



Tenant-in-Common Agreement *-sample-*

This Tenant-in-Common Agreement (this "Agreement") is entered into and effective as of this ____ day of _____, 20____, by and among those Persons listed as Co-Owners set forth below, and those Persons who later become a party to this Agreement by acquiring an interest in the Property, as defined herein (collectively, the "Co-Owners").

Witnesseth:

WHEREAS, the Co-Owners have acquired, or are acquiring undivided interests as tenants in common in that certain real property located in the City of _____, State of _____, which property is commonly referred to as "_____" and is more particularly described on Exhibit "A" attached hereto (the "Property"); and

WHEREAS, the Co-Owners desire to enter into this Agreement to provide for the orderly administration of their rights and responsibilities as to each other and as to others and to provide for the intended further operation and management of the Property.

NOW, THEREFORE, in consideration of the premises and the mutual agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Definitions

1a. For all purposes of this Agreement, the capitalized terms set forth below shall have the following meanings:

1b. "Affiliate" shall mean, with respect to any specified Person, any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, control, when used with respect to any specified Person, shall mean the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms controlling and controlled shall have meanings correlative to the foregoing.

1c. "Services Agreement" shall mean that certain Services Agreement entered into on or about the date hereof by and between Co-Owners and North Star Real Estate Services, L.L.C. ("North Star").

1d. "Code" shall mean the Internal Revenue Code of 1986, as amended from time to time.

1e. "Financing Documents" shall mean the documents executed by the Co-Owners or otherwise encumbering the Property to finance the acquisition or development thereof, or the refinance of said loan obligations, as the same may be amended, restated, replaced, supplemented, or otherwise modified from time to time, with such loan financing being accomplished with _____, as "Lender" and with the repayment obligations, indebtedness and other obligations, collateral security arrangements and other performance obligations subject of the Financing Documents being executed in connection with or immediately hereafter (including a promissory note, the "Note").

1f. "Interest" shall mean, with respect to a Co-Owner, such Co-Owner's tenant-in-common interest in the Property, sometimes expressed as a percentage undivided tenant-in-common interest.

1g. "Co-Owner(s)" shall mean each Co-Owner and each of their successors in interest pursuant to Section 4.

1h. "Percentage" shall mean, with respect to a particular Co-Owner, the percentage Interest of such Co-Owner as compared to all of the Interests.

1i. "Person" shall mean a natural person, corporation, limited partnership, limited liability company, general partnership, joint stock company, joint venture, association, company, trust, bank trust company, land trust, business trust or other organization, whether or not a legal entity, and a government or agency or political subdivision thereof.

1j. "Manager" shall mean that manager of the Property appointed by the Co-Owners, as may be replaced from time to time, as set forth herein, with the Manager having entered into a management agreement ("Management Agreement") acceptable to the Co-Owners.

1k. "Section" shall mean a section in this Agreement, unless otherwise modified.

2. *Formation of Tenancy in Common:*

2a. *Purposes:* The purposes of this tenancy-in-common are to engage in the following activities: (i) to manage, lease, mortgage and dispose of the Property; and (ii) to take such other actions as the Co-Owners deem necessary or advisable to carry out the foregoing. The Co-Owners shall hold the Property for investment purposes only and not for the active conduct of a trade or business. In particular, the tenancy-in-common shall only engage in activities which are customary services in connection with the maintenance and repair of the Property. Neither the tenancy-in-common, nor its agents shall provide any non-customary services, as such term is contemplated under Code Sections 512 and 856 and Rev. Rul. 75-743.

2b. *Nature of Co-Tenant Relationship:* The Co-Owners shall each hold their respective Interests in the Property as undivided tenant-in-common fractionalized estates in real property, with all of the common-law and other legal right, title and interest incident to such an estate. In order to maximize the benefits and interests associated with such an estate in the Property, the Co-Owners acknowledge and agree that certain of the rights and interests arising out of such an estate in real property must be subject of a common agreement amongst all of the holders of such estate interests and that it is in the best interests of each of the Co-Owners to facilitate the economic and fair ownership, possession, use, management and operation of the Property by making certain agreements amongst themselves as tenant-in-common owners. The Co-Owners do not intend by this Agreement to create a partnership, joint venture, association or a trust for federal income tax or any other purposes among themselves or with the Manager, but merely to set forth the terms and conditions upon which each of them shall hold their respective Interests. Except as expressly provided herein, no Co-Owner is authorized to act as agent for, to act on behalf of, or to do any act that will bind, any other Co-Owner or to incur any obligations with respect to the Property. Each Co-Owner shall be treated for federal income tax purposes as an owner of real estate, holding title to its Interest as a tenant-in-common undivided fee-simple owner of the Property. Each Co-Owner agrees to report its interest in the Property in a manner consistent with the foregoing and otherwise not to take any action that would be inconsistent with the foregoing.

3. *Limitation on Certain Activities*

3a. Notwithstanding any provisions of this Agreement and any provision of law that otherwise so empowers the Co-Owners, until the Note shall have been paid in full, (x) neither the Manager nor the Co-Owners shall (i) perform any act in contravention of or constituting an event of default under the Financing Documents, or (ii) make any loan or advance to any Person if such loan is not permitted by the Financing Documents, and (y) the Co-Owners shall not (i) own any assets other than their respective Interests in the Property and cash (or cash equivalents), or (ii) obtain any financing secured by or encumbering the Property other than the loan(s) unanimously approved by the Co-Owners evidenced by the Financing Documents.

3b. All Co-Owners shall be special purpose entities rather than natural persons, holding no assets other than their respective Interests in the Property as set forth above. As such, each Co-Owner shall at all times maintain the following procedures to avoid or minimize any risk of substantive consolidation of such Co-Owner with the bankruptcy or reorganization of any other Person: (i) maintain bank accounts separate from those of any other Person; (ii) conduct activities with Affiliates on an arm's length basis; (iii) observe statutory formalities with respect to the administration of such entity and in the conduct of the activities of such Co-Owner; (iv) hold the Co-Owner out to the public as a legal entity, separate and distinct from any of the Co-Owner's Affiliates; and (v) observe all special purpose entity provisions in the Operating Agreement that governs such Co-Owner.

3c. *Subchapter K Election:* The Co-Owners hereby agree that the joint ownership of the Property as tenants in common shall be excluded from Subchapter K of the Code and the Co-Owners will report on their federal and state income tax returns all items of income, deduction, credits and expense consistent therewith which result from their Interests as provided in Treasury Regulation Section 1.761-2(b). No Co-Owner shall notify the Commissioner of Internal Revenue that such Co-Owner desires that Subchapter K of the Code apply to the Co-Owners and each Co-Owner hereby agrees to indemnify, protect, defend and hold the other Co-Owners free and harmless from all costs, liabilities, tax consequences and expenses, including, without limitation, attorneys' fees, which may result from any Co-Owner so notifying the Commissioner in violation of this Agreement or otherwise taking a contrary position on any tax return.

3d. *Limitation on Number of Co-Owners:* Notwithstanding anything to the contrary contained in this Agreement, at no time shall the number of Co-Owners exceed the limit set forth in Revenue Procedure 2002-22. I.R.B. 2002-14, as the same may be modified from time to time.

4. *Transfer of Interests:* Except as specifically provided in this Agreement, and subject to compliance with applicable laws and with the restrictions and requirements of the Financing Documents, each Co-Owner may sell, transfer, convey, pledge, encumber or hypothecate its Interest or any part thereof, provided that (a) any transferee shall take such interest subject to this Agreement; and (b) any transferee shall execute and cause to be recorded an assignment and assumption agreement whereby (i) the transferor assigns to the transferee all of his right, title and interest in and to this Agreement; and (ii) the transferee assumes and agrees to perform faithfully and to be bound by all of the terms, covenants, conditions, provisions and agreements of the Agreement with respect to the Interest to be transferred. Upon execution and recordation of such assumption agreement, the transferee shall become a party to this Agreement without further action by the other Co-Owners.

5. *Distributions*

5a. *Source of Distributions:* All distributions to be made by the Manager under this Agreement shall be from the income and proceeds of the Property after payment of debt service due and payable to any lender under the Financing Documents and payment of all other expenses relating to the Property, including, without limitation, fees to the Manager and fees to North Star under the Services Agreement.

5b. *Distributions in General:* The Manager shall distribute all available cash to the Co-Owners in accordance with their Percentages on a monthly or quarterly basis as provided in the Management Agreement, after paying or reimbursing itself for any fees or expenses paid by the Manager on behalf of the Co-Owners, paying fees accrued and payable under the Services Agreement to North Star, and retaining such additional amounts as are necessary to pay anticipated ordinary current and future expenses of the Property. Amounts of cash retained pursuant to this paragraph shall be invested in interest-bearing bank accounts. All amounts distributable to the Co-Owners pursuant to this Agreement shall be paid by check. Further, under the Services Agreement, it is contemplated and has been agreed by the Co-Owners that the Manager make the foregoing disbursements to North Star, acting in behalf of the Co-Owners.

6. Rights and Obligations of Co-Owners

6.1 Status of Relationship: The Co-Owners intend to hold their interests in the Property as tenants in common, and this Agreement shall not be interpreted to impose a partnership or joint venture relationship on the Co-Owners either in law or in equity. Accordingly, no Co-Owner shall have any liability for the debts or obligations incurred by any other Co-Owner with respect to the Property or otherwise, and no Co-Owner shall have any authority, other than as specifically provided herein, to act on behalf of any other Co-Owner or to impose any obligation with respect to the Property.

6.2 Bankruptcy

6.2a Neither the bankruptcy, death, dissolution, liquidation, termination, incompetency or other incapacity of any Co-Owner, nor the transfer, by operation of law or otherwise, of any right, title or interest of the Co-Owners in and to the Property or hereunder shall terminate this Agreement. Any obligation of the Manager, if any, under the Financing Documents or any other document contemplated hereby may be performed by the Co-Owners and any such performance shall not be construed as a revocation of this Agreement.

6.2b The Co-Owners agree that the following shall constitute an Event of Bankruptcy with respect to any Co-Owner (and any of his, her, or its successors-in-interest): (i) if a receiver, liquidator or trustee is appointed for any Co-Owner; (ii) if any Co-Owner is substantively consolidated with the bankruptcy, reorganization, liquidation or arrangement pursuant to federal bankruptcy law, or similar federal or state law of any other Person; (iii) if, in connection with a bankruptcy, reorganization, liquidation or arrangement pursuant to federal bankruptcy law, or similar federal or state law, a court orders a Partition or sale of the Property or of any Co-Owner's interest; (iv) if any Co-Owner (and any of its successors-in-interest) becomes insolvent, makes an assignment for the benefit of creditors or admits in writing its inability to pay its debts generally as they become due; (v) if any petition for bankruptcy, reorganization, liquidation or arrangement pursuant to federal bankruptcy law, or similar federal or state law shall be filed by or against, consented to, or acquiesced in by, any Co-Owner; provided, however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by such Co-Owner then, upon the same not being discharged, stayed or dismissed within thirty (30) days thereof.

To avoid the inequity of a forced sale and the potential adverse effect on the investment of the other Co-Owners, the Co-Owners agree that, as a condition precedent to entering into this Agreement, the Co-Owner holding the Interest to which such Event of Bankruptcy applies shall follow the buy-sell procedure set forth in Section 6.2c of this Agreement, set forth below.

6.2c Upon the occurrence of an Event of Bankruptcy as defined in Section 6.2b, the Co-Owner that is the subject of, or which holds the Interest that is the subject of the Event of Bankruptcy (hereinafter "Seller") shall first make a written offer (an "Offer to Sell") to sell its Interest to the other Co-Owners at a price equal to (a) the Fair Market Value (as defined below) of the Seller's Interest in the Property minus (b) selling, prepayment or other costs that would apply in the event the Property was sold on the date of the offer. The other Co-Owners shall have twenty (20) days after delivery of the Offer to Seller to deliver a written acceptance of such Offer to Seller.

The other Co-Owners shall be entitled to purchase a portion of the selling Co-Owner's Interest in proportion to the Interest of the purchasing Co-Owner as compared to the Interests of all of the Co-Owners exclusive of the Interest of the Seller. In the event any Co-Owner elects not to purchase its share of the selling Co-Owner's Interest, the other Co-Owners shall be entitled to purchase additional Interests in proportion to the undivided Interest of such purchasing Co-Owner as compared to the Interests of all Co-Owners desiring to purchase such additional Interests.

Fair Market Value shall mean the fair market value of Seller's Interest in the Property on the date the Offer to Sell is made as determined in accordance with the following method. If any or all of the other Co-Owners (each a "Purchaser") accept the Offer to Sell, as set forth above, Seller and Purchaser shall commence negotiation of the Fair Market Value within fifteen (15) days after the Offer to Sell is accepted. If the parties do not agree, after good faith negotiations, within ten (10) days, then each party shall submit to the other a proposal containing the Fair Market Value the submitting party believes to be correct (each a "Proposal"). If either party fails to timely submit Proposals, then the Fair Market Value shall be determined by final and binding arbitration in accordance with the procedures set forth below. The parties shall meet within seven (7) days after delivery of the last Proposal and make a good faith attempt to mutually appoint a certified MAI real estate appraiser licensed in the jurisdiction of the Property location who shall have been active full-time over the previous five (5) years in the appraisal of comparable properties located in the county or city in which the Property is located to act as the arbitrator.

If the parties are unable to agree upon a single arbitrator, then the parties each shall, within five (5) days after the meeting, each select an arbitrator that meets the foregoing qualifications. The two (2) arbitrators so appointed shall, within fifteen (15) days after their appointment, appoint a third arbitrator meeting the foregoing qualifications. The determination of the arbitrator(s) shall be limited solely to the issue of whether Seller's or Purchaser's Proposal most closely approximates the Fair Market Value. The decision of the single arbitrator or of the arbitrator(s) shall be made within thirty (30) days after the appointment of a single arbitrator or the third arbitrator, as applicable. The arbitrator(s) shall have no authority, unless the parties to the arbitration otherwise agree, to create an independent structure of Fair Market Value or prescribe or change any or several of the components or the structure thereof, and the sole decision to be made shall be which of the parties' Proposals most closely corresponds to the Fair Market Value of the Property. The decision of the single arbitrator or majority of the three (3) arbitrators shall be binding upon the parties. If either party fails to appoint an arbitrator within the time period specified above, the arbitrator appointed by one of them shall reach a decision which shall be binding upon the parties. The cost of the arbitrators shall be paid equally by Seller and Purchaser.

The arbitration shall be conducted in the county where the Property is located, in accordance with the rules for expedited disposition of commercial disputes promulgated by the American Arbitration Association, as modified herein. The parties shall have no discovery rights in connection with the arbitration. The decision of the arbitrator(s) may be submitted to any court of competent jurisdiction by the party designated in the decision. Such party shall submit to the superior court a form of judgment incorporating the decision of the arbitrator(s), and such judgment, when signed by a judge of the superior court, shall become final for all purposes and shall be entered by the clerk of the court on the judgment roll of the court. If one party refuses to arbitrate an arbitrable dispute and the party demanding arbitration obtains a court order directing the other party to arbitrate, the party demanding arbitration shall be entitled to all of its reasonable attorneys' fees and costs in obtaining such order, regardless of which party ultimately prevails in the matter.

6.2d The closing of an acquisition pursuant to Section 6.2c above shall be held at a mutually acceptable date and location not later than thirty (30) days after the date the Fair Market Value is determined, whether by agreement or by arbitration. At the closing, the following shall occur:

(i) Seller shall assign to Purchaser or Purchaser's designee(s) the Interest of the Seller in accordance with the instructions of Purchaser, and shall execute and deliver to the Purchaser all documents which may be required to give effect to the disposition and acquisition of such Interest, in each case free and clear of all liens, claims and encumbrances, with covenants of general warranty; and

(ii) Purchaser shall pay to Seller the consideration therefore in cash.

6.2e *Sale of Property by Manager is Binding.* Any sale or other conveyance of the Property or any part thereof by the Manager made at the direction of the Co-Owners, or otherwise, pursuant to the term of this Agreement shall bind the Co-Owners and be effective to transfer or convey all rights, title and interest of the Co-Owners in and to the Property.

6.3 Rights of Partition

6.3a The Co-Owners agree generally that any Co-Owner (and any of its successors-in-interest) shall have the right at any time to file a complaint or institute any proceeding at law or in equity to have the Property partitioned corresponding to its Percentage (a "Partition") in accordance with and to the extent provided by applicable law. The Co-Owners acknowledge and agree that Partition of the Property may result in a forced sale by all of the Co-Owners.

To avoid the inequity of a forced sale and the potential adverse effect on the investment by the other Co-Owners, the Co-Owners agree that, in connection with a Partition, on or before two (2) business days after a price for the Property has been bid, set or offered (a "Partition Price") by any third party (a "Partition Purchaser") which the Co-Owner instituting the partition is willing to accept, such Co-Owner shall send all of the other Co-Owners notice of the Partition Price (the "Partition Notice"), and the other Co-Owners shall have a right of first refusal to purchase the Property at the Partition Price on or before thirty (30) days after receipt of the Partition Notice (the "Purchase Period"). In the event that prior to the expiration of the Purchase Period, more than one Co-Owner elects to purchase the Property, then the electing Co-Owners shall each purchase an equal interest in the Property unless they agree otherwise.

In the event that no Co-Owner elects to purchase the Property on or before the expiration of the Purchase Period, then the Property may be sold to a Partition Purchaser at a price equal to or greater than the Partition Price, and the Co-Owners shall have no further right to purchase the Property pursuant to this Section 6.3a; provided, however, that if the Co-Owner seeking Partition fails to sell the Property on or before six (6) months after the date of the Partition Notice, then prior to selling the Property to a Partition Purchaser, the Co-Owner seeking Partition must, once again, give the other Co-Owners a right of first refusal to purchase the Property pursuant to this Section 6.3a.

Notwithstanding the foregoing, in the event that any portion of the Property is subject to the Financing Documents or otherwise security for a debt, the Co-Owners shall not be entitled to Partition the Property if such Partition shall violate the terms or conditions of the Financing Documents or other such indebtedness.

6.3b The closing of a sale in connection with a right of first refusal exercised pursuant to Section 6.3a above shall be held at a mutually acceptable date and location not later than forty-five (45) days after the expiration of the Purchase Period. At the closing, the following shall occur:

(i) The Co-Owners seeking Partition shall assign to the acquiring Co-Owner(s), or its or their designee(s), the Property in accordance with the instructions of the acquiring Co-Owner(s), and shall execute and deliver to the acquiring Co-Owner(s) all documents which may be required to give effect to the disposition and acquisition of such Interest(s), in each case free and clear of all liens, claims and encumbrances, with covenants of general warranty; and

(ii) The acquiring Co-Owner(s) shall pay to all of the Co-Owner(s) the consideration therefore in cash.

6.4 Actions by Co-Owners

6.4a Unanimous consent of the Co-Owners shall be required prior to taking the following actions with respect to the Property: (i) selling or otherwise disposing of all of the Property, (ii) obtaining, amending or renegotiating any financing secured by or encumbering the Property; (iii) materially altering or changing the physical condition or legal status of the Property; (iv) engaging in any act or activity with respect to the Property that would be outside the normal course of holding real estate for passive investment; (v) contributing additional funds pursuant to Section 6.5; (vi) hiring a replacement Manager and negotiating, amending and renewing any management agreement with the then-serving Manager; (vii) amending, supplementing or terminating this Agreement; (viii) prepaying any and all loans pertaining to the Property in whole or in part; and (ix) amending or supplementing the Services Agreement. All other decisions required to be taken by the Co-Owners with respect to the Property may be approved by the Co-Owners who own more than fifty percent (50%) of the total Percentage of the Interests in the Property.

6.4b Whenever an action requiring unanimous by the Co-Owners is proposed, the Manager shall first send to all Co-Owners written notice (the "Decision Notice") setting forth the particulars of the decision (the "Decision"). The Decision Notice shall include a ballot on which the Co-Owner may mark its vote for or against the Decision. Co-Owners shall respond to the Decision Notice by returning the marked ballot to the Manager within fourteen (14) days of the receipt of the Decision Notice. A Co-Owner not returning the ballot within the prescribed period shall be deemed to have voted for the Decision. The Manager shall notify all Co-Owners of the results of the vote (the "Outcome Notice"). If the Decision is unanimous, the Manager shall be authorized to take action with respect to such Decision. If the Decision is not unanimous, then the procedure in Section 6.4c hereof shall apply.

6.4c If less than 75% of the Interests of the Co-Owners approve or consent to the Decision, no action can be taken with respect to such Decision. If the Decision is not unanimous, but at least 75% of the Interests of the Co-Owners shall have (or are deemed to have) voted for such Decision (the "Majority Group"), the Majority Group shall have the right, in its sole discretion, to elect within thirty (30) days of the Outcome Notice to make an offer (the "Offer") to purchase all of the Interests of the Co-Owners voting against such Decision (the "Minority Group") for a purchase price equal to the Fair Market Value of the Interest or collective Interests in the Property owned by the Minority Group. The Fair Market Value shall be determined in a manner consistent with the method set forth in Section 6.2c herein.

On or before fifteen (15) days after the date of the Offer, the members of the Minority Group shall either (i) consent to the Decision; (ii) sell their Interests to the Majority Group for the Fair Market Value of the Interest or collective Interests in the Property owned by the Minority Group; or (iii) if the members of the Minority Group do not elect either alternative (i) or (ii), they must purchase the Interests of the Majority Group under substantially the same terms and conditions as offered by the Majority Group, provided that the amount to be paid by the Minority Group shall be adjusted to reflect the Percentage ownership of the Majority Group's Interests. If some, but not all, of the Co-Owners who are in the Minority Group elect to consent to the Decision, those consenting members shall then become members of the Majority Group for purposes of (ii) and (iii) above. The obligation of the Majority Group or Minority Group to acquire the other group's Interest, and the allocations of the Interests amongst such group shall be apportioned between the members of the purchasing group as they unanimously agree. If they do not unanimously agree, the obligation to acquire the Interests and the allocation thereof shall be apportioned based upon each member's pro rata share calculated as their current Interest divided by all the Interests of the purchasing group. In the event a member of the Minority Group fails to respond or act as required by this Section 6.4c, each member of the Minority Group shall be liable to the other Co-Owners for all consequential damages and attorneys' fees incurred as a result of such failure.

6.4d The closing of an acquisition pursuant to Section 6.4c above (the "Closing") shall be held at a mutually acceptable date and location (the "Closing Date") not later than forty-five (45) days after the date of the Offer. At the Closing, the following shall occur:

- (i) The selling Co-Owner(s) shall assign to the acquiring Co-Owner(s) or its or their designee(s) the Interest(s) of the selling Co-Owner in accordance with the instructions of the acquiring Co-Owner(s), and shall execute and deliver to the acquiring Co-Owner(s) all documents which may be required to give effect to the disposition and acquisition of such Interest(s), in each case free and clear of all liens, claims and encumbrances, with covenants of general warranty; and
- (ii) The acquiring Co-Owner(s) shall pay to the selling Co-Owner(s) the consideration therefore in cash.

6.4e Notwithstanding the above, for all purposes of Sections 6.4a through 6.4d, a Co-Owner which is an Affiliate of the Manager shall not vote on, or be counted with respect to (i) any actions to provide for an audit of the Property operations, (ii) any termination of the Manager in accordance with the terms hereof, or (iii) any termination of any property management agreement entered into in accordance with the terms thereof.

6.4f *Obligation to Contribute Property to Another Co-Owner in the Event of Foreclosure upon Only Certain Co-Owners:* In the event that a lender forecloses on one or more, but not all, of the Co-Owners, then those Co-Owners who are joined in the foreclosure and lose their respective Interests in the Property shall have a right to a proportionate share of the Property owned by those Co-Owners who were not joined in the foreclosure and did not lose their interest in the Property. Any such right, however, shall be subordinate to the rights of the Lender.

6.4g *Documents:* The Co-Owners each agree to execute all documents required in connection with a sale or refinancing of the Property and such additional documents as may be required under this Agreement or may be reasonably required to effect the intent of the Co-Owners with respect to the Property or any Financing Documents. In the event that any Co-Owner fails to so execute any such documents and return the documents to the Manager on or before thirty (30) days after such Co-Owner receives a copy of such documents from the Manager, (a) the Manager is authorized and directed to execute the same on such Co-Owner's behalf and Co-Owner hereby appoints the Manager as Co-Owner's attorney-in-fact for such purpose, and (b) the non-executing Co-Owner shall be liable to the other Co-Owners for all consequential damages and attorneys' fees incurred as a result of such failure.

6.5 *Obligation to Fund Deficits:* The Manager shall notify Co-Owners if it determines that there are insufficient funds available to pay the Co-Owners' respective shares of expenses of the Property, including debt service. The Co-Owners shall decide how to provide such funds, whether by borrowing, contribution or otherwise. In the event any Co-Owner agrees to contribute additional funds but such Co-Owner fails to contribute such additional funds (the "Unpaid Funds") by the date for payment set forth in the Outcome Notice (as hereinafter defined), the Manager shall advise the contributing Co-Owners (the "Contributing Co-Owners") of such failure and the total amount of the Unpaid Funds (the "Failure Notice"), and the Contributing Co-Owner(s) may elect to contribute, in such proportion as they may determine, the Unpaid Funds on the non-paying Co-Owner's behalf by giving notice to the Manager of their intention to contribute the Unpaid Funds on or before ten (10) days after receipt of the Failure Notice. In the event two or more Co-Owners desire to pay the Unpaid Funds and are unable to agree on the apportionment thereof, each such Co-Owner shall be entitled to pay the Unpaid Funds in the ratio that his Interest bears to the total Interests of the Co-Owners desiring to pay the Unpaid Funds.

Immediately after the Manager receives the Unpaid Funds from the Contributing Co-Owner(s), the Manager shall send each non-paying Co-Owner a notice indicating the amount of the Unpaid Funds that each Contributing Co-Owner contributed on each non-paying Co-Owner's behalf (the "Reimbursement Notice"), and immediately after receiving the Reimbursement Notice, and in no event later than thirty (30) days following receipt of the Reimbursement Notice, the non-paying Co-Owner shall reimburse each Contributing Co-Owner the amount indicated in the Reimbursement Notice plus interest thereon at the rate of Eighteen Percent (18.00%) per annum (but not more than the maximum rate allowed by law) from the date advanced by the Contributing Co-Owner until paid. The Manager acknowledges and agrees that, upon receipt of written notice from any Contributing Co-Owner(s) of its failure to be reimbursed by a non-paying Co-Owner pursuant to a Reimbursement Notice, the Manager will use available cash otherwise distributable to the non-paying Co-Owner to reimburse the Contributing Co-Owner(s) for all funds advanced with interest thereon, as provided in the Reimbursement Notice. The remedies against a non-paying Co-Owner provided for herein are in addition to any other remedies that may otherwise be available, including the right to obtain a lien against the undivided interest in the Property of the non-paying Co-Owner, to the extent allowed by law.

7. Indemnifications

7a. *Indemnification of Other Co-Owners:* Each Co-Owner agrees to indemnify the other Co-Owners (and the manager and members of the other Co-Owners) from and against any and all Liabilities, which may be imposed on, incurred by or asserted at any time against the other Co-Owners (or the manager and members of the other Co-Owners) as a result of (a) the indemnifying Co-Owner's breach of this Agreement, or (b) any action by the indemnifying Co-Owner which causes a liability under the Financing Documents, including but not limited to liability of the Co-Owners under the non-recourse carve-outs in the Financing Documents or under the Co-Owner Indemnity Agreements. In no event shall this indemnity be relied on or enforceable by third parties other than the other Co-Owners, the manager and members of the other Co-Owners, and/or their successors and assigns. Without limiting the foregoing, this indemnity may not be relied on or enforced by a lender or any other third party creditor of the Property.

7b. *Right of Contribution:* If a Co-Owner is required to pay a lender more than such Co-Owner's percentage share of the Loan, then such Co-Owner shall have a right of contribution against all other Co-Owners to recover any excess amounts paid to said lender. Any such amounts due shall be paid within 30 days of receipt of written notice.

8. Termination of Agreement: This Agreement shall terminate on December 31, 2036; or upon the earlier unanimous written election of the Co-Owners, provided all loans obtained by the Co-Owners, secured by the Property, have been paid in full, unless the Co-Owners elect to extend the term of this Agreement.

9. Supplements and Amendments: This Agreement may be supplemented or amended by a written instrument signed by the Manager and all the Co-Owners, but if in the reasonable opinion of the Manager any amendment adversely affects any right, duty or liability of, or immunity or indemnity in favor of, the Manager under this Agreement, the Financing Documents, or any of the documents contemplated hereby to which they are a party, or would cause or result in any conflict with or breach of or default under any terms, conditions or provisions of its charter documents or bylaws or any document contemplated hereby to which they are a party, the Manager may, in its sole discretion, decline to enter into such amendment.

10. General Provisions

10a. *Limitations on Rights of Others:* Nothing in this Agreement, whether express or implied, shall give to any Person other than the Co-Owners any legal or equitable right, remedy or claim hereunder.

10b. *Notices, Etc.*: All notices, requests, demands, consents and other communications (collectively "Notices") required or contemplated by the provisions hereof shall refer on their face to this Agreement (although failure to do so shall not make such Notice ineffective), shall, unless otherwise stated herein, be in writing and shall be (a) personally delivered, (b) sent by reputable overnight courier service, (c) sent by certified or registered mail, postage prepaid and return receipt requested, or (d) transmitted by telephone facsimile with electronic confirmation of receipt, in each case, to the Co-Owners at the address and/or fax set forth opposite their signatures hereto, or at such other address and telephone facsimile number as shall be designated, respectively, by the Co-Owners in a written notice to the other Persons receiving Notices pursuant to this Section. Notices given pursuant to this Section shall be deemed received upon the earliest of the following to occur: (i) upon personal delivery; (ii) on the fifth day following the day sent, if sent by registered or certified mail; (iii) on the next business day following the day sent, if sent by reputable overnight courier; and (iv) if transmitted by telephone facsimile, on the day sent if such day is a business day of the addressee and the telephone facsimile is received by the addressee by 5:00 p.m. local time of the addressee on such day and otherwise on the first business day of the addressee after the day that the telephone facsimile is sent.

10c. *Severability*: Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

10d. *Separate Counterparts*: This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

10e. *Successors and Assigns*: All covenants and agreements contained herein shall be binding upon and inure to the benefit of the Co-Owners and their successors and assigns, all as herein provided, and shall, as to each of the Co-Owners and their successors and assigns operate as covenants running with the land. Any request, notice, direction, consent, waiver or other writing or action by the Co-Owners shall bind each of their successors and assigns.

10f. *Usage of Terms*: With respect to all terms in this Agreement, the singular includes the plural and the plural words importing any gender include the other gender; references to writing include printing, typing, lithography and other means of reproducing words in a visible form; references to agreements and other contractual instruments include all subsequent amendments thereto or changes therein entered into in accordance with their respective terms and not prohibited by this Agreement; references to Persons include their successors and permitted assigns; and the term including means including without limitation.

10g. *Headings*: The headings of the various Articles and Sections herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

10h. *Governing Law*: This Agreement shall be governed by, and construed in accordance with, the laws of the state in which the Property is located applicable to contracts to be performed entirely within such state, including all matters of construction, validity and performance.

10i. *Possession*: The Co-Owners intend to lease the Property at all times and no Co-Owner shall have the right to occupy or use any portion of the Property at any time during the term of this Agreement.

10j. *Mutuality; Reciprocity; Runs With the Land*: All provisions, conditions, covenants, restrictions, obligations and agreements contained herein are made for the direct, mutual and reciprocal benefit of each and every part of the Property, shall be binding upon and shall inure to the benefit of each of the Co-Owners, and their respective heirs, executors, administrators, successors, assigns, devisees, representatives, lessees and all other persons acquiring any undivided interest in the Property or any portion thereof whether by operation of law or any manner whatsoever (collectively "Successors"); shall

create mutual, equitable servitudes and burdens upon the undivided interest in the Property of each Co-Owner in favor of the Interest of every other Co-Owner; shall create reciprocal rights and obligations between the respective Co-Owners, their Interests in the Property, and their Successors; and shall, as to each of the Co-Owners and their Successors operate as covenants running with the land, for the benefit of the other Co-Owners pursuant to applicable law. It is expressly agreed that each covenant contained herein (i) is for the benefit of and is a burden upon the undivided Interests of each of the Co-Owners; (ii) runs with the undivided Interest of each Co-Owner; and (iii) benefits and is binding upon each Successor owner during its ownership of any undivided Interest, and each owner having any interest therein derived in any manner through any Co-Owner or Successor. Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Property is and shall be conclusively deemed to have consented and agreed to every restriction, provision, covenant, right and limitation contained herein, whether or not such person or entity expressly assumes such obligations or whether or not any reference to this Agreement is contained in the instrument conveying such interest in the Property to such person or entity. The Co-Owners agree that, subject to the restrictions on transfer contained herein, any Successor shall become a party to this Agreement upon acquisition of an undivided interest in the Property as if such person was a Co-Owner initially executing this Agreement.

10k. *Attorneys' Fees:* If any action or proceeding is instituted between all or any of the parties to this Agreement (including, but not limited to, the Manager and the Co-Owner(s)) arising from or related to this Agreement, the party or parties prevailing in such action or arbitration shall be entitled to recover from the other party or parties all of its or their costs of action or arbitration, including, without limitation, reasonable attorneys' fees and costs as fixed by the court or arbitrator therein.

10l. *Waivers:* No act of any Co-Owner shall be construed to be a waiver of any provision of this Agreement, unless such waiver is in writing and signed by the Co-Owner affected. Any Co-Owner may specifically waive any breach of this Agreement by any other Co-Owner, but no such waiver shall constitute a continuing waiver of similar or other breaches.

(Signatures on next page.)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective officers as of the day and year first above written.

Co-Owners

Address: _____

By: _____

Its: Authorized Representative

Email: _____
Telephone: _____
Facsimile: _____

Address: _____

By: _____

Its: Authorized Representative

Email: _____
Telephone: _____
Facsimile: _____

Address: _____

By: _____

Its: Authorized Representative

Email: _____
Telephone: _____
Facsimile: _____

Address: _____

By: _____

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Email: _____
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Facsimile: _____