

DRAFT 12/19/11

AGREEMENT REGARDING APPLICABLE PROCEEDS

THIS AGREEMENT REGARDING APPLICABLE PROCEEDS (this “Agreement”), dated as of December __, 2011 (the “Execution Date”), is made by and among **MERRILL LYNCH CAPITAL SERVICES, INC.** (“MLCS”), **MERRILL LYNCH PORTFOLIO MANAGEMENT, INC.** (“MLPMI” and together with MLCS, collectively, “Merrill” or “Merrill Entities”), **LEHMAN BROTHERS SPECIAL FINANCING INC.** (“LBSF”), and **LEHMAN BROTHERS HOLDINGS INC.** (“LBHI” and together with LBSF, the “Lehman Parties”). The Merrill Entities and the Lehman Parties are collectively referred to herein as the “Parties” and each is individually referred to herein as a “Party.”

Recitals

WHEREAS, in November 2005, AHF-Bay Fund, LLC, a Florida limited liability company (“AHF”), was loaned the proceeds of the Bonds (defined below) for purposes of acquiring and rehabilitating five multifamily housing projects in the State of Florida (collectively, the “Projects” and, each individually, a “Project”).

WHEREAS, the five multifamily housing projects comprising the Projects and financed with the Bonds are:

- (a) Brampton Court Apartments located in Broward County, Florida (the “Brampton Project”);
- (b) Brittany Bay Apartments located in Pinellas County, Florida;
- (c) Mariners Pointe Apartments located in Pinellas County, Florida;
- (d) Village Lakes Apartments located in Seminole County, Florida; and
- (e) Waterman’s Crossing Apartments located in Hillsborough County, Florida.

WHEREAS, pursuant to that certain Indenture of Trust, dated as of November 1, 2005 (the “Indenture”), between Capital Trust Agency (the “Issuer”) and U.S. Bank National Association (the “Trustee”), the Issuer issued the following Multifamily Housing Revenue Bonds: \$62,030,000 Series A Bonds (the “Series A Bonds” or “Senior Bonds”) (CUSIP Number 14052TBH6), \$20,680,000 Subordinate Series B Bonds (the “Series B Bonds”) (CUSIP Number 14052TBJ2), \$20,680,000 Subordinate Series C Bonds (the “Series C Bonds”) and \$1,915,000 Subordinate Series D Bonds (the “Series D Bonds” and, together with the Series B Bonds and

the Series C Bonds, the “Subordinate Bonds”) (The Series A Bonds and the Subordinate Bonds are collectively referred to as the “Bonds”).

WHEREAS, with regard to the Bonds:

(f) Merrill Lynch, Pierce, Fenner & Smith Incorporated (“MLPFS”) was the initial purchaser and MLPMI is the current sole beneficial owner of the Series A Bonds;

(g) Lehman Brothers, Inc. (“LBI”) was the initial purchaser and LBHI is the current sole beneficial owner of the Series B Bonds;

(h) NAHTEF Bond Fund I – 2005, L.P. (“NAHTEF”) was the initial purchaser and is the current sole beneficial owner of the Series C Bonds; and

(i) NAHTEF Acquisitions, LLC was the initial purchaser and is the current sole beneficial owner of the Series D Bonds.

WHEREAS, the proceeds of the Bonds were loaned (the “Loan”) to AHF by the Issuer pursuant to that certain Loan Agreement, dated as of November 1, 2005 (the “Loan Agreement”), which Loan is evidenced by a Senior Promissory Note (the “Senior Note”) executed by AHF in the amount of the Series A Bonds and certain subordinate promissory notes (collectively, the “Junior Notes”) executed by AHF in the amounts of each of the series of the Subordinate Bonds.

WHEREAS, in connection with the Bonds, AHF entered into the following additional agreements:

(j) That certain ISDA Master Agreement, dated as of November 10, 2005, between MLCS and AHF, together with the (a) Multicurrency Cross-Border Schedule and Credit Support Annex thereto, each dated as of November 10, 2005 and (b) Confirmation Letter entered into connection therewith for a transaction under the terms of which MLCS and AHF agreed to make certain payments to one another relating to the Series A Bonds (the foregoing, collectively, as amended, restated and/or supplemented from time to time, the “Merrill TRS”); and

(k) That certain ISDA Master Agreement, dated as of November 1, 2005, between LBSF and AHF, together with the (a) Multicurrency Cross-Border Schedule and Credit Support Annex thereto, each dated as of November 10, 2005 and (b) the Confirmation Letter entered into connection therewith for a transaction under the terms of which LBSF and AHF agreed to make certain payments to one another relating to the Series B Bonds (the foregoing, collectively, the “Lehman TRS” and, together with the Merrill TRS, the “Swaps”).

WHEREAS, to secure the various obligations of AHF under the Bonds and the Swaps, AHF granted the following mortgages (listed in order of lien priority) on each of the five multifamily housing projects comprising the Projects:

(l) Five separate First Mortgage, Security Agreement and Fixture Filings, each dated as of November 1, 2005 (collectively, the “First Mortgages”), and each executed by AHF in favor of the Issuer and assigned to the Trustee to secure the Series A Bonds as more particularly described on Exhibit A attached hereto and made a part hereof;

(m) Five separate Second Mortgage, Security Agreement and Fixture Filings, each dated as of November 1, 2005 (collectively, the “Second Mortgages” and, together with the First Mortgages, the “Merrill Mortgages”), and each executed by AHF in favor of MLCS to secure the obligations of AHF under the Merrill TRS as more particularly described on Exhibit A attached hereto and made a part hereof;

(n) Five separate Third Mortgage, Security Agreement and Fixture Filings, each dated as of November 1, 2005 (collectively, the “Third Mortgages”), each executed by AHF in favor of the Issuer and assigned to the Trustee to secure the Series B Bonds as more particularly described on Exhibit A attached hereto and made a part hereof;

(o) Five separate Fourth Mortgage, Security Agreement and Fixture Filings, each dated as of the November 1, 2005 (collectively, the “Fourth Mortgages” and, together with the Third Mortgages, the “Lehman Mortgages”), and each executed by AHF in favor of LBSF and LBHI to secure the obligations of AHF under the Lehman TRS; and

(p) Five separate Fifth Mortgage, Security Agreement and Fixture Filings, each dated as of November 1, 2005, and each executed by AHF in favor of the Issuer and assigned to the Trustee to secure the Series C Bonds and the Series D Bonds as more particularly described on Exhibit A attached hereto and made a part hereof.

WHEREAS, on September 15, 2008 and periodically thereafter, LBHI and certain of its subsidiaries commenced in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) voluntary cases under Chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). The Lehman Parties are authorized to continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

WHEREAS, by notice dated October 8, 2008 from MLCS to AHF (the “AHF Default Notice”), MLCS notified AHF that an Event of Default had occurred under the Merrill TRS (the “Merrill TRS Default”) as a result of the failure by AHF to post collateral with MLCS required pursuant to the Merrill TRS and by notice dated October 8, 2008 (the “Default Period Notice”), MLCS notified the Lehman Parties, LBI and NAHTEF of the Merrill TRS Default such that a “Default Period” respecting AHF became in effect under that certain Subordination Agreement, dated as of November 10, 2005 (the “Subordination Agreement”), by and among LBI, LBSF, MLPFS and NAHTEF governing certain rights of the parties thereto with respect to the Bonds and Projects.

WHEREAS, the parties previously agreed by stipulation, *inter alia*, to relief from Section 362 of the Bankruptcy Code respecting the sale of the Brampton Project and such stipulation was

approved by order of the Bankruptcy Court entered on April 26, 2011 (the “Brampton Stipulation”);

WHEREAS, the Merrill Entities and the Lehman Parties are in dispute as to certain of their respective rights under the Subordination Agreement and have agreed to resolve such dispute by entering into this Agreement in order to reflect their agreement as to the use, application, distribution and/or payment of Applicable Proceeds (as defined below) generated from a Third Party Sale (as defined below) or determined upon the occurrence of a Merrill Acquisition (as defined below), in each case with respect to any of the Projects.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Incorporation of Recitals.** The Parties hereby incorporate the foregoing recitals by reference and make them a part of this Agreement and warrant and represent that all such recitals are true and correct.

2. **Capitalized Terms; Definitions.**

(a) All initially capitalized terms used but not otherwise defined herein shall have the meanings ascribed thereto in the Indenture.

(b) The term “final non-appealable order” as used herein shall mean an order of the Bankruptcy Court that has not been reversed, modified, amended or stayed, and the time for appeal or to seek review or rehearing thereof, has expired and as to which no appeal, review or rehearing is pending.

(c) The term “Applicable Proceeds” as used herein shall mean, collectively, Applicable Sales Proceeds and Net Economic Proceeds.

(d) The term “Applicable Sales Proceeds” as used herein shall mean, as applicable with respect to any Third Party Sale, that portion of the sales proceeds received by AHF or the Trustee, as applicable, which, pursuant to the terms of the Indenture, is payable or otherwise distributable to the Series A Bondholder and/or the holder of the applicable Second Mortgage and all other amounts which are paid to or received by the Series A Bondholder or MLCS or by the Trustee and otherwise payable to the Series A Bondholder or MLCS, in each case, upon consummation of such sale.

(e) The term “Economic Value” as used herein shall mean, as applicable with respect to any Merrill Acquisition of a Project, the fair market value of such Project on an as-is basis as of a date not more than sixty (60) days prior to and not later than the date of such Merrill Acquisition (the “Valuation Period”) as determined by an appraisal obtained by Merrill, at its own expense, in accordance with its internal procedures but which appraisal shall be prepared by a Qualified Appraiser in conformity with the requirements of the Code of Professional Ethics & Standards of Professional Practice of the Appraisal

Institute (including the Uniform Standards of Professional Appraisal Practice) (the “Merrill Valuation”) and which Merrill Valuation is provided to the Series B Bondholder within fifteen (15) days following Merrill’s receipt of the Merrill Valuation; provided, however, if the Series B Bondholder disputes the Merrill Valuation, the Series B Bondholder may engage, at its own expense, a Qualified Appraiser to provide a separate appraisal of the fair market value of such Project on an as-is basis as of any date during the Valuation Period on or after the date of the Merrill Valuation (the “Lehman Valuation”), which appraisal shall be in conformity with the requirements of the Code of Professional Ethics & Standards of Professional Practice of the Appraisal Institute (including the Uniform Standards of Professional Appraisal Practice), in which case (i) if the Parties are able to agree upon a valuation of the Project, such agreed upon amount shall be the Economic Value of such Project, or (ii) if the Parties are unable to agree upon a valuation of the Project, the Series B Bondholder may dispute, in any Objection asserted by the Series B Bondholder pursuant to Section 4 hereof, the Economic Value reflected in the applicable Transfer Notice (in addition to any other disputes that the Series B Bondholder may have) in which case the Parties agree that the mediator shall determine the Economic Value for purposes of calculating any Deficiency; provided that, if, prior to any determination of Economic Value by the mediator pursuant to Section 4 hereof, there is a Third Party Sale of the Project, the parties agree that, notwithstanding anything to the contrary contained in this Agreement, the Economic Value shall be deemed to be equal to the gross sales price being paid by the purchaser in connection with such Third Party Sale.

(f) The term “Merrill Acquisition” as used herein with respect to any Project, shall mean the transfer and conveyance of such Project by AHF to Merrill or its affiliate, pursuant to or in connection with a deed-in-lieu of foreclosure transaction, a foreclosure sale under any Merrill Mortgage, a sale under Section 363 of the Bankruptcy Code or any other provision of the Bankruptcy Code or comparable state law, a plan of reorganization of AHF, or by any other means whatsoever.

(g) The term “Merrill Third Party Sale” as used herein with respect to any Project acquired by Merrill or its affiliate pursuant to a Merrill Acquisition, shall mean any of the following, whichever may first occur with respect to such Project: (a) the transfer and conveyance of such Project by Merrill or its affiliate to a third party that is unaffiliated with Merrill or its affiliates and pursuant to an arms-length transaction, or (b) the transfer and conveyance of such Project to a third party that is unaffiliated with Merrill or its affiliates, pursuant to or in connection with a foreclosure sale under any then-existing mortgage encumbering such Project, a sale under Section 363 of the Bankruptcy Code or any other provision of the Bankruptcy Code or comparable state law, a plan of reorganization of the owner of such Project, or by any other means whatsoever.

(h) The term “Net Economic Proceeds” as used herein shall mean, as applicable to any Merrill Acquisition of a Project, (a) ninety-seven percent (97%) of the Economic Value of such Project, less (b) the aggregate amount of any protective advances made by Merrill to AHF (either directly or through the Trustee) in an amount up to \$1,000,000 in respect of protective advances made by Merrill to date and, following (i) the reimbursement to Merrill of such \$1,000,000 in protective advances through Net

Sales Proceeds from any Third Party Sale of one or more of the Projects and/or (ii) the deduction of such \$1,000,000 in protective advances for purposes of deriving Net Economic Proceeds in connection with a Merrill Acquisition of one or more of the Projects, any additional protective advances made by Merrill for the benefit of such Project, and less (c) any other out of pocket expenses actually incurred by Merrill with respect to such Project, if any, for which Merrill is entitled to reimbursement or repayment under the terms of the Loan Documents (as defined in the Indenture), the Swap Documents (as defined in the Merrill TRS) and the Subordination Agreement (exclusive of any such protective advances or out of pocket expenses that have been reimbursed to Merrill or previously deducted in deriving the Net Sales Proceeds or Net Economic Proceeds of any other Project).

(i) The term “Net Sales Proceeds” as used herein shall mean, as applicable to any Third Party Sale of a Project, (a) the Applicable Sales Proceeds generated from such Third Party Sale, less (b) the aggregate amount of any protective advances made by Merrill to AHF (either directly or through the Trustee) in an amount up to \$1,000,000 in respect of protective advances made by Merrill to date and, following (i) reimbursement to Merrill of such \$1,000,000 in protective advances through Net Sales Proceeds from any Third Party Sale of one or more of the Projects and/or (ii) the deduction of such \$1,000,000 in protective advances for purposes of deriving Net Economic Proceeds in connection with a Merrill Acquisition of one or more of the Projects, any additional protective advances made by Merrill for the benefit of such Project, and less (c) any other out of pocket expenses actually incurred by Merrill with respect to such Project, if any, for which Merrill is entitled to reimbursement or repayment under the terms of the Loan Documents (as defined in the Indenture), the Swap Documents (as defined in the Merrill TRS) and the Subordination Agreement (exclusive of any such protective advances or out of pocket expenses that have been reimbursed to Merrill or previously deducted in deriving the Net Sales Proceeds or Net Economic Proceeds of any other Project).

(j) The term “Prime Rate” shall mean the prime rate published from time to time in the Money Rates section of *The Wall Street Journal*

(k) The term “Qualified Appraiser” shall mean an independent third party appraisal firm that is licensed in the State of Florida and that is a member of the American Institute of Real Estate Appraisers and which firm is not affiliated with the Party retaining such firm.

(l) The term “Series A Bondholder” shall mean MLPMI and/or any other holder of the Series A Bonds.

(m) The term “Series B Bondholder” shall mean LBHI and/or any other holder of the Series B Bonds.

(n) The term “Third Party Sale” as used herein with respect to any Project, shall mean any of the following, whichever may first occur with respect to such Project: (a) the transfer and conveyance of such Project by AHF to a third party that is unaffiliated with AFH or Merrill or its affiliates and pursuant to an arms-length transaction, or (b) the

transfer and conveyance of such Project to a third party that is unaffiliated with AFH or Merrill or its affiliates, pursuant to or in connection with a foreclosure sale under any Merrill Mortgage, a sale under Section 363 of the Bankruptcy Code or any other provision of the Bankruptcy Code or comparable state law, a plan of reorganization of AHF, or by any other means whatsoever.

3. **Conditions to Effectiveness of Agreement.** The Parties hereby agree that this Agreement shall become effective upon the issuance of the Bankruptcy Court Final Order (as defined below) by the Bankruptcy Court approving this Agreement.

4. **Notification of Proposed Transfer.** Merrill hereby agrees to provide to each Lehman Party written notice (a "Transfer Notice") of the proposed sale or transfer of a Project pursuant to a Third Party Sale or a Merrill Acquisition not less than fifteen (15) Business Days prior to the proposed closing date of such sale or transfer, as applicable. Each Transfer Notice shall include a calculation of Net Sales Proceeds or Net Economic Proceeds, as applicable (including the amount of Applicable Sales Proceeds or Economic Value used in such calculation and the calculation of all protective advances and other amounts to be deducted from Applicable Sales Proceeds or Economic Value, as applicable, in determining Net Sales Proceeds or Net Economic Proceeds, as applicable), and shall be accompanied by evidence reasonably satisfactory to the Series B Bondholder substantiating the Applicable Sales Proceeds or Economic Value, as applicable, and any such protective advances and/or other amounts deducted therefrom to derive Net Sales Proceeds or Net Economic Value.

The Series B Bondholder may deliver a written objection (an "Objection") to a Transfer Notice on or before the tenth (10th) Business Day following the Series B Bondholders' receipt of a Transfer Notice and the accompanying documents described above. If the parties are unable to resolve the issues raised in the Objection prior to the closing of the proposed sale or transfer, the Parties hereby agree that such dispute regarding the calculation of the amount of Net Sales Proceeds or Net Economic Proceeds, as applicable, and, based thereon, the resultant amount due to the Series B Bondholder under the terms of this Agreement, will be submitted to binding mediation at and be administered by the Judicial Arbitration and Mediation Service before a mediator mutually acceptable to the Parties in the City of New York, New York. The Parties will request a written opinion from the mediator which written opinion will be fully binding upon the Parties and which opinion shall not be subject to appeal by any Party. The judgment on the award rendered by the mediator may be entered in any court having jurisdiction thereof.

In the event the mediator determines that the amount due the Series B Bondholder is in excess of the amount set forth in the Transfer Notice (such excess amount being referred to as a "Deficiency"), Merrill shall pay (a) to the Series B Bondholder, in addition to the amount set forth in the Transfer Notice, an amount equal to (i) the amount of such Deficiency, and (ii) the amount of all expenses incurred by the Series B Bondholder in the mediation proceeding (e.g., reasonable attorneys' fees and out of pocket expenses) up to an amount equal to the greater of \$10,000 or the amount of such Deficiency, and (b) to the mediator, all mediation fees and expenses of the mediator. Such payment to the Series B Bondholder shall be made within five (5) Business Days following the determination of the Deficiency (provided that, as to the payment of any expenses incurred by the Series B Bondholder, evidence of such expenses has been provided to Merrill). Each Merrill Entity shall be jointly and severally liable for all such

payments to the Series B Bondholder. The Series B Bondholder may apply any payments which may be due to the Series B Bondholder by Merrill under this paragraph against any payments which may be due to Merrill under this Agreement.

In the event the mediator determines that there is no Deficiency, the Series B Bondholder shall pay to Merrill all expenses incurred by Merrill in the mediation proceeding (e.g., reasonable attorneys' fees and out of pocket expenses) up to an amount equal to \$10,000, and shall pay to the mediator, all mediation fees and expenses of the mediator. Such payment to Merrill shall be made within five (5) Business Days following the determination by the mediator that there is no Deficiency (provided that evidence of such expenses has been provided to the Series B Bondholder). Merrill may apply any payments which may be due to Merrill by the Series B Bondholder under this paragraph against any payments which may be due to the Series B Bondholder under this Agreement.

In the event that a Deficiency is determined to exist and is paid to the Series B Bondholder in accordance with the terms of this Agreement, Merrill shall send written notice to the Trustee (with a copy to the Series B Bondholder) recalculating the Net Sales Proceeds or Net Economic Proceeds, as applicable, for purposes of any application thereof to amounts due under the Series B Bonds pursuant to the terms of the Indenture.

5. Distribution of Applicable Proceeds.

(a) Upon the occurrence of a Third Party Sale with respect to a Project, Merrill shall deliver, and shall direct the Trustee or AHF, as applicable, to deliver, all Applicable Sales Proceeds received by Merrill, AHF or the Trustee, as follows:

(i) Unless previously reimbursed to Merrill pursuant to the terms of the Indenture or otherwise, a portion of such Applicable Sales Proceeds in the aggregate amount of any protective advances made by Merrill to AHF (either directly or through the Trustee) and any other out of pocket expenses actually incurred by Merrill with respect to such Project (exclusive of any such protective advances or out of pocket expenses that have been reimbursed to Merrill or previously deducted in deriving the Net Sales Proceeds or Net Economic Proceeds of any other Project), if any, for which Merrill is entitled to reimbursement or repayment under the terms of the Loan Documents (as defined in the Indenture), the Swap Documents (as defined in the Merrill TRS) and/or the Subordination Agreement shall be disbursed to Merrill.

(ii) A portion of such Applicable Sales Proceeds in an aggregate amount equal to five percent (5%) of the aggregate amount of Net Sales Proceeds, shall be paid to the Series B Bondholder and applied by the Trustee to amounts due under the Series B Bonds and Merrill shall so direct the Trustee. Notwithstanding the foregoing, Merrill hereby agrees that if, for any reason, the Trustee refuses or fails to deliver such share of Net Sales Proceeds to the Series B Bondholder as provided in this Section 5(a)(ii), Merrill shall pay to the Series B Bondholder an amount equal to the amount of Net Sales Proceeds that Merrill

directed the Trustee (or was required to direct the Trustee pursuant to this Section 5) to deliver to the Series B Bondholder.

(iii) All remaining Applicable Sales Proceeds shall be distributed to the Series A Bondholder until the Series A Bondholder is paid in full and to MLCS as party to the Merrill TRS until MLCS is paid in full and following such payments, shall be distributed by the Trustee in accordance with the terms of the Indenture but subject to the terms of the Subordination Agreement by and among Lehman Brothers Inc., Lehman Brothers Special Financing Inc. and NAHTEF Bond Fund I – 2005, L.P. dated as of November 10, 2005.

(b) Upon the occurrence of a Merrill Acquisition with respect to a Project, Merrill shall pay to the Series B Bondholder an amount equal to five percent (5%) of the aggregate Net Economic Proceeds attributable to such Project, with such amount to be determined as of the date of such Merrill Acquisition and payment of such amount to be made on the earlier of (i) a Merrill Third Party Sale or (ii) the date that is one (1) year following the date of the Merrill Acquisition (the earlier of such dates being referred to as the “Payment Due Date”), with interest to accrue on any such unpaid amount from and after the Payment Due Date at a rate per annum equal to the sum of the Prime Rate (as the same may vary from time to time) plus five percent (5%).

6. Delivery of Releases by the Lehman Parties.

(a) In exchange for Merrill’s agreement to the provisions of Section 4 and 5 hereof, each of the Lehman Parties hereby agrees, for itself and not with respect to any other Lehman Party, that, upon delivery of a Transfer Notice with respect to a Project (other than in connection with a Third Party Sale or Merrill Acquisition pursuant to which the liens of the Lehman Mortgages are to be extinguished solely by operation of law and for which any title company issuing a policy relating to the transfer of the Project does not require a separate release), such Lehman Party shall, within fifteen (15) Business Days’ of receipt of such Transfer Notice, deliver or cause to be delivered to Merrill, any and all documents, instruments, conveyances or agreements reasonably requested by Merrill evidencing the release, cancellation, reconveyance or termination of any claim, right, title and interest that such Lehman Party may have, directly or indirectly, in such Project (the “Releases”), including, without limitation, any Lehman Mortgages and any Lehman Mortgage Documents (as defined in the Lehman Mortgages) then in effect and encumbering such Project. The Releases shall be held in escrow pending consummation of the Third Party Sale, if applicable, and payment in full of all amounts owed to the Series B Bondholder following such Third Party Sale or following a Merrill Acquisition, as applicable, and shall be released immediately upon receipt by the Series B Bondholder of the amount set forth in the Transfer Notice in accordance with the provisions of Section 11 hereof. For purposes of clarity, Releases delivered in connection with a Merrill Acquisition shall not be released from escrow until all amounts due to the Series B Bondholder under Section 4 hereof have been paid in full.

(b) Upon failure by a Lehman Party to deliver, or cause to be delivered, a Release in accordance with Section 6(a) above, to the extent Merrill, acting in its sole and

absolute discretion, finds it necessary or desirable in connection with the sale of the applicable Project, Merrill shall have the right, following payment to the Series B Bondholder of the amount set forth in the Transfer Notice, to release, cancel, reconvey or terminate (a) the Lehman Mortgages encumbering such Project, together with any other Lehman Mortgage Documents encumbering such Project and (b) all other claim, right, title and interest such Lehman Party may have, directly or indirectly, in such Project. In furtherance of the foregoing, each Lehman Party hereby appoints Merrill as such Lehman Party's attorney-in-fact, with full power in such Lehman Party's name and on such Lehman Party's behalf, to execute, deliver and record any Releases of the Lehman Mortgages and other Lehman Mortgage Documents encumbering such Project, along with such other documentation Merrill deems necessary or appropriate to release, cancel, reconvey or terminate all claim, right, title and interest such Lehman Party may have, directly or indirectly, in such Project, all in such form and substance as Merrill, acting in its sole and absolute discretion, deems necessary or appropriate. The foregoing power of attorney is irrevocable and is coupled with an interest.

(c) Merrill hereby agrees that neither the payment to the Series B Bondholder of the amount set forth in the Transfer Notice nor the release of the Lehman Mortgages or other Lehman Mortgage Documents shall prejudice or impair in any way the Series B Bondholder's right to dispute the amount set forth in the Transfer Notice as the required payment to the Series B Bondholder in connection with the applicable Third Party Sale or Merrill Acquisition in accordance with Section 4 hereof nor shall they prejudice or impair in any way the Series B Bondholder's entitlement to a Deficiency and other amounts which may be determined to be payable to the Series B Bondholder pursuant to Section 4 hereof.

7. **[Intentionally Omitted.]**

8. **Delivery of Releases by Merrill.** Upon the repayment in full of (a) the Series A Bonds and all obligations secured by the First Mortgages or (b) any amounts payable to MLCS and all obligations secured by the Second Mortgages (the "Merrill Swap Obligations"), the applicable Merrill Entity shall release or cause to be released each of the First Mortgages or each of the Second Mortgages, as applicable, and all other security interests or collateral securing the Series A Bonds or the Merrill Swap Obligations, as applicable, in accordance with the Loan Documents (as defined in the Indenture) and the Swap Documents (as defined in the Merrill TRS).

9. **Approval by Bankruptcy Court.** Upon execution and delivery of this Agreement by all Parties, the Lehman Parties will file a motion (or separate motions) seeking approval of this Agreement by the Bankruptcy Court and provide Merrill with notice of such filing(s). If the Bankruptcy Court denies approval of such motion(s) or otherwise fails to approve this Agreement on or prior to January 11, 2011, this Agreement shall terminate and be of no further force or effect and the Parties shall be restored to their respective legal positions as if this Agreement had never been executed and delivered. Upon the issuance of a final non-appealable order by the Bankruptcy Court approving this Agreement pursuant to the motion(s) filed by the Lehman Parties ("Bankruptcy Court Final Order"), this Agreement shall become effective in accordance with its terms (the date on which this Agreement becomes effective being referred to

as the “Effective Date”). The Parties hereby acknowledge that the sale of the Brampton Project may occur prior to the Effective Date of this Agreement on the basis of the Brampton Stipulation.

10. **Interference.** Each Lehman Party acknowledges and agrees that it will not, directly or indirectly, contest, oppose or otherwise interfere in any way with (or cause any other person, firm or entity to do, or acquiesce to) the foreclosure of any Project, or deed-in-lieu thereof (including, without limitation, any Merrill Acquisition), or the approval of any Third Party Sale by Merrill provided that Merrill has complied with its payment obligations hereunder in all respects.

11. **Payments to Series B Bondholder.** Merrill shall make, and shall instruct the Trustee to make, all payments to be made to the Series B Bondholder under this Agreement by wire transfer of immediately available funds to the account and in accordance with the wire transfer instructions set forth on Exhibit B attached hereto and made a part hereof; provided, that the Series B Bondholder may, from time to time, amend such instructions by written notice to Merrill.

12. **Lehman Debtors’ Representations and Warranties.** The Lehman Debtors hereby represent and warrant to Merrill that the following statements are true and correct as of the Execution Date and will be true and correct as of the Effective Date:

(a) Authority. Subject to the issuance of a Bankruptcy Court Final Order, the Lehman Debtors have all the requisite power and authority to execute and deliver this Agreement and to perform all of their respective obligations under this Agreement.

(b) Due Authorization. Subject to the issuance of a Bankruptcy Court Final Order, the execution, delivery and performance of this Agreement has been duly authorized by all necessary action on the part of each of the Lehman Debtors and do not and will not require any consent or approval of any party, court (other than the Bankruptcy Court) or governmental authority that has not been obtained, except as otherwise set forth herein.

(c) Enforceability. When duly executed and delivered and upon issuance of a Bankruptcy Court Final Order, all of the Lehman Debtors’ obligations hereunder will be the legal, valid and binding obligations of the respective Lehman Debtor, enforceable in accordance with the terms of this Agreement.

(d) Performance. The performance by the Lehman Debtors of their respective duties and obligations under this Agreement will not conflict with, result in a breach of or default under, or be adversely affected by, any agreements, instruments, decrees, judgments, injunctions, orders, writs, laws, rules or regulations, or any determination or award of any arbitrator, to which any of the Lehman Debtors is a party or by which any of the Lehman Debtors or their respective assets are bound.

13. **Merrill Representations and Warranties.** Each of the Merrill Entities hereby represents and warrants to Lehman that the following statements are true and correct as of the Execution Date and will be true and correct as of the Effective Date:

(a) Authority. The Merrill Entities have all the requisite power and authority to execute and deliver this Agreement and to perform all of their respective obligations under this Agreement.

(b) Due Authorization. The execution, delivery and performance of this Agreement has been duly authorized by all necessary action on the part of each of the Merrill Entities and do not and will not require any consent or approval of any party, court or governmental authority that has not been obtained.

(c) Enforceability. When duly executed and delivered, all of the Merrill Entities' obligations hereunder will be the legal, valid and binding obligations of the respective Merrill Entity, enforceable in accordance with the terms of this Agreement.

(d) Performance. The performance by the Merrill Entities of their respective duties and obligations under this Agreement will not conflict with, result in a breach of or default under, or be adversely affected by, any agreements, instruments, decrees, judgments, injunctions, orders, writs, laws, rules or regulations, or any determination or award of any arbitrator, to which any of the Merrill Entities is a party or by which any of the Merrill Entities or their respective assets are bound.

14. **Authority.** Each Party represents and warrants that it has had full opportunity to consult its own attorney in connection with the review of this Agreement, that it understands the meaning and effect of this Agreement, that it has carefully read and understands the scope and effect of each provision contained in this Agreement, and that it is not relying upon any representations made by the other Parties or the other Parties' attorneys or other representatives except for such representations and warranties expressly provided in this Agreement. Each Party further represents and warrants to the other Parties that the person executing this Agreement on its behalf has the authority to do so, that it specifically authorized the execution of this Agreement, and that it has the sole right and exclusive authority to execute this Agreement in its stated capacity hereunder. LBHI further represents and warrants to Merrill that it has full beneficial ownership (with legal title currently being held by a nominee of the Depository Trust Company) of the Series B Bonds and no other person, firm or entity has any entitlement to any of the Applicable Proceeds to be paid to the Series B Bondholder under Section 5 of this Agreement or under the Lehman Mortgages. Merrill further represents and warrants to the Lehman Parties that Merrill has the power and authority, pursuant to the Indenture and the Subordination Agreement, to direct the Trustee to deliver the Applicable Sales Proceeds as set forth under Section 5 hereof. Attached hereto as Exhibit C is an acknowledgment of the Trustee confirming that the Trustee will comply with any written direction of MLPMI, as the Series A Bondholder, with respect to the disbursement and application of the Applicable Sales Proceeds. Merrill further represents and warrants that no consent of any holder of any Bonds, other than the Series A Bondholder, under the Indenture is required in connection with the execution and delivery, effectiveness or performance of this Agreement by any Party and that neither this Agreement nor anything contained herein will adversely affect the tax-exempt status of the Bonds. Prior to the execution and delivery of the Agreement, Merrill shall cause Bond Counsel (which may be Kutak Rock LLP) to deliver an opinion to the effect that neither this Agreement nor any of the agreements and transactions reflected herein adversely affect the exclusion of interest on the Bonds from gross income for federal income tax purposes.

15. **[Intentionally Omitted].**

16. **Events of Default.** A breach by any Party of its obligations hereunder or of any representations or warranties made by such Party hereunder and failure of such Party to cure such breach upon five (5) days' written notice from any other Party, shall entitle the other Parties to pursue any and all rights and remedies available at law or in equity including, without limitation, the right to seek specific performance or injunctive relief, without the necessity of posting any bond or other collateral that may be required under applicable law.

17. **Further Assurances.** The Parties, without further consideration, agree to execute and deliver such other documents and take such other action as may be reasonably necessary to effectuate the terms and provisions of this Agreement.

18. **Severability.** If any portion of any term or provision of this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby.

19. **Interpretation.** Should any of the provisions or terms of this Agreement require judicial interpretation, the court interpreting or construing this Agreement shall not apply a presumption that such provision(s) or term(s) shall be more strictly construed against one Party by reason of the rule of construction that a document is to be construed more strictly against the party who prepared it, it being agreed that all Parties and their counsel have participated in the preparation and review of this Agreement.

20. **Survival of Representations and Warranties.** All representations and warranties made by the Parties in this Agreement or any other document furnished in connection with this Agreement shall survive the execution and delivery of this Agreement and the other documents, and nothing shall affect the right of the other Parties to rely upon such representations and warranties or their accuracy.

21. **Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the Parties and their successors and permitted assigns. MLPMI, as holder of the Series A Bonds, agrees and covenants not to transfer or assign the Series A Bonds or any interest therein other than to a transferee or assignee that assumes all of MLPMI's obligations hereunder and agrees to be bound by the terms of this Agreement as the holder of the Series A Bonds. LBHI hereby agrees and covenants not to transfer or assign the Series B Bonds or any interest therein other than to a transferee or assignee that assumes all of the Series B Bondholder's obligations hereunder and agrees to be bound by the terms of this Agreement as the holder of the Series B Bonds.

22. **Captions.** The captions and headings of this Agreement are for convenience of reference only.

23. **Entire Agreement.** This Agreement constitutes the entire agreement among the Parties with respect to the subject matter hereof and may only be amended by a written instrument executed by all Parties.

24. **Counterparts.** This Agreement may be executed in any number of duplicate originals or counterparts, each of which deemed to be an original and all of which taken together

shall constitute a single agreement. The Parties further agree that a signature transmitted electronically or by facsimile may be treated and given the same legal effect as the original.

25. Consent to Jurisdiction; Governing Law. This Agreement and all claims or causes of action (whether in contract or tort) that may be based upon, arise out of or relate to this Agreement, or the negotiation, execution or performance of this Agreement (including any claim or cause of action based upon, arising out of or related to any representation or warranty made in or in connection with this Agreement or as an inducement to enter into this Agreement or any matters of construction, validity and performance relating to this Agreement and the obligations arising hereunder), shall be governed by, and construed in accordance with, the internal laws of the State of New York without reference to choice of law doctrine. Each of the Parties irrevocably consents to service of process in the manner provided for notices in Section 29 hereof. Nothing in this Agreement will affect the right, or requirement, of the Parties to serve process in any other manner permitted or required by law. Subject to the Parties' agreement to resolve certain disputes through binding mediation as provided in Section 4 hereof, each of the Parties agrees that (i) jurisdiction over any disputes arising out of or related to this Agreement shall lie with any court of the State of New York and the United States District Court located in the Borough of Manhattan in New York City and (ii) venue shall be in any court of the State of New York and the United States District Court located in the Borough of Manhattan in New York City; provided, however, that the Parties expressly agree that the Bankruptcy Court shall have jurisdiction over any disputes regarding payments that may be due and owing to the Lehman Parties under this Agreement (subject, however to the Parties' agreement to resolve certain disputes through binding mediation as provided in Section 4 hereof); provided, further, that nothing contained herein shall in any way prejudice the Lehman Parties' rights to seek to remove any other dispute arising out of or related to this Agreement from any court of the State of New York or any United States District Court to the Bankruptcy Court. Nothing in this Section 25 shall be construed in any manner so as to permit jurisdiction of the Bankruptcy Court over any disputes arising under Section 6 hereof, which disputes shall be subject to the exclusive jurisdiction of any court in the State of New York or the United States District Court in the Borough of Manhattan in New York City. Each of the Parties hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, (i) any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or any other documents executed and delivered in connection herewith to the extent in accordance with the provisions above; and (ii) the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court, which submission shall be exclusive unless none of such courts has lawful jurisdiction over such action or proceeding.

26. Attorneys' Fees. In the event any action be instituted by a Party to enforce this Agreement, the prevailing party in such action (as determined by the court, agency or other authority before which such suit or proceeding is commenced), shall be entitled to such reasonable attorneys' fees, costs and expenses as may be fixed by the decisionmaker. The foregoing includes, but is not limited to, reasonable attorneys' fees relating to the enforcement of this Agreement and/or in any post-judgment proceedings to collect or enforce the judgment with respect to this Agreement.

27. **Time Is of the Essence.** Time is of the essence with respect to all matters required of the Parties under this Agreement.

28. **Ratification.** The Subordination Agreement shall continue in full force and effect, and is hereby ratified, verified and approved in all respects except to the extent any provisions thereof conflict with the express provisions of this Agreement in which case this Agreement shall govern and control.

29. **Notices.** All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed effectively given: (a) upon personal delivery to any Party to be notified, (b) when sent by electronic mail or facsimile confirmed by the recipient, (c) on the date of a registered or certified mail receipt prepared by the U.S. Postal Service, or (d) the date of a nationally recognized overnight courier's written verification of receipt. All communications shall be sent to the following, unless a written notice of changed recipient or address is exchanged between the Parties:

To LBHI at:

Lehman Brothers Holdings, Inc.
1271 Avenue of the Americas, 38th Floor
New York, New York 10020
Attn: Joelle Halperin, Esq. and Daniel Glanz
Facsimile: (646) 834-0874
Email: joelle.halperin@lamcollc.com
daniel.glanz@lamcollc.com

and

Alvarez & Marsal
1271 Avenue of the Americas, 35th Floor
New York, New York 10020
Attn: Jason Haggins and Ron Dooley
Facsimile: (646) 285-9337
Email: jhaggins@alvarezandmarsal.com
rdooley@alvarezandmarsal.com

With a copy (which shall not constitute notice) to:

Weil, Gotshal & Manges LLP
1395 Brickell Avenue, 12th Floor
Miami, Florida 33131
Attn: Nellie P. Camerik, Esq.
Facsimile (305) 374-7159
Email: nellie.camerik@weil.com

To LBSF at:

Lehman Brothers Structured Financing
c/o Lehman Brothers Holdings Inc.
1271 Avenue of the Americas, 40th Floor
New York, New York 10020
Attn: Derivatives Legal
Facsimile: (646) 285-9701

With a copy (which shall not constitute notice) to:

Alvarez & Marsal
1271 Avenue of the Americas, 35th Floor
New York, New York 10020
Attn: Jason Haggins and Ron Dooley
Facsimile: (646) 285-9337
Email: jhaggins@alvarezandmarsal.com
rdooley@alvarezandmarsal.com

and

Weil, Gotshal & Manges LLP
1395 Brickell Avenue, 12th Floor
Miami, Florida 33131
Attn: Nellie P. Camerik, Esq.
Facsimile (305) 374-7159
Email: nellie.camerik@weil.com

To Merrill Entities at:

Merrill Lynch Capital Services, Inc.
Merrill Lynch Portfolio Management, Inc.
c/o Bank of America Merrill Lynch
Merrill Lynch, Pierce, Fenner & Smith Incorporated
One Bryant Park, NY1-100-12-3
New York New York 10036
Attn: Daniel R. Nussbaum
Facsimile: (646) 855-0634
Email: dan.nussbaum@bamll.com

With a copy (which shall not constitute notice) to:

Kutak Rock LLP
Suite 2100
Peachtree Center South Tower
225 Peachtree Street, N.E.

Atlanta, Georgia 30303
Attn: David A. Nix, Esq.
Facsimile: (404) 222-4654
Email: david.nix@kutakrock.com

30. Waiver of Jury Trial. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY HEREBY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY CLAIM, ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY ANY PARTY AGAINST ANY OTHER PARTY, OR ANY MATTER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT.

[Signatures appear on following page]

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the
Execution Date.

**MERRILL LYNCH CAPITAL SERVICES,
INC.**

By: _____
Name: Daniel Nussbaum
Title: Authorized Signatory

**MERRILL LYNCH PORTFOLIO
MANAGEMENT, INC.**

By: _____
Name: Daniel Nussbaum
Title: Authorized Signatory

[Signatures continued on next pages]

[Signature page to Agreement Regarding Applicable Proceeds]

LEHMAN BROTHERS HOLDINGS INC.,
as debtor and debtor in possession in its Chapter
11 case in the United States Bankruptcy Court for
the Southern District of New York, Case No. 08-
13555 (JMP)

By: _____
Name: _____
Title: _____

[Signatures continued on next page]

[Signature page to Agreement Regarding Applicable Proceeds]

**LEHMAN BROTHERS SPECIAL
FINANCING INC.**, as debtor and debtor in
possession in its Chapter 11 case in the United
States Bankruptcy Court for the Southern District
of New York, Case No. 08-13555 (JMP)

By: _____
Name: _____
Title: _____

[Signatures continued on next page]