INTERCREDITOR AGREEMENT-CME

by and between

[ ]

as Senior Lender

and

[ ]

as Junior Lender

Dated as of \_\_\_\_\_\_\_\_\_\_, 20\_\_

Premises:

Freddie Mac Loan Number \_\_\_\_\_\_\_\_\_\_\_\_\_\_

**INTERCREDITOR AGREEMENT**

 THIS INTERCREDITOR AGREEMENT (this “**Agreement**”), dated as of \_\_\_\_\_\_, 20\_\_ by and between , a , having an office at , , (“**Senior Lender**”), and a , having an office at (“**Initial** **Junior Lender**”).

RECITALS

WHEREAS, Senior Lender is the current holder of a loan to , a (“**Borrower**”), in the original principal amount of $ (the “**Senior Loan**”), which Senior Loan is evidenced by a certain Multifamily Note, dated as of , 20\_\_, made by Borrower to Junior Lender in the amount of the Senior Loan (the “**Senior Note**”), and secured by, among other things, a Multifamily **[Mortgage/Deed of Trust]**, Assignment of Rents and Security Agreement, dated as of , 20\_\_, made by Borrower in favor of Junior Lender (the “**Senior Security Instrument**”), which Senior Security Instrument encumbers the real property described on Exhibit A attached hereto and made a part hereof, and all improvements thereon and appurtenances thereto (collectively, the “**Premises**”); and

**CHOOSE ONE:**

[WHEREAS, Junior Lender sold and assigned the Senior Loan to Federal Home Loan Mortgage Corporation (“**Freddie Mac**”), which in turn sold and assigned the Senior Loan to Senior Lender; and]

**OR**

[WHEREAS, **[ORIGINAL SELLER/SERVICER OF SENIOR LOAN]** sold and assigned the Senior Loan to Federal Home Loan Mortgage Corporation (“**Freddie Mac**”), which in turn sold and assigned the Senior Loan to Senior Lender; and]

WHEREAS, Junior Lender is the owner and holder of a loan to Borrower in the original principal amount of $ (the “**Junior Loan**”), which Junior Loan is evidenced by a certain Promissory Note, dated as of , 20\_\_, made by Borrower in favor of Junior Lender in the amount of the Junior Loan (the “**Junior Note**”), and secured by, among other things, a Multifamily **[Mortgage/Deed of Trust]**, Assignment of Rents and Security Agreement, dated as of , 20\_\_, made by Borrower in favor of Junior Lender (the “**Junior Security Instrument**”), which Junior Security Instrument encumbers the Premises; and

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

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

##  Certain Definitions; Rules of Construction.

###  As used in this Agreement, the following capitalized terms shall have the following meanings:

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

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

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

“Bankruptcy Code” has the meaning provided in Section 10(d) hereof.

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

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

“Business Day” means any day other than a Saturday, a Sunday or any other day on which Junior Lender or any national banking associations are not open for business.

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

“CDO Asset Manager” with respect to any Securitization Vehicle which is a CDO, shall mean the entity which is responsible for managing or administering the Junior Loan as an underlying asset of such Securitization Vehicle or, if applicable, as an asset of any Intervening Trust Vehicle (including, without limitation, the right to exercise any consent and control rights available to the holder of the Junior Loan).

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

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

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

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

“Eligibility Requirements” means, with respect to any Person, that such Person (i) has total assets (in name or under management) in excess of $600,000,000 and (except with respect to a pension advisory firm or similar fiduciary) capital/statutory surplus or shareholder’s equity of $250,000,000 and (ii) is regularly engaged in the business of making or owning commercial real estate loans or operating commercial mortgage properties.

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

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

“Fitch” means Fitch, Inc.

“Freddie Mac” has the meaning provided in the Recitals hereto.

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

“Intervening Trust Vehicle” with respect to any Securitization Vehicle which is a CDO, shall mean a trust vehicle or entity which holds the Junior Loan as collateral securing (in whole or in part) any obligation or security held by such Securitization Vehicle as collateral for the CDO.

“Junior Crossed Pool” means a pool of mortgages from Junior Lender to Borrower or Affiliates of Borrower that includes the Junior Loan that have been cross-defaulted and cross-collateralized with the Senior Crossed Pool.

“Junior Lender” means the Initial Junior Lender, except that, if the Junior Loan has been Transferred pursuant to Section 4 of this Agreement, then “Junior Lender” shall mean the transferee with respect to such Transfer.

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

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

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

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

“Junior Security Instrument” has the meaning provided in the Recitals hereto.

“Moody’s” means Moody’s Investors Service, Inc.

“Morningstar” means Morningstar Credit Ratings, LLC.

“Permitted Fund Manager” means any Person that on the date of determination is (i) (A) one of the entities listed on Exhibit D, or the successor in interest thereto or a Person Controlling, Controlled by or under common Control with any such entity, or any other nationally-recognized manager of investment funds investing in debt or equity interests relating to commercial real estate, (B) approved by the Rating Agencies (for the purposes of this Agreement) as a “Permitted Fund Manager”, as evidenced by Rating Agency Confirmation, or (C) an entity that is otherwise a Qualified Transferee under clause (iii)(A), (iii)(B), (iii)(C) or (iii)(D) of the definition thereof, (ii) investing through a fund with committed capital of at least $250,000,000 and (iii) not subject to a bankruptcy, insolvency or similar proceeding.

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

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

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

“Property Jurisdiction” has the meaning provided in Section 32 hereof.

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

“Protective Advances” means all sums advanced for the purpose of payment of real estate taxes (including special payments in lieu of real estate taxes), maintenance costs, insurance premiums or other items (including capital items) reasonably necessary to protect the Premises from forfeiture, casualty, loss or waste, including, with respect to the Junior Loan, amounts advanced by Junior Lender pursuant to Sections 9 or 11 hereof.

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

“Qualified Manager” shall mean a property manager of the Premises which (i) is a reputable management company having at least five (5) years’ experience in the management of multifamily properties with similar uses as the Premises and in the jurisdiction in which the Premises are located, (ii) has, for at least five (5) years prior to its engagement as property manager, managed at least (5) properties of the same property type as the Premises, (iii) at the time of its engagement as property manager has units of the same property type as the Premises equal to the lesser of (A) 10,000 units and (B) five (5) times the number of units of the Premises and (iv) is not the subject of a bankruptcy or similar insolvency proceeding.

“Qualified Transferee” means (i) Initial Junior Lender, (ii) Freddie Mac, or (iii) one or more of the following:

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

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

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

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

(E) a Qualified Trustee (or in the case of a CDO, a single purpose bankruptcy-remote entity which contemporaneously pledges its interest in the Junior Loan to a Qualified Trustee) in connection with (I) a securitization of, (II) the creation of collateralized debt obligations (“CDO”) secured by, or (III) a financing through an “owner trust” of, a Junior Loan (any of the foregoing, a “Securitization Vehicle”), provided that (1) one or more classes of securities issued by such Securitization Vehicle is initially rated at least investment grade by each of the Rating Agencies (other than Moody’s) which assigned a rating to one or more classes of securities issued in connection with a Securitization; (2) in the case of a Securitization Vehicle that is not a CDO, the special servicer of such Securitization Vehicle has a Required Special Servicer Rating from each of the Rating Agencies which assigned a rating to one or more classes of securities issued in connection with a Securitization or, if no Rating Agency has assigned a rating to one or more classes of securities issued in connection with a Securitization, has a Required Special Servicing Rating from at least (1) one nationally recognized statistical rating agency (such entity, an “Approved Servicer”) and such Approved Servicer is required to service and administer such Junior Loan in accordance with servicing arrangements for the assets held by the Securitization Vehicle which require that such Approved Servicer act in accordance with a servicing standard notwithstanding any contrary direction or instruction from any other Person; and (3) in the case of a Securitization Vehicle that is a CDO, the CDO Asset Manager (and, if applicable, each Intervening Trust Vehicle that is not administered and managed by a Qualified Trustee, or a CDO Asset Manager which is a Qualified Transferee) are each a Qualified Transferee under clauses (iii)(A), (iii)(B), (iii)(C) or (iii)(D) of this definition; or

1. an investment fund, limited liability company, limited partnership or general partnership where a Permitted Fund Manager or an entity that is otherwise a Qualified Transferee under clauses (iii)(A), (iii)(B), (iii)(C) or (iii)(D) of this definition investing through a fund with committed capital of at least $250,000,000 acts as the general partner, managing member or fund manager and at least 50% of the equity interests in such investment vehicle are owned, directly or indirectly, by one or more entities that are otherwise Qualified Transferees under clauses (iii)(A), (iii)(B), (iii)(C) or (iii)(D) of this definition.

“Qualified Trustee” means (i) a corporation, national bank, national banking association or a trust company, organized and doing business under the laws of any state or the United States of America, authorized under such laws to exercise corporate trust powers and to accept the trust conferred, having a combined capital and surplus of at least $100,000,000 and subject to supervision or examination by federal or state authority, (ii) an institution insured by the Federal Deposit Insurance Corporation or (iii) an institution whose long-term senior unsecured debt is rated either of the then-in-effect top two rating categories of each of Fitch and S&P or Baa3 by Moody’s.

“Rating Agency” shall mean, any of S&P, Moody’s, Fitch, Morningstar or any other nationally-recognized statistical rating agency which provides ongoing rating services with respect to any of the Certificates.

“Rating Agency Confirmation” means, at any time that the Senior Loan is a part of a Securitization, each of the Rating Agencies, if any, shall have confirmed in writing that the occurrence of the event with respect to which such Rating Agency Confirmation is sought shall not result in a downgrade, qualification or withdrawal of the applicable rating or ratings ascribed by such Rating Agency to any of the Certificates then outstanding and for which such rating agency provides ongoing rating services, unless such Rating Agency has elected to waive its right to issue a Rating Agency Confirmation. In the event that no Certificates are outstanding, the Senior Loan is not part of a Securitization or a Securitization has occurred but no Rating Agency provides ongoing rating services with respect to any of the Certificates, any action that would otherwise require a Rating Agency Confirmation shall require the consent of the Senior Lender, which consent shall not be unreasonably withheld or delayed.

 “Required Special Servicer Rating” means (i) a rating of “CSS3” in the case of Fitch, (ii) on S&P’s Select Servicer list as a U.S. Commercial Mortgage Special Servicer in the case of S&P, (iii) a rating of “MOR CS3” in the case of Morningstar and/or (iv) in the case of Moody’s, such special servicer is acting as special servicer in a commercial mortgage loan securitization that was rated by Moody’s within the twelve (12) month period prior to the date of determination, and Moody’s has not downgraded or withdrawn the then-current rating on any class of commercial mortgage securities or placed any class of commercial mortgage securities on watch citing the continuation of such special servicer as special servicer of such commercial mortgage securities.

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

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

“Securitization Vehicle” has the meaning provided in the definition of “Qualified Transferee.”

“Senior Crossed Pool” means a pool of mortgages that have been cross-defaulted and cross-collateralized with the Senior Loan and with other loans that have been sold to Senior Lender and that are a part of a Securitization that includes the Senior Loan.

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

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

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

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

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

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

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

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

“Senior Security Instrument” has the meaning provided in the Recitals hereto.

[“SPE Equity Owner” means \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **[list any entity required to be a single purpose entity pursuant to the terms of the Senior Loan Documents. If not applicable, delete references throughout Agreement]**]

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

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

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

####  terms not otherwise defined herein shall have the meaning assigned to them in the Senior Security Instrument;

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

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

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

####  the words “herein”, “hereof”, “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular provision;

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

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

##  Approval of Loans and Loan Documents.

###  Junior Lender hereby acknowledges that (i) it has received and reviewed and, subject to the terms and conditions of this Agreement, hereby consents to and approves of, all of the terms and provisions of the Senior Loan Documents, (ii) the performance of the Senior Loan Documents will not constitute a default or an event which, with the giving of notice or the lapse of time, or both, would constitute a default under the Junior Loan Documents, and (iii) any application or use of the proceeds of the Senior Loan for purposes other than those provided in the Senior Loan Documents shall not affect, impair or defeat the terms and provisions of this Agreement or the Senior Loan Documents.

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

##  Representations and Warranties.

###  Junior Lender hereby represents and warrants as follows:

####  with respect to Initial Junior Lender only, Exhibit C attached hereto and made a part hereof is a true, correct and complete listing of all of the Junior Loan Documents as of the date hereof. To Junior Lender’s knowledge, there currently exists no default or event which, with the giving of notice or the lapse of time, or both, would constitute a default under any of the Junior Loan Documents.

####  with respect to Initial Junior Lender only, Junior Lender is the legal and beneficial owner of the entire Junior Loan free and clear of any lien, security interest, option or other charge or encumbrance, except that Junior Lender has contracted to sell the Junior Loan to Freddie Mac.

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

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

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

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

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

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

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

####  [The Junior Loan is not cross-defaulted or cross-collateralized with any loan other than the Senior Loan. The Premises do not secure any loan from Junior Lender to Borrower or any other Affiliate of Borrower other than the Junior Loan.] **OR** [The Junior Loan is cross-defaulted and cross-collateralized with the Senior Crossed Pool and the Junior Crossed Pool and is not cross-defaulted or cross-collateralized with any other loan. The Premises secure the Junior Crossed Pool and the Senior Crossed Pool and do not secure any other loan.]

###  Senior Lender hereby represents and warrants as follows:

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

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

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

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

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

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

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

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

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

####  [The Senior Loan is not cross-defaulted or cross-collateralized with any loan other than the Junior Loan. The Premises do not secure any loan from Senior Lender to Borrower or any other Affiliate of Borrower other than the Senior Loan.] **OR** [The Senior Loan is cross-defaulted and cross-collateralized with the Senior Crossed Pool and the Junior Crossed Pool and is not cross-defaulted or cross-collateralized with any other loan. The Premises secure the Senior Crossed Pool and the Junior Crossed Pool and do not secure any other loan.]

##  Transfer of Junior Loan or Senior Loan.

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

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

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

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

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

###  Notwithstanding anything in this Agreement to the contrary, Junior Lender may, from time to time, in its sole discretion Transfer all of the Junior Loan to Freddie Mac. If the Junior Loan is transferred to Freddie Mac, Junior Lender shall not be required to comply with Section 4(a) or (b), and the terms of this Section 4 shall be deemed to have been satisfied with respect to such Transfer to Freddie Mac. Upon Freddie Mac’s purchase of the Junior Loan, Freddie Mac will execute the Allonge attached hereto as Exhibit E for the benefit of the Senior Lender.

##  Intentionally Omitted.

##  Notice of Rating Confirmation. Junior Lender promptly shall notify Senior Lender of any intended action relating to the Junior Loan which would require Rating Agency Confirmation pursuant to this Agreement and shall cooperate with Senior Lender in obtaining such confirmation. Senior Lender promptly shall notify Junior Lender of any intended action relating to the Senior Loan which would require Rating Agency Confirmation pursuant to this Agreement and shall cooperate with Junior Lender in obtaining such confirmation. If Borrower is not required to pay all fees and expenses of the Rating Agencies in connection with any request for any Rating Agency Confirmation pursuant to the Senior Loan Documents or the Junior Loan Documents, Junior Lender shall pay all fees and expenses of the Rating Agencies in connection with any request for any Rating Agency Confirmation pursuant to this Agreement.

##  Modifications, Amendments, Etc.

###  Senior Lender shall have the right without the consent of Junior Lender in each instance to enter into any amendment, deferral, extension, modification, increase, renewal, replacement, consolidation, supplement or waiver (collectively, a “**Senior Loan Modification**”) of the Senior Loan or the Senior Loan Documents; provided, that no such Senior Loan Modification shall (i) increase the interest rate or principal amount of the Senior Loan, (ii) increase in any other material respect any monetary obligations of Borrower under the Senior Loan Documents, (iii) extend or shorten the scheduled maturity date of the Senior Loan (except that Senior Lender may permit Borrower to exercise any extension options in accordance with the terms and provisions of the Senior Loan Documents), (iv) convert or exchange the Senior Loan into or for any other indebtedness or subordinate any of the Senior Loan to any indebtedness of Borrower, (v) amend or modify the provisions limiting transfers of interests in the Borrower or the Premises, (vi) modify or amend the terms and provisions of the Senior Loan Cash Management Agreement with respect to the manner, timing and method of the application of payments under the Senior Loan Documents, (vii) cross default the Senior Loan with any other indebtedness, (viii) consent to a higher strike price with respect to any new or extended interest rate cap agreement entered into in connection with the extended term of the Senior Loan, (ix) obtain any contingent interest, additional interest or so-called “kicker” measured on the basis of the cash flow or appreciation of the Premises (or other similar equity participation), or (x) extend the period during which voluntary prepayments are prohibited or during which prepayments require the payment of a prepayment fee or premium or yield maintenance charge or increase the amount of any such prepayment fee, premium or yield maintenance charge; provided, however, in no event shall Senior Lender be obligated to obtain Junior Lender’s consent to a Senior Loan Modification in the case of a work-out or other surrender, compromise, release, renewal, or modification of the Senior Loan during the existence of a Continuing Senior Loan Event of Default, except that under all conditions Senior Lender shall obtain Junior Lender’s consent to a Senior Loan Modification with respect to clause (i) (with respect to increasing the principal amount of the Senior Loan only) and clause (x). Notwithstanding the foregoing provisions of this Section 7(a), any amounts funded by the Senior Lender under the Senior Loan Documents as a result of (A) the making of any Protective Advances or other advances by the Senior Lender, or (B) interest accruals or accretions and any compounding thereof (including default interest), shall not be deemed to contravene this Section 7(a).

Subject only to the foregoing provisions of this Section 7(a) and notwithstanding anything to the contrary in the Senior Loan Documents or in the Junior Loan Documents, including without limitation, the Senior Security Instrument, the Junior Security Instrument, the Senior Note and the Junior Note, no party, including Senior Lender, Borrower or any other party, shall be required to obtain the consent of Junior Lender in connection with any Senior Loan Modification of the Senior Loan or the Senior Loan Documents.

###  Junior Lender shall have the right without the consent of Senior Lender in each instance to enter into any amendment, deferral, extension, modification, increase, renewal, replacement, consolidation, supplement or waiver (collectively, a “**Junior Loan Modification**”) of the Junior Loan or the Junior Loan Documents; provided, that no such Junior Loan Modification shall (i) increase the interest rate or principal amount of the Junior Loan, (ii) increase in any other material respect any monetary obligations of Borrower under the Junior Loan Documents, (iii) extend or shorten the scheduled maturity date of the Junior Loan (except that Junior Lender may permit Borrower to exercise any extension options in accordance with the terms and provisions of the Junior Loan Documents), (iv) convert or exchange the Junior Loan into or for any other indebtedness or subordinate any of the Junior Loan to any indebtedness of Borrower, (v) amend or modify the provisions limiting transfers of interests in the Borrower or the Premises, (vi) consent to a higher strike price with respect to any new or extended interest rate cap agreement entered into in connection with the extended term of the Junior Loan, (vii) cross default the Junior Loan with any other indebtedness, (viii) obtain any contingent interest, additional interest or so-called “kicker” measured on the basis of the cash flow or appreciation of the Premises (or other similar equity participation), or (ix) extend the period during which voluntary prepayments are prohibited or during which prepayments require the payment of a prepayment fee or premium or yield maintenance charge or increase the amount of any such prepayment fee, premium or yield maintenance charge; provided, however, in no event shall Junior Lender be obligated to obtain Senior Lender’s consent to a modification or amendment to the Junior Loan Documents in the case of a work-out or other surrender, compromise, release, renewal, or modification of the Junior Loan if an Event of Default has occurred and is continuing under the Junior Loan Documents, except that under all conditions Junior Lender shall obtain Senior Lender’s consent to a Junior Loan Modification with respect to clause (i) (with respect to increasing the principal amount of the Junior Loan only), clause (ii), clause (iii) (with respect to shortening the scheduled maturity date of the Junior Loan only), clause (iv), clause (viii) and clause (ix). In addition and notwithstanding the foregoing provisions of this Section 7(b), any amounts funded by the Junior Lender under the Junior Loan Documents as a result of (A) the making of any Protective Advances or other advances by the Junior Lender, or (B) interest accruals or accretions and any compounding thereof (including default interest), shall not be deemed to contravene this Section 7(b).

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

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

###  Junior Lender acknowledges that the subordination of the Junior Loan Documents to the Senior Loan Documents shall in no way be limited, diminished, impaired or otherwise affected by an amendment or modification to the Senior Loan Documents.

##  Subordination of Junior Loan and Junior Loan Documents.

###  Junior Lender hereby subordinates and makes junior the Junior Loan, the Junior Loan Documents and the liens and security interests created thereby, and all rights, remedies, terms and covenants contained therein to (i) the Senior Loan, (ii) the liens and security interests created by the Senior Loan Documents and (iii) all of the terms, covenants, conditions, rights and remedies contained in the Senior Loan Documents, and no amendments or modifications to the Senior Loan Documents or waivers of any provisions thereof shall affect the subordination thereof as set forth in this Section 8(a).

###  Each and every Junior Loan Document shall be subject and subordinate to each and every Senior Loan Document and all extensions, modifications, consolidations, supplements, amendments, replacements and restatements of and/or to the Senior Loan Documents.

###  Neither Junior Lender nor any party affiliated with or related to Junior Lender shall provide any “debtor-in possession” financing to Borrower unless Senior Lender consents in writing to such financing and all its terms. If Junior Lender or any affiliated or related person violates the preceding sentence, then without limiting Senior Lender’s other rights or remedies, any and all liens and payments the Junior Lender receives for or under such financing shall be void and assigned to Senior Lender.

##  Payment Subordination.

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

###  Notwithstanding anything to the contrary contained in this Agreement, including, without limitation, Section 9(a), so long as a Proceeding has not occurred or a Continuing Senior Loan Event of Default is not outstanding, Junior Lender may accept payments of any amounts due and payable from time to time that Borrower is obligated to pay to Junior Lender in accordance with the terms and conditions of the Junior Loan Documents and Junior Lender shall have no obligation to pay over to Senior Lender any such amounts.

###  Prior to commencing any Enforcement Action, Junior Lender shall (i) give the Senior Lender written notice of the default which would permit Junior Lender to commence such Enforcement Action, (ii) obtain Senior Lender’s prior written consent, which consent may be granted or withheld in Senior Lender’s sole and absolute discretion, to such Enforcement Action, and (iii) provide Senior Lender with copies of any and all material notices, pleadings, agreements, motions and briefs served upon, delivered to or with any party to any Enforcement Action and otherwise keep Senior Lender reasonably apprised as to the status of any Enforcement Action.

###  In the event of a casualty to the buildings or improvements constructed on any portion of the Premises or a condemnation or taking under a power of eminent domain of all or any portion of the Premises, Senior Lender shall have a first and prior interest in and to any payments, awards, proceeds, distributions, or consideration arising from any such event (the “**Award**”). If (x) the amount of the Award is in excess of all amounts owed to Senior Lender under the Senior Loan Documents, however, and (y) either the Senior Loan has been paid in full or Borrower is entitled to a remittance of same under the Senior Loan Documents other than to repair or restore the Premises, such excess Award or portion to be so remitted to Borrower shall, to the extent permitted in the Senior Loan Documents, be paid to or at the direction of Junior Lender, unless other Persons have claimed the right to such Award, in which case Senior Lender shall only be required to provide notice to Junior Lender of such excess Award and of any other claims thereto. In the event of any competing claims for any such excess Award, Senior Lender shall continue to hold such excess Award until Senior Lender receives an agreement signed by all Persons making a claim to the excess Award or a final order of a court of competent jurisdiction directing Senior Lender as to how and to which Person(s) the excess Award is to be distributed. Notwithstanding the foregoing, in the event of a casualty or condemnation, Senior Lender shall release the Award from any such event to the Borrower if and to the extent required by the terms and conditions of the Senior Loan Documents in order to repair and restore the Premises in accordance with the terms and provisions of the Senior Loan Documents. Any portion of the Award made available to the Borrower for the repair or restoration of the Premises shall not be subject to attachment by Junior Lender.

##  Rights of Subrogation; Bankruptcy.

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

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

###  Subject to Section 30 of this Agreement, the provisions of this Agreement shall be applicable both before and after the commencement, whether voluntary or involuntary, of any case, proceeding or other action against Borrower [or any SPE Equity Owner] under any existing or future law of any jurisdiction relating to bankruptcy, insolvency, reorganization or relief of debtors (a “**Proceeding**”). For as long as the Senior Loan shall remain outstanding, Junior Lender shall not, and shall not solicit any person or entity to, and shall not direct or cause Borrower to solicit any entity which Controls Borrower (the “**Borrower Group**”) to: (i) commence any Proceeding; (ii) institute proceedings to have Borrower [or any SPE Equity Owner] adjudicated bankrupt or insolvent; (iii) consent to, or acquiesce in, the institution of bankruptcy or insolvency proceedings against Borrower [or any SPE Equity Owner]; (iv) file a petition or consent to the filing of a petition seeking reorganization, arrangement, adjustment, winding-up, dissolution, composition, liquidation or other relief by or on behalf of Borrower [or any SPE Equity Owner]; (v) seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for Borrower [or any SPE Equity Owner], the Premises (or any portion thereof) or any other collateral securing the Senior Loan (or any portion thereof); (vi) make an assignment for the benefit of any creditor of Borrower [or any SPE Equity Owner]; (vii) seek to consolidate the Premises (or any portion thereof) or any other assets of the Borrower [or any SPE Equity Owner] with the assets of any member of the Borrower Group in any proceeding relating to bankruptcy, insolvency, reorganization or relief of debtors; or (viii) take any action in furtherance of any of the foregoing.

###  Junior Lender agrees that (i) it shall not make any election, give any consent, commence any action or file any motion, obligation, notice or application or take any other action in any Proceeding by or against the Borrower [or any SPE Equity Owner] without the prior consent of Senior Lender, (ii) Senior Lender may vote in any such Proceeding any and all claims of Junior Lender, and Junior Lender hereby appoints the Senior Lender as its agent, and grants to the Senior Lender an irrevocable power of attorney coupled with an interest, and its proxy, for the purpose of exercising any and all rights and taking any and all actions available to the Junior Lender in connection with any case by or against the Borrower [or any SPE Equity Owner] in any Proceeding, including without limitation, the right to vote to accept or reject a plan or to make any election under Section 1111(b) of the United States Bankruptcy Code (the “**Bankruptcy Code**”); provided, however, that with respect to any proposed plan of reorganization in respect of which creditors are voting, Senior Lender may vote on behalf of Junior Lender only if the proposed plan would result in Senior Lender being “impaired” (as such term is defined in the Bankruptcy Code) and (iii) Junior Lender shall not challenge the validity or amount of any claim submitted in such Proceeding by Senior Lender in good faith or any valuations of the Premises or other Senior Loan collateral submitted by Senior Lender in good faith, in such Proceeding or take any other action in such Proceeding, which is adverse to Senior Lender’s enforcement of its claim or receipt of “adequate protection” (as such term is defined in the Bankruptcy Code). Notwithstanding anything to the contrary in this Agreement, Junior Lender may prepare and file its own proof of claim in a Proceeding.

##  Rights of Cure.

###  Subject to the rights of any mezzanine lender with respect to any mezzanine loan related to the Senior Loan, prior to Senior Lender commencing any Enforcement Action under the Senior Loan Documents, Senior Lender shall provide written notice of the default which would permit the Senior Lender to commence such Enforcement Action to Junior Lender, whether or not Senior Lender is obligated to give notice thereof to Borrower (each such notice, a “**Senior Loan Default Notice**”) and shall permit Junior Lender an opportunity to cure such default in accordance with the provisions of this Section 11(a). In the case of a monetary default relating to a liquidated sum of money, Junior Lender shall have until ten (10) Business Days after the later of (i) the giving by Senior Lender of the Senior Loan Default Notice and (ii) the expiration of Borrower’s cure provision, if any, to cure such monetary default; provided, however, in the event Junior Lender elects to cure any such monetary default, Junior Lender shall reimburse the Senior Lender for any interest charged by Senior Lender on any required (pursuant to the applicable pooling and servicing agreement for a Securitization) advances for monthly payments of principal and/or interest on the Senior Loan and/or on any Protective Advances. Junior Lender shall not be required, in order to effect a cure hereunder (other than the cure by Junior Lender of a default in the payment of the Senior Loan in full on the maturity date thereof or the reimbursement of interest on such advances for monthly payments of principal and/or interest on the Senior Loan and/or on any Protective Advances, as aforesaid), to pay any interest calculated at the default rate under the Senior Loan Documents to the extent the same is in excess of the rate of interest which would have been payable by Borrower in the absence of such default (and irrespective of any cure of such default by Junior Lender pursuant to the provisions of this Agreement), and no interest shall accrue at the default rate as against Junior Lender for such period. Junior Lender shall not have the right to cure as hereinabove set forth with respect to monthly scheduled debt service payments on the Senior Loan for a period of more than four (4) consecutive months.

### In the case of a non-monetary default, Junior Lender shall have the same period of time as the Borrower under the Loan Documents to cure such non-monetary default; provided, however, if such non-monetary default is susceptible of cure but cannot reasonably be cured within such period and if curative action was promptly commenced and is being continuously and diligently pursued by Junior Lender, Junior Lender shall be given an additional period of time as is reasonably necessary for Junior Lender in the exercise of due diligence to cure such non-monetary default for so long as (i) Borrower makes or causes to be made timely payment of Borrower’s regularly scheduled monthly principal and/or interest payments under the Senior Loan and any other amounts due under the Senior Loan Documents, (ii) such additional period of time does not exceed thirty (30) days, unless such non-monetary default is of a nature that can not be cured within such thirty (30) day period, in which case, Junior Lender shall have such additional time as is reasonably necessary to cure such non-monetary default, (iii) such default is not caused by a bankruptcy, insolvency or assignment for the benefit of creditors of Borrower and (iv) during such non-monetary cure period, there is no material impairment to the value, use or operation of the Premises. Any additional cure period granted to Junior Lender hereunder shall automatically terminate upon the bankruptcy (or similar insolvency) of Borrower.

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

##  No Actions; Restrictive Provisions. Senior Lender consents to Junior Lender’s right, pursuant to the Junior Loan Documents, under certain circumstances, to cause the termination of the Property Manager. In the event that both Junior Lender and Senior Lender have such rights at any time, and Senior Lender fails to exercise such rights, Junior Lender may exercise such rights; provided, that such exercise may be superseded by any subsequent exercise of such rights by Senior Lender pursuant to the Senior Loan Documents. Upon the occurrence of any event which would entitle Junior Lender to cause the termination of the Property Manager pursuant to the Junior Loan Documents, Junior Lender shall have the right to select, or cause the selection, of a replacement property manager (including any asset manager) or leasing agent for the Premises, which replacement manager, asset manager and/or leasing agent shall either (a) be subject to Senior Lender’s reasonable approval and, if any Certificates with respect to which a Rating Agency provides ongoing rating services are then outstanding, Rating Agency Confirmation from such Rating Agency or (b) be a Qualified Manager. Notwithstanding anything in this Section 12 to the contrary, if an Event of Default under the Senior Loan then exists or any other event shall have occurred pursuant to which Senior Lender has the right to select any replacement manager, asset manager and/or leasing agent pursuant to the Senior Loan Documents, Senior Lender shall have the sole right to select any replacement manager, asset manager and/or leasing agent, whether or not a new manager or agent was retained by Junior Lender.

##  Right to Purchase Senior Loan.

###  Subject to the rights of any mezzanine lender with respect to any mezzanine loan related to the Senior Loan, if (w) a monetary default under the Senior Loan has occurred and has been continuing for more than sixty (60) days, (x) the Senior Lender has provided a Senior Loan Default Notice to Junior Lender, (y) any Enforcement Action has been commenced and is continuing under the Senior Loan Documents, or (z) the Senior Loan is a “specially serviced mortgage loan” under the applicable pooling and servicing agreement for a Securitization (each of the foregoing, a “**Purchase Option Event**”), Junior Lender shall have the right to purchase, in whole but not in part, the Senior Loan pursuant to the terms of the applicable pooling and servicing agreement executed by the Senior Lender in connection with the Securitization of the Senior Loan.

###  Junior Lender covenants not to enter into any agreement with Borrower or any Affiliate thereof to purchase the Senior Loan pursuant to Section 13(a) or in connection with any refinancing of the Senior Loan in any manner designed to avoid or circumvent the provisions of the Senior Loan Documents which require the payment of a prepayment premium or fee or yield maintenance charge in connection with a prepayment of the Senior Loan by Borrower. Junior Lender covenants not to Transfer the Junior Loan to Borrower or to any known Affiliate of Borrower.

##  Notices of Transfer; Consent. For as long as the Junior Loan remains outstanding, Senior Lender promptly shall notify Junior Lender if Borrower seeks or requests a release of the lien of the Senior Loan or seeks or requests Senior Lender’s consent to, or take any action in connection with or in furtherance of, a sale or Transfer of all or any material portion of the Premises, the granting of a further mortgage, deed of trust or similar encumbrance against the Premises or a prepayment or refinancing of the Senior Loan. In the event of a request by Borrower for Senior Lender’s consent to either (i) the sale or Transfer of all or any material portion of the Premises or (ii) the granting of a further mortgage, deed of trust or similar encumbrance against the Premises, Senior Lender shall, if Senior Lender has the right to consent, obtain the prior written consent of Junior Lender prior to Senior Lender’s granting of its consent or agreement thereto; provided, however, if an Event of Default shall have occurred and be continuing under the Senior Loan Documents, Senior Lender shall not be required to obtain the prior written consent of Junior Lender; and, provided, further, Senior Lender shall not be required to obtain Junior Lender’s consent in the event of a request by Borrower for Senior Lender’s consent to the granting of a further mortgage, deed of trust or similar encumbrance against the Premises that is intended to be purchased by Junior Lender.

##  Intentionally Omitted.

##  Intentionally Omitted.

##  Obligations Hereunder Not Affected.

###  All rights, interests, agreements and obligations of Senior Lender and Junior Lender under this Agreement shall remain in full force and effect irrespective of:

####  any lack of validity or enforceability of the Senior Loan Documents or the Junior Loan Documents or any other agreement or instrument relating thereto;

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

####  any manner of application of collateral, or proceeds thereof, to all or any portion of the Senior Loan or the Junior Loan, or any manner of sale or other disposition of any collateral for all or any portion of the Senior Loan or the Junior Loan or any other assets of Borrower or any other Affiliates of Borrower;

####  any change, restructuring or termination of the corporate structure or existence of Borrower or any other Affiliates of Borrower; or

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

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

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

To Junior Lender:

Attention:

Telecopy: (\_\_\_) -

With a copy to:

Attention:

Telecopy: (\_\_\_) -

To Freddie Mac:

Attention:

Telecopy: (\_\_\_) -

With a copy to:

Attention:

Telecopy: (\_\_\_) -

To Senior Lender:

Attention:

Telecopy: (\_\_\_) -

With a copy to:

Attention:

Telecopy: (\_\_\_) -

##  Estoppel.

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

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

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

##  No Third Party Beneficiaries; No Modification. The parties hereto do not intend the benefits of this Agreement to inure to Borrower or any other Person. This Agreement may not be changed or terminated orally, but only by an agreement in writing signed by the party against whom enforcement of any change is sought. If any Certificates are outstanding with respect to which any Rating Agency provides ongoing rating services, this Agreement shall not be amended unless a Rating Agency Confirmation has been obtained from such Rating Agency with respect to such amendment.

##  Successors and Assigns. This Agreement shall bind all successors and permitted assigns of Junior Lender and Senior Lender and shall inure to the benefit of all successors and permitted assigns of Senior Lender and Junior Lender.

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

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

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

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

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

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

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

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

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

##  Expenses.

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

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

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

##  Mutual Disclaimer.

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

###  Each of Senior Lender and Junior Lender acknowledges that the Senior Loan and the Junior Loan Documents are distinct, separate transactions and loans, separate and apart from each other.

##  Consent to Jurisdiction and Venue. Junior Lender agrees that if Senior Lender files a judicial foreclosure proceeding with respect to the Senior Loan, Junior Lender consents that such foreclosure proceeding may be litigated in the jurisdiction in which the Premises are located (“**Property Jurisdiction**”). The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have jurisdiction over all controversies that shall arise under or in relation to such foreclosure proceeding. Junior Lender irrevocably consents to service, jurisdiction, and venue of such courts for any such foreclosure proceeding and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise.

##  Recognition and Non-Disturbance Agreements. The Junior Lender shall enter into recognition and non-disturbance agreements with any tenants under commercial or retail leases to whom the Senior Lender has granted recognition and non-disturbance, on the same terms and conditions given by the Senior Lender.

[NO FURTHER TEXT ON THIS PAGE]

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

SENIOR LENDER:

 ,

a

By:

Name:

Title:

JUNIOR LENDER:

 ,

a

By:

Name:

Title:

**EXHIBIT A**

[Attach Legal Description of Premises]

**EXHIBIT B**

Senior Loan Documents

* + - * 1. Senior Note;
				2. Senior Security Instrument;
				3. UCC Financing Statements;
				4. [Guaranty];
				5. [Replacement Reserve Agreement];
				6. [Assignment of Management Agreement];
				7. [Repair Escrow Agreement];
				8. [Repair Agreement];
				9. [Insert additional Senior Loan Documents, if applicable]

**EXHIBIT C**

Junior Loan Documents

1. Junior Note;
2. Junior Security Instrument;
3. UCC Financing Statements;
4. [Guaranty];
5. [Replacement Reserve Agreement];
6. [Assignment of Management Agreement];
7. [Repair Escrow Agreement];
8. [Repair Agreement];
9. [Insert additional Junior Loan Documents, if applicable]

**EXHIBIT D**

Permitted Fund Managers

None

**EXHIBIT E**

Freddie Mac Loan Number \_\_\_\_\_\_\_\_\_\_\_\_\_\_

**ALLONGE**

The Federal Home Loan Mortgage Corporation agrees to be bound by and accepts the terms and conditions of that certain Intercreditor Agreement, entered into between [SENIOR LENDER] and [SELLER], as of \_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_.

**FEDERAL HOME LOAN MORTGAGE CORPORATION,**

a federally chartered corporation

By:

Name:

Title: