

LOAN SERVICING AND TENANCY IN COMMON AGREEMENT

THIS LOAN SERVICING AND TENANCY IN COMMON AGREEMENT (“Agreement”) is made as of _____, 2006 by and among Blackburne & Brown Mortgage Company, Inc. (“Servicer”), and each of the individuals and entities who have executed a counterpart signature page to this Agreement (each, a “Lender” and collectively the “Lenders”).

RECITALS

A. Servicer has arranged a \$_____ loan (the “Loan”) to be made by the Lenders to _____ (“Borrower”), which loan will be evidenced by a \$_____ Promissory Note (the “Note”) given by Borrower in favor of the Lenders and dated as of the date that the Loan is closed. The Note will be secured by a Deed of Trust that will encumber certain real property located in _____ County, and the improvements thereon commonly known as _____ (the “Property”). The Lenders have purchased fractionalized undivided interests in the Note.

B. The Loan may be used to construct or renovate certain improvements on the Property (the “Improvements”), in which case the Loan will be disbursed to Borrower, or on Borrower’s behalf, pursuant to the terms of 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.

C. The Lenders desire to appoint Servicer as their agent to disburse the Loan pursuant to the Construction Loan Agreement (if applicable), service the Note and to protect their interest in and enforce their rights under the Note, Deed of Trust, Construction Loan Agreement (if applicable) and any other agreements, security instruments and other documents executed in connection therewith (collectively the “Loan Documents”), all in accordance with the terms of this Agreement.

NOW, THEREFORE, the parties hereto agree as follows:

1. **Relationship of Parties**. Each Lender understands and acknowledges that he or she owns only a fractional undivided interest in the Note and that other Lenders also own fractional undivided interests in the Note. The fractional undivided interest of any Lender in the Note, the Deed of Trust, the Property (if Borrower should default under the Note and the Lenders, Servicer or some entity formed by the Lenders and Servicer should take title to the Property) or any proceeds therefrom shall be referred to herein as a “Fractional Interest”. The Lenders acknowledge that Servicer is serving as their agent with respect to the Note and that no other relationship between the Lenders and Servicer, including that of a partnership, joint venture, tenancy-in-common or trustee relationship is created by this Agreement. The Lenders further acknowledge that 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 that such services are ministerial and not discretionary in nature and that no fiduciary relationship is created between the Servicer and

any Lender by reason of the Services being provided for in this Agreement. Notwithstanding the foregoing, the Lenders acknowledge that Servicer or an affiliate of Servicer may also own a Fractional Interest, in which case Servicer or its affiliate 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.

2. **Appointment.** The Lenders hereby appoint Servicer as their agent to service the Note, to act for them under any of the Construction Loan Agreement, to protect their interest in and enforce their rights under the Note, Deed of Trust and any other Loan Documents and, if necessary, to manage, refinance or sell the Property, all in accordance with the terms of this Agreement. In connection with this appointment, the Lenders have granted Servicer an irrevocable durable power of attorney, coupled with an interest, as provided in Paragraph 15 below. Servicer hereby accepts this appointment and agrees to exercise diligent and good faith efforts in the execution of its duties as agent in accordance with reasonable and customary commercial practice.

3. **Note Servicing.** Servicer shall provide written notification to Borrower of Servicer's appointment as servicing agent and shall instruct Borrower to make all payments ("Payments") due under the Note and Deed of Trust payable to Servicer. With respect to its obligations as servicing agent, Servicer agrees as follows:

(a) If the Loan is subject to Construction Loan Agreement, Servicer shall disburse and administer the Loan pursuant to the Construction Loan Agreement; provided, however, that 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 property securing the Loan or impair the Borrower's ability to perform under the Construction Loan Agreement.

(b) Upon Servicer's receipt of any Payments, such Payments shall be immediately deposited into a 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 California Business and Professions Code, the California Administrative Code, 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) Payments shall not be commingled with any other assets of Servicer or used for any transactions other than the transaction for which such Payments are received by Servicer.

(d) Prior to the occurrence of an event of default under the Loan Documents, that portion of any Payment received by Servicer that constitutes principal, accrued interest, late charges and other sums owing under the Note for any month (less the servicing fee for such month as described in Paragraph 5 below and any holdbacks made by Servicer pursuant to Paragraph 6(a) below) shall be delivered to each of the Lenders pro rata according to his or her

Fractional Interest within twenty-five (25) days after Servicer's receipt thereof. Following the occurrence of an event of default under the Loan Documents, all Payments shall be distributed as provided in Paragraph 11 below.

(e) Servicer shall maintain records of its receipt, maintenance and disbursement of all Payments.

(f) Servicer shall provide to each Lender a monthly statement that indicates the Payments disbursed to such Lender during such month. Additionally, Servicer shall provide to each Lender an IRS form 1099-INT for each calendar year.

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

4. **Original Documents**. Servicer shall maintain possession of all original Loan Documents on behalf of all Lenders for such period as is required by law.

5. **Servicing Fee**. In consideration of its services hereunder and for as long as this Agreement remains in effect, the Lenders agree that Servicer shall be entitled to receive the following fees:

(a) A monthly servicing fee in an amount equal to one-twelfth (1/12) of _____ percent (_____%) of the unpaid principal balance outstanding under the Note at the beginning of such month. The servicing fee shall be deducted each month from the interest owing to the Lenders for such month. The Lender acknowledges that Servicer uses the monthly servicing fee to fulfill its loan servicing obligations under the Agreement. If Servicer does not receive any interest for any month, Servicer reserves the right to bill each Lender for his or her pro rata share of the scheduled monthly servicing fee. Each Lender agrees to pay its share of such servicing fee within ten (10) days after delivery of Servicer's written notice requesting such fee. Alternatively, the Servicer may, at its option, allow the unpaid servicing fee to accrue at the Delinquent Rate as defined in Paragraph 5(c) below.

(b) Income properties taken back in foreclosure often suffer from deferred maintenance and are seldom fully leased. Such properties need immediate and aggressive management attention. Therefore, if following the occurrence of a Transfer (as defined in Paragraph 7(d) below) Servicer should manage the Property on behalf of the Lenders (as provided in Paragraph 9 below), then Servicer shall be entitled to a monthly property management fee equal to the greater of \$300 or eight percent (8%) of the scheduled gross monthly rents and income from the Property. If the Property is fully or partially vacant, the scheduled gross monthly rents and income for the unoccupied portion of the Property will be determined based on a reasonable estimate of fair market rent or income. The property management fee shall be deducted each month from the gross rents and income from the Property. If the actual gross monthly rents and income from the Property are not sufficient to pay the property management fee, then Servicer anticipates accruing such property management fee at the Delinquent Rate as defined in subparagraph 5(c) below. However, the Lenders acknowledge that Servicer will use the property management fee to fulfill its property management obligations under this Agreement. Accordingly, Servicer reserves the right to bill

the Lenders for the property management fee on a pro rata basis. Each Lender agrees to pay his or her share of such property management fee within ten (10) days after delivery of Servicer's written notice requesting such fee. If the Property consists of undeveloped land and the Lenders should foreclose on or otherwise take title to the Property, then Servicer will charge a property management fee equal to \$400 a month. Since the Property will probably not generate any income, Servicer will bill the Investors on a monthly basis for this property management fee.

(c) If Servicer should bill the Lenders for the monthly servicing fee or the monthly property management fee, that portion of any such fee that is not paid when due shall bear interest at the lesser of (i) the rate of interest owing under the Note, plus three percent (3%), or (ii) the maximum rate allowable at law (the "Delinquent Rate") from the date of delinquency until the date such fee is paid in full. Additionally, a late charge equal to ten percent (10%) of the amount due shall be imposed on any such delinquent payment. Lender recognizes that default by it in making timely payment of the loan servicing fee or the property management fee will result in Servicer incurring additional expense in servicing the Loan and/or managing the Property and in frustration to Servicer in meeting its other financial commitments. Lender agrees that if it should fail to pay such fees when due, Servicer shall be entitled to damages for the detriment cause thereby, but that it is extremely difficult and impractical to ascertain the amount of such damages. Lender agrees that an amount equal to ten percent (10%) of the amount due is a reasonable estimate of such damages. Acceptance of any late charge shall not constitute a waiver of default with respect to the delinquent payment.

6. **Interest Reserve Holdback; Additional Lender Advances.**

(a) If Servicer should determine, in its reasonable judgment, that Borrower may default in its payment or other obligations under the Loan Documents and that costs will need to be incurred to protect the value of the Property as security and/or to enforce the rights of the Lenders under the Loan Documents, then Servicer shall have the right to retain in the Trust Account an amount not to exceed two (2) months' interest under the Note in order to pay for such costs. Servicer may retain such funds in the Trust Account for as long as Servicer deems prudent, in its reasonable business judgment.

(b) Servicer shall not advance or be obligated to advance to the Lenders any principal or interest owing under the Loan Documents. Additionally, Servicer shall not advance or be obligated to advance any amounts necessary or advisable to protect the value of the Property as security to enforce the Lenders' rights under the Loan Documents or, if necessary, to manage, refinance or sell the Property. These items, costs and expenses may include, without limitation, the advancement of funds necessary to complete construction or renovation of all or a phase of the Improvements, the cost and expense of engaging attorneys, accountants, appraisers and other third parties and of obtaining market studies and other reports as Servicer deems advisable (all such actions shall be referred to herein as "Protective Actions"). If Servicer should determine from time to time, in its reasonable business judgment, that additional funds are needed to engage in Protective Actions, then Servicer shall be entitled to assess the Lenders for such additional funds (an "Assessment"). Servicer shall provide written notice to the Lenders of the amount of any Assessment, the purpose for which such Assessment is to be used and each Lender's share of such Assessment (based on each Lender's Fractional Interest). The written

notice shall also inform the Lenders that (i) those Lenders who fail to advance their pro rata share of an Assessment shall have their right to receive principal, interest, late charges and other amounts owing under the Note, or any rent, sales or other proceeds if the Lenders should take title to the Property (collectively, "P&I") automatically subordinated to the right of Lenders who do advance their pro rata share of an Assessment to receive P&I, and (ii) those Lenders who advance more than their pro rata share of an Assessment (in order to make up the Assessments owing by a delinquent Lender) shall be entitled to a priority return of their P&I before those Lenders who advance only their pro rata share of an Assessment are entitled to receive their P&I, in each case as provided in Paragraph 6(d) below. Delinquent Lenders shall have 60 days after delinquency to pay the delinquent amount of their Assessment, together with interest at the Delinquent Rate, in order to reinstate the priority of their right to receive P&I. If the delinquent Lenders fail to advance the delinquent amount within this 60 day period, then their right to receive P&I shall be permanently and irrevocably subordinated to the right of Lenders who do advance their pro rata share of an Assessment to receive P&I. The cash and expenses for which Assessments may be applied against may include, without limitation, the cost and expense of paying property taxes, insurance (including forced order fire insurance), bringing or keeping senior liens current (if any), trustee's sale guarantees and other foreclosure costs, marketing costs, engaging attorneys, accountants, appraisers, contractors and other third parties, obtaining market studies and other reports as Servicer deems advisable, and paying for leasing commissions and tenant improvement costs. Each Lender agrees to pay its share of each Assessment within ten (10) days after delivery of Servicer's written notice requesting such funds. Each Lender acknowledges that Servicer shall not be able to engage in Protective Actions unless and until all Lenders have paid their share of an Assessment and that other Lenders are investing in the Note in part in reliance on the representation by each Lender that such Lender shall advance his or her share of an Assessment. Each Lender acknowledges that the value of the Property as security, the ability of Servicer to enforce the rights of the Lenders under the Loan Documents, and/or the ability of Servicer to manage, refinance or sell the Property may be materially impaired if any Lender fails to pay its share of an Assessment when requested to do so by Servicer. Each Lender grants Servicer an irrevocable, durable power of attorney, coupled with an interest, to file suit, seek injunctive relief or otherwise enforce the rights of such Lender against any other Lender who fails to timely pay its share of an Assessment when such Assessment is due, all as provided in Paragraph 15 below. Additionally, each Lender assigns to Servicer all rights, claims and causes of action it may have against any other Lender for contribution, indemnity or under any other contractual or equitable theory if such Lender should fail to pay its share of an Assessment when such Assessment is due. Any Assessments that are not paid when due shall bear interest at the Delinquent Rate.

(c) In order to protect the value of the Property as security or to allow Servicer to timely enforce the rights of the Lenders under the Loan Documents, the Lenders acknowledge that it may be prudent for one or more of them to pay, in addition to their own share of an Assessment, the share of an Assessment owing by a non-paying Lender, rather than wait for Servicer to obtain and enforce a judgment against such non-paying Lender. For example, if Borrower fails to maintain fire and casualty insurance, one or more Lenders may prefer to pay more than their pro rata share of an Assessment in order to ensure that the Property remains insured, rather than allow the Property to go uninsured while Servicer is pursuing its and the other Lenders' remedies against the non-paying Lender. If a Lender pays more than its pro

rata share of an Assessment, the excess amount paid shall bear interest at the Delinquent Rate from the date such excess amount is advanced until the date such excess amount is paid in full. If and when Servicer obtains any funds from a non-paying Lender, such funds shall first be used to repay any Lender who has paid more than its pro rata share of an Assessment plus interest, and then applied against the use for which the Assessment was originally sought. Any Lender who has paid more than its pro rata share of an Assessment and who has not otherwise been repaid for such excess amount shall be entitled to receive such excess amounts and interest thereon as provided in Paragraph 11 below.

(d) IF A LENDER FAILS TO PAY ITS PRO RATA SHARE OF AN ASSESSMENT WITHIN TEN DAYS AFTER WRITTEN REQUEST THEREFOR BY SERVICER, THE DELINQUENT LENDER'S RIGHT TO RECEIVE ITS ENTIRE SHARE OF P&I WILL AUTOMATICALLY BE SUBORDINATED TO THE RIGHT OF ALL LENDERS WHO PAY THEIR PRO RATA SHARE OF AN ASSESSMENT TO RECEIVE THEIR SHARE OF P&I. MOREOVER, ANY LENDER WHO PAYS MORE THAN ITS PRO RATA SHARE OF AN ASSESSMENT (IN ORDER TO MAKE UP THE ASSESSMENT OWING BY A DELINQUENT LENDER) SHALL BE ENTITLED TO A PRIORITY RETURN OF ITS ENTIRE SHARE OF P&I BEFORE ANY LENDER WHO HAS ONLY PAID ITS PRO RATA SHARE OF AN ASSESSMENT SHALL RECEIVE ITS SHARE OF P&I. SERVICER SHALL PROVIDE WRITTEN NOTICE TO ALL DELINQUENT LENDERS OF THEIR FAILURE TO TIMELY PAY THEIR PRO RATA SHARE OF AN ASSESSMENT, WHICH NOTICE SHALL INFORM THE DELINQUENT LENDERS THAT (I) THEY SHALL HAVE 60 DAYS TO PAY THE DELINQUENT AMOUNT IN ORDER TO REINSTATE THE PRIORITY OF THEIR RIGHT TO RECEIVE P&I, AND (II) IF THEY FAIL TO PAY THE DELINQUENT AMOUNT WITHIN THIS 60 DAY PERIOD, THEIR RIGHT TO RECEIVE P&I SHALL BE PERMANENTLY AND IRREVOCABLY SUBORDINATED TO THE RIGHT OF LENDERS WHO DO ADVANCE THEIR PRO RATA SHARE OF AN ASSESSMENT TO RECEIVE P&I. LENDERS WHO HAVE TIMELY PAID THEIR PRO RATA SHARE OF AN ASSESSMENT SHALL HAVE THE RIGHT, BUT NOT THE OBLIGATION, TO REIMBURSE ANY LENDER WHO HAS PAID MORE THAN HIS OR HER PRO RATA SHARE OF AN ASSESSMENT FOR ALL OF THE EXCESS AMOUNT PAID BY SUCH LENDER, PLUS INTEREST AT THE DELINQUENT RATE. ANY LENDERS WHO SO REIMBURSE A LENDER WHO HAS PAID MORE THAN HIS OR HER PRO RATA SHARE OF AN ASSESSMENT SHALL HAVE THE SAME PRIORITY OF RETURN OF P&I AS DOES THE REIMBURSED LENDER.

To illustrate the effect of this Paragraph 6(d), assume that there are four Lenders who have each invested \$100 in a loan (the total loan amount being \$400). Servicer determines that an Assessment is needed to pay for fire and casualty insurance premiums. Lender A fails to pay its \$2 share of the Assessment, Lenders B and C each pay their \$2 shares of the Assessment and Lender D pays its \$2 share of the Assessment, as well as an additional payment of \$2 (such additional payment being used to pay Lender A's share of the Assessment). P&I shall be distributed first to Lender D as to its entire share, then to Lenders B and C in equal proportion as to their entire shares and then to Lender A. Lender A can reinstate its priority as to P&I if it reimburses Lender D for the entire amount of Lender D's additional payment, together with interest at the Delinquent Rate, within 60 days after Servicer has delivered written notice of

delinquency. Otherwise, Lender A's right to receive P&I shall be permanently and irrevocably subordinated to the rights of Lenders B, C & D to receive P&I. If Lenders B and C make payments to Lender D such that each of Lenders B, C and D bear a proportional share of Lender A's share of the Assessment, then Lenders B, C and D shall all have equal priority as to P&I, following which Lender A shall be entitled to its return of P&I.

7. **Enforcement.**

(a) Upon the discovery by Servicer of an event of default under the Loan Documents, Servicer shall promptly notify the Lenders of the occurrence and nature of such event of default. Unless otherwise directed in writing by the Lenders as hereafter described, Servicer shall take one of the following courses of action following the occurrence of such event of default: (i) promptly perform all acts and execute all documents necessary to (A) exercise the power of sale contained in the Deed of Trust, including, without limitation, select a foreclosure agent, make demands, accept reinstatements, seek relief from any stay of foreclosure proceedings, and defend any litigation which seeks to restrain such foreclosure proceedings, and (B) enforce all rights and remedies available to the Lenders with respect to any other collateral for the Loan (provided, however, that if the loan enforcement practice typically undertaken by commercial lenders in the state in which the Property is located is to foreclose judicially or to take some other course of action, then B&B reserves the right to foreclose judicially or to take such other course of action if it deems it prudent to do so in the reasonable exercise of its judgment) (the form of loan enforcement undertaken by B&B shall be referred to as the "Loan Enforcement Process"); or (ii) negotiate and enter into a forbearance agreement in accordance with reasonable and customary commercial practices if (X) Servicer determines that such action is necessary or appropriate to protect the interests of the Lenders, (Y) the term of such forbearance agreement does not extend more than ninety (90) days from the date Servicer discovers the occurrence of such event of default, and (Z) the purpose of such forbearance is to allow Borrower additional time to refinance or sell the Property or otherwise arrange to pay all amounts owing under the Loan Documents. If Servicer should agree to forbear for ninety (90) days as provided in clause (ii) above and Borrower has not paid all amounts owing under the Loan Documents on or before the end of such ninety (90) day period, then Servicer shall promptly proceed to undertake the Loan Enforcement Process as provided in clause (i) above. Additionally, Servicer may, without first obtaining the prior written consent of any of the Lenders, (i) 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 the Loan Enforcement Process, and (ii) file suit or pursue other legal remedies against any guarantors of the Loan if such action will not impair the Lenders' security interest in the Property. Any actions taken by Servicer pursuant to this Paragraph 7 shall be taken by Servicer as agent for and on behalf of all the Lenders.

(b) If there is a Construction Loan Agreement applicable to the Loan, Servicer shall have the right, without first obtaining the written consent of any of the Lenders, to exercise those additional remedies in the Construction Loan Agreement which are supplemental to those available to the Lenders under the Secured Note and Deed of Trust including termination of further disbursement from the construction disbursement account (as outlined in the Construction Loan Agreement), declaring the Loan immediately due and payable, ordering the

work stopped if it appears to be proceeding in substantial deviation from the plans and specifications, ordering defaults to be corrected and additional funds added to the construction disbursement account to pay for additional work, and disbursing funds from the construction disbursement account to the Lenders to be credited against the Loan. Without the written consent of Lenders holding more than fifty percent (50%) of the Fractional Interests, Servicer will not, however, have the authority to enforce any supplemental remedy which would require that, in order to complete or further construction, Lenders expend funds or become liable for funds advanced or which would require that the Secured Note be subordinated to repayment of funds advanced by others, except as provided in subparagraph (c) of this paragraph 7.

(c) Servicer agrees that it shall not, without the prior written consent of Lenders holding more than fifty percent (50%) of the Fractional Interests: (i) forbear from undertaking the Loan Enforcement Process more than ninety (90) days from the date Servicer discovers the occurrence of an event of default under the Loan Documents; (ii) forgive debt; (iii) modify the terms of the Loan Documents (other than a forbearance as described in Paragraph 7(a) above); or (iv) conduct a judicial foreclosure (as opposed to foreclosure under the power of sale) if a judicial foreclosure does not constitute a part of the Loan Enforcement Process. Additionally, if the Loan is a construction loan and there should occur an event of default under the Loan Documents before the construction or renovation has been completed pursuant to the Construction Loan Agreement, Servicer shall not complete such construction or renovation except pursuant to a plan approved in writing by Lenders holding more than fifty percent (50%) of the Fractional Interests. Notwithstanding the foregoing sentence, Servicer may complete all or portions of the construction or renovation (X) using all or a portion of any undisbursed funds in any construction disbursement account required by the Construction Loan Agreement, and (Y) using funds advanced by Servicer for the benefit of the Lenders, if Servicer determines in its business judgment that such work is required to avoid the risk of material damage to or material deterioration in value of the Property before the consent of Lenders can be obtained. Servicer shall promptly relay to each Lender for such Lender's review and approval or disapproval the terms of any proposals discussed in this subparagraph 7(c). The failure of Servicer to receive any Lender's written approval of the terms of such proposals within thirty (30) days after Servicer's delivery thereof to such Lender shall be deemed to constitute such Lender's disapproval of such terms.

(d) If title to the Property should be transferred from Borrower as a consequence of a default by Borrower under the Loan Documents, whether such transfer should be by judicial or non-judicial foreclosure or by a deed in lieu of foreclosure, the grantee of the deed shall be one of the following, as determined by Servicer in its sole discretion: (i) Servicer, in trust and as trustee for the Lenders, (ii) Servicer, as nominee or agent for the Lenders, (iii) the Lenders, as tenants in common, or (iv) a corporation or partnership or limited liability company that is formed and capitalized as follows: the corporation or partnership or limited liability company shall be formed by Servicer; each of the Lenders shall contribute his or her Fractional Interest in exchange for a pro rata share of corporate stock or partnership or limited liability company interest; and the corporation or partnership or limited liability company shall succeed to the interest of each of the Lenders under this Agreement. The occurrence of such a transfer of title shall constitute a "Transfer." If requested by Servicer, each Lender shall execute and deliver any documents reasonably necessary to effectuate a Transfer. If Servicer should take

title to the Property in trust and as trustee for the Lenders, Servicer shall have only those duties and obligations expressly provided for in this Agreement.

8. **Waiver of Foreclosure Rights and Right to Partition.** Each Lender acknowledges that he or she is a tenant-in-common with the other Lenders as to the Note and the Deed of Trust. Additionally, if there should be a Transfer, the Lenders shall hold, as tenants in common, either a direct interest or a beneficial interest in the Property. Each Lender acknowledges that he or she has appointed Servicer as his or her agent to (i) protect his or her interest in and enforce his or her rights and remedies under the Loan Documents, and (ii) manage, refinance and/or sell the Property following a Transfer. Each Lender also acknowledges that Lenders holding more than fifty percent (50%) of the Fractional Interests 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 he or she may have to institute foreclosure proceedings under the Deed of Trust on his or her own initiative or to otherwise pursue separately his or her rights and remedies under the Loan Documents, and (ii) any direct or beneficial right he or she may have to seek a partition of the Property after the occurrence of a Transfer.

9. **Appointment as Property Manager.** Unless Lenders holding more than fifty percent (50%) of the Fractional Interests should object in writing and appoint another party, then, following the occurrence of a Transfer, Servicer shall be the Lenders' exclusive property manager to manage the Property in a manner customary for property managers of properties similar to the Property. Among other things, Servicer may lease the Property; collect rents; pay from such rents the cost of utilities, taxes, insurance, maintenance, repairs, marketing, Servicer's property management fee and other operating expenses deemed necessary or advisable by Servicer in its reasonable business judgment; hire others to provide maintenance, repair and other services; maintain a complete set of books and records of the operations of the Property; and evict tenants and take other actions against tenants of the Property who are in default under their respective leases. The Lenders acknowledge that if the cash flow from the Property is not sufficient to pay operating, maintenance and repair expenses of the Property, the Lenders may need to pay Assessments as provided in Paragraph 6(b) above.

10. **Sale of Property.**

(a) If there should be a Transfer, Servicer shall exercise diligent and good faith efforts to sell the Property for the highest price that Servicer reasonably believes it can obtain. Notwithstanding the foregoing, Servicer may enter into any proposed sale of the Property without first obtaining the written consent of any of the Lenders if (i) the cash proceeds available at the closing of such a proposed sale are sufficient to repay all amounts described in subparagraphs 11(i) through 11(vi) below, and (ii) the prospective purchaser in such proposed sale is not Servicer or any affiliate of Servicer.

(b) With respect to any proposed sale other than as described in subparagraph 10(a) above, Servicer shall promptly provide the Lenders with written notice of all material terms of such proposed sale for their review and approval, which such approval must be received by Servicer within a period of time specified by Servicer in such written notice but in

any event no later than thirty (30) days after Servicer's delivery of such written notice to the Lenders. The failure of Servicer to receive any Lender's written approval of the terms of such proposed sale within the specified time period shall constitute such Lender's disapproval of such terms. If approval is required pursuant to this Paragraph 10(b), Lenders holding more than fifty percent (50%) of the Fractional Interests must give their written approval before Servicer is authorized to enter into a proposed sale. If Servicer or an affiliate of Servicer is the prospective purchaser in a proposed sale of the Property and if Servicer or an affiliate of Servicer is also a Lender, then the Fractional Interests of Servicer or the affiliate of Servicer shall not be included for purposes of determining whether the Lenders' consent to such a sale has been obtained.

(c) With respect to any proposed sale that Servicer is authorized to enter into pursuant to this Paragraph 10, 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. The Lenders agree that Servicer may, in anticipation of the occurrence of a Transfer, solicit and negotiate offers to sell the Property prior to such Transfer. No such sale of the Property, however, shall become effective until the Transfer has occurred and the Lenders have approved the terms of such sale as provided for in this Agreement, if such approval is necessary.

(d) If there should be a Transfer, Servicer shall exercise diligent and good faith efforts to locate financing for the Property, the net proceeds of which (after deduction for loan fees, mortgage broker commissions, title insurance and other reasonable and customary closing costs) will be sufficient to repay all amounts described in subparagraphs 11(i) through 11(vi) below. If Servicer is able to locate such financing, then Servicer shall promptly provide the Lenders with written notice of all material terms of such proposed financing for the review and approval of Lenders holding more than fifty percent (50%) of the Fractional Interests, which such approval must be received by Servicer within a period of time specified by Servicer in such written notice but in any event no later than thirty (30) days after Servicer's delivery of such written notice to the Lenders. The failure of Servicer to receive any Lender's written approval of the terms of such proposed financing within the specified time period shall constitute such Lender's disapproval of such terms.

11. **Distribution of Proceeds.** Upon the receipt by Servicer of any proceeds from Borrower, any other person or the Property following a default by Borrower under the Loan Documents, whether such proceeds result from subsequent payments by Borrower or a guarantor, loan enforcement efforts by Servicer, the operations of the Property, or the sale or refinance of the Property, the net proceeds (after payment of reasonable and customary closing and transaction costs) shall be applied towards the payment of the following items and in the following order:

(i) to those Lenders who have advanced more than their pro rata share of an Assessment(s) and who have not been otherwise repaid for such excess amount, such excess amount, together with interest thereon at the Delinquent Rate.

(ii) to those Lenders who have advanced their pro rata share of an Assessment(s), the amount of such Assessment(s), together with interest thereon at the Delinquent Rate;

(iii) to the Servicer, any monthly servicing fees and property management fees that have been earned but have not been paid, together with interest thereon at the Delinquent Rate;

(iv) to those Lenders who have advanced more than their pro rata share of an Assessment(s) and have not otherwise been repaid for such excess amount, each such Lender's share of all P&I in proportion to their respective Fractional Shares;

(v) to those Lenders who have advanced their pro rata share of an Assessment(s), each such Lender's share of all P&I in proportion to their respective Fractional Shares;

(vi) to those Lenders who have failed to timely advance their pro rata share of an Assessment(s), each such Lender's share of P&I in proportion to their respective Fractional Shares; and

(vii) to the Lenders, the balance, if any, in proportion to their respective Fractional Shares.

12. **Duration of Agreement.**

(a) This Agreement may be terminated by the Lenders upon the giving of thirty (30) days' prior written notice to Servicer signed by Lenders holding more than fifty percent (50%) of the Fractional Interests and upon the payment to Servicer of the Termination Fee (as described below). The Lenders acknowledge that, although the Servicer received a modest loan origination fee, or "points", from the Borrower for funding the Loan, the Servicer's principal compensation for funding the Loan and obtaining the required securities permit from the California Department of Corporations comes not from the loan origination fee but from the monthly servicing fees it is to earn under this Agreement. The loan origination fee that Servicer charged for funding the Loan is less than Servicer would otherwise have charged if not for the anticipated loan servicing fees that Servicer will earn under this Agreement. Accordingly, if the Lenders should terminate Servicer pursuant to this Paragraph 12(a), such termination shall not be effective until the Lenders shall have paid Servicer a termination fee (the "Termination Fee") equal to three and one-half percent (3 1/2%) of the then-outstanding principal balance of the Note or, if a Transfer shall have occurred, the principal balance of the Note outstanding immediately prior to such Transfer. A default by Borrower under the Note, the Deed of Trust or the other Loan Documents shall not be cause for termination. If the Lenders should obtain a final judicial determination that the transfer was for cause, the Termination Fee shall be refunded to the Lenders.

(b) Servicer shall not be entitled to withdraw from its duties under this Agreement unless (i) Servicer has not received its monthly loan servicing fee for more than three (3) consecutive months or (ii) if there should have occurred a Transfer and Servicer shall be managing the property for the Lenders as provided in Paragraph 9 above, Servicer has not received its monthly property management fee for more than three (3) consecutive months. If Servicer should elect to terminate this Agreement under this Paragraph 12(b), then such election

shall not become effective until Servicer has provided the Lenders with thirty (30) days' prior written notice.

(c) Unless sooner terminated pursuant to clause (a) or (b) above, this Agreement shall automatically terminate when (i) principal, interest and all other sums owing under the Loan Documents have been paid in full; or (ii) Lenders holding more than fifty percent (50%) of the Fractional Interests shall have accepted in writing other consideration in full satisfaction of all amounts owing to all Lenders under the Loan Documents.

13. **Limitation of Liability.** The Lenders hereby release Servicer and its officers, directors, shareholders, employees and agents ("Servicer's Employees") from any and all actions, liabilities, damages, claims, suits and demands of every kind, nature and description that the Lenders may hereafter acquire against Servicer and Servicer's Employees arising out of any acts or omissions of Servicer or Servicer's Employees under this Agreement, so long as Servicer and Servicer's Employees are acting in good faith under this Agreement, are not grossly negligent and have not engaged in willful misconduct. Additionally, each Lender hereby agrees, but only to the extent of such Lender's Fractional Interest, to indemnify, defend and hold Servicer and Servicer's Employees harmless from and against any and all losses, claims, liabilities, costs and expenses threatened against or incurred by Servicer or Servicer's Employees not covered by insurance and arising out of or in connection with any acts or omissions of Servicer or Servicer's Employees under this Agreement, so long as Servicer and Servicer's Employees are acting in good faith under this Agreement, are not grossly negligent and have not engaged in willful misconduct.

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

15. **Power of Attorney.**

(a) The Lenders hereby grant 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 to enforce the terms of the Loan Documents, to assume and enter into contracts for the completion of the construction or renovation of the Improvements or any phase thereof, to take title to the Property as trustee or nominee for the Lenders, to cause title to the Property to be taken in the name of all Lenders as tenants in common or in the name of a corporation or partnership or limited liability company of which the Lenders shall constitute the shareholders or partners or members, to initiate legal action against any Lender who has failed to timely pay its share of loan servicing fees, property management fees or an Assessment when such amounts are due and to manage, encumber and sell the Property. Without limiting the foregoing, Servicer is expressly authorized to do the following: 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, 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, contractors and other third parties; obtain market studies and other reports; enter into forbearance and modification agreements, and enter into contracts for and execute documents in connection with the refinancing or sale of the Property, including the execution of deeds of trust or grant deeds. This power of attorney shall not be affected by subsequent incapacity of the principal. Additionally, this power of attorney is given by the Lender signing below to secure its performance of its obligations under this Agreement for the benefit of all of the other Lenders. The only event that will terminate this power of attorney is the termination of this Agreement as provided in Paragraph 12 above. In the event Lender fails to timely pay his or her pro rata share of loan servicing fees, property management fees or an Assessment, Servicer is hereby authorized, either on its own behalf or on behalf of the other Lenders, to commence legal action against the delinquent Lender. Since the investment of all Lenders could be jeopardized by the inability of Servicer to perform its duties hereunder, including the taking of Protective Actions, due to the lack of funds, and in the interest of a quick determination, Lender and Servicer hereby waive the right to raise any other claims and counter-claims at said hearing. Said claims and counter-claims may be the subject of a subsequent action.

(b) WARNING TO PERSON EXECUTING THIS AGREEMENT. THIS PARAGRAPH HAS IMPORTANT LEGAL CONSEQUENCES. IT CREATES A DURABLE POWER OF ATTORNEY. BEFORE EXECUTING THIS AGREEMENT, YOU SHOULD KNOW THESE IMPORTANT FACTS: THIS PARAGRAPH PROVIDES THE SERVICER WITH BROAD POWERS TO SERVICE, MANAGE AND ENFORCE YOUR RIGHTS UNDER YOUR FRACTIONAL INTEREST. THESE POWERS WILL EXIST FOR AN INDEFINITE PERIOD OF TIME UNLESS YOU LIMIT THEIR DURATION IN THIS PARAGRAPH. THESE POWERS WILL CONTINUE TO EXIST NOTWITHSTANDING YOUR SUBSEQUENT DISABILITY OR INCAPACITY. IF THERE IS ANYTHING ABOUT THIS PARAGRAPH THAT YOU DO NOT UNDERSTAND, YOU SHOULD ASK A LAWYER TO EXPLAIN IT TO YOU.

16. **Further Actions.** If Servicer determines, in its reasonable business judgment, that it is necessary or advisable for the Lenders to sign and deliver documents or take other actions in order for Servicer to fulfill its obligations under this Agreement, then the Lenders shall, upon reasonable written notice from Servicer, promptly sign and deliver such documents or take such other actions.

17. **Reliance by Third Parties.** Every document or instrument executed by Servicer in connection with the Loan Documents or 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.

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

 Servicer: 4811 Chippendale Drive, Suite 101
 Sacramento, California 95841
 Facsimile (916) 338-2328

 Lender: at the address of such Lender as set forth below such Lender's signature below.

Such addresses may be changed by notice given in the manner provided herein. Notices sent to the last known address of a Lender shall be deemed effective if sent to such address in the manner provided for in this paragraph. All payments, notices and other documents or communications shall be deemed given when hand-delivered or 48 hours after being deposited with the United States Post Office, first class mail, postage prepaid, or when received with respect to facsimiles sent to Servicer. 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 to the Lender who claims such proceeds and without any obligation to pay interest on such proceeds, 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 attorneys' fees suffered or incurred by Servicer as a result thereof.

19. **Attorneys' Fees.** If legal action is commenced to interpret or enforce any provisions of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and other related costs and expenses.

20. **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. The fractional undivided interests in the Note are being offered and sold without registration under the Securities Act of 1933, as amended (the "Act"), and in reliance upon the exemption from such registration requirements under Regulation D, Rule 504 and/or Rule 505, promulgated under the Act. The Lender hereby makes the representations and warranties contained in Exhibit A attached hereto with the understanding that Servicer is relying on such representations and warranties for the purpose of availing itself of this exemption from registration. Additionally, the Lender acknowledges that the Fractional Interests cannot be sold, assigned or otherwise transferred (i) except to certain selected residents of the State of California, and (ii) 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. Furthermore, the fractional undivided interests cannot be sold, assigned or transferred without registration under the Act or pursuant to an exemption therefrom. 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. Servicer may assign its rights and obligations under this Agreement to a third party at any time, without the need to obtain the prior consent of the Lenders.

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

22. **Counterparts.** This Agreement may be executed in any number of counterparts. Each counterpart hereof shall constitute an original document, and all counterparts which relate to the Note and Deed of Trust shall constitute one and the same document.

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

SERVICER:

BLACKBURNE & BROWN MORTGAGE
COMPANY, INC., a California corporation

By: _____
Its: _____

LENDER:

By: _____
Name (Print): _____

Address: _____

Social Security or Taxpayer I.D. No.: _____

EXHIBIT A

Lender Representations and Warranties

(Names of Lenders)