

## **LOAN SERVICING AND EQUITY INTEREST AGREEMENT**

THIS LOAN SERVICING AND EQUITY INTEREST AGREEMENT (“**Agreement**”) is made as of \_\_\_\_\_, 20\_\_ by and among Blackburne & Sons Realty Capital Corporation, a California corporation (“**Servicer**”), and \_\_\_\_\_ (“**Lender**”) and each of the other individuals and entities executing this Agreement as a Lender (each a “**Lender**” and collectively, the “**Lenders**”).

### **RECITALS**

A. Servicer has made or arranged a loan (the “**Loan**”) to \_\_\_\_\_ (“**Borrower**”) in the principal amount of \$\_\_\_\_\_ (the “**Principal**”) with interest payable thereon at the initial rate of \_\_\_\_% per annum (the “**Note Rate**”). The Loan will be evidenced by a secured promissory note executed by Borrower in favor of Servicer and the initial Lenders and dated as of the date that the Loan is closed (the “**Secured Note**”). The Secured Note will be secured by a deed of trust or a mortgage (the “**Security Document**”) that will be recorded in the official records of \_\_\_\_\_ County, \_\_\_\_\_ (the “**Official Records**”) encumbering certain real property more particularly described therein (the “**Security Property**”).

B. Servicer has offered to sell and assign the Secured Note and Security Document or a fractional undivided interest in the Secured Note and Security Document to each of the Lenders and, in connection with such offering, each Lender has received and reviewed the Offering Circular delivered herewith (the “**Offering Circular**”), together with the “Loan Package – Description of Specific Loan” materials relating to the Loan attached as Exhibit A thereto (the “**Loan Package**”). The Loan Package describes the Loan, the Borrower, the Security Document, the compensation to be received by Servicer for arranging and servicing the Loan and other information regarding the terms of the Loan and the Security Property. To the extent that Servicer or its affiliate(s) purchases or retains an interest in the Secured Note, Servicer or such affiliate(s) shall also be a Lender(s) subject to the terms and conditions set forth in this Agreement.

C. The Loan may be used to construct or renovate certain improvements on the Property (the “**Improvements**”), in which case the Loan will be underwritten based upon the “as completed” value of the property being constructed or renovated and governed by a Construction Loan Agreement and other related agreements between Servicer and Borrower (“**Construction Loan Agreement**”) and Servicer will assign its interest in the Construction Loan Agreement to the Lenders.

D. Contemporaneously herewith, Lender has executed and delivered to Servicer a Subscription Agreement (the “**Subscription Agreement**”) setting forth Lender’s subscription for the purchase of a fractional undivided interest in the Loan on the terms and conditions set forth in the Offering Circular and has delivered to Servicer the purchase price for such interest in the amount set forth in the Subscription Agreement.

E. Lender now desires to: (i) appoint Servicer as his, her or its agent to service the Secured Note, Security Document, Construction Agreement (if applicable) and any other agreements, security instruments and other documents executed in connection therewith (collectively, the “**Loan Documents**”); (ii) appoint the Servicer as Lender’s agent to protect Lender’s interest in and enforce his, her or its rights under the Loan Documents; and (iii) to set forth Lender’s rights and obligations to Servicer and the other Lenders with respect to the Loan and the actions to be taken by the Servicer on behalf of all of the Lenders in connection therewith, all on the terms and conditions set forth in this Agreement.

## **AGREEMENT**

**NOW, THEREFORE**, the parties hereto agree as follows:

### **ARTICLE I**

#### **DEFINITIONS**

1.1 “**Business Day**” means any day other than Saturday or Sunday or any California State or federal holiday upon which federal and state banking institutions are closed for business.

1.2 “**Default Interest**” shall mean the amount of additional interest (i.e., interest in excess of the Note Rate) payable by the Borrower upon the occurrence of a default under the Loan Documents.

1.3 “**Delinquent Rate**” shall mean interest at a rate equal to the lesser of (i) the rate of interest payable by the Borrower under the Secured Note, plus three percent (3%), or (ii) the maximum rate allowable at law (the “**Delinquent Rate**”).

1.4 “**ERISA Plan**” means a Lender that is a qualified employee benefit plan under the Employee Retirement Income Security Act of 1974, as amended.

1.5 “**Event of Default**” shall mean: (i) Borrower’s failure to make any payment of principal or interest when due and the expiration of any applicable cure periods for the delivery of such payment provided for in the Loan Documents; or (ii) the failure of Borrower to observe or perform any other obligation under the Loan Documents which, in the Servicer’s reasonable discretion, materially impairs or threatens the value of the Lenders’ security or the ability of Borrower or any other party to perform its obligations under the Loan Documents.

1.6 “**Fractional Interest**” shall mean: (i) prior to a Transfer of the Security Property to the Lenders or a Transfer Entity, each Lender’s undivided beneficial interest in the Secured Note, the Security Document and all other applicable Loan Documents in the percentage stated in the Security Document or any assignment thereof recorded in the Official Records at the time of such Lender’s purchase of his, her or its Fractional Interest; and (ii) following any Transfer of the Security Property to the Lenders or a Transfer Entity, each Lender’s corresponding percentage interest in the Security Property or the Transfer Entity (as applicable) as evidenced in any grant deed, assignment or other conveyance of the Security Property recorded in the Official Records or as set forth in the Transfer Entity Agreement and evidenced by each Lender’s assignment to the Transfer Entity of the interests stated in (i) hereof.

1.7 “**Investment Interest**” shall mean, for each Lender, an amount as of any given date, equal to: (i) such Lender’s pro rata share (based upon his, her or its Fractional Interest) of the principal amount of the Loan; plus (ii) accrued interest thereon at the Note Rate from the date of Lender’s acquisition of his, her or its Fractional Interest; plus (iii) Lender’s pro rata share (based upon his, her or its Fractional Interest) of any accrued Default Interest, late charges or other amounts payable to the Lenders under the Loan Documents as of such date; less (iv) any and all distributions made to a Lender under Section 8.1(b), and Sections 8.2, (d), (e) and (f). The above Investment Interest calculation is provided solely for purpose of quantifying the priority distributions payable pursuant to Section 8.2 and is not a guaranty of any specified return payable to any Lender. The Investment Interest is payable only as set forth in Section 8.2 and only to the extent there are sufficient Loan Proceeds or Property Proceeds received by the Servicer to make the distributions as outlined therein.

1.8 “**Lenders**” shall mean the persons or entities that execute this Agreement and purchase or otherwise own Fractional Interests, including Servicer or its affiliate(s) to the extent they own Fractional Interests and “**Lender**” shall mean any one of the Lenders. The term Lender and Lenders shall be utilized in this Agreement to describe owners of Fractional Interests whether prior to or following any Transfer of such Fractional Interest to a Transfer Entity in exchange for a membership interest therein. “**Lender**” shall mean any one of the Lenders.

1.9 “**Lender Majority**” shall mean as of any given date, any one or more Lenders (excluding any Non-Voting Lenders) that, in the aggregate, hold more than 50% of the total outstanding Fractional Interests.

1.10 “**Loan Expenses**” shall mean any unpaid costs or expenses payable in connection with the Loan that the Servicer deems necessary, in Servicer’s reasonable judgment, to service the Loan on the Lenders’ behalf, including any costs or expenses required to collect all amounts due under the Loan Documents, protect the Lenders’ interest in Loan, enforce the Lenders’ rights under the Loan Documents and/or, following a Transfer, any fees and costs incurred to manage, refinance or sell the Security Property or complete any stage of the construction or rehabilitation that may be required on the Security Property (if applicable). Loan Expenses as defined herein, may include, by way of example and without limitation, any of the following (as applicable): (i) all fees and costs incurred to foreclose on the Security Property (either judicially or non-judicially); (ii) all fees and costs incurred negotiating and documenting any forbearance agreement between the Lenders and the Borrower or any guarantors; (iii) all fees and costs incurred forming a Transfer Entity and transferring title of the Security Property to the Transfer Entity (including any filing fees, taxes and other fees and costs and taxes incurred forming and operating the Transfer Entity); (iv) any fees or costs incurred to pay for property taxes or insurance on the Security Property (including forced order fire insurance or taxes paid on behalf of the Borrower); (v) any fees or costs or expenses incurred to keep any senior liens current (if any); (vi) any costs incurred renovating or otherwise improving the Security Property for rent or sale on behalf of the Lenders; (vii) any fees or costs incurred marketing the Security Property for sale; (viii) any fees or costs incurred for market studies and other reports as Servicer deems advisable; (ix) any fees or costs incurred to pay any leasing commissions and/or tenant improvement costs; and (x) any fees or costs payable to attorneys, accountants, appraisers, contractors and other third parties in connection with any such Loan Expenses.

1.11 **“Loan Payments”** shall mean any and all proceeds received by the Servicer from the Borrower, any guarantor or any other third party, at any time, for application against the obligations of the Borrower or any guarantor to the Lenders under the Loan Documents. Loan Payments shall include, without limitation, all payments of principal and interest (including any Default Interest forbearance fees, extension fees, and any payments from any interest reserves established under the Loan Documents), late fees, shared appreciation or income payments, and any proceeds obtained through post-default judgments or court orders from the Borrower or any guarantor which are payable to the Lenders pursuant to the terms of the Loan Documents and this Agreement.

1.12 **“Non-Voting Lenders”** shall mean, as of any given date, all Defaulting Lenders that have lost their voting rights under this Agreement either: (i) temporarily, following their failure to pay their pro rata share of any Assessment on or before the Assessment Due Date in accordance with Section 6.2(b), hereof, and prior to the reinstatement of such rights in accordance with Section 6.2(c); or (ii) permanently and irrevocably following their failure to comply with Section 6.2(c) within the 60-day period set forth therein.

1.13 **“Post-Default Proceeds”** shall have the meaning given in Section 8.2.

1.14 **“Property Proceeds”** shall mean any and all proceeds received from the Security Property following a Transfer of title to the Lenders or a Transfer Entity, including, without limitation, all rental income or other proceeds derived from the operations of the Security Property, any insurance proceeds from damage or destruction of the Security Property not applied to repair or reconstruct same, any condemnation proceeds and any proceeds resulting from the sale or refinancing of the Security Property.

1.15 **“Security Document”** shall have the meaning given in Recital A, hereto, and, as the context may reasonably permit shall include any associated assignment of rights under the Security Document to Lender.

1.16 **“Transfer”** shall mean the transfer of title to the Security Property to a Transfer Entity or the Lenders whether by judicial or non-judicial foreclosure, deed in lieu of foreclosure or otherwise.

1.17 **“Transfer Entity”** shall mean any limited liability company or limited partnership formed by the Servicer pursuant to Section 4.1 to acquire title to the Security Property following a Transfer.

## **ARTICLE II**

### **APPOINTMENT; RELATIONSHIP OF PARTIES; LENDER WAIVERS**

2.1 **Appointment of Servicer.** Lender hereby appoints Servicer as Lender’s agent to collect payments under the Secured Note and act for Lender under the Construction Agreement (if applicable), to protect Lender’s interest in and enforce Lender’s rights under the Secured Note, Security Document and any other Loan Documents and, if necessary, to foreclose (judicially or non-judicially) on the Security Property and to manage, refinance or sell the Security Property, all in accordance with the terms of this Agreement. In connection with such

appointment, Servicer is hereby authorized to take any action on behalf of Lender, as Lender's agent, duly adopted by the Lenders in accordance with the terms of this Agreement, including, but not limited to, the right to take any action granted to Servicer pursuant to the power of attorney granted by Lender under Article XII, hereof. Servicer hereby accepts this appointment and agrees to exercise diligent and good faith efforts in the execution of its duties as loan servicing agent under this Agreement in accordance with reasonable and customary commercial practice.

**2.2 Relationship of Parties.** By executing this Agreement Lender is agreeing to the terms and conditions that will govern the Servicer's duties and obligations to Lender and the other Lenders as well as the rights and obligations of Lender as they relate to the other Lenders who are the intended third party beneficiaries of this Agreement. In connection therewith, Lender acknowledges each of the following:

(a) Servicer is serving as Lender's agent with respect to the Loan and no other relationship between the Lender and Servicer, including that of a partnership, joint venture, tenancy-in-common, or trustee relationship is created by this Agreement. The Services provided by the Servicer hereunder will be discharged in strict accordance with the terms of this Agreement and, when applicable, with the exercise of Servicer's reasonable and prudent business judgment and such services are ministerial and not discretionary in nature and that no fiduciary relationship is created between the Servicer and any Lender except as expressly provided for by this Agreement or by applicable law. Notwithstanding the foregoing, Lender acknowledges that Servicer or its affiliate(s) may also own Fractional Interests in the Loan, in which case Servicer or such affiliate(s) shall, to the extent of its Fractional Interest, be a Lender and be entitled and subject to all the rights and obligations of a Lender under this Agreement.

(b) Lender acknowledges that Lender's Fractional Interest represents a undivided fractional interest in the Loan, which Fractional Interest shall be held by Lender together with the other Lenders as tenants-in-common. Lender further acknowledges that Lender's right to direct the actions to be taken in connection with the servicing and enforcement of the Loan are restricted by the terms of the this Agreement and Servicer will take those actions approved by a vote of the Lender Majority (which excludes any Non-Voting Lenders as provided for in Section 6.2) on any matter subject to Lender approval as set forth in this Agreement. In the event that Lender objects to, or fails to affirmatively approve, any action approved by a Lender Majority, Lender hereby authorizes Servicer to take any and all actions required to implement the action so approved and hereby agrees to execute all documents and take all actions reasonably requested by the Servicer in furtherance of such action notwithstanding Lender's objection to same. Lender acknowledges that the failure of Lender to take any action or to impede any action required to implement any action or directive approved by a Lender Majority pursuant to the terms of this Agreement is a breach of the terms of this Agreement and may result in legal action against Lender by Servicer and/or one or more Lenders to compel or enjoin such action and/or for any damages to the Servicer or the Lenders caused by Lender's breach hereof.

(c) Lender acknowledges that Fractional Interests are assessable securities and Lender may be required to make investments of capital in addition to the amounts paid for the purchase of Lender's Fractional Interest. Failure to make such payments, if and when due, is a

breach of this agreement and will result in the immediate loss of Lender's right to vote on matters related to the Loan and the subordination of Lender's right to receive the return of his, her or its investment from the Loan Proceeds or the Property Proceeds to the rights of the Priority Lenders and any Super-Priority Lenders as set forth in Section 8.2 hereof. Lender further acknowledges that if Lender fails to pay his, her or its Assessment Amount, together with all Delinquent Interest, within the 60-day period required by Section 6.2(c), the loss of voting rights and the distribution subordinations will become permanent and irrevocable. Lender's breach of this Agreement (including, but not limited to, the Assessment provisions of Section 6.2 or Lender's obligations under this Agreement to execute all documents in furtherance of any action approved by a Lender Majority) may also subject Lender to legal or equitable actions by the Servicer or the other Lenders to compel compliance with this Agreement and/or for damages sustained by such party for Lender's breach hereof.

**2.3 Lender Waiver of Foreclosure Rights and Right to Partition.** Each Lender acknowledges that in the event of a Transfer of the Security Property, Servicer shall, in most circumstances, form a Transfer Entity to take title to the Security Property in accordance with Article 4 and Lenders will be required to assign their Fractional Interests to the Transfer Entity in exchange for a beneficial interest in the Transfer Entity equal to their Fractional Interest. Each Lender acknowledges that he, she or it has appointed Servicer as Lender's agent (i) to protect Lender's interest in and enforce Lender's rights and remedies under the Loan Documents; (ii) form and manage the Transfer Entity on behalf of the Lenders; and (iii) to refinance and/or sell the Security Property following a Transfer. Each Lender also acknowledges that a Lender Majority may direct such enforcement and management efforts. Accordingly, as a material part of the consideration for Servicer and the other Lenders to enter into this Agreement, each Lender hereby waives and relinquishes during the term of this Agreement (i) any right such Lender may have to institute foreclosure proceedings under the Security Document on such Lender's own initiative or to otherwise pursue separately such Lender's rights and remedies under the Loan Documents separately from the other Lenders, and (ii) any right such Lender may have to seek a partition of the Security Property after the occurrence of a Transfer to a Transfer Entity or otherwise.

**2.4 Return of Principal or Interest.** Nothing contained in this Agreement or any other agreement between the Lenders and the Servicer with respect to the Secured Note or the Security Property is intended, nor shall it be construed to be, as any type of representation, warranty or guaranty whatsoever by the Servicer or its principals or affiliates that the Secured Note is collectible, that any Lender shall ultimately receive his or her pro rata share of the entire unpaid principal balance, accrued interest and costs with respect to the Secured Note and the Security Document or that the equity in the Security Property is sufficient to protect such Lender's investment.

**2.5 Reliance by Third Parties.** Every document or instrument executed by Servicer pursuant to the terms and provisions of this Agreement and the Loan Documents and in connection with the Loan Documents or Security Property shall be conclusive evidence in favor of every person relying upon or claiming under any said document or instrument: (i) that at the time of the delivery thereof, the agency or trust created by this Agreement was in full force and effect; (ii) that such document or instrument was executed in accordance with the terms,

conditions and limitations contained in this Agreement, and (iii) that Servicer was duly authorized and empowered to execute and deliver every such document or instrument.

### **ARTICLE III**

#### **LOAN SERVICING**

3.1 **Secured Note Servicing.** Prior to an Event of Default, Servicer shall service the Secured Note on behalf of Lenders. Such services shall include each of the following:

(a) Servicer shall provide written notification to Borrower of Servicer's appointment as agent for the Lenders to service the Secured Note, and shall instruct Borrower to make all Loan Payments due under the Loan Documents payable to Servicer.

(b) Upon Servicer's receipt of any Loan Payments, such Loan Payments shall be immediately deposited into a non-interest bearing trust account (the "**Trust Account**") established with a federally insured bank in the name of Servicer, as agent for the Lenders, and maintained in accordance with the provisions of subsection 10238(k) of the California Real Estate Law (if applicable), Section 10145 and other applicable provisions of the California Business and Professions Code, Article 15 (commencing with Section 2830.1) of Chapter 6 of Title 10 of the California Code of Regulations, any applicable rules or regulations promulgated by the California Department of Real Estate and any other applicable laws, rules and regulations. The Lenders acknowledge that they shall not receive any interest on funds held in the Trust Account.

(c) Loan Payments shall not be commingled with any other assets of Servicer or used for any other transactions or purposes whatsoever other than the transaction for which such Loan Payments are received by Servicer.

(d) Prior to the occurrence of an Event of Default under the Loan Documents, that portion of any Loan Payment received by Servicer that constitutes Principal, accrued interest, and any other sums payable to the Lenders for any month under the Secured Note and this Agreement shall be delivered to each of the Lenders in accordance with Section 8.1. Following the occurrence of an Event of Default, all Loan Payments or Property Proceeds received by the Servicer shall be distributed (as provided in Section 8.2).

(e) Servicer shall maintain records of its receipt, maintenance and disbursement of all Loan Payments, and shall cause the Trust Account to be inspected as required by such laws, rules and regulations as are applicable thereto and as may reasonably be requested by Lenders in accordance with this Agreement.

(f) To the extent required by subsection 10238(k)(3) of the California Real Estate Law, Servicer shall arrange for the inspection of Servicer's trust account by an independent certified public accountant and forward the report of such accountant to the California Commissioner of Real Estate if and to the extent, and in the manner, required by law.

(g) Servicer shall provide or cause Borrower to provide to each Lender a monthly statement that indicates all Loan Payments disbursed to such Lender during the calendar

year. Additionally, Servicer shall provide or cause Borrower to provide to each Lender an IRS form 1099-INT for each calendar year.

(h) Servicer shall at all times maintain a valid California real estate broker's license.

(i) Servicer shall maintain possession of all original Loan Documents on behalf of all Lenders for such period as is required by law.

(j) If the Loan is subject to a Construction Loan Agreement, Servicer shall disburse and administer the Loan pursuant to the Construction Loan Agreement; provided, however, that, absent notice to the contrary to Servicer by a Lender Majority, Servicer may agree to a modification in the plans and specifications or in the construction timetable, budget or draw schedule provided in the Construction Loan Agreement or otherwise modify the manner in which the Loan is disbursed or administered if in its business judgment it is advisable to do so, or if the change will not in its business judgment materially impair the value of the Security Property or impair the Borrower's ability to perform under the Construction Loan Agreement

(k) Servicer shall provide the Lenders written notification of the occurrence of any of the following events: (i) the recording of a notice of default by the Servicer; (ii) the recording of a notice of trustee's sale; (iii) the receipt of any payment constituting an amount greater than or equal to five monthly payments from the Borrower, together with a request for reconveyance of the Security Property (including a description of any instructions for transfer or delivery); or (iv) a payment delinquency under the Secured Note of over 30 days.

**3.2 Loan Servicing Following Default.** Any Event of Default by Borrower under the Loan Documents shall constitute an Event of Default under all Fractional Interests held by all Lenders. Upon the discovery by Servicer of an Event of Default, Servicer shall promptly notify the Lenders of such Event of Default and, except as provided in Article VII, below, Servicer shall be authorized to take one of the following courses of action:

(a) promptly perform all acts and execute all documents or prudent to protect the interests of the Lenders, which may include (but are not limited to) acts and documents necessary to: (i) exercise the power of sale contained in the Security Document, including, without limitation, selecting a foreclosure agent, making demands, accepting reinstatements, seeking relief from any stay of foreclosure proceedings and bidding at any non-judicial foreclosure sale in accordance with in Section 3.3; (ii) defending any litigation which seeks to restrain such non-judicial foreclosure proceedings; (iii) take any actions required to organize a Judicial Foreclosure Meeting in accordance with Section 3.4 (if applicable); (iv) arrange for the Transfer of the Security Property to the Lenders or a Transfer Entity as outlined in Section 4.1, below, and (v) enforce all rights and remedies available to the Lenders with respect to any other collateral for the Loan;

(b) negotiate and enter into a forbearance agreement in accordance with reasonable and customary commercial practices if the Servicer determines that such action is necessary or appropriate to protect the interests of the Lenders and the term of such forbearance agreement does not extend more than 90 days from the date Servicer discovers the occurrence of



such Event of Default. If Servicer should agree to forbear for 90 days as provided herein and Borrower has not paid all amounts owing under the Loan Documents on or before the end of such 90-day period, then Servicer shall promptly proceed to exercise the power of sale contained in the Security Document as provided in subsection (a) above unless otherwise directed by a Lender Majority;

(c) negotiate and enter into a loan extension at maturity in accordance with reasonable and customary commercial practices if Servicer determines that such action is necessary or appropriate to protect the interests of the Lenders, and the extension is conditioned upon the Borrower continuing to make all periodic payments required under the Secured Note over the extension term and the term of such extension does not extend more than six months from the original maturity date of the Secured Note (an “**Extension**”). If Servicer should agree to an Extension as provided herein and Borrower has not paid all amounts owing under the Loan Documents on or before the end of the Extension period, then Servicer shall promptly proceed to exercise the power of sale contained in the Security Document as provided in subsection (a) above unless otherwise directed by a Lender Majority;

(d) accept a deed in lieu of foreclosure from Borrower if doing so would cause the Lenders to incur no greater expense or liability than if Servicer completed a non-judicial foreclosure sale; or

(e) file suit or pursue other legal remedies against any borrower or guarantor of the Loan if such action will not impair the Lenders’ security interest in the Security Property.

**3.3 Non-Judicial Foreclosure Sale.** If, following an Event of Default, Servicer determines that it is in the best interest of the Lenders to enforce of the power of sale contained in the Security Document and to proceed to sell the Security Property pursuant to a non-judicial foreclosure sale (a “**Foreclosure Sale**”), Lender and Servicer agree that Servicer or its affiliate(s) will act on behalf of all of the Lenders in connection with such Foreclosure Sale. In connection therewith, Lender and Servicer hereby agree as follows:

(a) In the event a Foreclosure Sale is required, Servicer shall, prior to the date of the Foreclosure Sale, retain a qualified foreclosure company or other foreclosure agent (a “**Foreclosure Agent**”) to administer the Foreclosure Sale on the Lenders’ behalf. If the Foreclosure Agent is not the named Trustee under the Security Document, Servicer shall provide for the named trustee to execute an assignment of the trustee’s obligations and duties as trustee to the Foreclosure Agent for the purpose of administering the Foreclosure Sale on the Lender’s behalf. Any Foreclosure Agent retained by Servicer shall be entitled to fees for the foreclosure services provided, which fees shall be reasonable in light of fees and other compensation payable for similar services in the area where the Security Property is located. All fees and costs incurred in connection with the Foreclosure Sale including any fees or other compensation payable to the Foreclosure Agent shall be Loan Expenses governed by Article VI of this Agreement.

(b) At least 15 Business Days prior to the date of the Foreclosure Sale, Servicer shall give the Lenders written notice of the date and time the Foreclosure Sale shall be held (“**Foreclosure Sale Notice**”), which Foreclosure Sale Notice shall include a copy of the statutorily required Notice of Trustee’s Sale recorded in the Official Records and a statement of

the total accrued and unpaid amounts due from the Borrower which may be credited towards the Lenders' purchase of the Security Property at the Foreclosure Sale (the "**Full Credit Bid**"). The Foreclosure Sale Notice shall also include either a notice to the Lenders of Servicer's intention to conduct the Foreclosure Sale in accordance with the Default Bid Instructions outlined in subsection (d) below or a written proposal from the Servicer outlining alternative bidding instructions for approval by a Lender Majority. Servicer shall be authorized to instruct the Foreclosure Agent to act in accordance with the Default Bid Instructions at the Foreclosure Sale without further Lender approval so long as (i) the Foreclosure Sale Notice includes a statement of Servicer's intention to do so; and (ii) Servicer has not received a Lender Bid Proposal from one or more Lenders as of the Lender Bid Deadline in accordance with subsection (c), below. Any bid instructions proposed by the Servicer or any Lender that materially deviate from the Default Bid Instructions shall be approved by a Lender Majority prior to the date of the Foreclosure Sale.

(c) Each Lender shall have five Business Days from the date of the Foreclosure Sale Notice (the "**Lender Bid Deadline**") to deliver to the Servicer such Lender's written proposal for bidding instructions that materially differ from those described in the Foreclosure Sale Notice (a "**Lender Bid Proposal**"). Such Lender Bid Proposal shall set forth a clear written description of the proposed bidding instructions to be used by the Servicer at the Foreclosure Sale and a request by the submitting Lender for the Servicer to circulate the Lender's Lender Bid Proposal to the other Lenders for consideration and approval. Within two Business Days following the Lender Bid Deadline, Servicer shall deliver to each Lender a written statement outlining the material terms of each properly submitted Lender Bid Proposal together with a request that each Lender affirmatively approve either the original bid instructions set forth in the Foreclosure Sale Notice or one of the alternative Lender Bid Proposals forwarded by Servicer to the Lenders pursuant to the terms hereof (collectively, the "**Bid Proposals**"). Upon the approval of one of the Bid Proposals by Lenders representing a Lender Majority (the "**Majority Instructions**"), Servicer shall be authorized to instruct the Foreclosure Agent to accept bids for the Security Property at the Foreclosure Sale in accordance therewith. Servicer shall notify the Lenders of the adoption of the Majority Instructions promptly following Servicer's receipt of the requisite approvals from the Lender Majority; however, the failure of Servicer to notify any Lender of the adoption of a Bid Proposal or the terms of the approved Majority Instructions prior to the Foreclosure Date, shall not affect the right of Servicer to take those actions required to implement the Majority Instructions at the time of the Foreclosure Sale.

(d) Unless Servicer has proposed alternative bidding instructions in the Foreclosure Notice or has received one or more Lender Bid Proposals prior to the Lender Bid Deadline, Servicer shall be authorized to instruct the Foreclosure Agent at the Foreclosure Sale to conduct the Foreclosure Sale as follows (the "**Default Bid Instructions**"): (i) a reasonable starting bid for the Security Property shall be determined by the Servicer and the Foreclosure Agent in light of the Loan amount and the type and location of the Security Property being sold; (ii) an initial credit bid by the Lenders shall be authorized in the amount of such starting bid; (iii) the Lenders' credit bid shall be increased by the minimum bid amount required to enter a bid greater than any competing third-party bids up to a maximum bid equal to the Lenders' Full Credit Bid; and (iv) the Lenders bidding shall discontinue when either the Lenders' credit bid is sufficient to purchase the Security Property or the trustee receives a competing bid in excess of the Full Credit Bid. In no event shall Servicer, without the express written approval of a Lender

Majority, instruct the trustee or the Foreclosure Agent at the Foreclosure Sale to either: (i) place a bid on the Lenders' behalf which exceeds the Full Credit Bid; or (ii) accept a competing bid for the Security Property in an amount which is less than Full Credit Bid available to the Lenders.

(e) Notwithstanding any provision of this Section 3.3 to the contrary, if at any time prior to the Foreclosure Sale, Servicer is unclear on the appropriate bidding instructions to be utilized in at the Foreclosure Sale, Servicer may postpone the Foreclosure Sale until clear directions from the Lender Majority are received. Lender acknowledges and agrees that Servicer shall not be liable to the Lender for any claims or damages resulting from any action taken by Servicer in accordance with this Article III.

**3.4 Judicial Foreclosure Sale.** Servicer shall not initiate judicial foreclosure proceedings against the Borrower without the express written consent of a Lender Majority. If, following an Event of Default, Servicer reasonably believes that a judicial foreclosure and proceedings against the Borrower may be in the best interests of the Lenders, Servicer may engage legal counsel on the Lenders' behalf for the sole purpose of reviewing the Loan Documents, assessing the rights of the Lenders with respect to a judicial foreclosure and attending a meeting with the Lenders to provide the Lenders with an overview of the potential costs and benefits of proceeding with a judicial foreclosure (a "**Judicial Foreclosure Meeting**"). Any fees and costs incurred to present the Judicial Foreclosure Meeting shall be Loan Expenses governed by Article VI, of this Agreement whether or not a Lender Majority ultimately decides to pursue a judicial foreclosure action.

## **ARTICLE IV**

### **TRANSFER; MANAGEMENT OF TRANSFER ENTITY**

**4.1 Transfer of Security Property; Transfer Entity.** If, as a consequence of an Event of Default, ownership of the Security Property is to be acquired by Lenders, Servicer shall in most cases form a Transfer Entity and take those actions necessary for the Transfer of the Security Property to the Transfer Entity as set forth in this Section 4.1 unless otherwise directed by a Lender Majority.

(a) The Transfer Entity will be a limited liability company or limited partnership formed by the Servicer for the purpose of taking title to the Security Property following a Transfer and holding of the Security Property prior to resale.

(b) Prior to any Transfer, Servicer shall distribute to the Lenders a copy of a proposed operating agreement or limited partnership agreement that will govern the Transfer Entity (the "**Transfer Entity Agreement**") which Transfer Entity Agreement shall be approved by a Lender Majority.

(c) Unless otherwise directed by a Lender Majority, the Transfer Entity shall be co-managed by Servicer and one or more Lenders selected by Servicer and approved by a Lender Majority.

(d) The Transfer Entity shall be capitalized through each Lender's contribution of his, her or its Fractional Interest in the Loan or, if formed following a Transfer,

the Security Property to the Transfer Entity which the Lenders will assign to the Transfer Entity in exchange for a membership interest in the Transfer Entity equal to each Lender's then current Fractional Interest in the Loan. Following each Lender's assignment of their Fractional Interest in the Loan to the Transfer Entity, such Lender will become a member of the Transfer Entity subject to the terms and conditions set forth in the Transfer Entity Agreement.

(e) The Transfer Entity Agreement shall provide that Servicer shall continue to manage the day-to-day enforcement and property management procedures on behalf of the Transfer Entity either by continuing to act as the loan servicer on behalf of the Transfer Entity pursuant to the terms of this Agreement or in its capacity of the co-manager of the Transfer Entity, in which case, such enforcement and management services (and Servicer's compensation in connection therewith) shall be as set forth in the Transfer Entity Agreement;

(f) The material terms of the Transfer Entity Agreement shall be structured such that the rights and obligations of the Lenders, as members, and the Servicer, as Manager of the Transfer Entity shall be, to the extent possible, similar in all material respects to the rights and obligations of the Lenders and Servicer existing under this Agreement as of the date of the Transfer including: (i) providing for distributions of Property Proceeds to the Lenders and Servicer as members and manager in the order of priority set forth in Section 8.2, hereof, including the retention of all priorities and subordinations related to any Loan Expenses paid by Priority Lenders made as of the date of Transfer; (ii) providing for manager compensation which is the same or comparable to that payable to the Servicer as of the date of Transfer; (iii) requiring ongoing additional capital contribution requirements materially similar to the Loan Expense provisions set forth in Article VI; and (iv) providing for the retention of all rights and obligations of the Lender (as members) to the other Lender/members and to the Manager which were reasonably material to a Lender's decision to purchase his, her or its Fractional Interest in the Loan at the time such investment decision was made.

(g) So long as the Transfer Entity Agreement is approved by a Lender Majority and meets the requirements set forth in subsection (f), above, each Lender (including Lenders that did not consent to the action approved by a Lender Majority) shall be required to execute and deliver any documents reasonably necessary in Servicer's good faith judgment to effectuate the Transfer, including execution of any assignments of their Fractional Interests in exchange for interests in the Transfer Entity. Upon the failure of any Lender to execute any document required by this Section 4.1(g), Servicer shall have the right to execute such documents as Lender's attorney-in-fact pursuant to the Power of Attorney granted pursuant to Article XII hereof. Additionally, the failure of any Lender to execute any such document shall be a breach of the terms of this Agreement by such Lender and entitle Servicer and/or the other Lenders to pursue any legal, equitable or other rights against such Lender to compel compliance with the terms hereof or for any damages caused by reason of such breach.

(h) Notwithstanding the foregoing, the grantee of the deed at the closing of the Transfer may also be one of the following, as determined by Servicer and approved by a Lender Majority: (i) Servicer, in trust and as trustee for the Lenders, (ii) Servicer, as nominee or agent for the Lenders, or (iii) the Lenders, as tenants in common according to their Fractional Interests; provided, however, that if Servicer should take title to the Security Property as trustee

or nominee for the Lenders Servicer shall have only those duties and obligations expressly provided for in this Agreement.

**4.2 Property Management Following Transfer.** In the event a Transfer Entity becomes the owner of the Security Property after a Transfer, Lender agrees that the Servicer shall have the right (either in the capacity of manager of the Transfer Entity or Servicer under this Agreement) to serve as the sole property manager for the Security Property or to engage a third party property manager to provide all or a portion of such services under the Servicer's direction. The property management services provided by the Servicer and/or such third party shall include the following (as applicable):

(a) Receiving any and all rents and/or other payments due to the Transfer Entity from the Security Property.

(b) Transmitting to the Transfer Entity Lender's portion of such rents and/or other Property Proceeds received by the Servicer after paying all expenses of the Security Property and all expenses or fees payable in accordance with Section 8.2.

(c) Transferring funds held in the Trust Account to the Transfer Entity.

(d) Taking any other action which Servicer deems necessary or convenient to the collection and managing of the Security Property including but not limited to acquiring insurance, instituting eviction proceedings, securing the Security Property from vandalism or taking such other action as Servicer deems necessary or desirable to protect the Security Property; provided that Servicer shall, before taking any of the actions authorized or permitted by this Section 4.2, promptly provide written notice to Lender of Servicer's intention to take the proposed action and the reasons therefore unless in the good faith judgment of the Servicer the Lenders would suffer any material harm that would otherwise have been avoidable but for the Servicer's obligation to comply with the following notice requirement. If and only if Servicer shall not have been timely provided with notice from a Lender Majority disapproving the proposed action, then Servicer shall not be precluded from taking the proposed action.

(e) Engaging and overseeing contractors, subcontractors, architects and any other party required to complete the construction contemplated in the Construction Loan Agreement (if applicable) pursuant to any construction plan approved by a Lender Majority.

(f) Executing and delivering on Lender's behalf in Lender's name or the name of the Transfer Entity any documents necessary or convenient for the exercise of any rights or duties which Lender may have in connection with the ownership of the Property either as a Lender or a member of the Transfer Entity, including but not limited to listing agreements for sale, rental agreements and leases.

(g) Paying, on behalf of Lenders or the Transfer Entity, any senior liens, taxes, insurance, payments for repairs or renovation or to otherwise protect the Security Property or enforce the Lender's rights hereunder or under the Transfer Entity Agreement, which expenses shall be Loan Expenses governed by Article VI, hereof. Notwithstanding the foregoing, Lender hereby agrees to hold Servicer harmless for Lender's failure to make any advance to a

senior encumbrance or any other advance that is necessary to protect the Security Property when notified by Servicer of the default or the need for said advance.

**4.3 Refinance or Sale of Security Property.** The Lenders and Servicer agree that, following the occurrence of a Transfer, Servicer or Servicer's affiliate, shall have the right to serve as the exclusive listing broker and mortgage broker with respect to any sale or refinancing of the Security Property. Lender agrees that Servicer shall have the authority, subject to the terms and conditions of subsections (a) and (b) of this Section 4.3, to refinance, sell or refinance in part and sell in part all or any portion of the Security Property as Servicer deems, in its reasonable business judgment, to be in the best interests of Lenders.

(a) Notwithstanding any other provision in this Agreement, Servicer may enter into any proposed sale or refinance of the Security Property without first obtaining the written consent of any of the Lenders if both of the following conditions are satisfied: (i) the cash proceeds available at the closing of such a proposed sale or refinance are sufficient to pay each Lender their entire investment in Fractional Interests plus all accrued but unpaid interest thereon at the Note Rate through the date of closing; and (ii) the prospective purchaser is not Servicer or any affiliate of Servicer.

(b) With respect to any proposed sale or refinance other than as described in Section 4.3 above, Servicer shall promptly forward the terms of such sale or refinance to the Lenders for their review and approval, which approval must be received by Servicer within a period of time specified by Servicer. The failure of Servicer to receive any Lender's written approval of the terms of such sale or refinance within the specified time period shall constitute such Lender's disapproval of such terms. If approval is required pursuant to this Section 8, a Lender Majority must give their written approval before Servicer is authorized to enter into such proposed sale or refinance. If the proposed sale is to Servicer or its affiliate, any Fractional Interests held by Servicer and its affiliates shall be disregarded for all purposes of calculating the Lender Majority.

(c) With respect to any proposed sale or refinance that Servicer is authorized to enter into pursuant to this Section 4.3, Servicer is authorized as the agent of the Lenders to negotiate, execute and deliver such documents and instruments as are necessary to effectuate such sale or refinance so long as the terms of such documents and instruments are consistent with the terms of the authorized sale or refinance. The Lenders agree that Servicer may, in anticipation of the occurrence of a Transfer, solicit and negotiate offers to sell or refinance the Security Property prior to such Transfer. No such sale or refinance of the Security Property, however, shall become effective until the Transfer has occurred and the Lenders have approved the terms of such sale or refinance as provided for in this Agreement.

## **ARTICLE V**

### **SERVICER COMPENSATION**

**5.1 Loan Servicing Fee.** In consideration for the services being provided by Servicer in connection with servicing the Loan and, if applicable, enforcing the Loan Documents on behalf of the Lenders, Servicer will be entitled to receive a monthly Servicing Fee in the amount

of 1/12<sup>th</sup> of one percent [**1.9%**] of the unpaid principal amount outstanding at the end of each month for the term of the Loan, prorated for partial months (“**Servicing Fee**”). So long as no payment default exists under the Loan, the Servicing Fee shall be payable from interest payments received from the Borrower and will be deducted by the Servicer prior to delivery of each Lender’s pro-rata share thereof. To the extent payments received from the Borrower are insufficient to pay the full amount of any Servicing Fees payable to the Servicer pursuant to this Section 5.1, the Servicing Fee shall continue to accrue in favor of the Servicer unless and until the occurrence of a Transfer and Servicer may elect, at any time, and from time to time, to either: (i) allow any unpaid Servicing Fees to accrue and be paid from the future Loan Proceeds or Property Proceeds in accordance with Section 8.2; or (ii) assess the Lenders for any accrued but unpaid Servicing Fees pursuant to the assessment provisions of Section 6.2.

**5.2 Management Fee.** In the event of a Transfer of the Property, the Servicer will provide the Lenders with all of the property management and other post-Transfer services outlined in this Agreement. In consideration of such services, Servicer shall, as of the date of the Transfer, be entitled a monthly management fee (the “**Management Fee**”) equal to the greater of: (i) 8% of the gross revenues actually received from the operations of the Property for any month following the Transfer, prorated for partial months; or (ii) a monthly fee equal to 1/12<sup>th</sup> of one percent [**1.9%**] of the unpaid principal balance of the Loan as of the date of the Transfer of the Property, prorated for partial months. To the extent payments received from the Property are insufficient to pay the full amount of the Management Fee calculated under subsection (ii) hereof, the Management Fee shall accrue in favor of the Servicer until paid and Servicer may elect, at any time, and from time to time, to either: (i) continue to allow any unpaid Management Fees to accrue and be paid from the Loan Proceeds or the Property Proceeds in accordance with Section 8.2, below; or (ii) assess the Lenders for any accrued but unpaid Management Fees pursuant to the assessment provisions of Section 6.2. Any Management Fee payable to the Servicer pursuant to this Section 5.2, shall be in lieu of the Servicing Fee payable pursuant to Section 5.1, above

**5.3 Prepayment Penalties; Exit Fees.** Servicer shall be entitled to retain up to 50% of any prepayment penalties and/or exit fees collected from Borrower by the Servicer under the Loan Documents and the balance will be paid to the Lenders; provided, however, that following an Event of Default by the Borrower, all Post-Default Proceeds shall be distributed in accordance with Section 8.2. Notwithstanding the foregoing, the Servicer may, in its sole discretion and without the approval of the Lenders, agree to waive all or a portion of any prepayment penalties due from the Borrower under the Loan Documents.

**5.4 Late Charges and Late Fees.** Servicer shall be entitled to retain up to 50% of any all late charges or late fees collected from Borrower by the Servicer under the Loan Documents and the balance will be paid to the Lenders; provided, however, that following an Event of Default by the Borrower, all Post-Default Proceeds shall be distributed in accordance with Section 8.2. Notwithstanding the foregoing, the Servicer may, in its sole discretion and without the approval of the Lenders, agree to waive all or a portion of any late charges or late fees due from the Borrower under the Loan Documents.

**5.5 Default Interest.** With respect to any Default Interest collected from Borrower by Servicer under the Loan Documents, Servicer shall be entitled to retain up to 50% of collected

Default Interest and shall pay the balance to the Lenders; provided, however, that following an Event of Default by the Borrower, all Post-Default Proceeds shall be distributed in accordance with Section 8.2. Notwithstanding the foregoing, the Servicer may, in its sole discretion and without the approval of the Lenders, agree to waive all or a portion of any Default Interest due from the Borrower under the Loan Documents.

**5.6 Shared Appreciation and Income Payments.** Servicer shall be entitled to retain up to 50% of any shared appreciation payments (i.e., any “equity kicker”) and/or shared income payments (i.e., any “income kicker”) collected from Borrower by the Servicer under the Loan Documents. The balance of such payments shall be paid to the Lenders; provided, however, that following an Event of Default by the Borrower, all Post-Default Proceeds shall be distributed in accordance with Section 8.2. Notwithstanding the foregoing, the Servicer may, in its sole discretion and without the approval of the Lenders, agree to waive all or a portion of any shared appreciation payments or shared income payments due from the Borrower under the Loan Documents.

**5.7 Brokerage Fee.** If Servicer or Servicer acts as the mortgage broker in connection with a refinance of all or any part of the Security Property in accordance with Section 4.3, Servicer or Servicer shall be entitled to a brokerage fee equal to the lesser of (i) 6% of the total amount of any refinance arranged by Servicer, or (ii) the amount of commission usual and customary for the arranging of loans secured by properties similar to the Security Property. Such a commission, together with all other costs relating to such a refinancing, shall be deducted from the proceeds of such refinancing. Servicer’s brokerage fee will be reduced on a dollar for dollar basis to pay any brokerage fees owing to third parties in connection with the refinance of the Security Property, but not below zero.

**5.8 Sales Commission.** If Servicer or Servicer acts as the exclusive listing broker for the sale of the Security Property, Servicer and/or Servicer shall be entitled to a sales commission when all or any portion of the Security Property is sold equal to the lesser of (i) 6% of (ii) the amount of commission usual and customary for the sale of properties similar to the Security Property. Servicer’s sales commission, together with all other costs relating to such a sale, shall be deducted from the proceeds of such sale. This sales commission shall be reduced on a dollar for dollar basis to pay any sales commissions owing to third parties in connection with a sale of the Security Property, but not below zero.

## **ARTICLE VI**

### **LOAN EXPENSES, ASSESSMENTS AND ADVANCES**

**6.1 Loan Expenses.** Each Lender shall be responsible for the payment of his, her or its pro rata share of any Loan Expenses based upon such Lender’s Fractional Interest. So long as there are sufficient Loan Payments or Property Proceeds available to pay all outstanding Loan Expenses (including any Loan Expense Reserves established by the Servicer pursuant to Section 6.3, below), each Lender’s share of such Loan Expenses shall be deducted from such Loan Payments or Property Proceeds (or available reserves) prior to any distribution of such proceeds to the Lenders under Section 8.2, below.



6.2 **Lender Assessments.** If, at any time, Servicer determines in its sole discretion, that the Loan Payments or Property Proceeds are insufficient to pay any fees or costs required to service the Loan on behalf of the Lenders, then Servicer may require the Lenders to pay their pro-rata share of such amounts (an “**Assessment**”) by complying with the provisions of this Section 6.2. The costs and expenses which may be subject to an Assessment hereunder shall expressly include, without limitation: (i) any Loan Expenses incurred (or to be incurred in connection with the Loan or the Security Property) (ii) any Protective Actions deemed necessary by the Servicer (whether incurred or to be incurred), including any fees or expenses payable to the Servicer in accordance therewith; (iii) to reimburse Servicer for any accrued but unpaid Protective Advances previously made by the Servicer on behalf of the Lenders; (iv) to pay any accrued but unpaid Servicing Fees or Management Fees payable to the Servicer pursuant to the terms of this Agreement; or (v) any other amounts properly payable by the Lenders pursuant to the Terms of this Agreement.

(a) If the Servicer determines that an Assessment is required, Servicer shall provide each Lender with a written notice that an Assessment shall be due from the Lenders (an “**Assessment Notice**”), which Assessment Notice shall include: (i) the amount of the total Assessment; (ii) the purpose(s) for which such Assessment is to be used; (iii) each Lender’s pro-rata share of such Assessment (based on each Lender’s Fractional Interest) (each Lender’s “**Assessment Amount**”); and (iv) the date the Lender’s Assessment payment is due, which date shall not be less than 10 days following the date of the Assessment Notice (the “**Assessment DueDate**”). All Assessment Amounts paid by the Lenders in response to the Assessment Notice shall be repayable from Loan Proceeds or Property Proceeds, together with interest thereon at the Delinquent Rate as set forth in Section 8.2. So long as each Lender pays his, her or its Assessment Amount all Lenders will retain their proportionate rights to the return of their Investment Interest notwithstanding the priority provisions set forth below.

(b) If any Lender fails to pay their pro rata share of an Assessment on or before the Assessment Due Date, such Lender(s) (the “**Defaulting Lenders**”) shall be in default of the terms of this Agreement and all Defaulting Lenders shall immediately lose any right to vote on or consent to any matters subject to Lender approval under Section 13, or elsewhere in this Agreement (“**Voting Rights**”). Each Defaulting Lender shall also have their right to any distributions from the Loan Proceeds or any Property Proceeds (if applicable) subordinated to the priority rights of those Lenders that paid their pro rata Assessment Amounts (the “**Priority Lenders**”) to the return of all such Assessment Amounts, plus interest at the Default Rate AND the full payment of such Priority Lenders’ Investment Interest. Such subordination and loss of Voting Rights shall be effective immediately upon expiration of the Assessment Due Date and shall continue unless and until a Defaulting Lender reinstates his, her or its Voting Rights and priority rights by complying with the reinstatement provisions of subsection (c), below. If any Defaulting Lender fails to deliver all amounts required to reinstate a Defaulting Lender’s priority within the 60 day period outlined in subsection (c), such Defaulting Lender shall permanently and irrevocably lose his, her or its Voting Rights under this Agreement and his, her or its right to distributions under Section 8.2, and such Lender’s corresponding right to any return of his, her or its Investment Interest, shall be *permanently and irrevocably* subordinated to the rights of the Priority Lenders and any Lenders that become Super-Priority Lenders in accordance with subsection (d) hereof.

(c) Each defaulting Lender shall have 60 days from the Assessment Due Date to reinstate his, her or its Voting Rights and distribution priorities under Section 8.2, by delivering to the Servicer, on or before the expiration of such 60-day period, the entire delinquent Assessment Amount, plus interest thereon at the Delinquent Rate from the Assessment Due Date until the delivery of payment thereof (“**Delinquent Interest**”). If Servicer receives the full amount payable by Defaulting Lender hereunder within the 60-day period, such Defaulting Lender shall be credited with the payment of his, her or its Assessment Amount and shall thereafter be deemed a Priority Lender to the extent thereof, with full Voting Rights and all other rights provided to Priority Lenders set forth in this Agreement. The failure of any Defaulting Lender to deliver all amounts required by this subsection within this 60-day period shall, upon the expiration of such 60-day period, result in each of the following: (i) the right of the Defaulting Lender to pay such Lender’s pro rata share of the Assessment under this subsection shall immediately cease; (ii) the Defaulting Lender shall have his, her or its right to distributions of any Loan Proceeds or Property Proceeds otherwise payable under Section 8.2, *permanently and irrevocably* subordinated to the rights of all of the Priority Lenders to the return of both the Assessment Amounts paid by such Priority Lenders, plus interest thereon at the Delinquent Rate, and the payment of the Priority Lenders’ entire Investment Interest; (iii) such Defaulting Lender shall permanently forfeit all future Voting Rights under this Agreement and any right to make any Default Assessments pursuant to subsection (d), below; and (iv) to the extent any Default Assessments are made by other Lenders under subsection (d), below, the Defaulting Lender shall have his, her or its right to distributions of Loan Proceeds or Property Proceeds under Section 8.2, *further subordinated, permanently and irrevocably*, to the rights of all Super Priority Lenders to the return of the Default Contributions made by such Lenders, plus interest at the Delinquent Rate, and the payment such Lenders’ entire Investment Interest.

(d) If any defaulting Lender fails to pay his, her or its Assessment in full as required by Section(c), above, then the Servicer may notify the Priority Lenders of the Defaulting Lenders’ default and request the payment of the additional funds required to meet the obligations referenced in the original Assessment Notice (an “**Assessment Default Notice**”). Upon the receipt of an Assessment Default Notice, each of the Priority Lenders shall have the right but not the obligation, on a pro rata basis (based upon their relative Fractional Interests without reference to the interests of the Defaulting Members), to contribute the additional amounts required for the Assessment on the terms and conditions set forth in the Assessment Default Notice (a “**Default Assessment**”). Those Lenders that pay their pro rata share of any Default Assessment (the “**Super Priority Lenders**”) shall be entitled to the priority return of such amount of (their, “**Default Contribution**”), plus interest thereon at the Delinquent Rate and will receive the additional right under Section 8.2(b) to receive their entire Investment Interest from Loan Proceeds or Property Proceed prior to the distribution of the Investment Interests of the Defaulting Lenders and any Priority Lenders that fail to pay their Default Contribution. To the extent that one or more Priority Lenders fail to make their share of a Default Contribution, the Servicer may grant those Super Priority Lenders’ that do make a Default Contribution the further right to pay the remaining amount due on a pro rata basis (based upon the relative amounts of the Default Contributions paid by such Lenders) which amounts, if paid, will also be entitled to the priority return applicable to Default Contributions outlined in Section 8.2 below.

(e) Lender hereby acknowledges that if a Lender fails to pay its pro rata share of any Assessment as set forth in the Assessment Notice, the Defaulting Lender will immediately

lose such Lender's Voting Rights and the right to receive the return of his, her or its investment will *automatically be subordinated* to the right of all Priority Lenders to receive the return of their Assessment Amount, plus interest at the Delinquent Rate *AND* the return of their entire Investment Interest. Lender further acknowledges that if Lender fails to pay his, her or its delinquent Assessment Amount together with interest at the Delinquent Rate within the 60-day period set forth in subsection (c) hereof: the Defaulting Lender shall permanently lose all Voting Rights under this Agreement, and (ii) the Servicer shall have the right to accept Default Assessments from the Priority Lenders to pay Lender's delinquent share of the Assessment and Lender's right to any distributions payable from the Loan will be *permanently and irrevocably* subordinated to the rights of both the Priority Lenders and the Super Priority Lenders as set forth in Section 8.2.

The remedies set forth in this Section 6.2 are cumulative and not exclusive and shall not affect the rights of the Servicer or any other Lender to bring an action in law or equity against any Lender for any damages resulting from Lender's breach of the terms hereof.

**6.3 Loan Expense Reserves.** If Servicer determines, in its reasonable judgment, that Borrower has defaulted or is reasonably likely to default in its payment or other obligations under the Loan Documents and that Loan Expenses are reasonably likely to be incurred to enforce the rights of the Lenders thereunder, Servicer shall have the right (in addition to the Servicer's right to include adequate reserves as part of a Loan Expense Request) to retain in the Trust Account an amount not to exceed three months' interest under the Secured Note in order to pay for such enforcement costs ("**Loan Expense Reserves**").

#### **6.4 Servicer Advances.**

(a) Servicer shall not advance or be obligated to advance its own funds to the Lenders for any principal or interest owing under the Loan Documents. Servicer may, however, in its sole discretion and without being so obligated to the Lenders, advance its own funds on behalf of the Lenders to be applied towards any Loan Expenses payable in connection with the Loan or the Security Property. Servicer shall notify each Lender promptly of any advances made by the Servicer on behalf of the Lenders pursuant to this Section 6.3 ("**Protective Advances**") by giving the Lenders a written Expense Notice in accordance with Section 6.1(a) above and the repayment of the Protective Advance shall thereafter be governed by the Lender Assessment provisions of Section 6.1 above. Any Protective Advances made by the Servicer not paid by the Lenders under Section 6.1, shall be repayable to the Servicer from distributions made in accordance with Section 8.2.

(b) Notwithstanding any provision to the contrary in this Agreement, the Servicer shall have the authority, but not the obligation, to take any action otherwise subject to the approval rights granted to the Lenders hereunder without the consent or approval of any Lender or a Lender Majority so long as such action is deemed by the Servicer at the time the action is taken to be (i) required for protection of the interests of the Lenders in the Loan or the Security Property; and (ii) delaying such action in order to obtain the affirmative consent of the Lender Majority under this Agreement would be to the detriment of the Lenders' interests in the Loan or the Security Property (an "**Emergency Action**"). Any expenses incurred by the

Servicer taking an Emergency Action shall be payable by the Lenders as a Protective Advance in accordance with Section 6.3(a), above.

## **ARTICLE VII**

### **CONSENT RIGHTS**

7.1 **Actions Requiring Consent of Lender Majority.** Except as provided in Section (c), below, Servicer agrees that it shall not take any of the following actions without receiving the prior written approval of a Lender Majority:

(a) forbearing from filing a Notice of Default and Election to Sell or similar exercise of Lenders' rights under the power of sale contained in the Security Document (other than a forbearance or a loan extension as described in Sections 3.2(b) and (c) above);

(b) forgiving any principal or regular interest owing under the Loan (but Servicer shall have authority to waive or forgive late charges, default interest and pre-payment penalties (if any));

(c) modifying the terms of the Loan Documents (other than a forbearance or a loan extension as described in Sections 3.2(b) and (c) above);

(d) conducting a judicial foreclosure (as opposed to foreclosure under the power of sale contained in the Security Document) or take any action in furtherance thereof other than as necessary to conduct the Member Foreclosure Meeting authorized in Section 3.4; or

(e) any other action expressly requiring the affirmative approval of a Lender Majority under the terms of this Agreement.

7.2 **Consent Notice.** Servicer shall promptly relay to each Lender for such Lender's review and approval or disapproval the terms of any proposals discussed in this Article VII which notice may be via email transmission given in accordance with Section 11.1, below. The failure of Servicer to receive any Lender's written disapproval of the terms of any proposals within 10 days after the effective date of such notice (as set forth therein) or such later date set forth in the Notice, shall be deemed to constitute such Lender's disapproval of such terms.

## **ARTICLE VIII**

### **DISTRIBUTIONS**

8.1 **Pre-Default Distributions** Except to the extent reserved by the Servicer pursuant to Section 6.3, all Loan Payments received prior to the occurrence of an Event of Default by the Borrower, shall be distributed within 25 days of Servicer's receipt thereof as follows:

(a) first, to the Servicer in the amount of the Servicing Fee payable to the Servicer pursuant to Section 5.1 of this Agreement; and

(b) thereafter, to the Lenders pro rata in accordance with their Fractional Interests.

**8.2 Post-Default Distributions.** Following an Event of Default, any Loan Payments or Property Proceeds collected by the Servicer (“**Post-Default Proceeds**”) shall be applied by the Servicer and/or paid to the Lenders and the Servicer in the following order of priority:

(a) first, to the Servicer in an amount equal to all accrued and unpaid Servicing Fees, Management Fees or unpaid Protective Advances made by the Servicer and any other fees reimbursements or other amounts payable to the Servicer pursuant to this Agreement together with accrued interest thereon at the Delinquent Rate;

(b) second, to the Super Priority Lenders, in relative proportion to the in total Default Contributions made under Section 6.2(d) of this Agreement, until each Super Priority Lender has received distributions under this Section 8.2(b)(ii) equal to the full amount of their Default Contribution, plus interest thereon at the Delinquent Rate;

(c) third, to the Priority Lenders, in relative proportion to the total pro rata Assessment Amount paid by each Priority Lender under Section 6.2(b) of this Agreement, until each Priority Lender has received distributions under this Section 8.2(b)(iii), equal to their full Assessment Amount, plus interest thereon at the Delinquent Rate;

(d) fourth, to the Super Priority Lenders, in accordance with their relative Default Contributions, until each Super Priority Lender has received distributions under this Section 8.2(b)(iv) equal to their entire Investment Interest;

(e) fifth, to the Priority Lenders, in accordance with their relative Assessment Amounts, until each Priority Lender has received distributions under this Section 8.2(b)(v) equal to their entire Investment Interest;

(f) sixth, to the Defaulting Lender in proportion to their relative Fractional Interests until the Defaulting Lenders have received distributions under this Section 8.2(f) equal to their entire Investment Interest; and

(g) thereafter, to the Lenders in accordance with their Fractional Interests.

## **ARTICLE IX**

### **TERMINATION OF AGREEMENT**

**9.1 Termination by Notification.** This Agreement may be terminated by the Lenders or Servicer upon 30 days’ prior written notice subject to the following:

(a) The terminating party shall give the non-terminating party (which in the case of a termination by the Servicer shall include each of the Lenders) written notice of the termination of this Agreement pursuant to this Section 9.1 (a “**Termination Notice**”) which termination shall be effective 30 days following the date of the Termination Notice or any later date provided for in the Termination Notice (the “**Termination Date**”);

(b) No Termination Notice delivered by the Lenders shall be effective unless such Termination Notice is executed by Lender's representing at least a Lender Majority;

(c) Upon termination by Lenders or Servicer pursuant to Subsection (a), above, Lenders shall be required to pay to Servicer an amount equal to the sum of (i) any and all Servicing Fees accrued but unpaid as of the Termination Date; plus (ii) any Management Fees accrued but unpaid as of the Termination Date; plus (iii) any Protective Advances and any other sums advanced by Servicer on behalf of the Lenders, plus interest thereon at the Delinquent Rate through the Termination Date;

(d) Following the delivery of a Termination Notice by Servicer or a Lender Majority, Servicer shall take no further actions in connection with the Loan except as directed, in writing, by a Lender Majority; and

(e) Following the delivery or receipt of a Termination Notice by the Lenders, the Lenders shall have the sole responsibility to identify and retain a substitute loan servicer or other agent to act for the Lenders in connection with the Loan (a "**Replacement Agent**") and to notify the Servicer of the retention of such Replacement Agent on or before the Termination Date. If a Lender Majority fails to notify Servicer of the appointment of a Replacement Agent by the Termination Date, then Servicer shall be authorized to: (i) distribute any undisbursed funds held for the benefit of the Lenders (less any amounts payable to the Servicer in accordance with subsection (c), above) to the Lenders in accordance with their Fractional Interests or as otherwise required in this Agreement; and (ii) deliver all Loan files in Servicer's possession to the Lender holding the greatest percentage Fractional Interest in the Loan or any other party identified by a Lender Majority on or prior to the Termination Date.

**9.2 Automatic Termination.** Unless sooner terminated pursuant to Section 9.1, above, this Agreement shall automatically terminate upon the occurrence of either of the following:

(a) all principal, interest and all other sums owing under the Loan Documents have been paid in full and distributed to the Lenders in accordance with this Agreement;

(b) a Lender Majority shall have accepted in writing other consideration in full satisfaction of all amounts owing to all Lenders under the Loan Documents; or

**9.3** each and every Lender has assigned his, her or its Fractional Interest in the Loan to a Transfer Entity governed by a Transfer Entity Agreement which expressly terminates the terms of this Agreement.

## **ARTICLE X**

### **LIMITATION OF LIABILITY; INDEMNIFICATION**

**10.1 Limitation of Liability.** The Lenders hereby release Servicer and its affiliates and their officers, directors, shareholders, employees and agents ("**Servicer Parties**") from any and all actions, liabilities, damages, claims, suits and demands of every kind, nature and description that the Lenders may hereafter acquire against the Servicer Parties arising out of any

acts or omissions of the Servicer Parties under this Agreement, so long as the Servicer Parties are acting in good faith under this Agreement, are not grossly negligent and have not engaged in willful misconduct.

**10.2 Indemnification.** Each Lender hereby agrees, but only to the extent of such Lender's Fractional Interest, to indemnify, defend and hold the Servicer Parties harmless from and against any and all losses, claims, liabilities, costs and expenses threatened against or incurred by the Servicer Parties not covered by insurance and arising out of or in connection with any acts or omissions of the Servicer Parties under this Agreement, so long as the Servicer Parties are acting in good faith under this Agreement, are not grossly negligent and have not engaged in willful misconduct. The provisions of this Article X shall survive the termination of this Agreement.

## **ARTICLE XI**

### **MISCELLANEOUS**

**11.1 Notices.** All payments, notices and other documents or communication required or contemplated under this Agreement shall be given in the manner provided as follows:

(a) Notices from Lender to Servicer shall be made either by mail or by electronic transmission (i.e., email) at the addresses set forth below:

BLACKBURNE & SONS REALTY CAPITAL CORPORATION  
4811 Chippendale Drive, Suite 101  
Sacramento, California 95841

Attention: \_\_\_\_\_

Phone No.: \_\_\_\_\_

Facsimile No.: (\_\_\_\_) \_\_\_\_\_

Email: \_\_\_\_\_@\_\_\_\_\_

(b) Notices from Servicer to Lender shall be made at the address of such Lender (including, as applicable, any email address) provided to Servicer in the Subscription Agreement. Such addresses may be changed by giving notice to the Servicer of such change of address in the manner provided herein.

(c) Unless otherwise notified by Lender that notifications and other communications to Lender under this Agreement should not be made by email transmission, Servicer may send all notices to Lender (including any proposed actions subject to the approval of a Lender Majority) by email transmission unless Servicer determines, in its discretion, that such notice or the information included therewith is too cumbersome or otherwise not appropriate for such transmission. All email notifications made to Lender shall be sent to the email address listed by the Lender in the Subscription Agreement or such other email address provided to Servicer in the manner provided herein. Email transmission notifications shall be deemed given 48 hours after the original email transmission was sent by the sender so long as sender has not received a delivery default notification or similar notification of non-transmittal within such two day period.

(d) Any payments, notices and other documents or communications not made by email transmission pursuant to subsection (c), above, shall be deemed given (i) when hand-delivered, or (ii) 48 hours after being deposited with the United States Post Office, first class mail, postage prepaid; or (iii) when received by confirmed facsimile transmission; or (iv) one business day after being deposited with a nationally-recognized overnight courier service.

**11.2 Return of Principal and Interest.** Nothing contained in this Agreement or any other agreement between the Lenders and the Servicer Parties with respect to the Secured Note or the Security Property is intended, nor shall it be construed to be, as any type of representation, warranty or guaranty whatsoever by the Servicer Parties that the Secured Note is collectible, that any Lender shall ultimately receive his or her pro rata share of the entire unpaid principal balance, accrued interest and costs with respect to the Secured Note and the Security Document or that the equity in the Security Property is sufficient to protect such Lender's investment.

**11.3 Responsibility for Payments.** Servicer shall not be liable to any Lender for the failure of such Lender to receive any payment, notice or other document or communication if such Lender should change its address without notifying Servicer in the manner provided herein. Should Servicer be put on notice by any Lender of conflicting claims as to the right to any proceeds of such Lender's Fractional Interest, Servicer may retain such proceeds, without liability or interest thereon, until such time as Servicer is satisfied that such conflict is resolved, or, in the alternative, Servicer may interplead the claimants and if Servicer so interpleads or if Servicer is made a party to any other suit between such claimants, the Lenders agree that Servicer may deduct from any amounts owing to such Lender with respect to his or her Fractional Interest all costs, expenses and reasonable attorney's fees suffered or incurred by Servicer as a result thereof.

**11.4 Assignment.** This Agreement shall be binding on and shall inure to the benefit of the parties hereto, and to their respective heirs, legal representatives, successors and assigns. Fractional Interests are being offered and sold without registration under the Securities Act of 1933, as amended, and in reliance upon the exemption from such registration requirements for intrastate offerings. Accordingly, the fractional undivided interests in the Secured Note cannot be sold, assigned or otherwise transferred (i) for a period of nine months from the termination of the offering for these fractional undivided interests, (ii) except to certain selected residents of the State of California, and (iii) except as provided in Section 260.141.11 of the Rules of the California Corporations Commissioner, without the consent of the Commissioner of Corporations for the State of California. Additionally, no such sale, assignment or transfer shall be valid until the assignee has executed a copy of this Agreement and Servicer has received this executed copy.

**11.5 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California.

**11.6 Counterparts; Third Party Beneficiaries.** This Agreement and/or the signature page hereto may be executed in any number of counterparts and each counterpart hereof shall constitute an original document. In addition, this Agreement and all other Servicing Agreements executed by Servicer and other Lenders with respect to the Loan shall all constitute one and the same Agreement, and are acknowledged to have been entered into with the intent to benefit each



such other Lender. All such Agreements shall be enforceable by any one or more other Lenders with respect to the Loan as if all Lenders were parties to the each such separate Servicing Agreement.

## **ARTICLE XII**

### **POWER OF ATTORNEY**

#### **12.1 Power of Attorney.**

(a) The Lenders hereby grant to Servicer an irrevocable special power of attorney, coupled with an interest, to perform all acts that Servicer is authorized to perform on behalf of the Lenders pursuant to this Agreement including, without limitation, the power and authority to calculate and submit loan payoff demands, to receive loan payoffs on behalf of the Lenders, to execute on behalf of Lenders any request for reconveyance of the Security Document that may be appropriate upon any such loan payoff, to execute any substitution of trustee under the Security Document that Servicer deems appropriate to enforce the terms of the Loan Documents, to take title to the Security Property as trustee or nominee for the Lenders, to cause title to the Security Property to be taken in the name of all Lenders as tenants in common or in the name of a Transfer Entity and to manage, encumber and sell the Security Property on behalf of the Lenders as provided in this Agreement. Without limiting the foregoing, Servicer is expressly authorized to do any of the following on behalf of all Lenders (subject to any applicable approval rights (if any) of a Lender Majority if and to the extent expressly provided elsewhere in this Agreement): execute requests for reconveyance, file notices of default, select a foreclosure agent, make demands, request substitutions of trustees, seek a receiver, publish and record notices of sale, file complaints, obtain judgments and deficiency judgments, seek relief from any stay of foreclosure proceedings or defend any litigation which seeks to restrain such foreclosure proceedings, accept reinstatements, execute subordination agreements, bid at a foreclosure sale and otherwise conduct judicial or non-judicial foreclosure proceedings; file, prosecute and defend legal actions and otherwise enforce the terms of the Loan Documents; employ attorneys, accountants, appraisers and other third parties; obtain market studies and other reports; and enter into contracts for and execute documents in connection with the refinancing, sale or operation of the Security Property, including the execution of deeds of trust or grant deeds and entering into subordination agreements with other lenders or lien holders on the Security Property.

(b) Lender acknowledges that the effect of granting the power of attorney set forth above is to give the Servicer the right and authority to execute, on Lender's behalf, all documents required in the furtherance of Servicer's obligations under this Agreement including, but not limited to, any actions approved by a Lender Majority (if required), whether or not Lender has approved of such action.

**LENDER HAS READ CAREFULLY AND UNDERSTANDS THE FOREGOING POWER OF ATTORNEY PROVISIONS AND THEIR EFFECT.**

\_\_\_\_\_  
(INITIAL)

\_\_\_\_\_  
(INITIAL)

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date first set forth above.

**SERVICER:**

BLACKBURNE & SONS REALTY CAPITAL  
CORPORATION  
a California corporation

By: \_\_\_\_\_

Its: \_\_\_\_\_

**LENDER:**

\_\_\_\_\_

\_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_