. I asked Simon if I were no longer willing or able to serve as Trustee should I appoint one of his children, or spouses of children, as the successor trustee. Simon told me that under no circumstances was I to appoint any of his children, or their spouses, to have anything to do with any aspect of his estate. He told me that if that ever happened his family would be ruined forever.
14. My lawyer, Peter Feaman, filed a document in one of the court proceedings showing that Simon had drafted language to reflect this into his testamentary documents. Based upon the documents, it appears that none of Simon’s children should be acting as a Fiduciary over certain Trusts not only because they were considered predeceased in the documents, but because it was against his stated wishes.
15. I have no personal knowledge that either Shirley or Simon’s Estates or Trusts have even been properly accounted for to this day.

16. I have no knowledge that Simon Bernstein ever intended to change his Trust or Will to add back in Pam Simon or Ted Bernstein or their children. Neither Simon Bernstein nor his legal counsel ever came to me to advise me that I was being removed as Successor Trustee in any of his Trusts. I came to learn that Simon Bernstein revised his trust in July 2012 – approximately 2 months before he passed away. The revised document removed me as a successor trustee and added Donald Tescher and Robert Spallina. I was surprised to see this as I recall Simon telling me that he didn't care much for them. In retrospect it appears that Simon had good instincts. I believe that they were introduced to Simon Bernstein by Ted Bernstein.

17. I do know from direct office experience working with Simon Bernstein and his son Ted Bernstein that there did come a time in 2012 when the "tensions in the office" between Simon and Ted started to grow and I could hear loud heated arguments between the two.

18. Ultimately, from what I understand, these disputes between Ted and Simon grew to such an elevated level that Simon moved out of the office space he shared with Ted in the weeks before his passing.

19. These difficulties between Ted and Simon, I believe, also contributed to difficulties in me getting paid proper commissions and, ultimately, I

resigned my position in May 2012. Simon and I never had any discussions to that point that changed anything that I was instructed to do at his passing.

20. I was directly aware that Eliot's sons Joshua, Jacob and Danny's Trusts were the sole and only Members of BFR, LLC which owned the home and, while I am not a lawyer, I would understand clearly that the sons were beneficial owners of the property.
21. It is impossible to imagine that Walt Sahm did not know this and can only speculate that somehow his new counsel may not have filed papers correctly or share with Walt the actions being taken in the mortgage foreclosure action.
22. I do have knowledge just from conversation with Eliot Bernstein about how he had tried to get proper release of funds and assets so the Plaintiffs, Walt and Pat Sahm, could be satisfied and again from what I knew about the monies and assets held by Simon Bernstein at the time of his passing that this Note and Mortgage could have been paid off in full to the Sahms' years ago leaving Eliot, his wife and 3 boys in the home free and clear as his parents wished with an asset with equity value due to the location of the home near St. Andrews school in Boca Raton.

23. I make this Statement under oath to the best of my personal knowledge and have not been promised or threatened in any way to make this statement and do so willingly and voluntarily in a hope to shed light and clarity so proper resolution of interests may occur.

Dated: 3/7/2022

William E. Stansbury

William E. Stansbury

Sworn to before me this 7<sup>th</sup> day of  
March, 2022.

Stevens Milord

NOTARY PUBLIC



STEVENS MILORD  
Commission # HH 133331  
Expires September 9, 2025  
Loaded Thru Budget Notary Services