
[_____] ,
as Co-Lender

[_____] ,
as Lead Lender and Servicer

CO-LENDING AND SERVICING AGREEMENT

Re: First Mortgage Loan in the
Amount of \$_____

Property: _____

Dated: _____, 200_

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CO-LENDING AND SERVICING AGREEMENT

This Agreement (the "Agreement"), dated as of April __, 2000 is made by and between _____, a _____, having an address at _____ ("Co-Lender") and _____ a _____, having an address at _____ ("Lead Lender"). Lead Lender and Co-Lender may be sometimes referred to individually herein as a "Party" and, collectively, as the "Parties."

R E C I T A L S:

A. Lead Lender and Co-Lender intend to make a first mortgage loan to _____ ("Borrower") in the aggregate principal sum of \$_____ (the "Loan"); and

B. The Loan is to be evidenced by certain notes to the Parties in the amount of the Loan; and

C. The Loan is to be secured by certain mortgages, deeds of trust or deeds to secure debt described on Exhibit A attached hereto (collectively, the "Security Instrument"), which Security Instrument encumbers Borrower's fee estate in the premises described in Exhibit B attached hereto (the "Property"); and

D. All of the documents evidencing, securing, insuring, guaranteeing or otherwise relating to the Loan set forth in Exhibit C attached hereto (the "Loan Documents") will be in the [names of Lead Lender and Co-Lender/name of Lead Lender for the benefit of Lead Lender and Co-Lender]; and

E. The Parties desire to set forth their respective interests in the Loan and Loan Documents and their relationship to each other as joint owners of the Loan and their agreements regarding the administration, servicing and enforcement of the Loan and the Loan Documents.

NOW THEREFORE, in consideration of the Recitals, and the mutual promises below, and other good and sufficient consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties mutually agree as follows:

ARTICLE I
DEFINITIONS

Section 1.1. DEFINED TERMS. Capitalized terms used herein shall have the following meanings.

“Acts” shall have the meaning set forth in 6.3;

“Acquisition” shall have the meaning set forth in Section 9.3;

“Advance” shall have the meaning set forth in Section 2.3;

“Advance Date” shall have the meaning set forth in Section 2.3;

“Advancing Party” shall have the meaning set forth in Section 4.7(c);

“Affiliate” shall have the meaning set forth in Section 11.1;

“Affiliated Transferee” shall have the meaning set forth in Section 11.1;

“Agreement” shall have the meaning set forth in Preamble;

“Applicable Bankruptcy Law” shall have the meaning set forth in Section 14.1;

“Appraisal” shall mean a written appraisal in conformance with the requirements and standards of Uniform Standard of Professional Appraisal Practice (“USPAP”) and performed by an independent, currently certified MAI appraiser who is employed by a nationally recognized appraisal firm selected by Lead Lender and approved by the Parties, which appraiser shall (1) assume that the Property is unencumbered, and (2) determine the fair market value based upon the standard three approaches to value established by USPAP, with emphasis on the capitalization of income approach to value;

“Approved Business Plan” shall have the meaning set forth in Section 16.5(c);

“Asset Management Fee” shall have the meaning set forth in Section 5.1(c);

“Borrower” shall have the meaning set forth in paragraph A of the Recitals;

A “Business Day” shall mean any day on which The New York Stock Exchange is open for trading;

“Business Plan” shall have the meaning set forth in Section 16.4(f);

“Co-Lender” shall have the meaning set forth in Preamble;

“Co-Lender Note” shall have the meaning set forth in Section 2.4;

“Commitment” means that certain Commitment dated _____ between [Lead Lender/Lead Lender and Co-Lender] and Borrower;

“Decision” shall have the meaning set forth in Section 9.1;

“Default Interest” shall mean the interest at the default rate defined in the Note;

“Default Letter” shall have the meaning set forth in Exhibit __;

“Disposition Fee” shall have the meaning set forth in Section 5.1(c);

“Disproportionate Advance” shall mean any Emergency Advance which is not funded equally by the Parties or any sum of money which the Parties have both agreed to pay, but which was not actually funded in accordance with the Parties’ Ownership Shares;

“Election Period” shall have the meaning set forth in Section 9.3(b);

“Emergency Advance” shall have the meaning set forth in Section 4.7(b);

“ERISA” shall have the meaning set forth in Section 11.2(c);

“ESA” shall have the meaning set forth in Section 10.9;

“Expenses” shall have the meaning set forth in Section 5.4(a);

“First Notice” shall have the meaning set forth in Section 16.9(b);

“First Party” shall have the meaning set forth in Section 16.9(b);

“Improvements” shall have the meaning set forth in Section 4.8(a)(iii);

“Indemnified Losses” shall have the meaning set forth in Section 19.2;

“Indebtedness” shall have the meaning set forth in Exhibit __;

“Initiating Party” shall have the meaning set forth in Section 9.3;

“Insolvent Party” shall have the meaning set forth in Section 14.1;

“Institutional Investor” shall have the meaning set forth in Section 11.2(e);

“Interim Business Plan” shall have the meaning set forth in Section 16.4(d);

“Lead Lender” shall have the meaning set forth in Preamble;

“Lead Lender Note” shall have the meaning set forth in Section 2.4;

“Leasing Guidelines” shall mean the leasing guidelines for the Property approved by [Lead Lender/the Parties] and attached to the Loan Documents as an exhibit, and if the Property is acquired by the Parties, leasing guidelines for the Property Manager which have been approved by the Ownership Entity;

“Loan” shall have the meaning set forth in paragraph A of the Recitals;

“Loan Default” shall have the meaning set forth in Section 10.1;

“Loan Documents” shall have the meaning set forth in paragraph D of the Recitals;

“Major Action” shall have the meaning set forth in Section 4.9;

“Market Value” shall mean the fair market value of the Property within sixty (60) calendar days of the date of determination of value by an Appraisal of the Property;

“Non-Enforcing Party” shall have the meaning set forth in Section 10.3(b);

“Note” shall mean, collectively, the Lead Lender Note and the Co-Lender Note;

“Notice of Advance” shall have the meaning as set forth in Section 2.3;

“Offer” shall have the meaning set forth in Section 11.1;

“Offer Notice” shall have the meaning set forth in Section 11.1;

“Offered Party” shall have the meaning set forth in Section 11.1;

“Offering Party” shall have the meaning set forth in Section 11.1;

“Other Financing” shall have the meaning set forth in Section 12.1;

“Ownership Entity” shall have the meaning set forth in Section 16.1;

“Ownership Share” shall have the meaning set forth in Section 2.1;

“Party” shall have the meaning set forth in Preamble;

“Parties” shall have the meaning set forth in Preamble;

“Preliminary Business Plan” shall have the meaning set forth in Section 16.4(b);

“Primary Servicing Fee” shall have the meaning set forth in Section 5.1(a);

“Property” shall have the meaning set forth in paragraph C of the Recitals;

“Property Manager” shall have the meaning set forth in Section 16.3(b);

“Purchasing Party” shall mean the Party purchasing the Selling Party’s entire right and interest in the Loan or the Property pursuant to Section 9.3;

“Purchase Price” shall have the meaning set forth in Section 9.3;

“Regular Advances” shall have the meaning set forth in Section 4.7(a);

“Rents” shall have the meaning set forth in Exhibit ___;

“Responding Party” shall have the meaning set forth in Section 9.3;

“Sale Closing Date” shall have the meaning set forth in Section 9.3;

“Second Notice” shall have the meaning set forth in Section 16.9(b);

“Second Party” shall have the meaning set forth in Section 16.9(b);

“Security” shall have the meaning set forth in Section 4.9(i);

“Security Instrument” shall have the meaning set forth in paragraph C of the Recitals;

“Selling Party” shall mean the Party selling its entire right and interest in the Loan or the Property pursuant to Section 9.3;

“Servicer” shall have the meaning set forth in Section 4.1;

“Servicing Fees” shall have the meaning set forth in Section 5.1;

“Servicing Standard” shall mean the servicing of the Loan by the Servicer solely in the best interests of and for the benefit of all of the Parties (as determined by the Servicer in the exercise of its reasonable judgment) and in accordance with applicable law, the specific terms of the Loan, this Agreement and to the extent not inconsistent with the foregoing, in the same manner in which, and with the same care, skill, prudence and diligence with which, it (i) services and administers similar mortgage loans comparable to the Loan and held for other similar third-party portfolios or (ii) administers mortgage loans for its own account, whichever standard is higher;

“Servicing Termination Fee” shall mean _____;

“Solvent Party” shall have the meaning set forth in Section 14.1;

“Special Servicing Fee” shall have the meaning set forth in Section 5.1(b);

“Workout Period” shall have the meaning set forth in Section 10.2.

Section 1.2. NUMBER AND GENDER. Whenever in this Agreement the singular number is used, the same shall include the plural where appropriate, and vice versa, and words of any gender in this Agreement shall include each other gender where appropriate.

ARTICLE II

OWNERSHIP INTERESTS

Section 2.1. OWNERSHIP SHARE. Lead Lender will own an undivided interest of ____ percent (____%) in the Loan equal to \$_____ as of the date hereof and Co-Lender will own an undivided interest of ____ percent (____%) in the Loan equal to \$_____ as of the date hereof (the respective pro rata interest of each Party is called the “Ownership Share” and, collectively, the “Ownership Shares”). The Parties will share an interest in the Loan and all risks and benefits of the Loan in proportion to their Ownership Share.

Section 2.2. ALLOCATION OF INCOME/LOSSES. All income, gain and profit with respect to the Loan, the Loan Documents and the Property and all advances, losses, costs and expenses with respect to the Loan, including, without limitation, advances for taxes, insurance premiums, dues, assessments, fees or to otherwise protect the Property, shall be apportioned among the Parties in accordance with their respective Ownership Shares. Each Party agrees that it will not, through any default in performance, cause the other Party to become obligated to disburse funds in excess of its Ownership Share of the Loan.

Section 2.3. FUNDING OF OWNERSHIP SHARE. When and as advances (singly the “Advance”) are to be made under the Loan, Lead Lender shall give Co-Lender written or telephonic notice thereof (“Notice of Advance”) at least two (2) Business Days prior to the Advance Date. Each Notice of Advance shall specify (a) the amount of the Advance, (b) the date the Advance is to be made (“the Advance Date”), and (c) the amount of Co-Lender’s share of the Advance. Each of the Parties shall deliver or cause to be delivered to Borrower its Ownership Share of each Advance in Federal Reserve or other funds immediately available no later than 12:00 noon (New York Time) on the date specified in the Notice of Advance. Should either Party not make Advances in accordance with the terms hereof, the Party continuing to make Advances shall have the rights set forth in Section 4.7.

Section 2.4. EVIDENCE OF OWNERSHIP SHARE. The Loan will be evidenced by two or more cross-defaulted notes, one to Lead Lender in the amount of its Ownership Share (the “Lead Lender Note”) and one to Co-Lender in the amount of its Ownership Share (the “Co-Lender Note”), in each instance multiplied by the initial principal amount of the Loan.

Section 2.5. INTEREST RATE. The respective Ownership Shares of the Parties shall bear interest at the rate set forth in the Note. Co-Lender shall be entitled to such interest received with respect to its Ownership Share of the Loan commencing on the date of Co-Lender’s funding of its Ownership Share of an Advance.

Section 2.6. TERM. This Agreement shall remain in full force and effect so long as both the Parties, their successors and permitted assigns shall have any interest in any portion of the Loan or the Property, including, without limitation, after acquisition of the Property by both the Parties through foreclosure, deed in lieu of foreclosure, or otherwise.

Section 2.7. EQUAL PRIORITY. Except as otherwise specifically provided in this Agreement, each Party shall have a ratably concurrent and co-equal legal and beneficial interest in the Loan, each Loan Document, and all rights, remedies, payments, collateral and proceeds thereof, equal to such Party's Ownership Share, without any preference or priority over the Ownership Share of the other Party in the Loan, the Loan Documents and the rights, remedies, payments, collateral and the proceeds thereof.

Section 2.8. FEES. Except as provided in Article V, all fees of any kind whatsoever by whomsoever paid in respect of the Loan pursuant to the terms of the Loan Documents, regardless of whether such Party has been granted a lien or security interest in such item of security pursuant to the Loan Documents or otherwise, whether the Loan Documents relating to such item of security are in favor or for the benefit of such Party or whether either Party holds possession of all or any part of such security whether or not the Loan has been funded, including, but not limited to, standby fees, extension fees, transfer fees, partial release fees, assumption fees, prepayment privilege fees and Default Interest will be apportioned among, and promptly paid to, the Parties.

Section 2.9. PARTY CERTIFICATIONS. Either Party shall, at any time, upon request of the other Party, deliver to the other Party a written statement certifying the amount of its Ownership Share, whether it has transferred or encumbered its interests in the Loan or the Property and, if so, the details relating to such transfer or encumbrance.

ARTICLE III

LEAD LENDER

Section 3.1. MORTGAGEE OBLIGATIONS. (a) Lead Lender, [as mortgagee of record/as agent for the Parties as mortgagees of record], shall promptly perform all of the lender's obligations under the Loan Documents. If such obligations include the payment of any mortgage insurance premiums, taxes, special assessments, or hazard insurance premiums, Lead Lender shall pay the same only if and to the extent funds have been made available for such purposes by payments received from Borrower. Lead Lender shall not make any Advances or incur any Expenses except as provided in this Agreement.

(b) Lead Lender shall maintain facilities and employ personnel sufficient to carry out its obligations as Servicer under this Agreement.

(c) Lead Lender will permit the Parties or their respective authorized representatives at any time during Lead Lender's normal business hours to examine all books and records relating to the Loan by giving Lead Lender at least two (2) Business Days' prior written

notice, and shall keep records pertaining to the Loan, which records shall be reasonably satisfactory to and shall be the property of the Parties. Lead Lender shall deliver such records or complete and accurate copies thereof to the Parties or their authorized representatives in the event of termination of this Agreement.

Section 3.2. LEAD LENDER AS RECORD HOLDER. Lead Lender, as mortgagee of record, shall administer the Loan in accordance with the terms of the Note, the Loan Documents, and this Agreement. Lead Lender shall not, without in each case first obtaining the prior written consent of the Parties, which consent may be withheld by any Party in its sole and absolute discretion, (i) modify or amend the Loan Documents or the Note, (ii) accept payment from Borrower other than in accordance with the terms of the respective Note, the Loan Documents, and this Agreement, (iii) waive compliance with terms or provisions of the Loan Documents or the Note, or (iv) take any other action with regard to the Note or the Loan Documents, unless otherwise specifically and expressly permitted herein.

Section 3.3. ORIGINAL DOCUMENTS. Lead Lender shall retain the original Lead Lender Note, and originals of all recorded and unrecorded Loan Documents, and Co-Lender shall receive its original Co-Lender Note, together with copies of all recorded Loan Documents and an inventory of all unrecorded Loan Documents. Lead Lender shall deliver a copy of any unrecorded Loan Document to Co-Lender upon request for same by Co-Lender.

Section 3.4. COMMUNICATIONS WITH BORROWER. The Parties acknowledge that, except as specifically agreed by the Parties, Lead Lender shall have the sole and exclusive authority to deal with and communicate with Borrower on behalf of the Parties relating to the Loan, notwithstanding that the particular matter in question may, pursuant to this Agreement, be subject to the approval or direction of both the Parties and that Lead Lender will only act with the proper authorization from Co-Lender if required by this Agreement. If required by this Agreement, Co-Lender shall provide Lead Lender with written notice indicating such Co-Lender's approval, rejection, or other direction. Except as specifically provided in this Agreement, or as otherwise required by law, Lead Lender shall use its good faith efforts to coordinate and cooperate with Co-Lender in any dealings with Borrower with respect to any rights, benefits and requests from Borrower as well as with respect to the obligations of Borrower under the Loan Documents.

Section 3.5. LEAD LENDER LIABILITY. Except for the obligations of Lead Lender in its capacity as a Party to pay its Ownership Share of the following items as otherwise provided in this Agreement, neither Lead Lender nor Servicer (if different from Lead Lender) nor any of its or their respective agents or authorized representatives, shall be responsible or liable for (a) any Expenses incurred by it or them as Lead Lender in accordance with the terms of this Agreement, or (b) for any action taken, or omitted to be taken, by it or them under this Agreement or any of the Loan Documents, except for acts or omissions resulting from its or their willful misconduct, gross negligence or actions taken by Lead Lender outside the scope of its authority under this Agreement, and to which the Parties did not expressly consent.

ARTICLE IV

LOAN ADMINISTRATION AND SERVICING

Section 4.1. **SERVICING STANDARD.** The Servicer for the Loan shall be Lead Lender; *provided, however*, that Lead Lender may delegate its duties as Servicer to an Affiliate of Lead Lender or, with the prior written consent of Co-Lender, to an unaffiliated third party; *provided, further*, that, unless specifically approved in writing by Co-Lender, Lead Lender shall not be relieved of its duties and obligations as Servicer, notwithstanding any such delegation. In the event of such approval by Co-Lender and an agreement by a third party (including an Affiliate of Lead Lender) to assume the obligations of Servicer hereunder, such party shall be deemed to be the Servicer hereunder, and references herein to Lead Lender in its role as Servicer shall be deemed references to such replacement Servicer. Lead Lender shall provide loan servicing in accordance with the Servicing Standard.

Section 4.2. **LOAN PAYMENTS.** All payments of principal and interest due in accordance with the Note evidencing the Loan shall be made by Borrower in accordance with the terms of the Note. All payments under the Note or otherwise due under the Loan Documents will be made directly to Lead Lender as Servicer on behalf of Co-Lender. Co-Lender's pro rata share (as determined below) shall be remitted by Lead Lender to Co-Lender within one (1) Business Day after receipt of such payment by Lead Lender. Remittances to Co-Lender shall be by Federal wire transfer in accordance with the wiring instructions attached hereto on Schedule 2, or as otherwise instructed by the Parties in writing.

Section 4.3. **ORDER OF PAYMENT.** Unless otherwise required under the terms of the Loan Documents, all monies and funds on account of the Loan and the Note received by Lead Lender, prior to the Parties or their designee(s) acquiring ownership of the Property shall be allocated between Lead Lender and Co-Lender, and Co-Lender's share shall be paid to Co-Lender by wire transfer in accordance with Section 4.2 above, in the following manner and in the following order (with the item outstanding for the longest period of time, within each category, to be repaid first within such category):

- (a) First, to repay any Disproportionate Advance made by a Party, together with any interest thereon payable by Borrower under the Loan Documents.
- (b) Second, on a pro-rata basis in accordance with each Party's Ownership Share:
 - (i) to the Servicing Fees;
 - (ii) to the payment of all proper costs of collection or enforcement of the Loan Documents;
 - (iii) to Emergency Advances which were equally funded by the Parties, together with interest thereon payable by Borrower as provided for in the Loan Documents;

- (iv) to Regular Advances;
- (v) to Expenses;
- (vi) to outstanding accrued interest payable under the Note and, if applicable, interest at the Default Interest;
- (vii) to past due scheduled principal payments under the Note;
- (viii) to regularly scheduled payment of principal due in accordance with the Note, if any;
- (ix) if the Note has been accelerated, to the payment of all principal under the Note;
- (x) to prepayment fees, if any, on the Note; and
- (xi) to the Parties in proportion to their Ownership Shares.

Notwithstanding anything contained herein to the contrary, nothing herein shall permit Lead Lender to apply amounts received contrary to any provision contained in the Loan Documents, and all such distributions and applications shall comply with the Loan Documents at all times.

Section 4.4. DISPROPORTIONATE PAYMENTS. Each Party further agrees that if it shall at any time, through exercise of any lien, setoff, litigation, counterclaim, voluntary payment by Borrower, or otherwise, obtain payment that is greater than the payment which would be allocable to such Party as set forth above in Section 4.3 above, then the Party receiving such payment shall immediately notify the other Party and shall promptly pay such portion of the disproportionate amount to the other Party to ensure that both Parties' share of such payment is in accordance with the provisions of Section 4.3. To the extent permitted by applicable federal, state and local law, any amount which is not turned over to the other Party as required hereinabove shall bear interest (payable by the Party holding such amount) from the tenth (10th) Business Day after receipt thereof at the Default Interest. Neither Party shall have any obligation to share any amount that is specifically designated by a court or other tribunal as a reimbursement of fees and expenses incurred by such Party in litigation before such court or tribunal.

Section 4.5. PREPAYMENTS/ADMINISTRATIVE FEES. (a) Any prepayment, or administrative fees paid to Lead Lender by Borrower in accordance with the Loan Documents shall be shared by the Parties in accordance with their Ownership Shares, except as otherwise provided for herein and for fees intended to reimburse out-of-pocket Expenses, including, without limitation, internal or outside attorneys' fees, in which case such fee(s) shall be paid to the Party who actually incurred such Expenses.

(b) In the event of prepayment in accordance with the terms of the Loan Documents, prepayment premiums shall be processed and remitted as received.

Section 4.6. **MONTHLY REPORT.** If applicable, Lead Lender shall furnish a monthly remittance report to Co-Lender within ____ (__) Business Days of its wiring any payments collected from Borrower to Co-Lender.

Section 4.7. **ADVANCES.** Except as provided in this Section 4.7, neither Party shall make an advance under the Loan Documents.

(a) **Regular Advances.** The Parties shall advance sums to Borrower (“Regular Advances”) in accordance with their Ownership Shares if and to the extent that both the Parties are obligated to do so under the Loan Documents, or as they may otherwise agree.

(b) **Emergency Advances.** To the extent permitted under the Loan Documents, either Party may, without the consent of the other, make an advance (an “Emergency Advance”) for the purposes of avoiding an imminent threat to any lien created under the Loan Documents, the priority of any lien created pursuant to the Loan Documents, or an imminent and significant threat to the Property or the safety of any person at the Property, including, without limitation, advances (i) to pay or discharge taxes immediately upon same becoming delinquent, (ii) to pay insurance premiums no earlier than five (5) days prior to when any policy may be canceled for non-payment of same, (iii) to pay the cost of emergency repairs to protect the Property from imminent damage or to minimize such imminent damage, or (iv) to pay any amount which, if unpaid, might imminently result in a lien on the Property with priority over the lien or liens created under the Loan Documents. Prior to making an Emergency Advance, the Party intending to make such Emergency Advance shall make reasonable, good faith efforts to notify the other Party of its intention to do so and, if possible, afford the other Party a chance to participate equally in such Emergency Advance. The Party making such Emergency Advance shall promptly give all the Parties to this Agreement written notice after making an Emergency Advance.

(c) **Disproportionate Advances.** The amount of any Disproportionate Advance shall equal, with respect to each Party (the “Advancing Party”) and each advance, (i) if the Party funded alone without immediate reimbursement from the other, the entire amount so funded, or (ii) if both the Parties funded one advance, but in unequal amounts, then the excess funded by the Advancing Party. Either Party may, at any time, pay its Ownership Share of the initial payment giving rise to any Disproportionate Advance, thereby eliminating the Disproportionate Advance. If Borrower is obligated under the Loan Documents to pay, and pays, interest on any Disproportionate Advance, the Advancing Party shall be entitled to all such interest thereon, unless the other Party has reimbursed the Advancing Party and eliminated the Disproportionate Advance, in which case each Party shall be entitled to share such interest payment in proportion to (i) its Ownership Share, and (ii) the respective number of days that each Party shall have remained unreimbursed for such advance.

Section 4.8. **DUTIES OF SERVICER.** (a) **Servicing of Loan.** Servicer shall, pursuant to the terms of this Agreement, service the Loan until all obligations under the Loan Documents have been fulfilled or until title to the Property has been acquired by the Parties or their designee(s). Servicer shall, using commercially reasonable efforts, perform the following services as Servicer:

- (i) Collect any and all sums due from Borrower, including, but not limited to, all payments due upon the Loan Documents in accordance with the allocation set

forth in this Agreement, and wire said sums collected to the Parties in accordance with the terms of this Agreement;

- (ii) Administer any real estate tax and all other escrows in accordance with the terms of the applicable Loan Documents and escrow agreements;
- (iii) Approve new leases, subleases, assignments of lease, lease modifications, amendments, terminations and non-disturbance agreements in the ordinary course of business (to the extent mortgagee shall have the right of approval under the Loan Documents) [relating to a lease which shall not comprise more than [_____] square feet of net rentable building area in the Improvements, *provided* (A) such approvals of lease modifications, amendments or terminations shall relate to leases of space in the buildings and improvements to the Property (“Improvements”) in the aggregate of not more than [_____] square feet of net rentable building area, (B) any new lease or modification or amendment of lease entered into shall conform to the standard lease agreement approved in accordance with the terms of the Commitment without material changes thereto, and (C) such new lease, sublease, assignment of lease, lease modification, amendment, termination or non-disturbance agreement shall also satisfy the conditions of the Loan Documents/which conform in all respects to the Leasing Guidelines in the Loan Documents];
- (iv) Respond, on behalf of the Parties, to any routine and customary Borrower Loan servicing requests;
- (v) Adjust any casualty insurance claims up to [\$_____] and administer the use of any casualty insurance proceeds thereof in a manner consistent with the terms of the Loan Documents and this Agreement;
- (vi) No less often than quarterly, or sooner if requested, report to the Parties on the status of all condemnation and casualty proceedings, and report to the Parties monthly on Borrower’s breach of its obligation to maintain any escrow accounts pursuant to the Loan Documents;
- (vii) Use customary diligence to ascertain and forthwith notify the Parties of the failure of Borrower to perform any material obligations under the Loan Documents. In addition, it shall notify the Parties of the following which come to the attention of Servicer:
 - (A) Vacating or meaningful change in the occupancy of the Property securing the Loan;
 - (B) The sale or transfer of the Property or any change in ownership or control of Borrower or any entity composing Borrower;

- (C) The death, bankruptcy or insolvency of Borrower or any entity of which Borrower is composed, or any principal in Borrower or any such entity;
- (D) Any loss or damage to the Property, in which event, in addition to notifying the Parties, it shall cause the insurance company concerned to be notified of such loss or damage; and
- (E) Any lack of repair or other deterioration or waste suffered or committed in respect to the Property securing the Loan;

It is understood, however, that Servicer shall not be obligated to give notice to the Parties of any facts other than those to which Servicer shall have actual notice, and those of which it would, except for its negligence, have had notice;

- (viii) During the existence of the Loan, provide evidence satisfactory to the Parties showing that all improvements are kept insured to the extent required under the Loan Documents for the benefit of the owner and the Parties, at the cost of Borrower or other person bound to continue insurance coverage against loss or from such other insurable risks and hazards as the Parties in their discretion may reasonably require, by an insurance company approved by the Parties. Such insurance (with deductibles and other terms required by the Loan Documents) may be force-placed by the Servicer if necessary. Such insurance policies shall be written in an amount equal to 100% of the full replacement cost of Improvements containing an agreed amount endorsement waiving all co-insurance provisions, but in no event will the insurance coverage be less than the Loan balance unless specifically approved by the Parties. All such policies are to be endorsed by a standard mortgagee clause. In the event that Borrower fails or refuses to provide insurance, Servicer's obligation is limited to exerting commercially reasonable efforts to secure appropriate coverage from Borrower and promptly notifying the Parties if it is unable to do so;
- (ix) Notify the Parties of Borrower's failure to make timely payment of taxes and assessments in accordance with the terms of the Loan Documents;
- (x) Furnish evidence of the refiling of UCC-1 financing statements or similar documents prior to their expiration;
- (xi) Use reasonable due diligence to secure Borrower's full compliance with all of Borrower's obligations under the Loan Documents, including, without limitation, the delivery of all required financial statements, rent rolls and other books and records; and
- (xii) In the event the Parties seek to foreclose the Loan, or otherwise acquire title to and possession of the Property or any other security for the Loan in

accordance with this Agreement, Lead Lender will assist the Parties in such proceedings.

Servicer shall comply with all applicable laws in performing its obligations hereunder.

(b) Environmental Matters. (i) Servicer shall promptly communicate to Lead Lender Servicer's awareness of (A) any violation or alleged violation of environmental laws (as defined in the Loan Documents) or (B) any actual or suspected incident regarding hazardous materials involving or threatening the Property.

(ii) Servicer shall take no action on behalf of the Parties with respect to (i) above without the prior written consent of the Parties unless required by law, court order or at the direction of any governmental entity.

Section 4.9. PROHIBITED ACTIONS. Subject to rights of Lead Lender under Article X, Servicer shall not, without the prior written consent of the Parties, exercise or enforce any of the rights of the Parties under the Loan Documents with respect to any of the following actions (a "Major Action") (unless such actions are expressly permitted pursuant to the terms of the Loan Documents):

- (i) Release or subordinate all or any security for the performance of any of Borrower's obligations under the Loan Documents, including repayment of the Loan or the repayment of any interest in connection with the Loan, or voluntarily release any guarantor or indemnitor from any guaranty or indemnity (such security for the Loan together with any guaranty or indemnity, the "Security");
- (ii) Give any approval or consent on behalf of the Parties to the proposed sale of the Property or any part thereof or any transfer of any interest in Borrower or entities comprising Borrower;
- (iii) Sell, transfer or assign the Note or extend the term of the Note beyond the maturity date specified therein or otherwise modify or amend the Note;
- (iv) Accelerate the maturity of the Note whether by reason of a default or upon the occasion of a sale of the Property that is not approved by the Parties, or commence any proceedings to foreclose the lien of the Security Instrument or to collect any amounts owing or claimed to be owing under any guaranty or otherwise to enforce the Loan or the Loan Documents to collect any amount owing under any of them other than scheduled payments of principal and interest, escrow deposits and any other payments and charges due pursuant to the Loan Documents;
- (v) Dispose of the Security or any material portion thereof after acquisition of title thereto as a result of the foreclosure of the Security Instrument or conveyance of the Security in lieu of foreclosure or otherwise;

- (vi) Approve new leases, subleases, assignments of lease, lease modifications, amendments, terminations and non-disturbance agreements which do not conform to the requirements of Section 4.8(a)(iii);
- (vii) Accept, receive or apply any prepayment upon all or any portion of the Loan in any form or manner other than is expressly permitted under the Loan Documents, *provided, however*, that a prepayment of the Loan during a time when prepayment is not permitted or requires consent may be accepted if prior written consent of the Parties to such prepayment is obtained;
- (viii) Take or fail to take any action that would (i) affect the amount or timing of any payment of principal or interest or (ii) materially impair the Property or reduce the likelihood of timely payment of amounts due thereon against Borrower under the Loan Documents;
- (ix) Release Borrower or any indemnitors or guarantors of the Loan from any liability under the Loan Documents, or consent to the postponement of Borrower's compliance with its obligations under the Loan Documents;
- (x) Grant any concession with respect to payment of the Loan or compliance with any material obligation imposed by any of the Loan Documents;
- (xi) Agree to any amendment, modification, cancellation or termination of any of the Loan Documents (other than those modifications and amendments which are necessary to correct typographical or scrivener's errors which shall not require the consent of the Parties);
- (xii) Adjust, compromise or settle a title insurance claim affecting the Property;
- (xiii) Except as provided in Section 4.8(a)(v), adjust, compromise or settle any hazard insurance or condemnation claim except as specifically required or permitted under the Loan Documents;
- (xiv) Retain any independent third party service provider in connection with Lead Lender's management and administration of the Loan or the Property, except as provided in Section 4.1; or
- (xv) Waive Default Interest payable by Borrower.

Section 4.10. INSPECTION REPORTS. Servicer shall make an inspection of the Property at least once every _____ years and shall furnish Co-Lender with a report covering such inspection on Servicer's standard form.

Section 4.11. FIRE DAMAGE AND CONDEMNATION. Servicer shall promptly notify the Parties of any loss or damage to the Property by fire or any other casualty or by condemnation or eminent domain (actually known by Servicer), and Servicer shall not make any agreement with

respect to repair or rebuilding without the written consent of the Parties. Servicer shall render such services as the Parties may require and authorize in connection with the settlement of insurance claims, or the collection of the proceeds thereof, or in connection with any condemnation or eminent domain proceeding, and the application of such proceeds to the repair or rebuilding of the Property.

Section 4.12. **MONIES RECEIVED AFTER ACQUIRING TITLE.** If the Parties should acquire title to the Property, then all net operating income and net sales, property insurance, title insurance, condemnation or other proceeds derived from the Property shall be distributed at such times and in such amounts as determined by the Parties pursuant to Article XVI hereof. Such distributions shall be made in accordance with each Party's Ownership Share, after first repaying either or both the Parties for any Disproportionate Advances, together with interest thereon (to the extent paid by Borrower as required by the Loan Documents and to the extent permitted by applicable federal, state and local law), in the same order in which such advances were made, whether made prior or subsequent to acquiring title to the Property.

ARTICLE V

COMPENSATION/EXPENSES AND LOSSES

Section 5.1. **SERVICING FEES.** As compensation for all services rendered or expenses incurred by Servicer under this Agreement, the Parties agree that the Servicer shall be entitled to the following compensation (the "Servicing Fees") during the term of this Agreement:

(a) **Primary Servicing Fee.** The Parties shall pay to Servicer an annual servicing fee (the "Primary Servicing Fee") in an amount equal to _____ (___%) of each Party's pro rata share of the principal balance of the Loan outstanding from time to time for the handling of routine administrative and servicing matters pertaining to the Loan. The Primary Servicing Fee shall be charged and paid in monthly installments. Servicer will deduct and retain from the monthly payments received on the Loan the monthly installments of the Primary Servicing Fee due it. Any portion of the fee not paid from the monthly payments shall continue to accrue and be due and paid first out of the amounts subsequently received, if any, on account of the Loan in payment of any shortfalls in previous payments due on the Loan. The Primary Servicing Fee shall continue to accrue unless and until (i) the fee is superseded by the "Special Servicing Fee" provided for in Section 5.1(b), or (ii) a foreclosure or deed in lieu of foreclosure of the Loan as provided in Section 5.1(c).

(b) **Special Servicing Fee.** In the event of a Loan Default, in lieu of the Primary Servicing Fee, each Party shall pay to Servicer a special servicing fee (the "Special Servicing Fee") computed at an annual rate of _____ (___%) of the outstanding principal balance of the Loan. The Special Servicing Fee shall be payable monthly, in installments due on the first day of each month (with adjustments for the first and last months to take into account periods of more or less than one full month) from and after the occurrence of an event of the Loan Default. To the extent payments are made by Borrower on the Loan, Servicer will deduct and retain from the payments the amount of Special Servicing Fee due it. Any shortfalls in the monies necessary to pay the Special Servicing Fee shall be paid by the Parties pro rata upon receipt of a billing therefor from Servicer. The Special Servicing Fee shall be payable until the earlier of the elimination of the default or the foreclosure or

deed in lieu of foreclosure of the Loan. Upon the elimination of the Loan Default (as a result of the curing of the Loan Default or the modification of the Loan Documents, thereby eliminating the Loan Default), the Primary Servicing Fee shall replace the Special Servicing Fee if the Loan shall be restored to good standing or, if the Loan Default is not eliminated and the Parties shall take title to the Property, the Asset Management and Disposition Fees (defined below) shall be then become payable. Any Special Servicing Fee accrued and unpaid at that time shall then be paid in full by the Parties.

(c) Asset Management and Disposition Fees. The Primary Servicing and Special Servicing Fees shall no longer accrue or be payable upon a foreclosure or deed in lieu of foreclosure of the Loan except that any accrued and unpaid Primary or Special Servicing Fees as of the date of taking of title shall be payable first out of any monies then or thereafter received from any person respecting the Loan or by the Parties if title to the Property is taken by the Parties. In lieu of a servicing fee after foreclosure or deed in lieu of foreclosure of the Loan, each Party (or the entity holding title to the Property if the Parties shall so elect to take title) shall be charged and shall pay to Servicer an annual asset management fee (the "Asset Management Fee") in the amount of _____ (___%) of the Party's pro rata share of the Market Value of the Property. Additionally, upon the sale of the Property, each Party shall pay to Servicer at closing a disposition fee (the "Disposition Fee") in an amount equal to _____ (___%) of the Party's pro rata share of the gross sales price payable to the Parties (or the entity holding title to the Property if the Parties so elect to take title) under the contract for the sale of the Property. All accrued and unpaid Asset Management Fees and the Disposition Fees shall be paid in full at the time of any sale of the Property. The Asset Management Fee shall be paid monthly and be deducted from the cash flow of the Property prior to any payments being made to the Parties.

Section 5.2. FEES PRO RATA. Each Party shall be liable only for its pro rata share of Primary Servicing Fees, Special Servicing Fees, and Asset Management and Disposition Fees. So long as Servicer is also a Party, Servicer may waive the share of any servicing fees payable by it pursuant to Section 11.1. Such waiver shall not affect the liability of any other Party for payment of its share of servicing fees.

Section 5.3. ADMINISTRATIVE CHARGES TO BORROWER. Servicer, in addition to and not in lieu of any Primary Servicing Fees or Special Servicing Fees, shall be entitled to retain for its own account interest on any tax and insurance and other impound or other escrow accounts not required to be paid to Borrower, late charges, and any and all administrative fees and charges to Borrower for routine servicing matters including, but not limited to, lease approvals, transfer and secondary financing approvals, partial releases and other routine loan administration matters expressly permitted in the Loan Documents and not requiring Co-Lender consent. Any fees, payments or charges in the nature of compensation to the Parties (and not as an administrative charge to Servicer), however, whether or not provided for in the Loan Documents, shall be shared by the Parties on a pro rata basis.

Section 5.4. EXPENSES AND LOSSES. Except as otherwise specifically provided in Section 8.2 of this Agreement, the following items shall be shared and/or paid by the Parties in accordance with their Ownership Shares at the time the expense or fee was incurred, or the loss was experienced, as applicable:

(a) If and to the extent Lead Lender is obligated to incur them under the provisions of the Loan Documents, or as the Parties may otherwise agree, all out-of-pocket costs, fees, and expenses, paid and/or reimbursed to third parties incurred by Lead Lender in connection with its management and administration of the Loan or the Property, including, without limitation, (i) fees and expenses paid or incurred by Lead Lender and for which Lead Lender is entitled to reimbursement in accordance with this Agreement or (ii) fees and expenses paid or incurred by third parties in connection with the management and administration of the Loan or the Property and for which they are entitled to reimbursement in accordance with the contract or agreement evidencing the terms upon which they have been retained by Lead Lender (such out-of-pocket costs, fees, expenses collectively, the “Expenses”).

(b) All losses with respect to the Loan shall be shared by Lead Lender and Co-Lender in accordance with their respective Ownership Shares.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES

Section 6.1. **AUTHORITY.** Lead Lender and Co-Lender each represents and warrants to the other Party that it has power and authority to enter into this Agreement and to perform the same and that the representatives of such Party executing this Agreement on its behalf are duly authorized to do so.

Section 6.2. **FINANCIAL EXPERIENCE.** Each Party hereby represents and warrants to the other Party that it has knowledge and experience in financial and business matters, it is capable of evaluating the risk of the proposed investment in the Loan, it has received or has access to all information required for making its investment decision regarding the Loan, the interest of such Party has not been registered under the Securities Act of 1933, as amended, and it has made no separate or independent agreement or contract with Borrower with respect to the Loan or the Property, except for the Loan Documents.

Section 6.3. **NOT A SECURITY.** Each Party represents and warrants to the other Party that (a) each Party does not consider its interest in the Loan, the Loan Documents and the Security to constitute the “purchase” or “sale” of a “property” within the meaning of the Securities Act of 1933, the Securities Exchange Act of 1934 or Rule 10b-5 promulgated thereunder, the Trust Indenture Act of 1939, or any other applicable securities statute or law, or any rule or regulation under any of the foregoing (collectively, as amended, the “Acts”), (b) each Party has no expectation that it will derive profits from the efforts of the other Party or any third party in respect of the acquisition of such Party’s interest in the Loan hereunder, (c) each Party’s interest in the Loan, the Loan Documents and the Security merely constitutes a commercial transaction by such Party with the other Party regarding such Party’s Ownership Share of the obligations of Borrower under the Loan Documents and does not represent an “investment” (as that term is commonly understood) in the other Party or Borrower, (d) each Party owns a certain interest in the Loan, the Loan Documents and the Security for its own account in respect of a commercial transaction made in the ordinary course of its business and not with a view to or in connection with any subdivision, resale, or

distribution thereof, and (e) each Party can bear the economic risk related to the purchase of the same, and has had access to all information deemed necessary by it in making its decision whether or not to purchase the same.

Section 6.4. INDEPENDENT JUDGMENT. Each Party further represents and warrants to the other Party that it has not relied, is not relying and will not rely upon the other Party with respect to, and that it has made or will make its own independent judgment with respect to, the following: (i) the creditworthiness of Borrower, (ii) the adequacy, effectiveness, enforceability, genuineness, validity or due execution of any of the Loan Documents or any other documents referred to or provided for therein or in this Agreement, (iii) any representation, warranty, document, certificate, report or statement contained in the Loan Documents, (iv) the collectability of the Loan, adequacy of property for the obligations of Borrower under the Loan Documents, and all other underwriting aspects of the Loan, (v) the existence, priority or perfection of any liens or security interest granted or purported to be granted in connection with any of the Loan Documents, or (vi) observation of or compliance with any of the terms, covenants or conditions of any of the documents on the part of Borrower.

Section 6.5. ERISA. Each Party represents and warrants that it shall not perform or cause to be performed, or fail to perform or cause the failure in performance of, any act (including the transfer of all or a portion by participation or otherwise, of a Lender's interest in the Loan) which would cause the other Party to be in violation of ERISA or other federal or state applicable law including laws regulating public employee retirement systems. The Parties agree to cooperate with each other to provide such information as is necessary to avoid such violation. Each Party must be satisfied in its sole discretion with the sources and uses of the amounts delivered to the other Party.

Section 6.6. NO REPRESENTATION AND WARRANTY. Neither Party makes or will make any representation or warranty to the other Party as to the enforceability, priority, adequacy, validity or binding effect of the Note or the Loan Documents.

Section 6.7. CERTIFICATES. Each Party, at the request of any other Party, will furnish to the Party requesting such information a certificate of incumbency for the officer executing this Agreement.

ARTICLE VII

LEGAL COUNSEL

Section 7.1. RETAINER. Except as otherwise provided in Section 10.3(b), neither Party, acting unilaterally, shall retain legal counsel for or on behalf of the Parties, and any legal counsel retained unilaterally by any Party shall be retained by it at its sole cost and expense. If the Parties shall agree that legal counsel should be retained for the protection of the interests of the Parties or in any other case, Lead Lender shall, after consulting with Co-Lender and with its consent, employ legal counsel to represent the Parties.

Section 7.2. LEGAL FEES. The fees and expenses of such legal counsel shall be borne by each Party in accordance with each Party's Ownership Share at the time such Expense was incurred. After any legal counsel has been retained by Lead Lender in accordance with this Article VII, neither Party shall have a right in connection with the same litigation, to retain another legal counsel at the expense of the Parties.

ARTICLE VIII

MORTGAGEE APPROVAL/ACTION

Section 8.1. INFORMATION. If either Party becomes aware of any matter of a material nature affecting the Loan, the Property or Borrower, such Party shall promptly notify the other Party, and shall, if applicable, send to the other Party copies of all notices relating to such matters, including, without limitation, matters relating to prepayment of the Loan, default under the Loan Documents, requests to modify the Loan Documents, requests to release any portion of the Property, pending or threatened litigation relating to the Loan or the Property, environmental contamination of the Property, condemnation of or casualty at the Property, requests to change the management or franchise arrangements at the Property, requests to make capital improvements which are not previously contemplated, or any other request, notification or circumstance of a material nature pertaining to the Loan, the Property or Borrower. Each Party shall endeavor to clearly mark all written communications and reports to the other Party with the investment name and the loan number assigned to the investment by the other Party.

Section 8.2. PROCEDURE. Except as otherwise provided for in Section 8.1 above, if consent is requested by Borrower for a modification, waiver, amendment, release, lease or with respect to any other request of Borrower relating to the Loan or the Property, Servicer shall promptly furnish to the Parties a summary of Borrower's written request and Servicer's analysis and recommendation with respect to such request. The Parties shall respond with an approval or rejection of such request in writing no later than [five (5)] Business Days following receipt of such request from Servicer, but in no event less than [two (2)] Business Days prior to the applicable time period for providing a party response as set forth in the Note or in the Loan Documents. If Co-Lender does not approve or reject the request within such period, or if the Parties are not in agreement, the provisions of Article IX below shall apply. *[Need to conform section to underlying Loan Documents]*

Section 8.3. DECISIONS REGARDING DEFAULT OR ACCELERATION. Decisions with respect to providing Borrower with notice of a Loan Default (hereinafter defined) under the Loan Documents, acceleration of the indebtedness due under the Note or exercise of remedies in connection with Borrower defaults shall be governed by Article X below.

ARTICLE IX

DISAGREEMENT/BUY-SELL

Section 9.1. COOPERATION. The Parties agree to make all reasonable efforts to communicate and cooperate with each other in order to reach a mutually acceptable decision with respect to any matter which requires joint approval or action (a “Decision”).

Section 9.2. DECISIONS REQUIRED BY THE LOAN DOCUMENTS. In the event (a) (i) the terms of the Note or the Loan Documents require a response from Lead Lender within the time periods set forth in the Loan Documents of receipt from Borrower of a request for a response, and the Parties are unable to reach a mutually acceptable Decision regarding such matter or (ii) the Parties are unable to reach a mutually acceptable Decision with respect to any other matters and neither Party has invoked the provisions of Section 9.3 hereof, then the Parties shall be deemed to have disapproved such Decision, or (b) if such matter is one that does not require approval or disapproval, then the Parties shall be deemed to have made the Decision that most closely preserves the status quo, and Servicer shall and is hereby authorized to convey such response to Borrower on behalf of the Parties. The provisions of this Section 9.2 shall not apply to Decisions with respect to providing Borrower with notice of Default, or with respect to the acceleration of the Loan and exercise of Loan remedies following an Event of Default (each of which events shall be governed by Article X hereof).

Section 9.3. BUY-SELL. (a) At any time during the existence of a default by Borrower under the Loan Documents, from and after the date of purchase of foreclosed property or the acceptance of a deed-in-lieu of foreclosure (an “Acquisition”), or if, after the Parties have in good faith made reasonable efforts to negotiate and reach a Decision, the Parties are still unable to reach a Decision relating to the Property, the Loan Documents, or as otherwise provided herein, either Party (the “Initiating Party”) may thereafter initiate the provisions of this Section 9.3 by sending notice to the other Party (the “Responding Party”) (i) stating that the Initiating Party wishes to initiate the provisions of this Section, and (ii) setting forth in such notice a proposed purchase price (the “Purchase Price”) that the Initiating Party would be willing to pay for the entire Ownership Share of the other Party in the Loan or in the Property, as applicable (which for the purposes of this Section 9.3 shall mean and include all interests in the Loan or the Property, as applicable, owned by an Affiliate of the Responding Party) and (iii) stating that the Initiating Party wishes to terminate this Agreement. If disproportionate shares of the Loan are owned or there are more than two (2) Parties, then the Purchase Price shall be stated in an amount for the purchase of one hundred percent (100%) of the Ownership Shares allocated in amounts for each Ownership Share.

(b) Within thirty (30) days after receipt of such notice from Initiating Party (the “Election Period”), Responding Party shall give written notice to Initiating Party electing either to (i) purchase Initiating Party’s entire right and interest in the Loan or the Property, as applicable, for the Purchase Price, or (ii) sell such entire right and interest in the Loan or the Property, as applicable (which for the purposes of this Section 9.3 shall mean and include all interests in the Loan or the Property, as applicable, owned by an Affiliate of the Initiating Party) to Initiating Party for the Purchase Price. If Responding Party shall not effectively give either of the above notices within the Election Period, then Responding Party shall be deemed to have elected to sell its interest to Initiating Party.

(c) The closing shall take place on the date (the “Sale Closing Date”) selected by the Purchasing Party, which date shall be (i) no earlier than fifteen (15) days following the date of receipt by the Initiating Party of the Responding Party’s election pursuant to the above paragraph, or, if no election is made, then fifteen (15) days following the expiration of the Election Period, and (ii) no later than the thirtieth (30th) day following receipt of such notice by the Initiating Party or if no election is made, then the thirtieth (30th) day following expiration of the Election Period. On the Sale Closing Date, (i) the Selling Party shall transfer and assign to the Purchasing Party, without recourse, all of its rights and obligations in respect of the Loan, including any amounts received by the Selling Party after the Sale Closing Date, free and clear of all liens, claims, and encumbrances, and (ii) the Purchasing Party shall pay the Purchase Price therefor by wire transfer of immediately available funds to the account designated by the Selling Party. At such closing, each Party shall, at the request of the other, execute and deliver such documents and instruments as the requesting Party shall reasonably require in order to effect such transfer.

(d) The Purchasing Party will assume all obligations of Selling Party arising after the Sale Closing Date under and in connection with the Loan by written instrument delivered and reasonably satisfactory in form to Selling Party. To the extent any loss, cost, liability or expense relates to an obligation solely of the Selling Party arising prior to the Sale Closing Date, the same shall be borne solely by the Selling Party, and the Selling Party shall indemnify, defend, reimburse and hold the Purchasing Party harmless against any and all such losses, costs, obligations, damages, penalties, actions, judgments, suits, liabilities and expenses (including reasonable attorneys’ fees) which may be asserted against or sustained or incurred by the Purchasing Party as a result thereof. To the extent any loss, cost, liability or expense relates to an obligation solely of the Purchasing Party arising on or subsequent to the Sale Closing Date, the same shall be borne solely by the Purchasing Party, and the Purchasing Party shall indemnify, defend, reimburse and hold the Selling Party harmless against any and all such losses, costs, obligations, damages, penalties, actions, judgments, suits, liabilities and expenses (including reasonable attorneys’ fees) which may be asserted against or sustained or incurred by the Selling Party as a result thereof.

(e) The Settlement of all post-foreclosure pro-rations and adjustments between the Parties shall be made as customary in the jurisdiction where the Property is located. Each Party shall pay its own attorneys’ fees associated with the sale and the Purchasing Party shall pay all other out-of-pocket costs associated with the transaction.

(f) If the Purchasing Party shall fail to complete the purchase within the time and in the manner required hereunder, then the Selling Party may then elect (a) to become the Purchasing Party and purchase the other Party’s entire right and interest in the Loan at the Purchase Price provided for herein, said election to be made within fifteen (15) days after the initial Purchasing Party’s failure to timely and properly close, with the closing to take place within fifteen (15) days thereafter, or (b) to cancel the notice invoking the provisions of this Paragraph, regardless of which Party originally gave the notice. If the Selling Party fails to convey its interest in the Loan within the time and in the manner required hereunder, then the Purchasing Party shall have all remedies allowed by law, including specific performance.

(g) Notwithstanding anything herein to the contrary, no Party shall be permitted to invoke the rights of an Initiating Party provided under this Section 9.3 if such Party is in material default of its obligations under this Agreement, until such default has been cured.

(h) Regardless of who is the Purchasing Party, in the event that either Party fails to perform its obligations hereunder, at any time thereafter such Party shall be required to deposit with the other Party ten percent (10%) of the other Party's Ownership Share in the outstanding Loan as a condition to initiating the provisions of this Section 9.3 which deposit will be refunded (or credited against the Purchase Price, as the case may be) at the Sale Closing Date, or retained by the other Party as liquidated damages in the event that such Party again breaches its obligations under this Section 9.3, *provided* that the other Party is ready, willing and able to perform its obligations hereunder on the Sale Closing Date.

(i) Lead Lender shall make, or cause Servicer to make, any and all files pertaining to the Loan available for inspection or perform other reasonable services with respect to any such sale.

ARTICLE X

DEFAULT/ACCELERATION/ENFORCEMENT

Section 10.1. LOAN DEFAULT. Each Party shall notify the other Party or Servicer, or Servicer shall notify the Parties, of the existence and nature of any material act or omission by Borrower or any other material circumstance which would, with the giving of notice or with the passage of time, give rise to a right of Lead Lender to accelerate the Note or exercise any other rights or remedies under the Loan Documents (a "Loan Default"), to the extent it has actual knowledge of such Loan Default. Thereafter, unless otherwise instructed by the mutual agreement of the Parties (which instruction shall be in writing), within the five (5) days following the occurrence of any Loan Default, Lead Lender shall send to Borrower a notice of default under the Note in the form attached hereto as Exhibit D, or in such other form as the Parties may hereafter from time to time jointly adopt. Each Party shall cooperate in the execution and delivery of notice of any Loan Default given pursuant hereto.

Section 10.2. REMEDIAL ACTION. During the period up to sixty (60) days after a Loan Default and the expiration of any applicable notice and cure periods (the "Workout Period"), Servicer shall proactively attempt to have Borrower remedy the default(s) or shall carry out any other course of action the Parties have agreed upon and shall provide the Parties with timely reports on its reinstatement efforts.

Section 10.3. ACCELERATION. (a) After the expiration of the Workout Period (or sooner if the Parties otherwise agree) Servicer shall immediately accelerate the maturity of the indebtedness and commence the exercise of remedies under the Loan Documents unless the Parties shall have agreed upon an alternate course of action. Within five (5) days of such expiration, Lead Lender shall send to Borrower a notice of acceleration of the Note in the form attached hereto as Exhibit E, or in such other form as the Parties may hereafter from time to time jointly adopt. Lead Lender shall not accelerate the Note except as expressly provided in this Article X.

(b) If one Party does not desire to accelerate the indebtedness or pursue enforcement remedies under the Loan Documents, such Party (the “Non-Enforcing Party”) shall nonetheless cooperate in accelerating the indebtedness and commencing enforcement remedies (including the retention of enforcement counsel) as provided above; however, either Party may initiate the “Buy/Sell” provision pursuant to Section 9.3 hereof, in which event the indebtedness shall not be accelerated prior to the completion of the procedures set forth in Section 9.3 unless the Selling Party agrees otherwise.

Section 10.4. ENFORCEMENT. Following acceleration of the Loan, unless otherwise instructed in writing by both the Parties, Lead Lender, in the name and on behalf of both the Parties, shall cause the proper proceedings to be instituted and prosecuted for the collection and enforcement thereof, including foreclosure, trustee’s sale, or otherwise realizing on the Property in a court of competent jurisdiction (if a judicial proceeding), and shall take any other action it deems reasonable and necessary in its sole discretion to protect the Loan and the Property (including, if appropriate in Lead Lender’s opinion, seeking the appointment of a receiver) and to enforce the observance and performance of all terms, covenants and conditions of the Loan Documents including, without limitation, the prosecution of any action in state, federal or bankruptcy court. Servicer shall furnish to the Parties copies of all pleadings respecting the foreclosure and shall make a reasonable effort to keep the Parties advised of material facts pertaining to the foreclosure and any collateral proceedings respecting the Loan. Lead Lender shall enter a bid in the judicial or nonjudicial sale of the Property for an amount up to the lesser of the amount of the indebtedness due under the Note including interest and costs and the Market Value of the Property unless the Parties agree otherwise.

Section 10.5. INSPECTIONS/APPRAISALS. Servicer shall (a) cause such inspections of the Property to be made as it shall deem reasonable and prudent and promptly furnish copies to the Parties of all such inspection reports, and (b) obtain prior to foreclosure, deed in lieu of foreclosure or other method of taking title, an Appraisal of the Property which shall promptly be furnished to the Parties.

Section 10.6. EXPENSES FOLLOWING LOAN ACCELERATION. If the Parties accelerate the Note or take any other enforcement action against Borrower under the Loan Documents, the Parties shall share, in accordance with their Ownership Shares, all of the Expenses, and other costs incurred by the Parties, or Lead Lender on behalf of the Parties as authorized hereunder in connection with the exercise and enforcement of all remedies under the Note and the Loan Documents.

Section 10.7. AUTOMATIC STAY/ENFORCEMENT PROHIBITED. Notwithstanding anything contained herein to the contrary, neither Party shall take any action with respect to the Loan which would violate the automatic stay applicable in the event of a bankruptcy petition filed by or against Borrower or in violation of any court order or which would otherwise be prohibited by law.

Section 10.8. DEED IN LIEU. A deed in lieu of foreclosure of the Property may only be taken with the prior written consent of the Parties.

Section 10.9. ENVIRONMENTAL. The Parties agree that prior to commencing of exercise of their remedies or their acquisition of title to or control of the Property, the Parties shall obtain (or cause the Receiver to obtain) an Environmental Site Assessment (the “ESA”) of the

Property to be prepared by an environmental consultant selected by Servicer and approved by the Parties, which ESA shall be comprehensive enough to satisfy each Party's then current underwriting standards. In the event that the ESA discloses an environmental risk that one of the Parties is unwilling to assume, either Party may at any time thereafter initiate the "Buy-Sell" provisions set forth in Section 9.3 hereof and once such "Buy-Sell" is initiated, unless emergency action is required to avoid imminent harm to the safety of persons at the Property or an imminent and significant increase in the ultimate liability associated therewith, no Party shall take any action with respect to the Property which might cause the Parties to incur environmental liability pending completion of the "Buy-Sell" closing. In the alternative, either Party may, prior to the Parties acquiring the Property, inform the other Party in writing that it desires to abandon its interest in the Property, in which case the objecting Party shall release all its interest in the Loan Documents and any and all claims it has to the Property by such instrument(s) as are reasonably required by the other Party, and title to the Property shall be taken and acquired in the name of the non-objecting Party or its designee only. *[Add time period for taking this action.]* Following a Party's abandonment of its interest in the Property, it shall for all periods thereafter have no further rights or obligations under the Loan Documents or this Agreement.

Section 10.10. NO REINSTATEMENT. Once acceleration of the Loan has occurred, Lead Lender may not accept reinstatement of the Loan without the prior written consent of Co-Lender unless otherwise required by law.

Section 10.11. COOPERATION WITH SERVICER. The Parties shall cooperate as necessary in connection with any enforcement or collection proceedings or other actions taken by Lead Lender pursuant hereto. The Parties shall execute and deliver upon request to Lead Lender such information and documents as Lead Lender shall require for the prosecution and completion of enforcement actions and proceedings.

ARTICLE XI

RIGHT OF FIRST OFFER/TRANSFER OF INTEREST

Section 11.1. RIGHT OF FIRST OFFER. Each of the Parties hereby covenants and agrees that it will not pledge, sell, assign or in any other way directly or indirectly transfer ownership or control of its interest in the Loan, or any Loan Document, or the Property, or any part thereof, until such interest is first offered for sale (hereinafter, an "Offer") to the other Party (the "Offered Party") upon the same terms and conditions as contemplated by the Party seeking to transfer its interest (the "Offering Party") to a third party. Except as provided in the third paragraph of this Section 11.1, the interest of a Party in the Loan, the Loan Documents and the Property may only be sold in its entirety, and no transfer of a "subparticipation interest" or lesser interest in the Loan is permitted. An offer shall set forth terms and conditions of the proposed conveyance and shall, subject to any confidentiality arrangement with Borrower, permit inspection and copying of the Offering Parties' files including all reports, facts, data, analysis or other information in its possession that are material to an evaluation of the Loan, the Property or the suitability of any proposed third party offeree. Notwithstanding anything to the contrary contained herein, the Offering Party need not have identified a proposed successor prior to initiating the first offer procedure contained herein.

The Offering Party shall deliver written notice of its Offer (the "Offer Notice") and all supporting documentation to the Offered Party. An Offered Party shall have fifteen (15) Business Days from the date of receipt of the Offer Notice to elect to acquire such interest upon substantially the same terms and conditions as those set forth in the offer and to communicate its intention to do so to the Offering Party. If an Offered Party does not either accept or reject the Offer within the time aforesaid, it shall be deemed to have declined the Offer. If the Offered Party accepts the Offer, the Offered Party shall accept an assignment or conveyance of such Offering Party's interest and make payment therefor on such terms as are set forth in the Offer by the later of (a) thirty (30) days (if the transfer is of interests in the Loan) or sixty (60) days (if such transfer is of the Property) after communicating its election to the Offering Party, or (b) the time provided for such assignment in the Offer.

Notwithstanding the foregoing, either Party may pledge, sell, transfer or assign its entire interest in the Loan, the Loan Documents or the Property, or a portion thereof, to any of its respective Affiliates, without first making any Offer to the other Party. "Affiliate" shall mean each and every corporation, partnership, limited liability company, trust or other entity which directly or indirectly owns and controls, or is owned and controlled by, or is wholly under common ownership and control with such other party. If either Party shall transfer all or a portion of its interest in the Loan, the Loan Documents, or the Property to an Affiliate (hereinafter, an "Affiliated Transferee"), such interest shall at all times be owned by the Affiliated Transferee, and shall be reconveyed by the Affiliated Transferee to the Party which made the original transfer, or to another Affiliated Transferee, prior to such time as the Affiliated Transferee ceases to be an Affiliate.

Neither Party shall have any obligation under this Agreement to purchase or repurchase the interest of the other Party in the Loan or the Property, upon a Loan Default or otherwise, except and to the extent as may be expressly provided in Article IX of this Agreement.

Section 11.2. TRANSFER OF INTERESTS. If an Offered Party declines the Offer, the Offering Party shall have six (6) months from the date it delivers the Offer Notice to consummate a sale to any third party which transfer and transferee shall meet all the requirements of this Section 11.2 (unless and to the extent waived in writing by the non-transferring Party) upon the same material terms and conditions as set forth in the Offer Notice; *provided, however*, that the Parties hereto agree that the contract purchase price offered to the third party offeree may be less than the purchase price set forth in the Offer by an amount not to exceed _____ percent (_%) of the purchase price set forth in the Offer Notice. Prior to or concurrently with the consummation of the transfer, the Offering Party shall notify the Offered Party to that effect and shall furnish evidence of such sale (including the terms and conditions and the date of sale).

(a) Prior to or concurrently with consummation of the transfer, the transferee must enter into an agreement to be bound by the provisions of this Agreement as successor to the Offering Party, in form and substance reasonably satisfactory to the Offered Party. The restrictions on transfer set forth in this Agreement shall be effective against the successors and assigns of any Party to this Agreement and to any subsequent owner of an interest in the Note, or the Loan Documents, or, following the Parties' acquisition of the Property, any interest in the Property. Any transfer in contravention of this Section 11.2 shall be ineffective to convey an interest in the Note, the Loan Documents, or the Property.

(b) In the event that the Offering Party is Lead Lender hereunder, the non-transferring Party shall have the option of assuming the role of Lead Lender under the terms and conditions of this Agreement, and if requested by such new Lead Lender, this Agreement shall be modified to reflect that such Party has assumed such role.

(c) No sale, assignment, pledge or transfer of any interest in the Loan or any of the Loan Documents, or the Property shall be permitted that would (i) cause any of the Parties to this Agreement to be in violation of the Employee Retirement Income Security Act of 1974 (“ERISA”) or any similar law applicable to public pension funds, (ii) result in rendering the investment of any Party to this Agreement an ineligible investment under, or otherwise violate, the law of the state in which such Party is domiciled or under the laws of the United States of America, or (iii) result in a violation of the Loan Documents or the Note. A determination made by either Party in good faith that a transfer is prohibited or would cause a violation under this Article XI shall be binding on both the Parties.

(d) Any sale, assignment, pledge or transfer pursuant to this Section 11.2 shall comply with all applicable federal and state securities laws.

(e) Notwithstanding any provisions in this Agreement to the contrary, no transfer of any Party’s rights and obligations in, to and under the Note, the Loan Documents, or the Property, other than to a single Institutional Investor, shall be effected by an Offering Party to a third party without the prior written consent of the Offered Party. For the purposes of this Article XI, an “Institutional Investor” shall be the following: (i) a U.S.-based bank or insurance company or private corporate or public pension or profit-sharing plan (or a similar plan) or an endowment fund for colleges, universities or private charitable foundations, in each case possessing more than [two billion] dollars in real estate assets and/or commercial mortgages and in the case of a bank or insurance company having an audited net worth as of the most recent fiscal year end of at least [one billion] dollars; and (ii) any entity or fund substantially all the beneficial interests in which are owned by one or more of the institutions described in clause (i) above and which meets the criteria described therein.

(f) The costs incurred by both the Parties in connection with any transfer to a third party under this Section 11.2, including, without limitation, the reasonable attorneys fees of the non-transferring Party and any costs associated with amending the Loan Documents or this Agreement, if any, shall be borne by the Offering Party, unless paid by its successor.

ARTICLE XII

OTHER FINANCING

Section 12.1. NO PARTICIPATION IN OTHER FINANCING. Without limiting rights to which each Party otherwise is or may become entitled, neither Party shall have any interest in, nor shall there be created any other encumbrance upon, solely by virtue of this Agreement, (a) any present or future loans from, letters of credit issued by, or leasing or other financing transactions by such Party to, or on behalf of, or with Borrower (collectively, the “Other Financing”) other than as

provided under the Loan Documents or as expressly provided in this Agreement, (b) any present or future guaranties by or for the account of Borrower in connection with such Other Financing, (c) any present or future offset exercised by the other Party in respect of such Other Financing, (d) any present or future property taken as property for any such Other Financing, or (e) any property now or hereafter in the possession or control of the other Party which may be or become property for the obligations of Borrower arising under any loan document by reason of the general description of indebtedness secured or of property contained in any other agreements, documents, or instruments related to any such Other Financing; *provided, however*, that if payments in respect of such guaranties or such property or the proceeds thereof shall be applied to the obligations of Borrower arising under the Loan Documents, then each Party shall be entitled to share in the amounts so applied according to its then Ownership Share.

Section 12.2. **ADDITIONAL FINANCING.** Notwithstanding Section 12.1, neither Party nor any Affiliate shall provide additional financing to Borrower with respect to the Property unless the same is permitted by the Loan Documents or otherwise approved by both the Parties in their sole discretion, and unless such Party gives to the other Party the reasonable opportunity to participate in such loan at the same ratio as its Ownership Share under the Loan, and subject to an Agreement with terms substantially the same as this Agreement.

ARTICLE XIII

INDEPENDENT APPROVAL OF CO-INVESTMENT

Section 13.1. **ACKNOWLEDGMENT OF INDEPENDENT APPROVAL.** Each Party hereby acknowledges and confirms approval, both as to form and content, of the Loan and the Loan Documents. Each Party further acknowledges to the other Party that it is an experienced and knowledgeable commercial mortgage lender and, in approving and making co-investment in the Loan, it has had a full opportunity to review independently the Loan and the Property and all material data relating thereto and is relying solely upon its own underwriting and investment analyses and decisions with full opportunity for independent investigation in approving and making its co-investment in the Loan.

Section 13.2. **NO REPRESENTATION OR WARRANTY.** Neither Party makes or has made any warranty or representation whatsoever to the other respecting the Loan, the Property or Borrower or any data or information furnished in connection with the Loan and no Party guarantees or has guaranteed the payment by Borrower or any other Person of principal or interest or any other sum payable under the Loan Documents. Nothing contained in this Agreement shall be construed as a representation, warranty or guarantee by Lead Lender as to Borrower's compliance with or performance of any of the terms or conditions contained in the Loan Documents, the adequacy, collectibility, legality, validity, sufficiency, effectiveness, binding effect, priority, perfection, binding effect, or the enforceability of the Loan or any of the Loan Documents.

ARTICLE XIV

INSOLVENCY

Section 14.1. PURCHASE OPTION. In the event that (a) a Party becomes insolvent or makes a transfer in fraud of creditors, or makes a general assignment for the benefit of creditors, or admits in writing its inability to pay its debts as they become due or is generally not paying its debts as such debts become due, or (b) a receiver, trustee or custodian is appointed for, or takes possession of, all or substantially all of the assets of a Party, either in a proceeding brought by such Party or in a proceeding brought against such Party, and such appointment is not discharged or such possession is not terminated within sixty (60) days after the effective date thereof or such Party consents to or acquiesces in such appointment or possession, or (c) a Party files a petition for relief under the Federal Bankruptcy Code or any other present or future federal or state insolvency, bankruptcy or similar law (collectively, "Applicable Bankruptcy Law") or an involuntary petition for relief is filed against a Party under any Applicable Bankruptcy Law and such petition is not dismissed within sixty (60) days after the filing thereof, or an order for relief naming a Party is entered under any Applicable Bankruptcy Law, or any composition, rearrangement, extension, reorganization or other relief of debtors now or hereafter existing is requested or consented to by a Party, or (d) the interest of a Party in the Loan or any part thereof is taken on execution or other process of law in any action against such Party, or (e) the Party is taken over or subject to rehabilitation by any Commissioner of Insurance or state or federal regulatory agency (a Party who becomes insolvent or makes a transfer in fraud of creditors or who is otherwise described by clauses (a) through (e) above is hereinafter called an "Insolvent Party"), the other Party (the "Solvent Party") shall have the right, but not the obligation, to purchase the Insolvent Party's interest in the Loan.

Section 14.2. EXERCISE OF OPTION/PURCHASE PRICE. In order to exercise this right, the Solvent Party shall give written notice to the Insolvent Party of its intention to exercise such option and shall conclude the purchase of the Insolvent Party's interest as soon as reasonably practicable thereafter. The purchase price for the Insolvent Party's interest in the Loan shall be the appraised fair market value of the Insolvent Party's Ownership Share in the Loan, the Loan Documents and the Property.

Section 14.3. DOCUMENTATION. In the event the Solvent Party acquires the interest of the Insolvent Party pursuant to this Article IV, the Solvent Party shall, on request of the Insolvent Party, certify in writing that it is acquiring such interest for the purpose of investment and not with a view to the distribution thereof within the meaning of the Securities Act of 1933, and the Insolvent Party shall deliver to the Solvent Party (a) such of the original Loan Documents as are in the Insolvent Party's possession, if any, (b) an assignment of all of the Insolvent Party's right, title and interest in the Loan, the Loan Documents and the Security, and (iii) such evidence of the Insolvent Party's existence, good standing and authority and the due execution and delivery by the Insolvent Party of the assignment and any documents related thereto.

ARTICLE XV

NO THIRD-PARTY BENEFICIARIES

Section 15.1. NO THIRD-PARTY BENEFICIARY. This Agreement is made and entered into for the sole protection and benefit of the Parties and their successors and permitted assigns and nothing in this Agreement, whether express or implied, shall inure to the benefit of, or confer any rights or remedies upon, Borrower or any person other than the Parties and their permitted successors and assigns. Borrower and any person other than the Parties shall not be entitled to rely upon or raise as a defense, in any manner whatsoever, the failure of either Party to comply with the provisions of this Agreement.

Section 15.2. NO LIABILITY. Neither Party shall incur any liability to Borrower or any other Person for any act or omission of the other Party, nor is there anything in this Agreement intended to relieve or discharge the obligation or liability of third persons to any Party to this Agreement, nor shall any provisions hereof give any third party any right of subrogation or action over or against any Party to this Agreement.

ARTICLE XVI

ACQUISITION OF THE PROPERTY

Section 16.1. TITLE AND OWNERSHIP. If the Property or any portion thereof is acquired by the Parties, whether through foreclosure, trustee's sale, or deed in lieu of foreclosure or otherwise, title shall be taken in a member managed limited liability company, or, if the Parties cannot agree on the form of the limited liability company (and only in that case), in the name of the Parties as tenants in common; *provided, however*, if the state in which the Property is located imposes more than a nominal tax or other imposition upon the limited liability form of ownership, then the Parties may elect to take title in a limited partnership, the general partner of which shall be a limited liability company or limited partnership owned and controlled pro rata solely by the Parties. The entity in which title to the Property is taken, or tenancy in common if that form of ownership is used, is hereinafter referred to as "Ownership Entity." Each Party shall own its pro rata share of the Ownership Entity (or in the Property if title is taken as tenants in common). Upon acquisition of title, the Property shall be owned, managed and maintained in accordance with the terms of this Agreement including, without limitation, this Article XVI, and this Agreement shall serve as the operating agreement for the Ownership Entity in which title is taken or, if title is taken as tenants in common, as the agreement of the Parties governing their tenancy in common. Lead Lender shall be the servicer and managing Party for the Property after foreclosure including acting as the managing member, partner or tenant in common, as the case may be, depending on the form of ownership in which title to the Property is taken.

Section 16.2. OPERATIONS IN GENERAL. The Property shall be operated as an [*insert property type such as hotel, office building, warehouse, etc*], including related amenities, and as an ongoing and continuing business.

Section 16.3. PROPERTY MANAGER. (a) As soon as practicable, but in any event at least thirty (30) days prior to acquiring title to the Property, Lead Lender shall furnish to Co-Lender by a notice a list (arranged in descending order of Lead Lender's preference) containing (i) the names of three (3) independent third party companies experienced in the operation and management for institutional investors of facilities similar to the Property; (ii) the names of three (3) independent third party leasing agents experienced in the leasing of such properties for institutional investors (which may be the same companies as those recommended for property manager for the Property); and (iii) comprehensive bid proposals from each company on the list including experience and abilities, personnel to be assigned, proposed fees, and services to be provided to the Property and the Parties. Those services must include, at a minimum, those required of a property manager and leasing agent(s) under this Article XVI. The Parties will then have seven (7) Business Days from the date of that notice to agree on the selection of the property management and leasing company(ies) for the Property from the companies on that list, and the company(ies) selected shall promptly be retained on behalf of the Ownership Entity as property manager and leasing agent(s) for the Property in accordance with Section 16.3(b); *provided, however:*

(1) If the Parties are unable to agree within the prescribed time on which company(ies) from the list shall be selected for the Property, then Co-Lender, by a notice given within three (3) Business Days of the expiration of the foregoing seven (7) day period, may select from the list the company(ies) to be retained as the property manager and leasing agent for the Property, and that (those) company(ies) shall be retained in accordance with Section 16.3(b);

(2) If, after being entitled to do so, Co-Lender shall fail to give a notice selecting a property management and leasing company(ies) for the Property, then Lead Lender shall make the selection(s) from the above list and shall notify Co-Lender of its selection(s);

(3) If the Parties have previously agreed upon the selection of a property manager and leasing agent in connection with the appointment of a receiver in an enforcement action taken under Article IX, then absent an objection in writing from either Party furnished to the other Party at least thirty (30) days prior to obtaining title, that (those) company(ies) shall be retained as the property manager and leasing agent after title to the Property is taken and the receiver is discharged; and

(4) If Lead Lender shall fail to furnish to Co-Lender the list of proposed property management and leasing companies in the time required as above, then Co-Lender, upon notice to Lead Lender, shall select and employ the property manager and leasing agent(s) for the Property on behalf of the Ownership Entity.

[Note. Provisions should be added to Article IX on the selection of property manager where the Parties can designate in connection with the appointment of a receiver.]

(b) Lead Lender, in the name of and on behalf of the Ownership Entity, shall promptly employ the property management and leasing company(ies) selected by the Parties as provided in Section 16.3(a) (herein, whether a single company or separate companies, the "Property Manager") to manage and operate the Property pursuant to a property management and leasing agreement(s) substantially in the form attached hereto as Exhibit ___. Employees at the Property shall

be the employees solely of the Property Manager and not of the Parties or the Ownership Entity. All reasonable efforts shall be made to effectuate a smooth transition of management of the Property to the Property Manager with the least possible disruption to business at the Property.

Section 16.4. BUSINESS PLAN AND OPERATING BUDGET; PRO RATA SHARING OF EXPENSES

(a) As soon as practicable after retention of the Property Manager or if Property Manager has also served as or under a receiver appointed for the Property, then no later than thirty (30) days prior to acquisition of title to the Property, Property Manager, shall prepare and present for the Parties' approval a preliminary business plan and operating budget, in reasonable detail, for the Property for the portion of the calendar year remaining. This plan and budget shall include, at a minimum, and set forth in reasonable detail, the following: estimated gross operating revenues (including anticipated rents), operating expenses, net operating income or net operating loss, Leasing Guidelines, cash flow forecast, marketing plan, property constraints and required maintenance and capital expenditures (including projected tenant improvements) for the Property.

(b) After being in effect for __ months, this preliminary business plan and operating budget shall be reviewed by the Parties with the assistance of the Property Manager, and Lead Lender shall make recommendations to all Parties for amendments, if any, to the preliminary business plan and operating budget for the portion of the calendar year remaining. The Parties may thereupon agree to amendments to the preliminary business plan and operating budget for such portion of the year. The preliminary business plan and operating budget, as so amended and approved by the Parties, is hereinafter referred to as the "Preliminary Business Plan."

(c) For calendar years after the year in which title to the Property is taken, no later than one hundred and twenty (120) days prior to the end of each calendar year (or as soon as reasonably possible if title is acquired after September 1 of any calendar year), Lead Lender shall cause the Property Manager to prepare and present for approval by both Parties a proposed business plan with an operating budget for the Property including estimates covering the following two years, containing the same type of information as required in the Preliminary Business Plan, and, if applicable, a comparison of actual operating results for the Property for the calendar year then ending to the estimates set forth in the prior year's business plan and budget for such calendar year. Once approved, the Property Manager shall operate and maintain the Property in accordance with the approved business plan and operating budget (the "Approved Business Plan"), and shall be authorized to make expenditures and pay expenses in accordance with the Approved Business Plan, reporting on financial reports as provided in Section 16.5.

(d) If the Parties fail to agree on a business plan and budget for the Property, the following shall apply, each of which shall constitute an "Interim Business Plan": (i) if the business plan and operating budget is the Preliminary Business Plan, then Lead Lender, on behalf of the Parties, may approve an Interim Business Plan and any amendments thereto, and such Preliminary Business Plan shall constitute the Approved Business Plan for the year in which the Property is acquired and shall govern the operations of the Property until the Parties approve the first budget; and (ii) if the business plan and budget is other than the Preliminary Business Plan, then the Property shall be operated under the most recent Approved Business Plan until a new business plan and operating budget shall be approved by the Parties, subject to such adjustments as Lead Lender shall deem appropriate to take into account emergency or serious maintenance situations at the Property, tenant

improvement costs and leasing commissions (but only to the extent included in a previous Approved Business Plan or required with respect to leases previously approved by the Parties), and expenditures for the Property required by Law including Environmental Laws which, if not made, may result in the imposition of a fine or penalty or other sanction against the Parties, the Ownership Entity or the Property.

(e) Lead Lender may approve and authorize a variance in any single line item within an Approved Business Plan, up or down, of not more than fifteen percent (15%), so long as (i) such variance does not result in a net variance in total for the Approved Business Plan of not more than _____%, and (ii) the total of all adjustments to line items (as opposed to the net) does not exceed \$_____.

(f) Each Party shall be obligated for its pro rata share of any monies required for the operation and maintenance of the Property pursuant to any applicable Preliminary Business Plan, Interim Business Plan or Approved Business Plan (as applicable, the "Business Plan"), and for the payment of the Asset Management Fees. If monies over and above the revenues available from the operation of the Property are required under a Business Plan, for operation and maintenance of the Property or for the payment of the Asset Management Fee, each Party shall pay its pro rata share of such monies within five (5) days of a notice from Lead Lender requesting the same and specifying the date on which the monies are due. If a Party refuses or fails to pay its pro rata share of such monies as and when required, the other Party may, but shall not be required to do so, advance the defaulting Party's pro rata share of monies (herein "Property Advances") upon notice to the other Party, and shall by virtue thereof acquire a security interest and lien on the defaulting Party's interest in the Property and the Ownership Entity in the amount of such advance plus interest thereon as hereinafter provided from the date of the Property Advance. Property Advances shall bear interest at the rate of two (2) percentage points over the prime rate shown in the *Wall Street Journal* published on or closest to the date of such advances for the first five (5) days measured from the date of each Property Advance, and five (5) percentage points over that prime rate for each day thereafter that a Property Advance remains unpaid. The right of a defaulting Party to require its approval and consent to matters as provided in this Agreement shall be suspended during the period that it shall be in default of its obligation to make its pro rata share of a Property Advance and in the payment of interest due thereon. Additionally, from and after the date such other Party makes a Property Advance and until such advance is repaid in full with accrued interest, a defaulting Party shall be deemed to have appointed the other Party as the defaulting Party's attorney-in-fact, coupled with an interest, for purposes of executing on the defaulting Party's behalf and recording such documents as the non-defaulting Party determines are necessary in order to perfect its security interest relating to a Property Advance in the defaulting Party's interest in the Property and the Ownership Entity.

(g) Lead Lender without Co-Lender's consent shall have the right to approve leases for the Property meeting the following conditions: (i) the lease is for not more than _____ square feet of space and for a term (including all extensions) of not more than _____ years; (ii) tenant improvement costs are covered by an operating budget which is part of an Approved Business Plan; (iii) the rent payable under the lease (after deducting any free rent) must equal or exceed an amount per square foot which is not less than _____ % of the targeted rent range for the Property as set forth in an Approved Business Plan; and (iv) the lease is on a form previously approved by the Parties without material modification. All other leases shall require the consent of

both Parties. [This subparagraph would be subject to modification depending upon type of property (apartment or hotel, for example).]

(h) Neither Party, in presenting, approving or otherwise acting upon a Business Plan, makes any warranty or representation to the other that estimated revenues, expenses, value or any other item appearing in any Business Plan can or will be achieved.

Section 16.5. REPORTING. No later than the twentieth (20th) day of each month, Property Manager shall submit to each Party, with respect to the immediately previous calendar month, the following reports for the Property: (1) a monthly and year-to-date profit and loss statement, (2) a monthly and year-to-date statement of cash flows, (3) a balance sheet, (4) a current rent roll, and (5) any other reports reasonably requested by either Party. Lead Lender, in addition, shall cause the Property Manager, no less than ninety (90) days following the end of each calendar year, to submit to the Parties a profit and loss statement and a balance sheet and such other information as either Party shall reasonably request for the Property and the Ownership Entity, which statements shall be audited by a certified public accountant acceptable to both Parties. Lead Lender shall also employ a nationally recognized accounting firm to prepare and furnish to the Parties such information as is generally required of investors for the filing of federal and state income tax returns based upon the structure of ownership elected by the Parties. The cost of the services of such accounting firm shall be an operating expense of the Property or the entity in which title has been taken.

Section 16.6. DISTRIBUTIONS OF INCOME/EXPENDITURES. The Parties shall share in all income and expenses of the Property in accordance with their pro rata interests in the Property. Cash flow from the Property, net of operating costs, working capital, reserves for capital expenditures, furniture, fixtures and equipment, Asset Management Fee, taxes, and insurance shall be distributed to the Parties [monthly/quarterly] along with the monthly operating statements delivered under the immediately preceding Section 16.5. If any Party owes the other Party for any Property Advances (including interest thereon), then the disbursements to each Party shall be adjusted accordingly to take into account the amount of any Property Advance with interest thereon.

Section 16.7. INSURANCE/CASUALTY/CONDEMNATION. From and after acquisition of title to the Property, Lead Lender shall obtain, or request that Property Manager obtain, property and liability insurance for the Property with the same coverage and for amounts not less than those required under the Loan Documents which insurance shall name each Party and the Ownership Entity as an insured. Lead Lender shall furnish or request that Property Manager furnish to Co-Lender an original certificate of insurance showing all coverages or, if available, duplicate original copies of all policies. If insurance is provided under a blanket policy, then Lead Lender shall furnish or cause to be furnished to Co-Lender an original certificate issued by the insurer showing the required coverages including the allocation of coverages in the required amounts to the Property and the Ownership Entity. All policies shall provide that coverage may not be canceled, modified or amended without first giving both Parties at least thirty (30) days written notice thereof. Lead Lender shall have the same rights to adjust, settle and compromise insurance claims without the other Party's prior consent as it has under Section 4.8(a)(v) hereof.

Section 16.8. APPRAISALS. Unless otherwise agreed by both Parties, Lead Lender will cause the Property to be appraised at three (3) year intervals commencing three (3) years after the date of the Appraisal. Each Appraisal of the Property performed under this Section 16.8, to the extent possible, shall be updates only of the immediately prior appraisal in order to minimize costs. Lead Lender will also order an Appraisal upon the listing of the Property for sale under the following Section 16.9 or at any time the Parties receive an unsolicited offer to sell the Property that either Party wishes to accept pursuant to Section 16.9 hereof. The Appraisals shall be done by the same firm performing the Appraisal unless either Party objects to that firm by notice to the other Party or the Parties otherwise agree on the selection of a different appraisal firm. In the case of such objection, the Parties, within thirty (30) days of such objection, shall agree on another appraisal firm to perform the Appraisal or, in the absence of such agreement, Lead Lender shall select another appraiser who shall be an individual having an MAI designation who is employed by a nationally recognized appraisal firm selected by Lead Lender. Each Party shall receive a copy of the Appraisal upon completion. The cost of the Appraisal shall be deemed an operating expense of the Property and shall be borne pro rata by the Parties.

Section 16.9. SALE OF PROPERTY. (a) Lead Lender shall make recommendations from time to time for sale of the Property and, after consultation with and consent by Co-Lender, may employ one or more brokers as shall be reasonable under the circumstances and list the Property for sale. Lead Lender shall not be authorized to accept any offer to purchase the Property without the consent of Co-Lender except on the following conditions: (i) the offer shall be arms-length from an unrelated third party with conveyance by special warranty or quit claim deed; (ii) the offer shall be for all cash and for the entire Property; (iii) the offer shall be in an amount at least equal to ninety-eight percent (98%) of the Market Value of the Property; and (iv) title to the Property is held in an Ownership Entity and not as tenants in common.

(b) If either Party receives a bona fide offer to purchase the Property from a third party (other than an offer solicited under the preceding paragraph), such Party shall promptly disclose the party and proposed sale terms to the other Party in a notice (the "First Notice"); *provided*, however, if the offer is for all cash and either Party wishes to accept such offer, it (the "First Party") shall so advise the other Party (the "Second Party") in a notice (the "Second Notice") to be given within five (5) Business Days of the First Notice. The Second Party shall then elect by a notice to the First Party given within ten (10) Business Days of the Second Notice, either (i) to agree to join in the sale, or (ii) to purchase the First Party's pro rata interest in the Property for a price, all cash, equal to the First Party's pro rata share of the sales price offered. If the Second Party elects not to join in the sale, but rather to purchase the pro rata interest of the First Party, then the First Party shall sell and assign its pro rata interest in the Property for an amount equal to its pro rata share of the offering price, but taking into account normal closing adjustments and pro rations as customary in the jurisdiction where the Property is located, and the closing of the sale of this interest shall occur on a Business Day specified in Second Party's notice of election (which shall be not less than ten (10) Business Days nor more than thirty (30) Business Days from the date of such notice of election) and otherwise as provided in Article XVII hereof.

(c) If the Property is to be sold pursuant to Subsections 16.9(a) or (b) above, Lead Lender shall be authorized to negotiate a purchase and sales agreement for the sale of the Property which shall be on the foregoing terms, shall require minimal (in Lead Lender's reasonable judgment)

or no seller representations, warranties and indemnities that survive closing, and, in addition, shall contain such other terms and conditions as Lead Lender deems commercially reasonable. The Parties agree to execute such purchase and sales agreement as shall have been negotiated, consistent with the above, promptly upon presentation by Lead Lender. Any transfer of title to the Property under this Section 16.9, whether to a third party purchaser or a Party, shall be by special warranty deed.

(d) Proceeds of any sale of the Property shall be distributed to the Parties within two (2) Business Days after the closing of the sale, after repayment of any Advances, Property Advances and other amounts due Lead Lender and Co-Lender, whether incurred before or after the Parties' acquisition of title to the Property, and after providing for any appropriate reserves for final expenses and taxes. It is the stated intention of the Parties that any Ownership Entity or tenancy in common between the Parties shall be wound up at the earliest possible date following sale of the Property, consistent with requirements of law and this Agreement.

Section 16.10. NO DIVISION. The Parties each agree with the other that the Property cannot be subdivided or partitioned and, accordingly, may only be operated and sold or transferred as a whole. Accordingly, each Party agrees that it will not file any legal action for partition or partition sale and waives any right to file such an action to the fullest extent permitted by law.

Section 16.11. RESTRICTIONS ON SALE, MORTGAGING AND PLEDGING. Neither the Property nor a Party's pro rata interest therein or in any entity holding title to the Property may be sold, assigned, or transferred, directly or indirectly, except in accordance with Section 16.9 and Sections 16.10 and 9.3 hereof. Additionally, neither the Property nor a Party's pro rata interest therein or in an Ownership Entity may be mortgaged, pledged or otherwise encumbered, directly or indirectly, without the prior consent of one hundred percent (100%) of all Parties.

ARTICLE XVII

RECIPROCAL PURCHASE RIGHTS

Section 17.1. RECIPROCAL PURCHASE RIGHTS. If after the Acquisition, the Parties are unable in good faith to resolve any disputes between them, either Party may initiate the "Buy-Sell" provisions set forth in Section 9.3 of this Agreement, except that the terms "Loan" and "Loan Documents" as used therein shall be read to mean "Property," and transfers of interests thereunder shall be of the selling Party's pro rata ownership interest in the Property and the Ownership Entity, if any, in which title to the Property has been taken, rather than of a pro rata share in the Loan. Any transfer requiring a deed to the Property under this Section shall be by special warranty deed. ***[For Hotel Loans Add: Unless required by law to do so, no transfer may be made which shall cause the selling Party to be required to give notice or make payments under the Federal Worker Adjustment and Retraining Notification Act, or any other similar state or federal plant closing or mass layoff law, or any rules and regulations promulgated with respect thereto.]***

Section 17.2. DISPUTES. In the event the Parties are unable to agree upon any Decisions affecting the Property, and neither Party invokes the provisions of Section 17.1 to initiate the "Buy-Sell" procedure set forth in Section 9.3, disputes between the Parties shall be resolved in accordance with the provisions of Section 9.2.

ARTICLE XVIII

NO OTHER RELATIONSHIP

Section 18.1. NO PARTNERSHIP OR OTHER FIDUCIARY RELATIONSHIP. Neither the execution of this Agreement, the sharing in the Loan Documents, nor any agreement to share in profits or losses arising as a result of the transactions contemplated hereby is intended to be or to create, and the foregoing shall be construed not to be or to create, any partnership, joint venture, or other joint enterprise between the Parties, and neither the execution of this Agreement, nor the management and administration of the Loan Documents and the related documents by Lead Lender as Servicer, nor the management and administration of the Property pursuant to the Loan Documents or following a foreclosure or deed in lieu thereof, nor any other right, duty or obligation of Lead Lender (as Servicer or otherwise) under or pursuant to this Agreement is intended to be or to create any express, implied or constructive trust or other fiduciary relationship between Lead Lender and Co-Lender.

Section 18.2. NO LOAN. No amount paid by either Party as a co-investment in the Loan, nor the ratable participation of either Party in the performance by Borrower of Borrower's obligations under any of the Loan Documents shall be considered a loan by either Party to the other Party. Neither Party shall have any obligation to repurchase the co-investment interest of the other Party in the Loan upon any default by Borrower with respect to any of Borrower's obligations or otherwise.

Section 18.3. NO LIABILITY. No Party shall be liable to any other person or entity for the liability in tort or contract of any other Party arising in connection with the Loan or any transaction connected herewith or therewith.

ARTICLE XIX

INDEMNIFICATION

Section 19.1. INEQUITABLE CONDUCT. Each Party covenants and agrees that neither it nor its officers, trustees, employees or agents will engage in any conduct which might be held to be inequitable with respect to the creditors of Borrower or of any of the constituent partners of Borrower and hereby agrees to indemnify the other Party for any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind and nature whatsoever which may be imposed on, incurred by or asserted against the other Party in any way relating to or arising out of equitable subordination of the liens and security interests (or any part thereof) securing the Loan to the claims of other creditors of Borrower to the extent and only to the extent that such equitable subordination results from the inequitable conduct of such Party or its officers, directors, employees or agents undertaken without the actual knowledge and express consent of the other Party.

Section 19.2. INDEMNIFICATION OF LEAD LENDER. Co-Lender hereby agrees to reimburse, indemnify and hold Lead Lender and Servicer harmless from and against, and to be responsible for its Ownership Share in, any and all losses, claims, damages, liabilities, costs, Expenses or disbursements (collectively, "Indemnified Losses"), which may be imposed upon, incurred by or asserted against Lead Lender, in its capacity as such, in any way relating to or arising out of this Agreement or the Loan Documents, or any action taken or omitted by Lead Lender or Servicer hereunder or under the Loan Documents, including reasonable attorneys' fees and any costs incurred in defense thereof. The foregoing indemnification shall not extend to acts or omissions resulting from Lead Lender's willful misconduct, gross negligence or actions taken by Lead Lender or Servicer outside the scope of its authority under this Agreement. Unless Lead Lender is satisfied that Co-Lender is obligated to pay its Ownership Share of any Indemnified Losses likely to be incurred by or on behalf of the Parties by Lead Lender, Lead Lender shall be under no duty to exercise or enforce any rights, remedies, powers or privileges with respect to any of the obligations of Borrower under any of the Loan Documents and shall not be compelled to do any act thereunder or pursuant to this Agreement or to take any action toward the exercise or enforcement of the powers created by this Agreement or any of the Loan Documents, or to direct any other party to take any such action, or to prosecute or defend any suit in respect hereof or thereof on behalf of the Parties.

ARTICLE XX

RETURN OF FUNDS RECEIVED BY PARTY

Upon demand, each Party shall repay to Lead Lender any sums paid to Lead Lender by Borrower and distributed by Lead Lender to such Party which Lead Lender shall be required by law or court order to return to Borrower or to any receiver, trustee, or custodian for Borrower.

ARTICLE XXI

SUCCESSOR LEAD LENDER; CO-LENDER'S DEFAULTS

Section 21.1. SUCCESSOR LEAD LENDER. Lead Lender, may be removed as lead lender in the event of Lead Lender's Insolvency or Lead Lender's material breach of this Agreement. In addition Lead Lender may resign as Lead Lender upon thirty (30) days' written notice by tendering a written resignation to Co-Lender. In the event that Lead Lender is removed as provided hereunder, Co-Lender shall be appointed as successor lead lender. Upon Co-Lender's purchase of Lead Lender's Ownership Share in the Loan, Lead Lender shall assign the following into the name of Co-Lender: (i) all Loan Documents and sums held by Lead Lender thereunder, (ii) all contracts with third persons executed by Lead Lender in connection with the administration of the Loan, and (iii) all deposits, sums, instruments, policies and security for the Loan. In the event Lead Lender resigns or Co-Lender resigns or is removed as successor lead lender, a new successor lead lender may only be appointed with the consent of both the Parties and such successor lead lender shall serve as lead lender until removal or resignation.

Section 21.2. DEFAULT BY CO-LENDER. In the event of the insolvency of Co-Lender or in the event Co-Lender is in material default hereunder after the expiry of all notice and cure periods, Lead Lender, or its designee, shall have the right, but not the obligation, in addition to all other remedies at law or in equity, including, without limitation, the right to seek specific performance for any loss occasioned by such default, to purchase the then outstanding Ownership Share of Co-Lender in the Loan for an amount equal to the defaulting Co-Lender's proportionate share of the principal balance of the Loan theretofore advanced by Co-Lender, plus accrued interest thereon to the date of purchase. In the event of the insolvency of Co-Lender, payment for its Ownership Share will be made only out of the repayment of the principal of the Loan, pro rata, if and as received in repayment of the Loan. There shall be no recourse against Lead Lender, its designee or Co-Lender for the payment of such sums except to the extent of the receipt of payments from Borrower. The payment of interest on the deferred obligation shall be made only out of sums received and credited as interest on the Loan. Co-Lender shall indemnify Lead Lender, and its designee from and against any and all loss, damage or expenses (including, but not limited to, reasonable attorneys' fees) which they may sustain or incur by reason of or in consequence of such default. Upon the exercise by Lead Lender of the above remedies, the Ownership Shares of the obligations of Co-Lender for the sharing of losses and reimbursement for costs shall not be reduced, but shall remain as established on the date of this Agreement and the interest of Co-Lender (but not its liability) shall terminate at the date of purchase, and Co-Lender shall promptly execute all documents reasonably requested to surrender and transfer its interest.

ARTICLE XXII

TERMINATION OF SERVICER

Section 22.1. TERMINATION OF LEAD LENDER AS SERVICER. Co-Lender may, for cause, as determined in Co-Lender's reasonable discretion, terminate Lead Lender as Servicer upon written notice to Lead Lender. Cause for termination shall include, but is not limited to, (a) the failure of Lead Lender to perform any of its obligations as Servicer under this Agreement for a period of thirty (30) days after written notice from Co-Lender, *provided* that if such default cannot reasonably be cured within such thirty (30) day period and Lead Lender shall have commenced to cure such default within such thirty (30) days period and thereafter diligently and expeditiously proceeds to cure same, such thirty (30) day period shall be extended so long as it shall require Lead Lender in the exercise of due diligence to cure such default, (b) the sale, mortgage, pledge, or assignment of the servicing obligations under this Agreement by Lead Lender without the prior written consent of the Parties, (c) insolvency of Lead Lender, (d) the filing of a petition in bankruptcy by Lead Lender, or the adjudication of Lead Lender as a bankrupt, or the assignment by Lead Lender for the benefit of creditors, or the appointment of a trustee or a receiver, or conservator, (e) if a liquidation agent is appointed for or over Lead Lender to assume custody, control, or management of the business of Lead Lender, (f) the dissolution of Lead Lender, or (g) if Lead Lender enters into an Agreement of Conservator with creditors or commences voluntary dissolution proceedings.

Section 22.2. RESIGNATION. Lead Lender may terminate its obligations as Servicer under this Agreement upon thirty (30) days' written notice to the Parties, *provided, however*, that all obligations hereunder shall continue until the Loan has been paid in full or until the Parties have

procured an individual or corporation which is acceptable to the Parties and who is willing to carry out all of the obligations of Lead Lender as Servicer under this Agreement in regard to the Loan, which replacement Servicer shall be procured by the Parties no later than ___ days after the delivery of Lead Lender's termination notice. Notice of termination by Lead Lender shall be cause for complete termination hereof by the Parties without notice.

Section 22.3. SERVICING TERMINATION FEE. As more particularly set forth in this Agreement, if Lead Lender shall sell its entire interest in the Loan to Co-Lender in accordance with Section 9.3 of this Agreement, and (a) Co-Lender assumes the obligations of Lead Lender as Servicer under this Agreement, and (b) no monetary default exists under the Loan Documents at the time of transfer, the Purchase Price set forth in this Agreement shall include the Servicing Termination Fee.

Section 22.4. FILES/ACCOUNTING. Upon termination of Lead Lender's servicing obligations under this Agreement, by either Party, all records, correspondence, escrow balances, unremitted payments, etc., relating to the Loan shall be surrendered to the Parties or their authorized representatives, without charge. Lead Lender will render a full accounting for any and all monies collected in connection with the Loan or this Agreement relating to its obligations as Servicer hereunder.

ARTICLE XXIII

GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York (without giving consideration to principles of conflicts of law and applicable law) of the United States of America.

ARTICLE XXIV

NOTICES

All notices, demands, requests and other communications pursuant to this Agreement shall be deemed to have been properly given, when made in writing, three (3) Business Days after receipt, when delivered personally or when sent either through United States Postal Service postpaid, registered or certified mail with return receipt requested, or by courier (such as Federal Express, United Parcel or similar service) at the expense of the sender, addressed to the Party to receive such notice at the following address or at such other address as may hereafter be specified by written notice given as set forth in this section:

If to Lead Lender:

If to Co-Lender: _____

Attention: _____

Notice given in any manner described herein shall be effective only if and when received as required by the Party to be notified or refused by the Party to be notified.

ARTICLE XXV

GENERAL

Section 25.1. MODIFICATION AND WAIVER. This Agreement may be modified, amended or cancelled, and compliance with any of its provisions waived, only by an instrument in writing executed by all the Parties hereto. No failure by any Party hereto to enforce compliance with any provision hereof at any time shall affect the right at a later time to enforce its compliance. No waiver of compliance with any provision hereof in any instance by any Party shall, except as otherwise provided in the instrument granting such waiver, operate as or be construed as a further or continuing waiver of compliance with such provision or other provision.

Section 25.2. BINDING EFFECT. This Agreement shall inure to the benefit of and be binding on the Parties hereto and their respective successors and permitted assigns, and the successors and permitted assigns of all or any part of the interest of any party hereto. If either Party transfers its interest in the Loan, the Loan Documents and the Security in conformance with the terms of this Agreement, it shall not be liable for any obligation arising hereunder with respect to the interest transferred after such transfer, each Party and its successors being liable only for obligations accruing during its period of ownership of its interest in the Loan, the Loan Documents and the Security.

Section 25.3. ENTIRE AGREEMENT. This Agreement sets forth the entire Agreement and understanding of the Parties hereto with respect to the transactions contemplated hereby and the subject matter hereof and supersedes all prior agreements or understandings relating thereto.

Section 25.4. SEVERABILITY. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the Parties hereto waive any provision of law which prohibits or renders unenforceable any provision hereof.

Section 25.5. COUNTERPARTS. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument, binding on the Parties, and the signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart.

Section 25.6. ASSIGNMENT/SUCCESSORS/AND ASSIGNS. Except as expressly provided in Section 10.1, no Party, without the prior written consent of the other Party, shall sell, encumber, or otherwise dispose of all or any portion of its Ownership Share in the Loan. All of the terms, covenants and conditions herein contained shall inure to the benefit of and be binding upon the Parties hereto, their successors and assigns; *provided* that any transfer of any interest herein or in the Loan in violation of any of the provisions hereof shall confer no rights upon the transferee.

Section 25.7. HEADINGS. The headings in this Agreement are for convenience of reference only and shall not define or limit the provisions hereof.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first above written.

By: _____
Name:
Title:

By: _____
Name: