

ROADMAP/BASICS OF REAL ESTATE FINANCE, PART 1 & PART 2

First Run Broadcast: June 27, & 28, 2018

1:00 p.m. E.T./12:00 p.m. C.T./11:00 a.m. M.T./10:00 a.m. P.T. **(60 minutes each day)**

This program will provide you with a guide to real estate finance. It will cover the practical aspects of structuring debt, equity, and mezzanine finance. Major issues and traps in negotiating first mortgages, including personal guarantees and carve-outs, will be discussed in detail. The program will also cover credit enhancement, leasehold finance, and how financing alternatives have changed in a stronger market. This program will provide you with a real-world guide to major issues in negotiating and drafting real estate finance agreements.

Day 1 – June 27, 2018:

- Major issues of negotiating first mortgages
- Loan application and bank commitments
- Role of personal guarantees and negotiating non-recourse carve-outs with lenders
- Defeasance and prepayment premiums

Day 2 – June 28, 2018:

- Structuring equity in real estate deals
- Mezzanine financing and drafting issues
- Leasehold finance
- Credit enhancement instruments
- Single purpose entities for finance purposes

Speaker:

Manuel A. Fernandez is partner in the Miami office of Kasowitz Benson Torres & Friedman, LLP, where he represents clients in an extensive array of real estate matters, including real estate acquisitions and dispositions, commercial leasing matters, distressed real estate transactions, real estate financings and the formation of real estate joint ventures. He also represents hedge funds, pension funds, and other real estate opportunity funds in connection with joint ventures. Mr. Fernandez received his B.A., *cum laude*, from the University of Miami and his J.D., *magna cum laude*, from the University of Miami School of Law.

Richard R. Goldberg is a retired partner, resident in the Philadelphia office of Ballard Spahr, LLP, where he established an extensive real estate practice, including development, financing, leasing, and acquisition. Earlier in his career, he served as vice president and associate general counsel of The Rouse Company for 23 years. He is past president of the American College of Real Estate Lawyers, past chair of the Anglo-American Real Property Institute, and past chair of the International Council of Shopping Centers Law Conference. Mr. Goldberg is currently a Fellow of the American College of Mortgage Attorneys and is a member of the American Law Institute. Mr. Goldberg received his B.A. from Pennsylvania State University and his LL.B. from the University of Maryland School of Law.

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Please complete all of the requested information, print this application, and fax with credit info or mail it with payment to: Vermont Bar Association, PO Box 100, Montpelier, VT 05601-0100. Fax: (802) 223-1573 **PLEASE USE ONE REGISTRATION FORM PER PERSON.**

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Roadmap/Basics of Real Estate Finance, Part 1

Teleseminar

June 27, 2018

1:00PM - 2:00PM

1.0 MCLE GENERAL CREDITS

VBA Members \$75
Non-VBA Members \$115

NO REFUNDS AFTER June 20, 2018

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Phone # _____ Fax # _____

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Roadmap/Basics of Real Estate Finance, Part 2

Teleseminar

June 28, 2018

1:00PM - 2:00PM

1.0 MCLE GENERAL CREDITS

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Non-VBA Members \$115

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Date: June 27, 2018

Seminar Title: Roadmap/Basics of Real Estate Finance, Part 1

Location: Teleseminar - LIVE

Credits: 1.0 MCLE General Credit

Program Minutes: 60 General

Luncheon addresses, business meetings, receptions are not to be included in the computation of credit. This form denotes full attendance. If you arrive late or leave prior to the program ending time, it is your responsibility to adjust CLE hours accordingly.



Vermont Bar Association

CERTIFICATE OF ATTENDANCE

Please note: This form is for your records in the event you are audited

Sponsor: Vermont Bar Association

Date: June 28, 2018

Seminar Title: Roadmap/Basics of Real Estate Finance, Part 2

Location: Teleseminar - LIVE

Credits: 1.0 MCLE General Credit

Program Minutes: 60 General

Luncheon addresses, business meetings, receptions are not to be included in the computation of credit. This form denotes full attendance. If you arrive late or leave prior to the program ending time, it is your responsibility to adjust CLE hours accordingly.

Richard R. Goldberg, Esquire
Ballard Spahr Andrews & Ingersoll, LLP
Philadelphia, PA

I. First Mortgages

Applications have served as long commitments.

A. Issues to be raised in applications.

1. Exceptions to prepayment clause
2. Exceptions to non-recourse clause
3. Exceptions to due on sale clause
4. Exceptions to full environmental indemnity
5. Form of borrower's counsel opinion
6. Use of insurance and condemnation proceeds for rebuilding
7. Restrictions on leasing activity
8. Relationship with tenants and use of subordination and non-disturbance agreements

II. Non-recourse Carve-outs

Lenders have been adding significant exceptions to the non-recourse carve-outs language. These carve-outs protect the lender against borrower bad conduct and borrower action to defeat the lender's remedies.

A. Lenders have been adding significant exceptions to non-recourse language in order to discourage certain practices by borrowers and may be expected to continue this practice. Some typical carve-outs, designed to reimburse lender for any losses caused by certain conduct, are as follows:

1. Fraud or misrepresentation in the making of the loan
 - a. Restrict to intentional misrepresentations?
 - b. Restrict to statements made in writing?
 - c. Misapplication of loan proceeds or insurance or condemnation funds released to borrower for restoration.
 - d. Misapplication of tenant security deposits or prepaid rents (but did the lender have security deposits included as collateral?).

- e. Misapplication of revenues from the improvements by not paying expenses of operation and maintenance or the indebtedness occurring after default or a period prior to default.
- f. Liability under hazardous waste indemnities.
- g. Failure to pay mechanics' liens, perhaps including subordinate liens.
- h. Failure to pay taxes, assessments and/or utility charges.
- i. Violation of the due on sale and due on encumbrance clause
- j. Violation of the covenants regarding use of hazardous materials.
- k. Resisting enforcement of the documents by the lender.
- l. Filing for protection under bankruptcy laws.

Some lenders provide for total recourse in the event certain covenants are breached as a method to control undesirable borrower conduct.

The last four carve-outs may provide for total recourse. Any exculpation language should be included in the note and the security instrument. All carve-outs should be negotiated in the commitment stage.

III. Defeasance Pre-payment Premiums

The use of securitization has altered the playing field for yield maintenance.

- A. Normal yield maintenance is usually a minimum of the greater of (i) 1% or (ii) the differential between the interest to be earned over the course of the loan from a treasury bill based formula discounted to present value.
- B. Defeasance takes the place of yield maintenance. In defeasance, the borrower is required to put a deposit in the hands of a fresh entity which pays interest at the same rate of the original obligation and where the principal, upon termination, is paid to the lender from the escrow sources. Defeasance prevents early interruption of cash flow.

IV. Mezzanine Financings

Mezzanine financing has taken the place of second mortgage financings which is not permitted in securitized loan situations.

- A. The mezzanine lender owns the ownership interest in the borrower so that upon foreclosure it can own all of the ownership entities comprising the borrower and effectively control the borrower.

- B. The mezzanine borrower may have to move down several levels in the ownership chain in order to preserve itself with respect to bankruptcy.
- C. Mezzanine lending is a pledge of ownership interest secured by either Article 8 or Article 9 of the Uniform Commercial Code. The mezzanine lender does not own any interest in the property.
- D. Foreclosure is done by Uniform Commercial Code pursuant to Article 8 or Article 9 of the Uniform Commercial Code.
- E. The mortgage loan/mezzanine loan intercreditor agreement is quite different from the normal first mortgage/second mortgage because the mezzanine lender does not have a recorded lien against the property.
- F. There are significant insurance products available from title insurance companies to protect the mezzanine lender's Uniform Commercial Code interest.

V. Leasehold Financings

Elements of a financeable ground lease:

- A. An unencumbered fee with all fee mortgage being subject to or recognizing the leasehold mortgage.
- B. Term: The term of the lease must be longer than the term of the mortgage and at least for the term of the amortization.
- C. Rent should be fixed or, if variable, capable of being ascertained by use of a formula.
- D. Tenants' rights to mortgage must be clear in the lease.
- E. Tenants should not have the right to change the lease without the leasehold mortgagee's consent. The lease must recognize the leasehold mortgagee.
- F. Damage and destruction: Use of proceeds for rebuilding should be permitted except for total destruction in the last four years of the lease.
- G. Defaults: The leasehold mortgagee must have notice, separate adequate opportunity to cure with additional time, and there should be no right to terminate by the landlord unless the leasehold mortgagee has failed to assert its cure rights.
- H. The landlord should be obligated to provide the leasehold mortgagee with a new lease for the unexpired term of the old lease on the same terms and conditions.

Richard R. Goldberg, Esquire
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PLAYERS IN THE UNIVERSE OF SECURITIZED LOANS

Issuer (a/k/a Producer or Lender): Originates the mortgages, assembles them into pools and sells the mortgage pools to the Trust. Borrower usually deals exclusively with the Issuer through loan closing. Thereafter, Borrower usually deals exclusively with the Servicer and the Special Servicer.

Trust: Legal entity formed to hold legal title to the mortgages. Usually organized as a REMIC for federal tax purposes.

Borrower: Usually is required to be a Single Purpose Entity (SPE) to make the likelihood of bankruptcy remote for the benefit of the Investors. May be required to have an independent director, member or partner.

Investor (or Certificate Holder): Purchases certificate of beneficial interests in Trust. Entitled to receive repayment of investment in Trust at a specified interest rate out of debt service payments received by the Trust. The certificates are structured into classes or tranches by the Issuer (or the Rating Agency) with the classes bearing disproportionate risks of loss (in the event of mortgage defaults not born by First Loss Holder) and entitlements to principal repayments (“fast pay/slow pay”).

First Loss Holder or “B piece” Holder: Purchases unrated “Class B” interests in the Trust and is exposed to repayment losses (principal and interest) before Investors who own rated “Class A” certificates.

Trustee: Administers the Trust. Distributes proceeds of sale of the beneficial interests in the Trust to the Issuer. Periodically distributes debt service payments to Investors. (This function may be subcontracted to a “paying agent”). Enforces Pooling and Servicing Agreement, which governs the conduct of the Servicer and Special Servicer. Can replace the Servicer or Special Servicer in the event of a breach of the Pooling and Servicing Agreement.

Servicer: Administers the mortgages on behalf of the Investors in accordance with the Pooling and Servicing Agreement. Collects debt service. Reports borrower delinquencies to Trustee. Usually advances funds to cover delinquent mortgage payments (subject to reimbursement by First Loss Holder). Approves all leases which require lender approval. Performs defeasance and yield maintenance calculations. May also act as Special Servicer. When mortgage payment default occurs, Pooling and Servicing Agreement specifies when the Servicer must turn over work out/collection process to the Special Servicer (usually 45 to 90 days).

Special Servicer: Controls all workouts and default modifications and may control foreclosure proceedings. Latitude granted to the Special Servicer is limited by the REMIC tax rules and the Pooling and Servicing Agreement. Special Servicer is selected either

because (i) as Issuer, it has retained the Class B (first loss) Interest, (ii) it insisted on becoming the Special Servicer as a condition of purchasing the Class B interest, or (iii) it possesses specific expertise.

Rating Agency: Examines the offering and rates the overall quality of the mortgage pool and each Investor tranche in accordance with the risk of loss assigned to each tranche (based on the Rating Agency's standards, benchmarks and "stress tests"). Ratings assigned range from AAA (top investment grade) to B (below "credit" standards).

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July 18 - 20, 2012

Modern Real Estate Transactions

COMPLEX CASH MANAGEMENT AGREEMENT BETWEEN BORROWER, SENIOR LENDER, AND JUNIOR LENDER

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Richard R. Goldberg

Ballard Spahr Andrews & Ingersoll, LLP

Philadelphia, PA.

CASH MANAGEMENT AGREEMENT

THIS CASH MANAGEMENT AGREEMENT (this “**Agreement**”), made as of the _____, is among _____ (“**Borrower**”), _____ (“**Manager**”), _____ (“**Lender**”), and _____ (“**Senior Lender**” and “**Financial Institution**” as the context may require).

RECITALS:

A. Borrower by its promissory note of even date herewith given to Lender (the note together with all extensions, renewals, modifications, consolidations, substitutions, replacements, increases and amendments thereof shall collectively be referred to as the “**Note**”) is indebted to Lender in the principal sum of \$ _____ in lawful money of the United States of America, with interest from the date thereof at the rates set forth in the Note (the indebtedness evidenced by the Note, together with such interest accrued thereon, shall collectively be referred to as the “**Loan**”), principal and interest to be payable in accordance with the terms and conditions provided in the Note.

B. The Loan is secured by, among other things, a Mortgage, Security Agreement, Financing Statement and

Fixture Filing and an Absolute Assignment of Rents and Leases of even date herewith which grants Lender a second lien on the property encumbered thereby (the “**Property**”). All and any of the documents, including, without limitation, the Note, the Security Instrument and this Agreement now or hereafter executed by Borrower and/or others and by or in favor of Lender, which wholly or partially secure or guarantee payment of the Note are referred to as the “**Loan Documents**”.

C. Borrower by its promissory note dated January 26, 2001 given to Senior Lender (the note together with all extensions, renewals, modifications, consolidations, substitutions, replacements, increases and amendments thereof shall collectively be referred to as the “**Senior Note**”) is indebted to Senior Lender in the principal sum of _____ in lawful money of the United States of America, with interest from the date thereof at the rates set forth in the Senior Note (the indebtedness evidenced by the Senior Note, secured by, among other things, a Mortgage Deed and Security Agreement given to Senior Lender (the “**Senior Mortgage**”), the Senior Note together with such interest at the rates set forth therein shall collectively be referred to as the “**Senior Loan**”).

D. Pursuant to a certain Hotel Management Agreement dated January 26, 2001, between Borrower and Manager (the “**Management Agreement**”, a true and complete copy of which are attached to that certain Assignment of Management Agreements of even date herewith as Exhibit A thereto), Borrower employed Manager exclusively to operate and manage the Property consisting of an approximate 800 room resort and convention hotel located in _____ referred to as the “**Project.**”

E. Borrower has established with the Financial Institution a bank account in the name of Lender and Senior Lender, designated as Account No. _____ and designating Lender and Senior Lender as the pledgee thereof (the “**Project Account**”).

F. Borrower and Manager have submitted, or caused to be submitted, to Lender, an operating budget for the Project which Lender has approved (the “**Approved Budget**” as defined in the Loan Agreement) for the time period from the date hereof through and including January 31, 2001. Senior Lender has approved the budget pursuant to its Loan Documents.

WHEREAS, as a condition to making the Loan and the Senior Loan, Lender and Senior Lender have required that Borrower and Manager enter into this Agreement.

NOW THEREFORE, in consideration of the mutual premises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

1. Defined Terms.

(a) As used herein, the following capitalized terms shall have the respective meanings set forth in the recitals hereto:

“**Approved Budget;**”

“**Financial Institution;**”

“**Loan;**”

“**Loan Documents;**”

“**Management Agreement;**”

“**Note;**”

“**Project;**”

“**Project Account;**”

“**Property;**”

“**Senior Loan;**”

“**Senior Mortgage;**” and

“**Senior Note.**”

(b) As used herein, the following capitalized terms shall have the respective meanings set forth below:

“**Accrued Interest**” shall have the meaning set forth in the Note.

“**Business Day**” shall mean any day other than a Saturday, Sunday or any day on which commercial banks in the State of Florida are authorized or required to close.

“**DSCR**” means the number derived by dividing the Gross Income less the sum of Operating Expenses and Extraordinary Expenses by the debt service required to be paid pursuant to the First Mortgage and the debt service required to be paid by the Loan, including Accrued Interest.

“**Excess Cash Flow**” means an amount equal to the difference between Gross Income and the sum of (i) Tax and Insurance Reserve Payment; (ii) Operating Expenses, (iii) debt service under the First Mortgage, (iv) debt service under the Loan (including Required Interest Payments but not including Accrued Interest), (v) Extraordinary Expenses, and (vi) the FF&E Reserve Payments.

“**Extraordinary Expense**” means an operating expense or capital expenditure with respect to the Property that is not set forth in the Budget which has been approved by Lender and Senior Lender after submission by Borrower and Manager of a reasonably detailed explanation of the necessity for the proposed expense.

“**First Mortgage**” means the loan made by Bank Atlantic to Borrower in the principal amount of \$17,000,000.00 with a security interest prior to the Loan.

“**FF&E Reserve Payments**” means the amount required to be reserved for the replacement of furniture, fixtures and equipment set forth in the Budget, adjusted for monthly payments.

“**Gross Income**” means the all revenues derived from the Property including, without limitation, room revenues, food and beverage revenues, rents, insurance proceeds, condemnation proceeds, and revenues of any kind whatsoever.

“**Monthly Cash Flow Statement**” means a report prepared monthly by manager detailing Gross Income, Tax and insurance Reserve Payment, Operating Expenses, FF&E Reserve payments, debt service payments under the First Mortgage and the Loan, payments of unpaid Accrued Interest, if any, and amounts of Excess Cash Flow.

“**Operating Expenses**” means those expenses set forth in the Budget.

“**Person**” shall mean any individual, sole proprietorship, partnership, limited liability company, joint venture, trust, unincorporated organization, association, corporation, institution, entity, party or government (whether territorial, national, federal, state, county, city, municipal or otherwise, including, without limitation, any instrumentality, division, agency, body or department thereof).

“**Required Interest Payments**” shall have the meaning contained in the Note.

“**Senior Loan Documents**” means the loan documents evidencing or securing the Senior Loan.

“**Sweep Account**” means the account maintained by Lender and Senior Lender at _____, a national banking association, in _____, Account No. _____ in which all funds to be disbursed in the Project Account are to be initially deposited and swept on a twice per week basis into the Project Account pursuant to irrevocable instructions from the Borrower.

“**Tax and Insurance Reserve Payment**” shall have the meaning as ascribed to it in the Loan Agreement.

(c) All terms used but not otherwise defined in this Agreement shall have the same defined meanings set forth in the Loan Documents or Senior Loan Documents, unless the context shall require otherwise.

(d) The meanings given to capitalized terms defined herein shall be equally applicable in both singular and plural forms of such terms.

2. Use and Maintenance of Project Account. The Project Account shall be used for the deposit of all Gross Income derived from the Project and for the payment of all Operating Expenses, Tax and Insurance Reserve Payment, Extraordinary Expenses, FF&E Reserve Payments, debt service on the First Mortgage, debt service on the Loan, and any other expenses otherwise approved to be paid by both the Lender and Senior Lender. While Borrower may be named as a beneficiary of the Project Account and Manager as a signatory on the Project Account,

the Project Account shall at all times remain in the name of Lender and Senior Lender and under the sole dominion and control of Lender and Senior Lender. Provided no default exists under the Loan Documents, sums on deposit in the Project Account may be invested at the direction of Borrower in investments then regularly offered by the Financial Institution in those items listed in Exhibit B to this Agreement. No investment shall be made if the maturity date of the investment is later than the date on which sums to be invested are required for payment of an item specified in Section 3(b) hereof. All income from investments shall be the property of the Borrower, but shall be retained in the Project Account in accordance with Section 3(b) hereof. Borrower shall be responsible for the payment of any federal, state local or other tax applicable to the income earned from the investments, which shall be paid from funds other than those in the Project Account.

3. Duties of Manager.

(a) *Deposits into Project Account.* Manager agrees to deposit all Gross Income any other income generated from the Project directly into the Sweep Account on a twice per week basis and cause such to be swept on at least a twice per week basis into the Project Account on at least a daily basis. Manager shall not commingle any such funds and shall hold such funds in an express trust for the benefit of Lender and Senior Lender until deposited into the Project Account as required by the preceding sentence. Manager hereby acknowledges its fiduciary duties to Lender and Senior Lender. Any deposit made by Manager or on behalf of Borrower into the Project Account shall be deemed deposited into the Project Account when the funds in respect of such deposit shall become available funds.

(b) *Disbursements from Project Account.* Manager shall disburse all sums required to operate the Project, pay debt service on the First Mortgage and the Loan and any other sums required to be spent to provide for the orderly operation of the Project in the following order of precedence:

- (i) first, to pay the Tax and Insurance Reserve Payment;
- (ii) second, to pay Operating Expenses on a monthly basis; calendar month
- (iii) third, to pay debt service on the First Mortgage for the calendar month
- (iv) fourth, to pay the Required Interest Payments for the
- (v) fifth, to the extent available on the last day of each calendar month from excess cash flow computed on a monthly basis, Accrued Interest
- (vi) sixth, to the extent available on the last day of each calendar month from excess cash flow computed on a monthly basis, accumulated unpaid Accrued Interest.
- (vii) seventh, to pay Extraordinary Expenses on a monthly basis;
- (viii) eighth, to pay the FF&E Reserve Payments on a monthly
- (ix) ninth, when instructed by Lender, to the extent DSCR for any previous twelve (12) month period exceeds 1.40, all Excess Cash Flow up to an amount necessary to provide Borrower with an annualized seven per cent (7%) return on its cash investment in the Project reduced to a monthly return. The cash investment of Borrower shall be determined by Lender in its sole discretion based upon Borrower's report to Lender of all actual cash invested by Borrower in the Property. All remaining Excess Cash Flow shall remain in the project Account until Loan is fully paid together with all unpaid interest, fees and other charges thereunder.

Borrower, Manager, Lender and Senior Lender agree that there shall be no other disbursement from the Project Account other than these set forth in this Section without the prior written consent of Lender and Senior Lender, exercised in their sole discretion. The parties acknowledge that the accumulation of cash in the Project Account without dissipation or diminution (including, without limitation, by way of distribution to Borrower) is material collateral securing the Loans of Lender and Senior Lender.

4. Duties of Borrower and Manager.

(a) *Income Statements.* Borrower shall submit, or cause Manager to submit, to Senior Lender and Lender, on a monthly basis, both a budgeted and actual monthly statement of cash flow.

(b) *Extraordinary Expenses*. Borrower shall submit, or cause Manager to submit all Extraordinary Expenses to Senior Lender and Lender for their written approval.

(c) *Budget*. Borrower shall submit, or cause manager to submit, the Operating Budget and the Capital Budget to Senior Lender and Lender for their approval in accordance with the Loan Agreement.

5. Duties of Lender. Lender and Senior Lender shall render their approval of submissions hereunder promptly. To the extent Lender or Senior Lender is unable to render its approval, it shall either ask for additional clarification or supporting information or present its reasons for disapproval.

6. Termination of Cash Management Agreement. Upon Borrower's default under this Agreement, and/or after an Event of Default under any of the Loan Documents or Senior Loan Documents, Lender or Senior Lender acting alone may terminate this Agreement at any time by written notice delivered to Manager and Borrower, and the funds in the account shall be held in accordance with the terms and conditions of the Intercreditor Agreement between Senior Lender and Lender. Manager shall follow all subsequent instructions which it has received from Senior Lender and Lender after such termination.

7. Pledge of Accounts.

(a) Borrower hereby pledges, transfers and assigns to Lender and Senior Lender, and grants to Lender and Senior Lender, as additional security for the payment and performance of the Note, Senior Note and the other obligations of Borrower under the Loan Documents and Senior Loan Documents, a continuing security interest in and to: (i) the Project Account and all of Borrower's right, title and interest in and to all cash, property or rights transferred to or deposited in such Project Account from time to time by Manager or Borrower or on behalf of Borrower in accordance with the provisions of this Agreement; (ii) the Sweep Account and all of Borrower's right, title and interest in and to all cash, property or rights transferred to or deposited in such Sweep Account from time to time by Manager or Borrower or on behalf of Borrower in accordance with the provisions of this Agreement; and (iii) any and all proceeds of the foregoing. Manager and Borrower acknowledge and agree that Manager is acting at the direction of, and as the fiduciary of, Lender and Senior Lender in connection with the subject matter of this Agreement. Manager and Borrower further agree to execute, acknowledge, deliver, file or do, at their sole cost and expense, all other acts, assignments, notices, agreements or other instruments as Lender and Senior Lender may reasonably require in order to effectuate, assure, secure, assign, transfer and convey unto Lender and Senior Lender any of the rights granted in this Section 7(a).

(b) If an Event of Default under the Senior Loan Documents shall occur, Lender or Senior Lender may withdraw and apply all sums from the Project Account to the amounts due under the Note or Senior Note and/or all other obligations under the Loan Documents or Senior Loan Documents in such order, proportion and priority as Senior Lender may determine in its sole discretion; provided, however, that Senior Lender has no obligation to permit Lender to apply any funds to Lender's Note or other obligations. Senior Lender's right to withdraw and apply amounts in the Project Account shall be in addition to all other rights and remedies provided to Senior Lender under this Agreement, the Senior Loan Documents and at law or in equity. Lender may exercise the rights given hereunder to Senior Lender upon the prior written consent of Senior Lender. If Lender or Senior Lender notifies the Financial Institution that an Event of Default under the Loan Documents or Senior Loan Documents has occurred, Borrower shall not object to, and shall cooperate in permitting Lender or Senior Lender to gain access to, banking balances via computer software.

(c) Borrower acknowledges that no due dates and no grace or notice periods (if any are applicable) set forth in the Note or Senior Note and the Loan Documents or Senior Loan Documents shall be deemed to have been extended, tolled, waived or otherwise affected by the provisions of this Agreement. In order to further secure the performance by Borrower of the obligations Loan Documents or Senior Loan Documents and as a material inducement for Lender and Senior Lender to make the Loans in accordance with the terms of the Note or Senior Note and the Loan Documents or Senior Loan Documents, Borrower hereby acknowledges and confirms that: (i)

Manager and its authorized employees shall have the sole right to make disbursements from the Project Account; and (ii) neither Borrower nor any other Person claiming on behalf of or through Borrower shall have any right or authority, whether express or implied, to make use of, or withdraw any amounts from, the Project Account; and (iii) none of the persons or entities referred to in (i) and (ii) hereof shall make use of or withdraw any amounts from the Sweep Account.

8. Financial Institution Obligations With Respect to Project Account.

(a) *Project Account.* Financial Institution agrees to establish and maintain the Project Account as contemplated by this Agreement and agrees not to commingle the amounts held in, or designated for deposit in, the Project Account with any other amounts held on behalf of Lender, Senior Lender, Borrower or any other party. Financial Institution acknowledges that all amounts held in the Project Account are for the benefit and account of Lender and Senior Lender and agrees not to apply amounts received nor to make disbursements from or debits to the Project Account other than in accordance with this Agreement.

(b) *Fees and Expenses.* Financial Institution agrees to look solely to Borrower for payment of its fees in connection with its maintenance of the Project Account and services hereunder, and Borrower agrees to pay such fees to the Financial Institution on demand therefor; provided, however, that the fees which the Financial Institution may charge to Borrower shall not exceed the fees and charges customarily charged by the Financial Institution to its customers with respect to the customary and standard maintenance of a deposit account. Borrower acknowledges and agrees that it solely shall be, and at all times remains, liable to the Financial Institution, Senior Lender and Lender for all fees, charges, costs and expenses in connection with the Project Account, this Agreement and the enforcement hereof, including, without limitation, the reasonable fees and expenses of legal counsel to the Financial Institution, Senior Lender and Lender as needed to enforce performance of this Agreement.

9. Rights and Duties of Lender, Senior Lender and Financial Institution.

(a) *Reasonable Care.* Beyond the exercise of reasonable care in the custody thereof, neither Financial Institution, Senior Lender nor Lender shall have any duty as to the Project Account in its possession or control as agent therefor or bailee thereof or any income thereon or the preservation of rights against any person or otherwise with respect thereto. Financial Institution, Senior Lender and Lender each shall be deemed to have exercised reasonable care in the custody and preservation of the Project Account in its possession if the Project Account is accorded treatment substantially equal to that which Financial Institution, Senior Lender or Lender accords its own property, it being understood that Lender or Senior Lender shall not be liable or responsible for any loss or damage to any of the Project Account, or for any diminution in value thereof, by reason of the act or omission of Financial Institution, Senior Lender or Lender, its Affiliates, agents, employees or bailees, except to the extent that such loss or damage results from Financial Institution's, Senior Lender's or Lender's gross negligence or willful misconduct.

(b) *Indemnity.* Financial Institution shall be responsible for the performance only of such duties as are specifically set forth herein, and no duty shall be implied from any provision hereof. Financial Institution shall not be under any obligation or duty to perform any act which would involve it in expense or liability or to institute or defend any suit in respect hereof, or to advance any of its own monies. Borrower shall indemnify and hold Financial Institution, Senior Lender and Lender, their respective employees and officers harmless from and against any loss, cost or damage (including, without limitation, reasonable attorneys' fees and disbursements) incurred by Financial Institution, Senior Lender or Lender in connection with the transactions contemplated hereby, except to the extent that such loss or damage results from Financial Institution's, Senior Lender's or Lender's gross negligence or willful misconduct.

(c) *Reliance.* Financial Institution shall be protected in acting upon any notice, resolution, request, consent, order, certificate, report, opinion, bond or other paper, document or signature believed by it to be genuine, and it may be assumed that any person purporting to act on behalf of Borrower giving any of the foregoing in connec-

tion with the provision hereof has been duly authorized to do so. Financial Institution may consult with counsel, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder and in good faith in accordance therewith. Financial Institution shall not be liable to Borrower for any act or omission done or omitted to be done by Financial Institution in reliance upon any instruction, direction or certification received by Financial Institution and without gross negligence or willful or reckless misconduct.

(d) *Lender, Senior Lender and Financial Institution Appointed Attorney-In-Fact.* Borrower hereby irrevocably constitutes and appoints Lender, Senior Lender and Financial Institution, as agent for Lender and Senior Lender, as Borrower's true and lawful attorney-in-fact, with full power of substitution, to execute, acknowledge and deliver any instruments and to exercise and enforce every right, power, remedy, option and privilege of Borrower with respect to the Project Account and do in the name, place and stead of Borrower, all such acts, things and deeds for and on behalf of and in the name of Borrower, which Borrower could or might do or which Financial Institution, Senior Lender or Lender may deem necessary or desirable to more fully vest in Lender, Senior Lender and/or Financial Institution as agent for Lender and Senior Lender the rights and remedies provided for herein and to accomplish the purposes of this Agreement. The foregoing powers of attorney are irrevocable and coupled with an interest. If Borrower fails to perform any agreement herein contained and such failure shall continue for five (5) Business Days after notice of such failure is given to Borrower, Financial Institution as agent for Lender and Senior Lender may perform or cause performance of any such agreement, and any reasonable expenses of Lender, Senior Lender and Financial Institution in connection therewith shall be paid by Borrower.

10. Remedies. Upon the occurrence of an Event of Default, Lender and Senior Lender may:

(a) without notice to Borrower, except as required by law, and at any time or from time to time, charge, set-off and otherwise apply all or any part of the Project Account against the obligations of Borrower under the Project Property.

(b) in its sole discretion, at any time and from time to time, exercise any and all rights and remedies available to it under this Agreement, and/or as a secured party under the UCC;

(c) demand, collect, take possession of, receipt for, settle, compromise, adjust, sue for, foreclose or realize upon the Project Account (or any portion thereof) as Lender and Senior Lender may determine in its sole discretion; and

(d) any other remedy available to the Lender and Senior Lender pursuant to the Loan Documents or Senior Loan Documents and at law or equity.

11. Miscellaneous

(a) *Fees.* Borrower shall be, and at all times shall remain, liable to Manager, Lender and Senior Lender to pay all fees, charges, costs and expenses in connection with the Project Account, this Agreement and the subject matter hereof, including those of the Financial Institution, Senior Lender and Lender.

(b) *Default.* A default under this Agreement shall constitute an Event of Default under the Loan Documents and Senior Loan Documents.

(c) *Successors and Assigns; Assignments.* This Agreement shall bind and inure to the benefit of and be enforceable by Manager, Borrower, Lender and Senior Lender and their respective successors and assigns. Lender and Senior Lender shall have the right to assign or transfer its rights under this Agreement without limitation in connection with any assignment of the Loan, the Senior Loan, the Note, the Senior Note, the Loan Documents, the Senior Loan Documents and any such assignee or transferee shall be entitled to all the benefits afforded Lender and Senior Lender under this Agreement; provided that such assignee or transferee shall have delivered to the other parties hereto written confirmation that such assignee or transferee agrees to be bound by the terms of this Agreement and provided further that such assignee or transferee is also the assignee or transferee of the Note, Senior Note and the Loan Documents or Senior Loan Documents.

(d) *Amendment.* This Agreement may be amended from time to time in writing by all parties hereto.

(e) *Notices.* Any notices to be given under this Agreement must be in writing and shall be delivered personally or mailed by certified or registered mail, return receipt requested, to the parties at the following addresses:

If to the Borrower:

with a copy to:

If to Lender:

With a copy to:

If to Manager:

If to Financial Institution:

with a copy to:

If to Senior Lender:

with a copy to:

Unless otherwise expressly provided herein, all such notices to be effective shall be in writing (including by facsimile), and shall be deemed to have been duly given or made (a) when delivered by hand or by nationally recognized overnight carrier, (b) upon receipt after being deposited in the mail, certified mail and postage prepaid, or (c) in the case of facsimile notice, when sent and electronically confirmed, addressed as set forth above.

(f) *Termination.* This Agreement may not be terminated by Manager or Borrower without the prior written consent of Lender and Senior Lender. No termination shall impair the rights of any party with respect to checks processed prior to the effective date of termination. This Agreement shall terminate upon the repayment of the Loan and the Senior Loan. Upon termination of this Agreement, Lender and Senior Lender shall deliver such instruments as shall be necessary to terminate this Agreement and close the Project Account.

(g) *Governing Law.* THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF _____.

(h) *Headings.* The Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

(i) *Severability.* Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

(j) *Borrower Relationship with Bank Holding Sweep Account.* Borrower agrees during the term of the Senior Loan and the Loan, as such may be extended, that it will not open any other account, take any loan, nor enter into any obligation with the bank in which the Sweep Account is opened. Failure to comply with this covenant shall be an Event of Default under this Agreement, the Senior Loan Documents and the Loan Documents.

(k) *Counterparts.* This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original but all of which together shall constitute but one and the same document.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in several counterparts (each of which shall be deemed as original) as of the date first above written.

BORROWER

Attest:

MANAGER

Attest:

LENDER

Attest:

FINANCIAL INSTITUTION and SENIOR LENDER

Attest:

SU006 ALI-ABA 985
END OF DOCUMENT

SU006 ALI-ABA 899

American Law Institute - American Bar Association Continuing Legal Education
The American Law Institute Continuing Legal Education
July 18 - 20, 2012

Modern Real Estate Transactions

CMSA SUGGESTED FORM MEZZANINE INTERCREDITOR AGREEMENT

Richard R. Goldberg
Ballard Spahr LLP
Philadelphia, Pennsylvania

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INTERCREDITOR AGREEMENT

by and between

[_____]

as Senior Lender

and

[_____]

as Mezzanine Lender

Dated as of _____, 20 ____

Premises: _____

INTERCREDITOR AGREEMENT

THIS INTERCREDITOR AGREEMENT (this “Agreement”), dated as of _____, 20 ____ by and between _____, a _____, having an office at _____, _____, _____ (“Senior Lender”), and _____ a _____, having an office at _____, (“Mezzanine Lender”).

RECITALS

WHEREAS, pursuant to the terms, provisions and conditions set forth in that certain Loan Agreement, dated as of _____, 20 ____, between _____, a _____, (“Borrower”) and Senior Lender (the “Senior Loan Agreement”), Senior Lender has made or is about to make a loan to Borrower in the original principal amount of \$ _____ (the “Senior Loan”), which Senior Loan is evidenced by a certain Promissory Note, dated as of _____, 20 ____, made by Borrower to Senior Lender in the amount of the Senior Loan (the “Senior Note”), and secured by, among other things, [*insert as applicable*: a Mortgage, Assignment of Leases and Rents and Security Agreement/Deed of Trust, Assignment of Leases and Rents and Security Agreement], dated as of _____, 20 ____, made by Borrower in favor of Senior Lender (the “Senior Mortgage”), which Senior Mortgage encumbers the real property described on Exhibit A attached hereto and made a part hereof, and all improvements thereon and appurtenances thereto (collectively, the “Premises”); and

WHEREAS, pursuant to the terms, provisions and conditions set forth in that certain Mezzanine Loan Agreement, dated as of _____, 20 ____, between _____, a _____ (“Mezzanine Borrower”) and Mezzanine Lender (the “Mezzanine Loan Agreement”), Mezzanine Lender is the owner and holder of a loan to Mezzanine Borrower in the original principal amount of \$ _____ (the “Mezzanine Loan”), which Mezzanine Loan is evidenced by a certain Promissory Note, dated as of _____, 20 ____, made by Mezzanine Borrower in favor of Mezzanine Lender in the amount of the Mezzanine Loan (the “Mezzanine Note”), and secured by, among other things, a Pledge and Security Agreement, dated as of _____, 20 ____, from Mezzanine Borrower pursuant to which Mezzanine Lender is granted a first priority security interest in all of Mezzanine Borrower's ownership interests in Borrower [and its general partner/managing member] (the “Pledge Agreement”); and

WHEREAS, Senior Lender and Mezzanine Lender desire to enter into this Agreement to provide for the relative priority of the Senior Loan Documents (as such term is hereinafter defined) and the Mezzanine Loan Documents (as such term is hereinafter defined) on the terms and conditions hereinbelow set forth, and to evidence certain agreements with respect to the relationship between the Mezzanine Loan and the Mezzanine Loan Documents, on the one hand, and the Senior Loan and the Senior Loan Documents, on the other hand.

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Senior Lender and Mezzanine Lender hereby agree as follows:

Section 1. Certain Definitions; Rules of Construction.

(a) As used in this Agreement, the following capitalized terms shall have the following meanings:

“Affiliate” means, as to any particular Person, any Person directly or indirectly, through one or more intermediaries, controlling, Controlled by or under common control with the Person or Persons in question.

“Agreement” means this Agreement, as the same may be amended, modified and in effect from time to time, pursuant to the terms hereof.

“Award” has the meaning provided in Section 9(d) hereof.

“Borrower” has the meaning provided in the Recitals hereto.

“Borrower Group” has the meaning provided in Section 10(c) hereof.

“Business Day” means _____.

“CDO” has the meaning provided in the definition of the term “Qualified Transferee.”

“Certificates” means any securities (including all classes thereof) representing beneficial ownership interests in the Senior Loan or in a pool of mortgage loans including the Senior Loan issued in connection with a Securitization of the Senior Loan.

“Continuing Senior Loan Event of Default” means an Event of Default under the Senior Loan for which (i) Senior Lender has provided notice of such Event of Default to Mezzanine Lender in accordance with Section 11(a) of this Agreement and (ii) the cure period provided to Mezzanine Lender in Section 11(a) of this Agreement has expired.

“Control” means the ownership, directly or indirectly, in the aggregate of more than fifty percent (50%) of the beneficial ownership interests of an entity and the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of an entity, whether through the ability to exercise voting power, by contract or otherwise. “Controlled by,” “controlling” and “under common control with” shall have the respective correlative meaning thereto.

“Directing Mezzanine Lender” has the meaning provided in Section 4(c) hereof.

“Eligibility Requirements” means, with respect to any Person, that such Person (i) has total assets (in name or under management) in excess of [\$600,000,000] [**Note: for very large loans, a higher amount may be required**] and (except with respect to a pension advisory firm or similar fiduciary) capital/statutory surplus or shareholder's equity of [\$250,000,000] [**Note: for very large loans, a higher amount may be required**] and (ii) is regularly engaged in the business of making or owning commercial real estate loans or operating commercial mortgage properties.

“Enforcement Action” means any (i) judicial or non-judicial foreclosure proceeding, the exercise of any power of sale, the taking of a deed or assignment in lieu of foreclosure, the obtaining of a receiver or the taking of any other enforcement action against the Premises or Borrower, including, without limitation, the taking of possession or control of the Premises, (ii) acceleration of, or demand or action taken in order to collect, all or any indebtedness secured by the Premises (other than giving of notices of default and statements of overdue amounts) or (iii) exercise of any right or remedy available to Senior Lender under the Senior Loan Documents, at law, in equity or otherwise with respect to Borrower and/or the Premises.

“Equity Collateral” means the equity interests of Borrower [and its general partner/managing member] pledged pursuant to the Pledge Agreement.

“Equity Collateral Enforcement Action” means any action or proceeding or other exercise of Mezzanine Lender's rights and remedies commenced by Mezzanine Lender, in law or in equity, or otherwise, in order to realize upon the Equity Collateral.

“Event of Default” as used herein means (i) with respect to the Senior Loan and the Senior Loan Documents, any Event of Default thereunder which has occurred, is continuing (i.e., has not been cured by Borrower or by the Mezzanine Lender in accordance with the terms of this Agreement) and (ii) with respect to the Mezzanine Loan and the Mezzanine Loan Documents, any Event of Default thereunder which has occurred and is continuing (i.e., has not been cured by Mezzanine Borrower).

“Loan Pledgee” has the meaning provided in Section 15 hereof.

“Loan Purchase Price” has the meaning provided in Section 13(a) hereof.

“Mezzanine Borrower” has the meaning provided in the Recitals hereto.

“Mezzanine Lender” has the meaning provided in the first paragraph of this Agreement.

“Mezzanine Loan” has the meaning provided in the Recitals hereto.

“Mezzanine Loan Agreement” has the meaning provided in the Recitals hereto.

“Mezzanine Loan Cash Management Agreement” means any cash management agreement executed in con-

nection with, or the cash management provisions of, the Mezzanine Loan Documents.

“Mezzanine Loan Documents” means the Mezzanine Loan Agreement, the Mezzanine Note and the Pledge Agreement, together with all documents and instruments set forth on Exhibit C hereto, as any of the foregoing may be modified, amended, extended, supplemented, restated or replaced from time to time, subject to the limitations and agreements contained in this Agreement.

“Mezzanine Loan Modification” has the meaning provided in Section 7(b) hereof.

“Mezzanine Note” has the meaning provided in the Recitals hereto.

“Monetary Cure Period” has the meaning provided in Section 11(a) hereof.

“Permitted Fund Manager” means any Person that on the date of determination is (i) one of the entities listed on Exhibit D [**to be reviewed on a case by case basis**] or any other nationally-recognized manager of investment funds investing in debt or equity interests relating to commercial real estate, (ii) investing through a fund with committed capital of at least \$250,000,000 and (iii) not subject to a Proceeding.

“Person” means any individual, sole proprietorship, corporation, general partnership, limited partnership, limited liability company or partnership, joint venture, association, joint stock company, bank, trust, estate unincorporated organization, any federal, state, county or municipal government (or any agency or political subdivision thereof) endowment fund or any other form of entity.

“Pledge” has the meaning provided in Section 15 hereof.

“Pledge Agreement” has the meaning provided in the Recitals hereto.

“Premises” has the meaning provided in the Recitals hereto.

“Proceeding” has the meaning provided in Section 10(c) hereof.

“Property Manager” means property manager of the Premises. or any successor thereto as

“Protective Advances” means all sums advanced for the purpose of payment of real estate taxes (including special payments in lieu of real estate taxes), maintenance costs, insurance premiums or other items (including capital items) reasonably necessary to protect the Premises or the Separate Collateral, respectively, from forfeiture, casualty, loss or waste, including, with respect to the Mezzanine Loan, amounts advanced by Mezzanine Lender pursuant to Section 11 hereof.

“Purchase Option Notice” has the meaning provided in Section 13(a) hereof.

“Qualified Manager” shall mean a property manager of the Premises which (i) is a reputable management company having at least five (5) years' experience in the management of commercial properties with similar uses as the Premises and in the jurisdiction in which the Premises are located, (ii) has, for at least five (5) years prior to its engagement as property manager, managed at least (5) properties of the same property type as the Premises, (iii) at the time of its engagement as property manager has leasable square footage of the same property type as the Premises equal to the lesser of (A) 1,000,000 leasable square feet and (B) five (5) times the leasable square feet of the Premises and (iv) is not the subject of a bankruptcy or similar insolvency proceeding. **[Note: for very large assets, the tests in clauses (ii) and (iii) may be required to be higher.] [Insert other appropriate criteria for type of asset. e.g. luxury hotels, convention centers, regional malls, etc.]**

“Qualified Transferee” means (i) Mezzanine Lender, or (ii) one or more of the following:

(A) a real estate investment trust, bank, saving and loan association, investment bank, insurance company, trust company, commercial credit corporation, pension plan, pension fund or pension advisory firm, mutual fund, government entity or plan, provided that any such Person referred to in this clause (A) satisfies the Eligibility Requirements;

(B) an investment company, money management firm or “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act of 1933, as amended, or an institutional “accredited investor” within the meaning of Regulation D under the Securities Act of 1933, as amended, provided that any such Person referred to in this clause (B) satisfies the Eligibility Requirements;

(C) an institution substantially similar to any of the foregoing entities described in clauses (ii)(A) or (ii)(B) that satisfies the Eligibility Requirements;

(D) any entity Controlled by any of the entities described in clause (i) or clauses (ii)(A) or (ii)(C) above;

(E) a Qualified Trustee in connection with a securitization of, the creation of collateralized debt obligations (“CDO”) secured by or financing through an “owner trust” of, the Mezzanine Loan (collectively, “Securitization Vehicles”), so long as (A) the special servicer or manager of such Securitization Vehicle has the Required Special Servicer Rating and (B) the entire “controlling class” of such Securitization Vehicle, other than with respect to a CDO Securitization Vehicle, is held by one or more entities that are otherwise Qualified Transferees under clauses (ii)(A), (B), (C) or (D) of this definition; provided that the operative documents of the related Securitization Vehicle require that (1) in the case of a CDO Securitization Vehicle, the “equity interest” in such Securitization Vehicle is owned by one or more entities that are Qualified Transferees under clauses (ii)(A), (B), (C) or (D) of this definition and (2) if any of the relevant trustee, special servicer, manager fails to meet the requirements of this clause (E), such Person must be replaced by a Person meeting the requirements of this clause (E) within thirty (30) days; or

(F) an investment fund, limited liability company, limited partnership or general partnership where a Permitted Fund Manager or an entity that is otherwise a Qualified Transferee under clauses (ii)(A), (B), (C) or (D) of this definition acts as the general partner, managing member or fund manager and at least 50% of the equity interests in such investment vehicle are owned, directly or indirectly, by one or more entities that are otherwise Qualified Transferees under clauses (ii)(A), (B), (C) or (D) of this definition.

“Qualified Trustee” means (i) a corporation, national bank, national banking association or a trust company, organized and doing business under the laws of any state or the United States of America, authorized under such laws to exercise corporate trust powers and to accept the trust conferred, having a combined capital and surplus of at least \$100,000,000 and subject to supervision or examination by federal or state authority, (ii) an institution insured by the Federal Deposit Insurance Corporation or (iii) an institution whose long-term senior unsecured debt is rated either of the then in effect top two rating categories of each of the Rating Agencies.

“Rating Agencies” shall mean, prior to a Securitization, each of S&P, Moody's Investors Service, Inc., and Fitch, Inc., or any other nationally-recognized statistical rating agency which has been designated by Senior Lender and, after a Securitization, shall mean any of the foregoing that have rated any of the Certificates.

“Rating Agency Confirmation” means each of the Rating Agencies shall have confirmed in writing that the occurrence of the event with respect to which such Rating Agency Confirmation is sought shall not result in a downgrade, qualification or withdrawal of the applicable rating or ratings ascribed by such Rating Agency to any of the Certificates then outstanding. In the event that no Certificates are outstanding or the Senior Loan is not part of a Securitization, any action that would otherwise require a Rating Agency Confirmation shall require the consent of the Senior Lender, which consent shall not be unreasonably withheld or delayed.

“Redirection Notice” has the meaning provided in Section 15 hereof.

“Required Special Servicer Rating” means (i) a rating of “CSS1” in the case of Fitch, (ii) on the S&P list of approved special servicers in the case of S&P and (iii) in the case of Moody's, such special servicer is acting as special servicer in a commercial mortgage loan securitization that was rated by Moody's within the twelve (12) month period prior to the date of determination, and Moody's has not downgraded or withdrawn the then-current rating on any class of commercial mortgage securities or placed any class of commercial mortgage securities on watch citing the continuation of such special servicer as special servicer of such commercial mortgage securities.

“S&P” means Standard & Poors Ratings Services, a division of The McGraw-Hill Companies, Inc.

“Securitization” means the sale or securitization of the Senior Loan (or any portion thereof) in one or more transactions through the issuance of securities, which securities may be assigned ratings by the Rating Agencies.

“Senior Lender” has the meaning provided in the first paragraph of this Agreement.

“Senior Loan” has the meaning provided in the Recitals hereto.

“Senior Loan Agreement” has the meaning provided in the Recitals hereto.

“Senior Loan Cash Management Agreement” means any cash management agreement or agreements executed in connection with, or cash management provisions of, the Senior Loan Documents.

“Senior Loan Default Notice” has the meaning provided in Section 11(a) hereof.

“Senior Loan Documents” means the Senior Loan Agreement, the Senior Note and the Senior Mortgage, together with the instruments and documents set forth on Exhibit B hereto, as any of the foregoing may be modified, amended, extended, supplemented, restated or replaced from time to time, subject to the limitations and agreements contained in this Agreement.

“Senior Loan Liabilities” shall mean, collectively, all of the indebtedness, liabilities and obligations of Borrower evidenced by the Senior Loan Documents and all amounts due or to become due pursuant to the Senior Loan Documents, including interest thereon and any other amounts payable in respect thereof or in connection therewith, including, without limitation, any late charges, default interest, prepayment fees or premiums, exit fees, advances and post-petition interest.

“Senior Loan Modification” has the meaning provided in Section 7(a) hereof.

“Senior Mortgage” has the meaning provided in the Recitals hereto.

“Senior Note” has the meaning provided in the Recitals hereto.

“Separate Collateral” means (i) the Equity Collateral, (ii) the accounts (and monies therein from time to time) established pursuant to the Mezzanine Cash Management Agreement, and (iii) any other collateral given as security for the Mezzanine Loan pursuant to the Mezzanine Loan Documents, in each case not directly constituting security for the Senior Loan.

“SPE Constituent Entity” means _____ **[list any entity required to be a single purpose entity pursuant to the terms of the Senior Loan Documents]**

“Third Party Agreement” has the meaning provided in Section 5(a) hereof.

“Third Party Obligor” has the meaning provided in Section 5(a) hereof.

“Transfer” means any assignment, pledge, conveyance, sale, transfer, mortgage, encumbrance, grant of a security interest, issuance of a participation interest, or other disposition, either directly or indirectly, by operation of law or otherwise.

(b) For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(i) all capitalized terms defined in the recitals to this Agreement shall have the meanings ascribed thereto whenever used in this Agreement and the terms defined in this Agreement have the meanings assigned to them in this Agreement, and the use of any gender herein shall be deemed to include the other genders;

(ii) [terms not otherwise defined herein shall have the meaning assigned to them in the Senior Loan Agreement;]

(iii) all references in this Agreement to designated Sections, Subsections, Paragraphs, Articles, Exhibits, Schedules and other subdivisions or addenda without reference to a document are to the designated sections, subsections, paragraphs and articles and all other subdivisions of and exhibits, schedules and all other addenda to this Agreement, unless otherwise specified;

(iv) a reference to a Subsection without further reference to a Section is a reference to such Subsection as contained in the same Section in which the reference appears, and this rule shall apply to Paragraphs and other subdivisions;

(v) the terms “includes” or “including” shall mean without limitation by reason of enumeration;

(vi) the words “herein”, “hereof”, “hereunder” and other words of similar import refer to this Agreement as

a whole and not to any particular provision;

(vii) the words “to Mezzanine Lender's knowledge” or “to the knowledge of Mezzanine Lender” (or words of similar meaning) shall mean to the actual knowledge of officers of Mezzanine Lender with direct oversight responsibility for the Mezzanine Loan without independent investigation or inquiry and without any imputation whatsoever; and

(viii) the words “to Senior Lender's knowledge” or “to the knowledge of Senior Lender” (or words of similar meaning) shall mean to the actual knowledge of officers of Senior Lender with direct oversight responsibility for the Senior Loan without independent investigation or inquiry and without any imputation whatsoever.

Section 2. Approval of Loans and Loan Documents.

(a) Mezzanine Lender hereby acknowledges that (i) it has received and reviewed and, subject to the terms and conditions of this Agreement, hereby consents to and approves of the making of the Senior Loan and, subject to the terms and provisions of this Agreement, all of the terms and provisions of the Senior Loan Documents, (ii) the execution, delivery and performance of the Senior Loan Documents will not constitute a default or an event which, with the giving of notice or the lapse of time, or both, would constitute a default under the Mezzanine Loan Documents, (iii) Senior Lender is under no obligation or duty to, nor has Senior Lender represented that it will, see to the application of the proceeds of the Senior Loan by Borrower or any other Person to whom Senior Lender disburses such proceeds, and (iv) any application or use of the proceeds of the Senior Loan for purposes other than those provided in the Senior Loan Documents shall not affect, impair or defeat the terms and provisions of this Agreement or the Senior Loan Documents.

(b) Senior Lender hereby acknowledges that (i) it has received and reviewed, and, subject to the terms and conditions of this Agreement, hereby consents to and approves of the making of the Mezzanine Loan and, subject to the terms and provisions of this Agreement, all of the terms and provisions of the Mezzanine Loan Documents, (ii) the execution, delivery and performance of the Mezzanine Loan Documents will not constitute a default or an event which, with the giving of notice or the lapse of time, or both, would constitute a default under the Senior Loan Documents, (iii) Mezzanine Lender is under no obligation or duty to, nor has Mezzanine Lender represented that it will, see to the application of the proceeds of the Mezzanine Loan by Mezzanine Borrower or any other Person to whom Mezzanine Lender disburses such proceeds and (iv) any application or use of the proceeds of the Mezzanine Loan for purposes other than those provided in the Mezzanine Loan Documents shall not affect, impair or defeat the terms and provisions of this Agreement or the Mezzanine Loan Documents. Senior Lender hereby acknowledges and agrees that any conditions precedent to Senior Lender's consent to mezzanine financing as set forth in the Senior Loan Documents or any other agreements with the Borrower, as they apply to the Mezzanine Loan Documents or the making of the Mezzanine Loan, have been either satisfied or waived.

Section 3. Representations and Warranties.

(a) Mezzanine Lender hereby represents and warrants as follows:

(i) Exhibit C attached hereto and made a part hereof is a true, correct and complete listing of all of the Mezzanine Loan Documents as of the date hereof. To Mezzanine Lender's knowledge, there currently exists no default or event which, with the giving of notice or the lapse of time, or both, would constitute a default under any of the Mezzanine Loan Documents.

(ii) Mezzanine Lender is the legal and beneficial owner of the entire Mezzanine Loan free and clear of any lien, security interest, option or other charge or encumbrance, other than any lien or security interest granted to any Loan Pledgee (as hereinafter defined) as contemplated by the provisions of Section 15 hereof.

(iii) There are no conditions precedent to the effectiveness of this Agreement that have not been satisfied or waived.

(iv) Mezzanine Lender has, independently and without reliance upon Senior Lender and based on such doc-

uments and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement.

(v) Mezzanine Lender is duly organized and is validly existing under the laws of the jurisdiction under which it was organized with full power to execute, deliver, and perform this Agreement and consummate the transactions contemplated hereby.

(vi) All actions necessary to authorize the execution, delivery, and performance of this Agreement on behalf of Mezzanine Lender have been duly taken, and all such actions continue in full force and effect as of the date hereof.

(vii) Mezzanine Lender has duly executed and delivered this Agreement and this Agreement constitutes the legal, valid, and binding agreement of Mezzanine Lender enforceable against Mezzanine Lender in accordance with its terms subject to (x) applicable bankruptcy, reorganization, insolvency and moratorium laws, and (y) general principles of equity which may apply regardless of whether a proceeding is brought in law or in equity.

(viii) To Mezzanine Lender's knowledge, no consent of any other Person and no consent, license, approval, or authorization of, or exemption by, or registration or declaration or filing with, any governmental authority, bureau or agency is required in connection with the execution, delivery or performance by Mezzanine Lender of this Agreement or consummation by Mezzanine Lender of the transactions contemplated by this Agreement.

(ix) None of the execution, delivery and performance of this Agreement nor the consummation of the transactions contemplated by this Agreement will (v) violate or conflict with any provision of the organizational or governing documents of Mezzanine Lender, (w) to Mezzanine Lender's knowledge, violate, conflict with, or result in the breach or termination of, or otherwise give any other Person the right to terminate, or constitute (or with the giving of notice or lapse of time, or both, would constitute) a default under the terms of any contract, mortgage, lease, bond, indenture, agreement, or other instrument to which Mezzanine Lender is a party or to which any of its properties are subject, (x) to Mezzanine Lender's knowledge, result in the creation of any lien, charge, encumbrance, mortgage, lease, claim, security interest, or other right or interest upon the properties or assets of Mezzanine Lender pursuant to the terms of any such contract, mortgage, lease, bond, indenture, agreement, franchise, or other instrument (provided, however, that Mezzanine Lender shall have the right to grant a lien, charge, encumbrance, claim or security interest in the Mezzanine Loan or any portion thereof to a Loan Pledgee as contemplated by the provisions of Section 15 hereof), (y) violate any judgment, order, injunction, decree, or award of any court, arbitrator, administrative agency or governmental or regulatory body of which Mezzanine Lender has knowledge against, or binding upon, Mezzanine Lender or upon any of the securities, properties, assets, or business of Mezzanine Lender or (z) to Mezzanine Lender's knowledge, constitute a violation by Mezzanine Lender of any statute, law or regulation that is applicable to Mezzanine Lender.

(x) The Mezzanine Loan is not cross-defaulted with any loan other than the Senior Loan. The Premises do not secure any loan from Mezzanine Lender to Mezzanine Borrower or any other Affiliate of Borrower.

(b) Senior Lender hereby represents and warrants as follows:

(i) Exhibit B attached hereto and made a part hereof is a true, correct and complete listing of the Senior Loan Documents as of the date hereof. To Senior Lender's knowledge, there currently exists no default or event which, with the giving of notice or the lapse of time, or both, would constitute a default under any of the Senior Loan Documents.

(ii) Senior Lender is the legal and beneficial owner of the Senior Loan free and clear of any lien, security interest, option or other charge or encumbrance.

(iii) There are no conditions precedent to the effectiveness of this Agreement that have not been satisfied or

waived.

(iv) Senior Lender has, independently and without reliance upon Mezzanine Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement.

(v) Senior Lender is duly organized and is validly existing under the laws of the jurisdiction under which it was organized with full power to execute, deliver, and perform this Agreement and consummate the transactions contemplated hereby.

(vi) All actions necessary to authorize the execution, delivery, and performance of this Agreement on behalf of Senior Lender have been duly taken, and all such actions continue in full force and effect as of the date hereof.

(vii) Senior Lender has duly executed and delivered this Agreement and this Agreement constitutes the legal, valid, and binding agreement of Senior Lender enforceable against Senior Lender in accordance with its terms subject to (x) applicable bankruptcy, reorganization, insolvency and moratorium laws and (y) general principles of equity which may apply regardless of whether a proceeding is brought in law or in equity.

(viii) To Senior Lender's knowledge, no consent of any other Person and no consent, license, approval, or authorization of, or exemption by, or registration or declaration or filing with, any governmental authority, bureau or agency is required in connection with the execution, delivery or performance by Senior Lender of this Agreement or consummation by Senior Lender of the transactions contemplated by this Agreement.

(ix) None of the execution, delivery and performance of this Agreement nor the consummation of the transactions contemplated by this Agreement will (v) violate or conflict with any provision of the organizational or governing documents of Senior Lender, (w) to Senior Lender's knowledge, violate, conflict with, or result in the breach or termination of, or otherwise give any other Person the right to terminate, or constitute (or with the giving of notice or lapse of time, or both, would constitute) a default under the terms of any contract, mortgage, lease, bond, indenture, agreement, or other instrument to which Senior Lender is a party or to which any of its properties are subject, (x) to Senior Lender's knowledge, result in the creation of any lien, charge, encumbrance, mortgage, lease, claim, security interest, or other right or interest upon the properties or assets of Senior Lender pursuant to the terms of any such contract, mortgage, lease, bond, indenture, agreement, franchise or other instrument, (y) violate any judgment, order, injunction, decree or award of any court, arbitrator, administrative agency or governmental or regulatory body of which Senior Lender has knowledge against, or binding upon, Senior Lender or upon any of the securities, properties, assets, or business of Senior Lender or (z) to Senior Lender's knowledge, constitute a violation by Senior Lender of any statute, law or regulation that is applicable to Senior Lender.

(x) The Senior Loan is not cross-defaulted with any other loan. The Premises do not secure any other loan from Senior Lender to Borrower, Mezzanine Borrower or any other Affiliate of Borrower.

Section 4. Transfer of Mezzanine Loan or Senior Loan.

(a) Mezzanine Lender shall not Transfer more than 49% of its beneficial interest in the Mezzanine Loan unless either (i) a Rating Agency Confirmation has been given with respect to such Transfer, in which case the related transferee shall thereafter be deemed to be a "Qualified Transferee" for all purposes of this Agreement, or (ii) such Transfer is to a Qualified Transferee. Any such transferee must assume in writing the obligations of Mezzanine Lender hereunder and agree to be bound by the terms and provisions hereof. Such proposed transferee shall also remake each of the representations and warranties contained herein for the benefit of the Senior Lender.

(b) At least five (5) days prior to a transfer to a Qualified Transferee, the Mezzanine Lender shall provide to Senior Lender and, if any Certificates are outstanding, to the Rating Agencies, a certification that such transfer will be made in accordance with this Section 4, such certification to include the name and contact information of

the Qualified Transferee.

(c) If more than one Person shall hold a direct interest in the Mezzanine Loan, the holder(s) of more than 50% of the principal amount of the Mezzanine Loan shall designate by written notice to Senior Lender one of such Persons (the “Directing Mezzanine Lender”) to act on behalf of all such Persons holding an interest in the Mezzanine Loan. The Directing Mezzanine Lender shall have the sole right to receive any notices which are required to be given or which may be given to Mezzanine Lender pursuant to this Agreement and to exercise the rights and power given to Mezzanine Lender hereunder, including any approval rights of Mezzanine Lender; provided, that until the Directing Mezzanine Lender has been so designated, the last Person known to the Senior Lender to hold more than a 50% direct interest in the Mezzanine Loan shall be deemed to be the Directing Mezzanine Lender. Once the Directing Mezzanine Lender has been designated hereunder, Senior Lender shall be entitled to rely on such designation until it has received written notice from the holder(s) of more than 50% of the principal amount of the Mezzanine Loan of the designation of a different Person to act as the Directing Mezzanine Lender.

(d) Mezzanine Lender acknowledges that any Rating Agency Confirmation may be granted or denied by the Rating Agencies in their sole and absolute discretion and that such Rating Agencies may charge customary fees in connection with any such action.

(e) Senior Lender may, from time to time, in its sole discretion Transfer all or any of the Senior Loan or any interest therein, and notwithstanding any such Transfer or subsequent Transfer, the Senior Loan and the Senior Loan Documents shall be and remain a senior obligation in the respects set forth in this Agreement to the Mezzanine Loan and the Mezzanine Loan Documents in accordance with the terms and provisions of this Agreement.

Section 5. Foreclosure of Separate Collateral.

(a) Mezzanine Lender shall not exercise any rights it may have under the Pledge Agreement and the other Mezzanine Loan Documents or applicable law with respect to a foreclosure or other realization upon the Equity Collateral (including, without limitation, obtaining title to the Equity Collateral or selling or otherwise transferring the Equity Collateral) without a Rating Agency Confirmation unless (i) the transferee of title to the Equity Collateral is a Qualified Transferee, (ii) the Premises will be managed by a Qualified Manager promptly after the transfer of title to the Equity Collateral, and (iii) if not in place prior to the transfer of title to the Equity Collateral, hard cash management and adequate reserves for taxes, insurance, debt service, ground rents, capital repair and improvement expenses, tenant improvement expenses and leasing commissions and operating expenses will be implemented under the Senior Loan promptly after the transfer of title to the Equity Collateral; provided, that the implementation of such hard cash management and reserves would not cause a “significant modification” of the Senior Loan, as such term is defined in [Treasury Regulations Section 1.860G-2\(b\)](#). Additionally, if a non-consolidation opinion was delivered in connection with the closing of the Senior Loan, the transferee of the Equity Collateral shall deliver a new non-consolidation opinion relating to the transferee acceptable to the Rating Agencies within ten (10) business days of the transfer of title to the Equity Collateral. The Mezzanine Lender shall provide notice of the transfer and an officer's certificate from an officer of Mezzanine Lender certifying that all conditions set forth in this [Section 5\(a\)](#) have been satisfied to Senior Lender and the Rating Agencies upon consummation of any transfer of the Equity Collateral pursuant to this [Section 5\(a\)](#). Senior Lender may request reasonable evidence that the foregoing requirements have been satisfied. In the event that such Transfer results in the removal of any guarantor, indemnitor, pledgor, or other obligor under the Senior Loan Documents (each, a “Third Party Obligor”), such transferee or an Affiliate thereof reasonably satisfactory to the Senior Lender shall: (A) execute and deliver to Senior Lender a guaranty, indemnity, pledge agreement or other agreement which provides for the obligations of such obligor (each, a “Third Party Agreement”), in each case, in a form substantially similar to the Third Party Agreement that it is replacing, pursuant to which the Third Party

Obligor shall undertake the obligations set forth therein, and (B) if there are Certificates then outstanding, deliver (or cause to be delivered) to Senior Lender and each Rating Agency, an opinion of counsel that the substitution of the original Third Party Obligor and the original Third Party Agreement with a substitute Third Party Obligor and a substitute Third Party Agreement, would not cause a “significant modification” of the Senior Loan, as such term is defined in [Treasury Regulations Section 1.860G-2\(b\)](#).

(b) Nothing contained herein shall limit or restrict the right of Mezzanine Lender to exercise its rights and remedies, in law or in equity, or otherwise, in order to realize on any Separate Collateral that is not Equity Collateral.

(c) In the event Mezzanine Lender or any purchaser at a UCC sale obtains title to the Separate Collateral, Senior Lender hereby acknowledges and agrees that **[optional:** any transfer or assumption fee in the Senior Loan Agreement shall be waived as a condition to such transfer and] any such transfer shall not constitute a breach or default under the Senior Loan Documents, provided the conditions in [Section 5\(a\)](#) are met. Senior Lender also acknowledges and agrees that it will not impose any unreasonable fees or delays in connection with such Transfer.

Section 6. [Notice of Rating Confirmation](#). Mezzanine Lender promptly shall notify Senior Lender of any intended action relating to the Mezzanine Loan which would require Rating Agency Confirmation pursuant to this Agreement and shall cooperate with Senior Lender in obtaining such confirmation. Senior Lender promptly shall notify Mezzanine Lender of any intended action relating to the Senior Loan which would require Rating Agency Confirmation pursuant to this Agreement and shall cooperate with Mezzanine Lender in obtaining such confirmation. Mezzanine Lender shall pay all fees and expenses of the Rating Agencies in connection with any request for any Rating Agency Confirmation pursuant to this Agreement.

Section 7. [Modifications, Amendments, Etc.](#)

(a) Senior Lender shall have the right without the consent of Mezzanine Lender in each instance to enter into any amendment, deferral, extension, modification, increase, renewal, replacement, consolidation, supplement or waiver (collectively, a “[Senior Loan Modification](#)”) of the Senior Loan or the Senior Loan Documents provided that no such Senior Loan Modification shall (i) increase the interest rate or principal amount of the Senior Loan, (ii) increase in any other material respect any monetary obligations of Borrower under the Senior Loan Documents, (iii) extend or shorten the scheduled maturity date of the Senior Loan (except that Senior Lender may permit Borrower to exercise any extension options in accordance with the terms and provisions of the Senior Loan Documents), (iv) convert or exchange the Senior Loan into or for any other indebtedness or subordinate any of the Senior Loan to any indebtedness of Borrower, (v) amend or modify the provisions limiting transfers of interests in the Borrower or the Premises, (vi) modify or amend the terms and provisions of the Senior Loan Cash Management Agreement with respect to the manner, timing and method of the application of payments under the Senior Loan Documents, (vii) cross default the Senior Loan with any other indebtedness, (viii) consent to a higher strike price with respect to any new or extended interest rate cap agreement entered into in connection with the extended term of the Senior Loan, (ix) obtain any contingent interest, additional interest or so-called “kicker” measured on the basis of the cash flow or appreciation of the Premises, (or other similar equity participation), or (x) extend the period during which voluntary prepayments are prohibited or during which prepayments require the payment of a prepayment fee or premium or yield maintenance charge or increase the amount of any such prepayment fee, premium or yield maintenance charge; provided, however, in no event shall Senior Lender be obligated to obtain Mezzanine Lender’s consent to a Senior Loan Modification in the case of a workout or other surrender, compromise, release, renewal, or indulgence relating to the Senior Loan during the existence of a Continuing Senior Loan Event of Default, except that under no conditions shall [clause \(i\)](#) (with respect to increase principal amount only), or [clause \(x\)](#) be modified without the written consent of Mezzanine Lender. In addition and notwithstanding the foregoing provisions of this [Section 7](#), any amounts funded by the Senior

Lender under the Senior Loan Documents as a result of (A) the making of any Protective Advances or other advances by the Senior Lender, or (B) interest accruals or accretions and any compounding thereof (including default interest), shall not be deemed to contravene this Section 7(a).

(b) Mezzanine Lender shall have the right without the consent of Senior Lender in each instance to enter into any amendment, deferral, extension, modification, increase, renewal, replacement, consolidation, supplement or waiver (collectively, a “Mezzanine Loan Modification”) of the Mezzanine Loan or the Mezzanine Loan Documents provided that no such Mezzanine Loan Modification shall (i) increase the interest rate or principal amount of the Mezzanine Loan, (ii) increase in any other material respect any monetary obligations of Mezzanine Borrower under the Mezzanine Loan Documents, (iii) extend or shorten the scheduled maturity date of the Mezzanine Loan (except that Mezzanine Lender may permit Mezzanine Borrower to exercise any extension options in accordance with the terms and provisions of the Mezzanine Loan Documents), (iv) convert or exchange the Mezzanine Loan into or for any other indebtedness or subordinate any of the Mezzanine Loan to any indebtedness of Mezzanine Borrower, (v) provide for any additional contingent interest, additional interest or so-called “kicker” measured on the basis of the cash flow or appreciation of the Premises or (vi) cross default the Mezzanine Loan with any other indebtedness. Notwithstanding anything to the contrary contained herein, if an Event of Default exists under the Mezzanine Loan Documents, Mezzanine Lender shall be permitted to modify or amend the Mezzanine Loan Documents in connection with a work-out or other surrender, compromise, release, renewal or modification of the Mezzanine Loan except that under no conditions shall clause (i), with respect to increases in principal amounts only, clause (ii), clause (iii) (with respect to shortening the maturity only), clause (iv) or clause (v) be modified without the written consent of the Senior Lender. In addition and notwithstanding the foregoing provisions of this Section 7(b), any amounts funded by the Mezzanine Lender under the Mezzanine Loan Documents as a result of (A) the making of any Protective Advances or other advances by the Mezzanine Lender, or (B) interest accruals or accretions and any compounding thereof (including default interest), shall not be deemed to contravene this Section 7(b).

(c) Senior Lender shall deliver to Mezzanine Lender copies of any and all modifications, amendments, extensions, consolidations, spreaders, restatements, alterations, changes or revisions to any one or more of the Senior Loan Documents (including, without limitation, any side letters, waivers or consents entered into, executed or delivered by Senior Lender) within a reasonable time after any of such applicable instruments have been executed by Senior Lender.

(d) Mezzanine Lender shall deliver to Senior Lender copies of any and all modifications, amendments, extensions, consolidations, spreaders, restatements, alterations, changes or revisions to any one or more of the Mezzanine Loan Documents (including, without limitation, any side letters, waivers or consents entered into, executed or delivered by Mezzanine Lender) within a reasonable time after any of such applicable instruments have been executed by Mezzanine Lender.

Section 8. Subordination of Mezzanine Loan and Mezzanine Loan Documents.

(a) Mezzanine Lender hereby subordinates and makes junior the Mezzanine Loan, the Mezzanine Loan Documents and the liens and security interests created thereby, and all rights, remedies, terms and covenants contained therein to (i) the Senior Loan, (ii) the liens and security interests created by the Senior Loan Documents and (iii) all of the terms, covenants, conditions, rights and remedies contained in the Senior Loan Documents, and no amendments or modifications to the Senior Loan Documents or waivers of any provisions thereof shall affect the subordination thereof as set forth in this Section 8(a). Mezzanine Lender hereby acknowledges and agrees that the Mezzanine Loan is not secured by a lien on the Premises or any of the other collateral securing the Senior Loan or any other assets of the Borrower.

(b) Every document and instrument included within the Mezzanine Loan Documents shall be subject and subordinate to each and every document and instrument included within the Senior Loan Documents and all exten-

sions, modifications, consolidations, supplements, amendments, replacements and restatements of and/or to the Senior Loan Documents.

(c) This Agreement shall not be construed as subordinating and shall not subordinate or impair Mezzanine Lender's first lien priority right, estate and interest in and to the Separate Collateral and Senior Lender hereby acknowledges and agrees that Senior Lender does not have and shall not hereafter acquire, any lien on, or any other interest whatsoever in, the Separate Collateral, or any part thereof, and that the exercise of remedies and realization upon the Separate Collateral by Mezzanine Lender or a Loan Pledgee in accordance with the terms and provisions of this Agreement shall not in and of itself constitute a default or an Event of Default under the Senior Loan Documents.

Section 9. Payment Subordination.

(a) Except (i) as otherwise expressly provided in this Agreement and (ii) in connection with the exercise by Mezzanine Lender of its rights and remedies with respect to the Separate Collateral in accordance with the terms of this Agreement, all of Mezzanine Lender's rights to payment of the Mezzanine Loan and the obligations evidenced by the Mezzanine Loan Documents are hereby subordinated to all of Senior Lender's rights to payment by Borrower of the Senior Loan and the obligations secured by the Senior Loan Documents, and Mezzanine Lender shall not accept or receive payments (including, without limitation, whether in cash or other property and whether received directly, indirectly or by set-off, counterclaim or otherwise) from Borrower and/or from the Premises prior to the date that all obligations of Borrower to Senior Lender under the Senior Loan Documents are paid. If a Proceeding shall have occurred or a Continuing Senior Loan Event of Default shall have occurred and be continuing, Senior Lender shall be entitled to receive payment and performance in full of all amounts due or to become due to Senior Lender before Mezzanine Lender is entitled to receive any payment on account of the Mezzanine Loan. All payments or distributions upon or with respect to the Mezzanine Loan which are received by Mezzanine Lender contrary to the provisions of this Agreement shall be received and held in trust by the Mezzanine Lender for the benefit of Senior Lender and shall be paid over to Senior Lender in the same form as so received (with any necessary endorsement) to be applied (in the case of cash) to, or held as collateral (in the case of non-cash property or securities) for, the payment or performance of the Senior Loan in accordance with the terms of the Senior Loan Documents. Nothing contained herein shall prohibit the Mezzanine Lender from making Protective Advances (and adding the amount thereof to the principal balance of the Mezzanine Loan) notwithstanding the existence of a default under the Senior Loan at such time.

(b) Notwithstanding anything to the contrary contained in this Agreement, including, without limitation, Section 9(a), provided that no Event of Default shall then exist under the Senior Loan Documents, Mezzanine Lender may accept payments of any amounts due and payable from time to time which Mezzanine Borrower is obligated to pay Mezzanine Lender in accordance with the terms and conditions of the Mezzanine Loan Documents and Mezzanine Lender shall have no obligation to pay over to Senior Lender any such amounts.

(c) Mezzanine Lender may take any Equity Collateral Enforcement Action which is permitted under Section 5 hereof; provided, however, that (i) Mezzanine Lender shall, prior to commencing any Equity Collateral Enforcement Action, give the Senior Lender written notice of the default which would permit Mezzanine Lender to commence such Equity Collateral Enforcement Action and (ii) Mezzanine Lender shall provide Senior Lender with copies of any and all material notices, pleadings, agreements, motions and briefs served upon, delivered to or with any party to any Equity Collateral Enforcement Action and otherwise keep Senior Lender reasonably apprised as to the status of any Equity Collateral Enforcement Action.

(d) In the event of a casualty to the buildings or improvements constructed on any portion of the Premises or a condemnation or taking under a power of eminent domain of all or any portion of the Premises, Senior Lender shall have a first and prior interest in and to any payments, awards, proceeds, distributions, or consideration arising from any such event (the "Award"). If the amount of the Award is in excess of all amounts owed to Seni-

or Lender under the Senior Loan Documents, however, and either the Senior Loan has been paid in full or Borrower is entitled to a remittance of same under the Senior Loan Documents other than to restore the Premises, such excess Award or portion to be so remitted to Borrower shall, to the extent permitted in the Senior Loan Documents, be paid to or at the direction of Mezzanine Lender, unless other Persons have claimed the right to such awards or proceeds, in which case Senior Lender shall only be required to provide notice to Mezzanine Lender of such excess Award and of any other claims thereto. In the event of any competing claims for any such excess Award, Senior Lender shall continue to hold such excess Award until Senior Lender receives an agreement signed by all Persons making a claim to the excess Award or a final order of a court of competent jurisdiction directing Senior Lender as to how and to which Person(s) the excess Award is to be distributed. Notwithstanding the foregoing, in the event of a casualty or condemnation, Senior Lender shall release the Award from any such event to the Borrower if and to the extent required by the terms and conditions of the Senior Loan Documents in order to repair and restore the Premises in accordance with the terms and provisions of the Senior Loan Documents. Any portion of the Award made available to the Borrower for the repair or restoration of the Premises shall not be subject to attachment by Mezzanine Lender.

Section 10. Rights of Subrogation; Bankruptcy.

(a) Each of Mezzanine Lender and Senior Lender hereby waives any requirement for marshaling of assets thereby in connection with any foreclosure of any security interest or any other realization upon collateral in respect of the Senior Loan Documents or the Mezzanine Loan Documents, as applicable, or any exercise of any rights of set-off or otherwise. Each of Mezzanine Lender and Senior Lender assumes all responsibility for keeping itself informed as to the condition (financial or otherwise) of Borrower, Mezzanine Borrower, the condition of the Premises and all other collateral and other circumstances and, except for notices expressly required by this Agreement, neither Senior Lender nor Mezzanine Lender shall have any duty whatsoever to obtain, advise or deliver information or documents to the other relative to such condition, business, assets and/or operations. Mezzanine Lender agrees that Senior Lender owes no fiduciary duty to Mezzanine Lender in connection with the administration of the Senior Loan and the Senior Loan Documents and Mezzanine Lender agrees not to assert any such claim. Senior Lender agrees that Mezzanine Lender owes no fiduciary duty to Senior Lender in connection with the administration of the Mezzanine Loan and the Mezzanine Loan Documents and Senior Lender agrees not to assert any such claim.

(b) No payment or distribution to Senior Lender pursuant to the provisions of this Agreement and no Protective Advance by Mezzanine Lender shall entitle Mezzanine Lender to exercise any right of subrogation in respect thereof prior to the payment in full of the Senior Loan Liabilities, and Mezzanine Lender agrees that, except with respect to the enforcement of its remedies under the Mezzanine Loan Documents permitted hereunder, prior to the satisfaction of all Senior Loan Liabilities it shall not acquire, by subrogation or otherwise, any lien, estate, right or other interest in any portion of the Premises or any other collateral now securing the Senior Loan or the proceeds therefrom that is or may be prior to, or of equal priority to, any of the Senior Loan Documents or the liens, rights, estates and interests created thereby.

(c) Subject to Section 30 of this Agreement, the provisions of this Agreement shall be applicable both before and after the commencement, whether voluntary or involuntary, of any case, proceeding or other action against Borrower [or any SPE Constituent Entity] under any existing or future law of any jurisdiction relating to bankruptcy, insolvency, reorganization or relief of debtors (a "Proceeding"). For as long as the Senior Loan shall remain outstanding, Mezzanine Lender shall not, and shall not solicit any person or entity to, and shall not direct or cause Mezzanine Borrower to direct or cause either the Borrower or any entity which controls Borrower (the "Borrower Group") to: (i) commence any Proceeding; (ii) institute proceedings to have Borrower [or any SPE Constituent Entity] adjudicated a bankrupt or insolvent; (iii) consent to, or acquiesce in, the institution of bankruptcy or insolvency proceedings against Borrower [or any SPE Constituent Entity]; (iv) file a petition or con-

sent to the filing of a petition seeking reorganization, arrangement, adjustment, winding-up, dissolution, composition, liquidation or other relief by or on behalf of Borrower [or any SPE Constituent Entity]; (v) seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for Borrower [or any SPE Constituent Entity], the Premises (or any portion thereof) or any other collateral securing the Senior Loan (or any portion thereof); (vi) make an assignment for the benefit of any creditor of Borrower [or any SPE Constituent Entity]; (vii) seek to consolidate the Premises or any other assets of the Borrower [or any SPE Constituent Entity] with the assets of the Mezzanine Borrower or any member of the Borrower Group in any proceeding relating to bankruptcy, insolvency, reorganization or relief of debtors; or (viii) take any action in furtherance of any of the foregoing.

(d) If Mezzanine Lender is deemed to be a creditor of Borrower or any SPE Constituent Entity in any Proceeding (i) Mezzanine Lender hereby agrees that it shall not make any election, give any consent, commence any action or file any motion, claim, obligation, notice or application or take any other action in any Proceeding by or against the Borrower [or any SPE Constituent Entity] without the prior consent of Senior Lender, except to the extent necessary to preserve or realize upon Mezzanine Lender's interest in the Equity Collateral; provided, however, that any such filing shall not be as a creditor of the Borrower, (ii) Senior Lender may vote in any such Proceeding any and all claims of Mezzanine Lender, and Mezzanine Lender hereby appoints the Senior Lender as its agent, and grants to the Senior Lender an irrevocable power of attorney coupled with an interest, and its proxy, for the purpose of exercising any and all rights and taking any and all actions available to the Mezzanine Lender in connection with any case by or against the Borrower [or any SPE Constituent Entity] in any Proceeding, including without limitation, the right to file and/or prosecute any claims, to vote to accept or reject a plan, to make any election under [Section 1111\(b\) of the Bankruptcy Code](#); provided, however, that with respect to any proposed plan of reorganization in respect of which creditors are voting, Senior Lender may vote on behalf of Mezzanine Lender only if the proposed plan would result in Senior Lender being "impaired" (as such term is defined in the United States Bankruptcy Code) and (iii) Mezzanine Lender shall not challenge the validity or amount of any claim submitted in such Proceeding by Senior Lender in good faith or any valuations of the Premises or other Senior Loan collateral submitted by Senior Lender in good faith, in such Proceeding or take any other action in such Proceeding, which is adverse to Senior Lender's enforcement of its claim or receipt of adequate protection (as that term is defined in the Bankruptcy Code).

Section 11. Rights of Cure.

(a) Prior to Senior Lender commencing any Enforcement Action under the Senior Loan Documents, Senior Lender shall provide written notice of the default which would permit the Senior Lender to commence such Enforcement Action to Mezzanine Lender and any Loan Pledgee entitled to notice thereof pursuant to [Section 15](#) of this Agreement, whether or not Senior Lender is obligated to give notice thereof to Borrower (each, a "Senior Loan Default Notice") and shall permit Mezzanine Lender an opportunity to cure such default in accordance with the provisions of this [Section 11\(a\)](#). If the default is a monetary default relating to a liquidated sum of money, Mezzanine Lender shall have until five (5) Business Days after the later of (i) the giving by Senior Lender of the Senior Loan Default Notice and (ii) the expiration of Borrower's cure provision, if any, (a "Monetary Cure Period") to cure such monetary default; provided, however, in the event it elects to cure any such monetary default, Mezzanine Lender shall (x) defend and hold harmless Senior Lender for all cost, expenses, losses, liabilities, obligations, damages, penalties, costs, and disbursements imposed on, incurred by or asserted against Senior Lender due to or arising from such Monetary Cure Period and (y) without duplication of the foregoing, reimburse the Senior Lender for any interest charged by Senior Lender on any required (pursuant to applicable pooling and servicing agreement) advances for monthly payments of principal and/or interest on the Senior Loan and/or on any Protective Advances. [**Optional:** Mezzanine Lender shall not be required, in order to effect a cure hereunder (other than the cure by Mezzanine Lender of a default in the payment of the Senior Loan in full on the

maturity date thereof or the reimbursement of interest on advances for monthly payment of principal and/or interest and/or on any Protective Advances, as aforesaid), to pay any interest calculated at the default rate under the Senior Loan Documents to the extent the same is in excess of the rate of interest which would have been payable by Borrower in the absence of such default (and irrespective of any cure of such default by Mezzanine Lender pursuant to the provisions of this Agreement), and no interest shall accrue at the default rate as against Mezzanine Lender for such period.] Mezzanine Lender shall not have the right to cure as hereinabove set forth with respect to monthly scheduled debt service payments on the Senior Loan for a period of more than [four] consecutive months unless Mezzanine Lender has commenced and is continuing to diligently pursue its rights against the Separate Collateral. If the default is of a non-monetary nature, Mezzanine Lender shall have the same period of time as the Borrower under the Loan Documents to cure such non-monetary default; provided, however, if such non-monetary default is susceptible of cure but cannot reasonably be cured within such period and if curative action was promptly commenced and is being continuously and diligently pursued by Mezzanine Lender, Mezzanine Lender shall be given an additional period of time as is reasonably necessary for Mezzanine Lender in the exercise of due diligence to cure such non-monetary default for so long as (i) Mezzanine Lender makes or causes to be made timely payment of Borrower's regularly scheduled monthly principal and/or interest payments under the Senior Loan and any other amounts due under the Senior Loan Documents, (ii) such additional period of time does not exceed thirty (30) days, unless such non-monetary default is of a nature that can not be cured within such thirty (30) days, in which case, Mezzanine Lender shall have such additional time as is reasonably necessary to cure such non-monetary default, (iii) such default is not caused by a bankruptcy, insolvency or assignment for the benefit of creditors of Borrower and (iv) during such non-monetary cure period, there is no material impairment to the value, use or operation of the Premises. Any additional cure period granted to the Mezzanine Lender hereunder shall automatically terminate upon the bankruptcy (or similar insolvency) of the Borrower.

(b) To the extent that any Qualified Transferee acquires the Equity Collateral in accordance with the provisions and conditions of this Agreement, such Qualified Transferee shall acquire the same subject to the Senior Loan and the terms, conditions and provisions of the Senior Loan Documents for the balance of the term thereof, which shall not be accelerated by Senior Lender solely due to such acquisition and shall remain in full force and effect; provided, however, that (i) such Qualified Transferee shall have caused Borrower to reaffirm in writing, subject to such exculpatory provisions as shall be set forth in the Senior Loan Documents, all of the terms, conditions and provisions of the Senior Loan Documents on Borrower's part to be performed and (ii) all defaults under the Senior Loan which remain uncured as of the date of such acquisition have been cured by such Qualified Transferee or waived by Senior Lender except for defaults that are not susceptible of being cured by such Qualified Transferee; provided, that such defaults which are not susceptible of being cured do not materially impair the value, use or operation of the Premises. [**Optional:** Notwithstanding any contrary or inconsistent provision of this Agreement, the Senior Loan Documents or the Mezzanine Loan Documents, no acquisition or other fee or similar charge shall be due in connection with such Qualified Transferee's acquisition of any interest in Borrower or the Premises as the result of a Equity Collateral Enforcement Action or assignment in lieu of foreclosure or other negotiated settlement in lieu of any of the foregoing.]

(c) So long as no Event of Default shall have occurred and be continuing under the Senior Loan Documents, all funds held and applied pursuant to the Senior Loan Cash Management Agreement, shall continue to be applied pursuant thereto and shall not be applied by Senior Lender to prepay outstanding principal balance of the Senior Loan.

Section 12. No Actions; Restrictive Provisions. Senior Lender consents to Mezzanine Lender's right, pursuant to the Mezzanine Loan Documents, under certain circumstances, to cause the termination of the Property Manager. In the event both Mezzanine Lender and Senior Lender shall have such rights at any time, and Senior

Lender shall fail to exercise such rights, Mezzanine Lender may exercise such rights, provided such exercise may be superseded by any subsequent exercise of such rights by Senior Lender pursuant to the Senior Loan Documents. Upon the occurrence of any event which would entitle Mezzanine Lender to cause the termination of the Property Manager pursuant to the Mezzanine Loan Documents, Mezzanine Lender shall have the right to select, or cause the selection, of a replacement property manager (including any asset manager) or leasing agent for the Premises, which replacement manager, asset manager and/or leasing agent shall either (a) be subject to Senior Lender's reasonable approval and, if any Certificates are then outstanding, be subject to a Rating Agency Confirmation or (b) be a Qualified Manager. Notwithstanding anything in this Section 12 to the contrary, if an Event of Default under the Senior Loan then exists or any other event shall have occurred pursuant to which Senior Lender has the right to select any replacement manager, asset manager and/or leasing agent pursuant to the Senior Loan Documents, Senior Lender shall have the sole right to select any replacement manager, asset manager and/or leasing agent, whether or not a new manager or agent was retained by Mezzanine Lender.

Section 13. Right to Purchase Senior Loan.

(a) If the Senior Loan has been accelerated, any Enforcement Action has been commenced and is continuing under the Senior Loan Documents or the Senior Loan is a "specially serviced mortgage loan" under the applicable pooling and servicing agreement (each of the foregoing, a "Purchase Option Event"), upon ten (10) Business Days prior written notice to Senior Lender (the "Purchase Notice"), Mezzanine Lender shall have the right to purchase, in whole but not in part, the Senior Loan for a price equal to the outstanding principal balance thereof, together with all accrued interest and other amounts due thereon (including, without limitation, any late charges, default interest, exit fees, advances and post-petition interest), any Protective Advances made by Senior Lender and any interest charged by Senior Lender on any advances for monthly payments of principal and/or interest on the Senior Loan and/or on any Protective Advances), including all costs and expenses (including legal fees and expenses) actually incurred by Senior Lender in enforcing the terms of the Loan Documents (the "Loan Purchase Price"). Concurrently with payment to the Senior Lender of the Loan Purchase Price, Senior Lender shall deliver or cause to be delivered Mezzanine Lender all Senior Loan Documents held by or on behalf of Senior Lender and will execute in favor of Mezzanine Lender or its designee assignment documentation, in form and substance reasonably acceptable to Mezzanine Lender, at the sole cost and expense of Mezzanine Lender to assign the Senior Loan and its rights under the Senior Loan Documents (without recourse, representations or warranties, except for representations as to the outstanding balance of the Senior Loan and as to Senior Lender's not having assigned or encumbered its rights in the Loan). The right of Mezzanine Lender to purchase the Senior Loan shall automatically terminate (i) upon a transfer of the Premises by foreclosure sale, sale by power of sale or delivery of a deed in lieu of foreclosure or (ii) if a Purchase Option Event ceases to exist.

(b) Mezzanine Lender covenants not to enter any agreement with the Borrower or any Affiliate thereof to purchase the Senior Loan pursuant to subsection (a) above or in connection with any refinancing of the Senior Loan in any manner designed to avoid or circumvent the provisions of the Senior Loan Documents which require the payment of a prepayment fee or yield maintenance charge in connection with a prepayment of the Senior Loan by the Borrower.

Section 14. Additional Understandings. For as long as the Mezzanine Loan remains outstanding:

(a) Notices of Transfer; Consent. Senior Lender promptly shall notify Mezzanine Lender if Borrower seeks or requests a release of the lien of the Senior Loan or seeks or requests Senior Lender's consent to, or take any action in connection with or in furtherance of, a sale or transfer of all or any material portion of the Premises, the granting of a further mortgage, deed of trust or similar encumbrance against the Premises or a prepayment or refinancing of the Senior Loan. In the event of a request by the Borrower for Senior Lender's consent to either (i) the sale or transfer of all or any material portion of the Premises or (ii) the granting of a further mortgage, deed of trust or similar encumbrance against the Premises, Senior Lender shall, if Senior Lender has the right to con-

sent, obtain the prior written consent of Mezzanine Lender prior to Senior Lender's granting of its consent or agreement thereto.

(b) Annual Budget. The Mezzanine Lender shall have the right to approve the annual operating budget of Borrower in accordance with the terms of the Mezzanine Loan Documents. In the event the Mezzanine Lender objects to any such proposed budget, the Mezzanine Lender shall advise the Senior Lender of such objections, along with its suggestions for changes, within ten (10) days after its receipt of such budget in accordance with the Mezzanine Loan Documents. Senior Lender agrees to consult with the Mezzanine Lender with respect to such objections and suggestions but such consultation shall not be binding on Senior Lender. The Mezzanine Lender shall consent to any changes in the budget reasonably requested by the Senior Lender.

[The following alternative is acceptable for Senior Loans with hard cash management and adequate reserves for taxes, insurance, debt service, ground rents, capital repairs and improvement expenses, tenant improvement expenses and leasing commissions, and operating expenses:

(b) Annual Budget. The Mezzanine Lender shall have the right to approve the annual operating budget of Borrower in accordance with the terms of the Mezzanine Loan Documents. Notwithstanding anything contained herein, in the Senior Loan Documents or in the Mezzanine Loan Documents, the Mezzanine Lender may require Borrower to submit the annual budget to the Mezzanine Lender for approval prior to any submission to the Senior Lender. Upon Mezzanine Lender's approval, the Mezzanine Lender shall submit the approved budget to the Senior Lender for its approval. The Mezzanine Lender shall consent to any changes in the budget reasonably requested by the Senior Lender. In the event that the approval of the Mezzanine Lender is not obtained on a timely basis, the then current existing operating budget shall remain in effect with an increase in any non-discretionary expense item to either (i) the prior budgeted expense amount with a 5% increase or (ii) the actual expense incurred as evidenced by the applicable bill or invoice.]

Section 15. Financing of Mezzanine Loan. Notwithstanding any other provision hereof, Senior Lender consents to Mezzanine Lender's pledge (a "Pledge") of the Mezzanine Loan and of the Separate Collateral to any entity which has extended a credit facility to Mezzanine Lender that is a Qualified Transferee or a financial institution whose long-term unsecured debt is rated at least "A" (or the equivalent) or better by each Rating Agency (a "Loan Pledgee"), on the terms and conditions set forth in this Section 15; provided that a Loan Pledgee which is not a Qualified Transferee may not take title to the Equity Collateral without a Rating Agency Confirmation. Upon written notice by Mezzanine Lender to Senior Lender that the Pledge has been effected, Senior Lender agrees to acknowledge receipt of such notice and thereafter agrees: (a) to give Loan Pledgee written notice of any default by Mezzanine Lender under this Agreement of which default Senior Lender has actual knowledge; (b) to allow Loan Pledgee a period of ten (10) days (in respect of a monetary default) and a period of thirty (30) days (in respect of a non-monetary default) to cure a default by Mezzanine Lender in respect of its obligations to Senior Lender hereunder, but Loan Pledgee shall not be obligated to cure any such default; (c) that no amendment, modification, waiver or termination of this Agreement shall be effective against Loan Pledgee without the written consent of Loan Pledgee, which consent shall not be unreasonably withheld; (d) that Senior Lender shall give to Loan Pledgee copies of any Senior Loan Default Notice simultaneously with the giving of same to the Mezzanine Lender and accept any cure thereof by Loan Pledgee made in accordance with the provisions of Section 11 of this Agreement as if such cure were made by the Mezzanine Lender; and (e) that, upon written notice (a "Redirection Notice") to Senior Lender by Loan Pledgee that Mezzanine Lender is in default, beyond applicable cure periods, under Mezzanine Lender's obligations to Loan Pledgee pursuant to the applicable credit agreement between Mezzanine Lender and Loan Pledgee (which notice need not be joined in or confirmed by Mezzanine Lender), and until such Redirection Notice is withdrawn or rescinded by Loan Pledgee, Senior Lender shall remit to Loan Pledgee and not to Mezzanine Lender, any payments that Senior Lender would otherwise be obligated to pay to Mezzanine Lender from time to time pursuant to this Agreement, any

Mezzanine Loan Document or any other agreement between Senior Lender and Mezzanine Lender that relates to the Senior Loan. Mezzanine Lender hereby unconditionally and absolutely releases Senior Lender from any liability to Mezzanine Lender on account of Senior Lender's compliance with any Redirection Notice believed by Senior Lender to have been delivered by Loan Pledgee. Loan Pledgee shall be permitted to fully exercise its rights and remedies against Mezzanine Lender, and realize on any and all collateral granted by Mezzanine Lender to Loan Pledgee (and accept an assignment in lieu of foreclosure as to such collateral), in accordance with applicable law. In such event, the Senior Lender shall recognize Loan Pledgee (and any transferee which is also a Qualified Transferee at any foreclosure or similar sale held by Loan Pledgee or any transfer in lieu of such foreclosure), and its successors and assigns, as the successor to Mezzanine Lender's rights, remedies and obligations under this Agreement and the Mezzanine Loan Documents and any such Loan Pledgee or Qualified Transferee shall assume in the writing the obligations of the Mezzanine Lender hereunder accruing from and after such Transfer and agrees to be bound by the terms and provisions hereof. The rights of Loan Pledgee under this Section 15 shall remain effective unless and until Loan Pledgee shall have notified the Senior Lender in writing that its interest in the Mezzanine Loan has terminated.

Section 16. Intentionally Omitted.

Section 17. Obligations Hereunder Not Affected.

(a) All rights, interests, agreements and obligations of Senior Lender and Mezzanine Lender under this Agreement shall remain in full force and effect irrespective of:

(i) any lack of validity or enforceability of the Senior Loan Documents or the Mezzanine Loan Documents or any other agreement or instrument relating thereto;

(ii) any taking, exchange, release or non-perfection of any other collateral, or any taking, release or amendment or waiver of or consent to or departure from any guaranty, for all or any portion of the Senior Loan or the Mezzanine Loan;

(iii) any manner of application of collateral, or proceeds thereof, to all or any portion of the Senior Loan or the Mezzanine Loan, or any manner of sale or other disposition of any collateral for all or any portion of the Senior Loan or the Mezzanine Loan or any other assets of Borrower or Mezzanine Borrower or any other Affiliates of Borrower;

(iv) any change, restructuring or termination of the corporate structure or existence of Borrower or Mezzanine Borrower or any other Affiliates of Borrower; or

(v) any other circumstance which might otherwise constitute a defense available to, or a discharge of, Borrower, Mezzanine Borrower or a subordinated creditor or a Senior Lender subject to the terms hereof.

(b) This Agreement shall continue to be effective or be reinstated, as the case may be, if at any time any payment of all or any portion of the Senior Loan is rescinded or must otherwise be returned by Senior Lender or Mezzanine Lender upon the insolvency, bankruptcy or reorganization of Borrower or otherwise, all as though such payment had not been made.

Section 18. Notices. All notices, demands, requests, consents, approvals or other communications required, permitted, or desired to be given hereunder shall be in writing sent by facsimile (with answer back acknowledged) or by registered or certified mail, postage prepaid, return receipt requested, or delivered by hand or reputable overnight courier addressed to the party to be so notified at its address hereinafter set forth, or to such other address as such party may hereafter specify in accordance with the provisions of this Section 18. Any such notice, demand, request, consent, approval or other communication shall be deemed to have been received: (a) three (3) Business Days after the date mailed, (b) on the date of sending by facsimile if sent during business hours on a Business Day (otherwise on the next Business Day), (c) on the date of delivery by hand if delivered during business hours on a Business Day (otherwise on the next Business Day) and (d) on the next Business Day if sent by an overnight commercial courier, in each case addressed to the parties as follows:

To Mezzanine Lender:

Attention: _____

Telecopy: (_____) _____ - _____

With a copy to:

Attention: _____

Telecopy: (_____) _____ - _____

To Senior Lender:

Attention: _____

Telecopy: (_____) _____ - _____

With a copy to:

Attention: _____

Telecopy: (_____) _____ - _____

[To Loan Pledgee:

Attention: _____

Telecopy: (_____) _____ - _____]

Section 19. Estoppel.

(a) Mezzanine Lender shall, within ten (10) days following a request from Senior Lender, provide Senior Lender with a written statement setting forth the then current outstanding principal balance of the Mezzanine Loan, the aggregate accrued and unpaid interest under the Mezzanine Loan, and stating whether to Mezzanine Lender's knowledge any default or Event of Default exists under the Mezzanine Loan.

(b) Senior Lender shall, within ten (10) days following a request from Mezzanine Lender, provide Mezzanine Lender with a written statement setting forth the then current outstanding principal balance of the Senior Loan, the aggregate accrued and unpaid interest under the Senior Loan, and stating whether to Senior Lender's knowledge any default or Event of Default exists under the Senior Loan.

Section 20. Further Assurances. So long as all or any portion of the Senior Loan and the Mezzanine Loan remains unpaid and the Senior Mortgage encumbers the Premises, Mezzanine Lender and Senior Lender will each execute, acknowledge and deliver in recordable form and upon demand of the other, any other instruments or agreements reasonably required in order to carry out the provisions of this Agreement or to effectuate the intent and purposes hereof.

Section 21. No Third Party Beneficiaries; No Modification. The parties hereto do not intend the benefits of

this Agreement to inure to Borrower, Mezzanine Borrower or any other Person. This Agreement may not be changed or terminated orally, but only by an agreement in writing signed by the party against whom enforcement of any change is sought. If any Certificates are outstanding, this Agreement shall not be amended unless a Rating Agency Confirmation has been obtained with respect to such amendment.

Section 22. Successors and Assigns. This Agreement shall bind all successors and permitted assigns of Mezzanine Lender and Senior Lender and shall inure to the benefit of all successors and permitted assigns of Senior Lender and Mezzanine Lender.

Section 23. Counterpart Originals. This Agreement may be executed in counterpart originals, each of which shall constitute an original, and all of which together shall constitute one and the same agreement.

Section 24. Legal Construction. In all respects, including, without limitation, matters of construction and performance of this Agreement and the obligations arising hereunder, this Agreement shall be governed by, and construed in accordance with, the internal laws of the State of [New York] applicable to agreements intended to be wholly performed within the State of [New York].

Section 25. No Waiver; Remedies. No failure on the part of the Senior Lender to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

Section 26. No Joint Venture. Nothing provided herein is intended to create a joint venture, partnership, tenancy-in-common or joint tenancy relationship between or among any of the parties hereto.

Section 27. Captions. The captions in this Agreement are inserted only as a matter of convenience and for reference, and are not and shall not be deemed to be a part hereof.

Section 28. Conflicts. In the event of any conflict, ambiguity or inconsistency between the terms and conditions of this Agreement and the terms and conditions of any of the Senior Loan Documents or the Mezzanine Loan Documents, the terms and conditions of this Agreement shall control.

Section 29. No Release. Nothing herein contained shall operate to release Borrower from (a) its obligation to keep and perform all of the terms, conditions, obligations, covenants and agreements contained in the Senior Loan Documents or (b) any liability of Borrower under the Senior Loan Documents or to release Mezzanine Borrower from (x) its obligation to keep and perform all of the terms, conditions, obligations, covenants and agreements contained in the Mezzanine Loan Documents or (y) any liability of Mezzanine Borrower under the Mezzanine Loan Documents.

Section 30. Continuing Agreement. This Agreement is a continuing agreement and shall remain in full force and effect until the earliest of (a) payment in full of the Senior Loan, (b) transfer of the Premises by foreclosure of the Senior Mortgage or the exercise of the power of sale contained therein or by deed-in-lieu of foreclosure, (c) transfer of title to the Mezzanine Lender of the Separate Collateral or (d) payment in full of the Mezzanine Loan; provided, however, that any rights or remedies of either party hereto arising out of any breach of any provision hereof occurring prior to such date of termination shall survive such termination.

Section 31. Severability. In the event that any provision of this Agreement or the application hereof to any party hereto shall, to any extent, be invalid or unenforceable under any applicable statute, regulation, or rule of law, then such provision shall be deemed inoperative to the extent that it may conflict therewith and shall be deemed modified to conform to such statute, regulation or rule of law, and the remainder of this Agreement and the application of any such invalid or unenforceable provisions to parties, jurisdictions or circumstances other than to whom or to which it is held invalid or unenforceable, shall not be affected thereby nor shall same affect the validity or enforceability of any other provision of this Agreement.

Section 32. Expenses.

(a) To the extent not paid by Borrower or out of or from any collateral securing the Senior Loan which is real-

ized by Senior Lender, Mezzanine Lender agrees upon demand to pay to Senior Lender the amount of any and all reasonable expenses, including, without limitation, the reasonable fees and expenses of its counsel and of any experts or agents, which Senior Lender may incur in connection with the (i) exercise or enforcement of any of the rights of Senior Lender against Mezzanine Lender hereunder to the extent that Senior Lender is the prevailing party in any dispute with respect thereto or (ii) failure by Mezzanine Lender to perform or observe any of the provisions hereof.

(b) To the extent not paid by Mezzanine Borrower out of or from any collateral securing the Mezzanine Loan which is realized by Mezzanine Lender, Senior Lender agrees upon demand to pay to Mezzanine Lender the amount of any and all reasonable expenses, including, without limitation, the reasonable fees and expenses of its counsel and of any experts or agents, which Mezzanine Lender may incur in connection with the (i) exercise or enforcement of any of the rights of Mezzanine Lender against Senior Lender hereunder to the extent that Mezzanine Lender is the prevailing party in any dispute with respect thereto or (ii) failure by Senior Lender to perform or observe any of the provisions hereof.

Section 33. Injunction. Senior Lender and Mezzanine Lender each acknowledge (and waive any defense based on a claim) that monetary damages are not an adequate remedy to redress a breach by the other hereunder and that a breach by either Senior Lender or Mezzanine Lender hereunder would cause irreparable harm to the other. Accordingly, Senior Lender and Mezzanine Lender agree that upon a breach of this Agreement by the other, the remedies of injunction, declaratory judgment and specific performance shall be available to such non-breaching party.

Section 34. Mutual Disclaimer.

(a) Each of Senior Lender and Mezzanine Lender are sophisticated lenders and/or investors in real estate and their respective decision to enter into the Senior Loan and the Mezzanine Loan is based upon their own independent expert evaluation of the terms, covenants, conditions and provisions of, respectively, the Senior Loan Documents and the Mezzanine Loan Documents and such other matters, materials and market conditions and criteria which each of Senior Lender and Mezzanine Lender deem relevant. Each of Senior Lender and Mezzanine Lender has not relied in entering into this Agreement, and respectively, the Senior Loan, the Senior Loan Documents, the Mezzanine Loan or the Mezzanine Loan Documents, upon any oral or written information, representation, warranty or covenant from the other, or any of the other's representatives, employees, Affiliates or agents other than the representations and warranties of the other contained herein. Each of Senior Lender and Mezzanine Lender further acknowledges that no employee, agent or representative of the other has been authorized to make, and that each of Senior Lender and Mezzanine Lender have not relied upon, any statements, representations, warranties or covenants other than those specifically contained in this Agreement. Without limiting the foregoing, each of Senior Lender and Mezzanine Lender acknowledges that the other has made no representations or warranties as to the Senior Loan or the Mezzanine Loan or the Premises (including, without limitation, the cash flow of the Premises, the value, marketability, condition or future performance thereof, the existence, status, adequacy or sufficiency of the leases, the tenancies or occupancies of the Premises, or the sufficiency of the cash flow of the Premises, to pay all amounts which may become due from time to time pursuant to the Senior Loan or the Mezzanine Loan).

(b) Each of Senior Lender and Mezzanine Lender acknowledges that the Senior Loan and the Mezzanine Loan Documents are distinct, separate transactions and loans, separate and apart from each other.

IN WITNESS WHEREOF, Senior Lender and Mezzanine Lender have executed this Agreement as of the date and year first set forth above.

SENIOR LENDER:

a _____

By: _____

Name:

Title:

MEZZANINE LENDER:

a _____

By: _____

Name:

Title:

EXHIBIT A

[Attach Legal Description of Premises]

EXHIBIT B

Senior Loan Documents

EXHIBIT C

Mezzanine Loan Documents

EXHIBIT D

Permitted Fund Managers

[To be reviewed on a case by case basis]

SU006 ALI-ABA 899
END OF DOCUMENT

ARTICLE I

CAPITAL

Section 1.1. Initial Capital Contributions.

(a) Developer Member's Initial Capital Contribution. Contemporaneously with the execution of this Agreement, Developer Member shall make the Developer Member's Initial Capital Contribution in accordance with the terms and conditions of the Contribution Agreement.

(b) Investor Member's Initial Capital Contribution. Contemporaneously with the execution of this Agreement, Investor Member shall make the Investor Member's Initial Capital Contribution in accordance with the terms and conditions of the Contribution Agreement.

(c) No Right to Return of Capital. No Member shall have the right to withdraw any capital from the Company or be repaid its Capital Contribution except as provided in this Agreement.

Section 1.2. Required Additional Capital Contributions.

(a) If at any time or from time to time Required Additional Capital Contributions are required for the payment of any Shortfall¹ or Required Project Equity,² then the Managing Member shall promptly notify each Member of such Required Additional Capital Contribution ("**Required Additional Capital Contributions**"), then the Managing Member shall promptly notify each Member of such Required Additional Capital Contribution (a "**Required Additional Capital Contribution Notice**") identifying the amount of such Required Additional Capital Contribution (the "**Required Additional Capital Contribution Amount**") and the reasons therefor, in reasonable detail. The Managing Member shall consult with the other Member within a reasonable period of time prior to delivering any Required Additional Capital Contribution Notice. Any Member may direct the Managing Member to provide (and the Managing Member shall provide) a Required Additional Capital Contribution Notice if such Member determines that a Required Additional Capital Contribution is needed or, in lieu thereof, such Member shall have the right to deliver Required Additional Capital Contribution Notices. The Managing Member shall use its reasonable efforts to not deliver a Required Additional Capital Contribution Notice more than once per month unless Investor Member has given its prior consent in each instance. Each Required Additional Capital Contribution Notice with respect to a Shortfall shall (i) describe in reasonable detail the anticipated capital requirements for such month or other applicable period with reference to the Annual Budget and Business Plan, to be allocated among the specified

¹ A "Shortfall" would typically be defined as a shortfall in the amount required to pay the operating expenses of the Company.

² "Required Project Equity" would typically be defined as capital required for the construction of a project that is not provided by the construction lender.

line item(s); (ii) indicate the amounts expended by the Company to date in connection with the Project among the specified line item(s) of the Annual Budget and Business Plan; (iii) describe the portion of expenditures for such month or other applicable period anticipated to be funded from available Company funds; (iv) describe the portion of expenditures for such month or other applicable period which is to be funded by Required Additional Capital Contributions; (v) set forth each Member's Percentage Interest of the Required Additional Capital Contribution Amount on account of such Shortfall; and (vi) be accompanied by such documentation and information as a Member receiving such Required Additional Capital Contribution Notice may reasonably require. If there is a dispute as to the Required Additional Capital Contribution Amount which cannot be resolved by the Members in good faith within ten (10) days after receipt of a Required Additional Capital Contribution Notice, such dispute shall be settled by the Accountant and the determination of the Accountant shall be binding and conclusive. The Members agree to promptly provide the Accountant with all information necessary to resolve such dispute and shall instruct the Accountant to resolve such dispute as expeditiously as possible.

(b) Each Required Project Equity Notice shall be accompanied by:

(i) a completed, executed request for an Additional Capital Contribution in the form of AIA Form G702, certified by the Managing Member as to, among other things, that the work and materials for which payment is requested have been performed or delivered, along with evidence of all expenses, and that the Project is being or has been constructed in accordance with the Plans and Specifications or detailed description of any variance therefrom and pursuant to the Development Budget and that no amounts requested represent Cost Overruns;

(ii) a written certification from the Development Consultant indicating the status of construction, compliance with the Plans and Specifications and the Development Budget, and approval of the disbursement request; and

(iii) a copy of the construction lender's draw request package for such draw, if any, accompanied by a certification from the Managing Member that the applicable Financing is in full force and effect, there is no default thereunder, and that the draw request package is true and correct and complete.

(c) Each Required Project Equity Request shall constitute a representation by the Managing Member that, except as provided in such notice, (1) all funds previously received from prior Required Project Equity Requests have been expended in accordance with such Required Project Equity Requests, (2) none of the labor, materials, overhead or other items of expense specified in the current Required Project Equity Request were the basis of any prior Required Project Equity Requests, (3) all funds to be contributed pursuant to the current Required Project Equity Request will be used solely for the purpose of paying the items specified in the current Required

Project Equity Request, (4) no funds requested by any Required Project Equity Request for the purpose of disbursement to any party have been or will at any time be returned to the Managing Member or any Affiliate of the Managing Member (other than the Company), as a rebate, refund or otherwise (except for payment in accordance with the Development Management Agreement), (5) no event shall have occurred and be continuing on the date of such Required Project Equity Request which, with the passage of time or the giving of notice or both, would constitute a material default under the Financing Documents and (6) no funds requested by any Required Project Equity Request shall be used to pay for Cost Overruns that are due and payable by Development Manager pursuant to the terms of the Development Management Agreement. Notwithstanding anything to the contrary contained in this Agreement, Developer Member acknowledges and agrees that any Cost Overruns paid by Development Manager pursuant to the terms of the Development Management Agreement shall not be considered Additional Capital Contributions by Developer Member and shall not be credited to Developer Member's Capital Account.

(d) Each Member shall make an Additional Capital Contribution to the Company in an amount equal to its Percentage Interest of the Required Additional Capital Contribution, on or before the Due Date. As used in this Agreement, "Due Date" shall mean (i) with respect to a Required Additional Capital Contribution that is expressly approved by the Members, the tenth (10th) day following the approval by the Members of such Required Additional Capital Contribution (or such earlier or later date as may be expressly agreed upon by the Members) or, if such approval is obtained prior to the date such Required Additional Capital Contribution shall be required by the Company (as a result of approval of a budget or otherwise), the tenth (10th) day following receipt of the Required Additional Capital Contribution Notice, and (ii) with respect to Required Additional Contributions necessary to eliminate Shortfalls, if there is no dispute as to the Required Additional Capital Contribution Amount, the tenth (10th) day following the delivery of a Required Additional Capital Contribution Notice, together with all information required pursuant to this Section 1.2 or, if there is a dispute as to the Required Additional Contribution Amount, the tenth (10th) day following resolution by the Accountant of such dispute in accordance with subsection 1.2(a), and (iii) with respect to a Required Additional Capital Contribution approved or required by the Members in respect of leasing, operation, maintenance, repair, renovation or development of the Project or any portion thereof, the tenth (10th) day following receipt of a notice from a Member to make such Required Additional Capital Contribution, and (iv) with respect to a Required Additional Capital Contribution that is Required Project Equity, if there is no dispute as to the Required Additional Capital Contribution Amount, the tenth (10th) day following receipt of the Required Additional Capital Contribution Notice together with all information required pursuant to Section 1.2 or, if there is a dispute as to the Required Additional Capital Contribution Amount, the tenth (10th) day following resolution by the Accountant of such dispute in accordance with subsection 1.2(a).

(e) Additional Capital Contributions shall be credited to the Capital Account of the Members making such Additional Capital Contributions. Except as provided in this Section 1.2 with respect to Required Additional Capital Contributions, no

Member shall have the obligation to make additional Capital Contributions to the Company. Investor Member shall not be obligated to make any Required Additional Capital Contribution that is Required Project Equity unless Managing Member shall have provided to Investor Member the information set forth in subsection 1.2(c).

Section 1.3. Failure to Make Required Additional Capital Contributions.

(a) If any Member shall fail to advance any Required Additional Capital Contribution pursuant to Section 1.2 hereof by 5:00 p.m. Eastern Standard Time on the Due Date thereof (a “**Defaulting Member**”), then the portion thereof not contributed by such Defaulting Member shall be hereinafter referred to as the “**Deficiency**”. In such event, the non-Defaulting Member, may, in its sole and absolute discretion, elect by notice to the Defaulting Member to make a Default Loan to the Defaulting Member in accordance with the provisions of clause (b) below.

(b) Default Loans.

(i) A non-Defaulting Member that does not have an outstanding Default Loan made to it hereunder (a “**Lending Eligible Member**”) may deliver a notice (a “**Default Loan Notice**”) to the Defaulting Member which shall include the following statement set forth in all capital letters “NOTE: YOU HAVE FAILED TO MAKE A REQUIRED ADDITIONAL CAPITAL CONTRIBUTION TO [_____, LLC] IN THE AMOUNT OF \$[_____] , AND THE UNDERSIGNED CAN ELECT TO FUND THE SAME AS A “DEFAULT LOAN” AS DEFINED IN SECTION 1.3 OF THE LIMITED LIABILITY COMPANY AGREEMENT OF [_____, LLC]. IF SUCH REQUIRED ADDITIONAL CAPITAL CONTRIBUTION IS NOT MADE BY YOU ON OR BEFORE TEN (10) DAYS FOLLOWING THE DATE HEREOF.” The Lending Eligible Member shall have the right, but not the obligation, to make a loan (a “**Default Loan**”) to such Defaulting Member in an amount equal to the Deficiency at any time after the tenth (10th) day following the delivery of a Default Loan Notice provided that such Defaulting Member has not made such Required Additional Capital Contribution prior to the making of such Default Loan. If a Default Loan(s) shall be made in accordance with this subsection 1.3(b), the Company shall notify the Defaulting Member of the amount and date of the Default Loan(s), and the Capital Account of the Defaulting Member shall be credited to reflect the payment of the proceeds of the Default Loan to the Company. Each Default Loan shall be deemed to be made to the Defaulting Member, with the proceeds of each Default Loan being delivered to the Company by the Lending Eligible Member making same in immediately available funds on such Defaulting Member’s behalf. A Default Loan shall be deemed to have been advanced on the date actually advanced. Default Loans shall earn interest on the outstanding principal amount thereof at a rate equal to the lesser of (i) the Default Loan Rate or (ii) the Maximum Rate, from the date actually advanced until the same is repaid in full.

(ii) Default Loans shall be secured as provided in subsection 1.3(b)(iii) and shall have a term of one hundred eighty (180) days. A Lending Eligible Member making a Default Loan (a “**Lending Member**”) may, in the exercise of such Member’s sole and absolute discretion, extend the term of a Default Loan for a period(s) to be determined by such Member. If a Default Loan has been made, the Defaulting Member shall not receive any distributions of Net Cash Flow or Net Proceeds of a Capital Transaction or any proceeds from the transfer of all or any part of its Company Interest while the Default Loan, including all interest thereon remains unpaid. Instead, the Defaulting Member’s share of Net Cash Flow and Net Proceeds of a Capital Transaction or such other proceeds shall first be paid to the Lending Member until all Default Loans to such Defaulting Member, including all accrued and unpaid interest thereon shall have been repaid in full. Such payments shall be applied first to the payment of then accrued interest on such Default Loans and then to the repayment of the principal amounts thereof, but shall be considered, for all other purposes of this Agreement, to have been distributed to the Defaulting Member. Distributions of Net Cash Flow and Net Proceeds of a Capital Transaction to such Defaulting Member shall be immediately reinstated prospectively upon the full repayment of a Default Loan (including all accrued and unpaid interest thereon), to the Lending Member. The Defaulting Member shall be liable for the reasonable fees and expenses incurred by the Lending Member (including, without limitation, reasonable attorneys’ fees and disbursements) in connection with any enforcement or foreclosure upon any Default Loan and such costs shall, to the extent enforceable under applicable law, be added to the principal amount of the applicable Default Loan. In addition, at any time during the term of such Default Loan, the Defaulting Member shall have the right to repay, in full or in part, the Default Loan (including interest and any other charges).

(iii) If a Member makes a Default Loan, the Defaulting Member shall be deemed to have pledged to the Lending Member, and granted to such Lending Member, a continuing first priority security interest in all of the Defaulting Member’s Company Interest to secure the payment of the principal of, and interest on, any Default Loans made in accordance with the provisions hereof, and for such purpose this Agreement shall constitute a security agreement. The Lending Member is authorized to immediately file one or more UCC financing statements in order to perfect such security interest. In addition, the Defaulting Member shall promptly execute, acknowledge and deliver such financing statements, continuation documents and other documents and take such other actions as the Lending Member shall request in order to perfect or continue the perfection of such security interest; and, if the Defaulting Member shall fail to do so within seven (7) days after demand therefor, the Lending Member is hereby appointed the attorney-in-fact of, and is hereby authorized on behalf of, the Defaulting Member, to execute, acknowledge and deliver all

such documents and take all such other actions as may be required to perfect such security interest. Such appointment and authorization are coupled with an interest and shall be irrevocable. The Lending Member may sell or otherwise dispose of the Defaulting Member's Company Interest in accordance with the UCC, and the Lender Member shall have all the rights and remedies of a secured party under the UCC, all such rights and remedies being cumulative, not exclusive, and enforceable alternatively, successively or concurrently, at such time or times as the Lending Member deems expedient.

(iv) If the non-Defaulting Member shall elect not to make a Default Loan, the non-Defaulting Member may elect, within ten (10) days following receipt of a written notice from Managing Member that the Defaulting Member shall have failed to make the Applicable Capital Contribution, to have the Company return the Additional Capital Contribution advanced by the non-Defaulting Member and, promptly following such election, the Company shall return such Additional Capital Contribution to the non-Defaulting Member.

Section 1.4. No Third Party Beneficiaries. The right of a Member to require an Additional Capital Contribution or to make a Default Loan shall not confer upon any creditor or other third party having dealings with the Company any right, claim or other benefit, including the right to require any such Additional Capital Contribution or Default Loan.

Section 1.5. Status. It shall be the duty of the Managing Member to keep all Members informed as to the status of Additional Capital Contributions and/or Default Loans.

PROFESSIONAL EDUCATION BROADCAST NETWORK

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