

**EXHIBIT "A"**

Tenants-in-Common Reorganization Agreement Dated May 12, 2014

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## TENANTS-IN-COMMON REORGANIZATION AGREEMENT

THIS TENANTS-IN-COMMON REORGANIZATION AGREEMENT (this "Agreement") is made effective as of May 12, 2014 (the "Effective Date"), by and among those parties identified on Exhibit "A" hereto (each referred to individually as an "Owner" and collectively as the "Owners"), BREAKWATER EQUITY PARTNERS, LLC, a California limited liability company ("Breakwater"), and VIRTUA PARTNERS LLC, an Arizona limited liability company ("Virtua").

### RECITALS

A. The Owners hold 100% of the tenants-in-common ownership interests (the "Tenancy") in that certain office building known locally as *Met Center 15*, having approximately 257,600 square feet of net rentable area and constructed upon approximately 26.83 acres of real property located in Austin, Texas, as more particularly described on Exhibit "B" to this Agreement (the "Property"). The amount of each Owner's Tenancy interest in the Property is set forth on Exhibit "A" to this Agreement.

B. The Owners are parties to that certain *Tenants in Common Agreement* affecting the Property, recorded as Document No. 2005153512 in the Official Public Records of Travis County, Texas, attached to this Agreement as Exhibit "C" (the "TIC Agreement").

C. The Property is subject to a mortgage loan dated on or about August 19, 2005, from and held by General Electric Capital Corporation, or its successors or assigns ("Lender"), in the original principal amount of \$28,000,000 (the "Loan").

D. The Property is also subject to certain lease agreements (the "Leases") with the following tenants: (i) Progressive, which occupies approximately 85% of the rentable space in the Property; and (ii) Waste Management, Inc., which occupies approximately 15% of the rentable space in the Property.

E. The Owners and Breakwater are parties to that certain *Consulting Services Agreement* dated effective as of December 31, 2012 (the "Consulting Agreement"), pursuant to which Breakwater was engaged to provide services to help the Owners negotiate and obtain the restructuring of certain loans relating to the Property. Under the foregoing agreement, in the event of the successful restructuring of the subject debt, Breakwater is entitled to receive a fee equal to a 22.5% equity position in the Property.

F. The Owners desire to reorganize the Tenancy and form a new single-purpose limited liability company for the purpose of owning and operating the Property, as more particularly provided by this Agreement.

## AGREEMENT

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

1. Formation of New Entity.

A. Organization. The parties to this Agreement hereby agree to enter into a joint venture partnership and form MC 15 Members, LLC, a new single-purpose limited liability company under the laws of the State of Texas (the "New Entity"). The New Entity will be manager-managed, and the manager of the New Entity will be Virtua.

B. Membership. Ownership of the New Entity will be comprised of 36 members (the "Members"), which will consist of the Owners, Breakwater, and Virtua. The membership interest percentage each Owner will receive in the New Entity will be equal to such Owner's current Tenancy interest in the Property minus the following dilutions: (i) first, the present Tenancy interest of each Owner will be diluted so as to provide to Breakwater a 22.5% equity interest in the Property pursuant to the terms of the Consulting Agreement; and (ii) second, the resulting Tenancy interests of the Owners and Breakwater will be diluted so as to provide to Virtua a 20% interest in the New Entity. Thus, upon formation, membership of the New Entity will be held 20% by Virtua and 80% by the Owners and Breakwater (collectively, the "LP Members"). The exact percentage of membership interests to be issued in the New Entity will be as shown on the membership schedule attached to this Agreement as Exhibit "D". Virtua will act as "Tax Matters Partner" of the New Entity for purposes of Internal Revenue Code § 6231(a)(7).

C. Operating Agreement. The Members will cooperate in good faith to draft an operating agreement for the New Entity that is reasonably acceptable to the Members and any applicable lender for the Property, and the Members acknowledge and agree that the final operating agreement for the New Entity will likely contain terms required by, and subject to, the approval of any such lender. The New Entity's operating agreement will vest exclusive management power of the New Entity in Virtua (including, but not limited to, the day-to-day decisions relating to property issues, vendors, and leasing matters); provided, however, that such management power will be subject only to the majority approval by the LP Members for any sale or other disposition of the Property, including the timing and terms of any such sale.

2. Conveyance of Property; I.R.C. § 721 Exchange. Upon or promptly following the formation of the New Entity, each Owner will transfer its Tenancy interest in the Property to the New Entity in exchange for a membership interest in the New Entity as set forth on Exhibit "D" to this Agreement. Each of the Owners agrees to execute any and all documents necessary to effectuate the transfer of its Tenancy interest to the New Entity, which transfer will be made through an exchange under Internal Revenue Code § 721. Landmark Title (the "Title Company"), whose contact information is set forth in Section 10 of this Agreement, will be

engaged to render escrow and title services with regard to the conveyance of title to the Property from the Owners to the New Entity. Concurrently with its acquisition of title to the Property, the New Entity will assume all liabilities of the Owners relating to the Property, including, without limitation, any and all mortgage financing relating to the Property and all landlord obligations under the Leases, and the Owners agree to execute any documents necessary to memorialize such assignments and assumptions.

3. Recapitalization.

A. Business Plan relating to the Property. The Members agree to a minimum two-year hold of the Property by the New Entity. Attached to this Agreement as Exhibit "E" are hypothetical 2-year and 7-year pro formas relating to the anticipated operation of the Property, including anticipated funding sources and uses, which set forth different potential scenarios for the Property, but which do not represent all the potential scenarios for the Property.

B. New Debt relating to the Property. Virtua, on behalf of the New Entity, will use its best efforts to seek to potentially obtain approximately \$26,200,000 of senior debt and approximately \$2,900,000 of mezzanine/equity debt relating to the Property. Any such loans will be non-recourse to the Members. Any carve-out guarantee(s) required by a lender for a loan to the New Entity will be provided by Lloyd W. Kendall, Jr. ("Kendall"). In exchange for any guarantee given by Kendall, the New Entity will pay Kendall a guarantee fee equal to 1% of the loan guaranteed.

C. Targeted Closing Date for Recapitalization. The targeted closing date for recapitalization of the Property will be June 30, 2014, or such other date as may be required by a lender or as mutually agreed to by the parties to this Agreement.

D. Existing Debt relating to the Property. Virtua, on behalf of the New Entity, will act as the sole representative of the Owners with respect to seeking refinancing of the existing Loan relating to the Property. Funds from any new loan(s) obtained by the New Entity, and to be secured by the Property, will be used to pay off the existing Loan, which will terminate any guaranty obligations of the Owners.

E. Costs of Recapitalization. The costs of recapitalization will be paid using funds acquired from new financing obtained by the New Entity. Notwithstanding the foregoing to the contrary, Virtua will advance to the New Entity the sum of \$75,000, to be used for the payment of loan deposits and legal fees relating to the recapitalization of the Property. The foregoing advance by Virtua will in no way be considered a capital contribution to the New Entity, and such advance will be repaid to Virtua upon the closing of the new loan obtained by the New Entity.

4. Leasing Matters; Leasing Fee. Virtua will act as the leasing broker for the Property, with all powers necessary to that end, including, but not limited to, obtaining any and all licenses for the New Entity, its officer and/or its employees as may be legally required for such leasing operations or retaining a licensed Texas broker. In exchange for leasing services

rendered, Virtua (through a licensed affiliate) will receive from the New Entity a maximum fee of 3% of the gross revenue derived from the Leases of the Property.

5. Construction Matters; Construction Management Fee. The parties acknowledge certain improvements to the Property are necessary or advisable. Virtua will oversee the construction process of any and all such improvements, and may retain such experts as it deems necessary. All costs of construction will be paid out of the construction reserve which will be created upon the refinancing of the Property. Virtua may charge the New Entity a reasonable fee for the construction management services rendered.

6. Future Sale or Disposition of the Property; Exit Fee. Upon the future sale or other disposition of the Property, the New Entity will pay to Virtua an exit fee equal to 1% of the subject sale price.

7. Termination of TIC Agreement. The Owners agree and acknowledge that the TIC Agreement will be terminated concurrently with the formation of the New Entity and the associated transfer of the Tenancy interests to the New Entity. The Owners agree to execute and file a release of the TIC Agreement in the Official Public Records of Travis County, Texas, as may be appropriate to memorialize the termination.

8. Disposition of Consulting Agreement. Upon the successful recapitalization and I.R.C. § 721 roll-up contemplated by this Agreement, Breakwater will be deemed to have fully performed its obligations under the Consulting Agreement, Breakwater will be entitled to receive from the Owners a 22.5% equity interest in the Property in accordance with the terms of the Consulting Agreement (which interest will be converted into a membership interest in the New Entity as detailed in Section I.A of this Agreement), and the Consulting Agreement will terminate and the parties thereto will have no further duties or obligations thereunder.

9. Affiliation Disclosure. Virtua will, from time to time as necessary, disclose to the Members any third-party affiliates related to Virtua. The parties hereto each acknowledge that Virtua and Breakwater have disclosed an affiliation with Jack Rose, Ed Reichenberg, Quynh (Quinn) Palomino, and Veralta Consulting Group LLC. Virtua contemplates entering into agreements with these individuals and/or companies to provide services related to the remediation of the Property.

10. Notices. Any and all notices provided by one party to another under this Agreement will be made to the applicable party at the following address(es):

If to Virtua:

Virtua Partners LLC  
ATTN: Lloyd W. Kendall, Jr.  
141 Wildwood Gardens  
Piedmont, California 94611  
Email: [lloydkendall@comcast.net](mailto:lloydkendall@comcast.net)  
Fax: \_\_\_\_\_

With a copy to: Dioguardi Flynn LLP  
ATTN: Mark Dioguardi  
7001 North Scottsdale Road, Suite 2060  
Scottsdale, Arizona 85253  
Email: [mdioguardi@dioguardiflynn.com](mailto:mdioguardi@dioguardiflynn.com)  
Fax: (480) 951-8824

If to Breakwater: Breakwater Equity Partners, LLC  
ATTN: Jack Rose  
3636 Nobel Drive, Suite 350  
San Diego, California 92122  
Email: [jack.rose@breakwaterequity.com](mailto:jack.rose@breakwaterequity.com)  
Fax: (858) 216-4042

If to the Owners: Matthews, Stein, Sheils, Pearce, Knott, Eden &  
Davis, L.L.P  
ATTN: Ken Stein  
8131 LBJ Freeway, Ste. 700  
Dallas, Texas 75251  
Email: [kstein@mssattorneys.com](mailto:kstein@mssattorneys.com)  
Fax: (972) 234-1750

If to the Title Company: Landmark Title Assurance Agency  
ATTN: Vicki Etherton  
2525 East Camelback Road, Suite 130  
Phoenix, Arizona 85016  
Email: [vicki.etherton@ltaz.com](mailto:vicki.etherton@ltaz.com)  
Fax: (480) 748-2710

11. Exclusivity. The LP Members represent and warrant to Virtua that no other person or entity has a contract, agreement, option, letter of intent, right of first refusal or first offer, or other right to acquire all or any other part of the Property or their interests therein.

12. Approval of the Agreement by the Owners. This Agreement will become effective and will be in full force and effect at such time as this Agreement has been executed by Breakwater, Virtua and by the Owners collectively representing at least 66.67% of the Tenancy in the Property (a "Super-Majority"). In the event less than 100% of the Owners agree to execute this Agreement, the Super-Majority agrees to use the call out provisions of the TIC Agreement to create unanimous consent for this Agreement, as provided in the TIC Agreement and with costs and expenses relating thereto to be paid, allocated, and reimbursed as provided in the TIC Agreement.

13. Miscellaneous Provisions. The following miscellaneous provisions shall apply to the performance, construction, and interpretation of this Agreement:

A. The Recitals and Exhibits to this Agreement are hereby incorporated into

this Agreement and made a part hereof by this reference.

B. Other than the Consulting Agreement, this Agreement (including the Recitals and Exhibits hereto) contains the complete and entire agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter hereof. No representations, warranties or promises not expressly contained herein (or in the Consulting Agreement) shall be binding upon the parties.

C. In the event that any one or more of the provisions contained in this Agreement is for any reason held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision hereof, and this Agreement will be construed as if such invalid, illegal, or unenforceable provision had not been contained herein.

D. This Agreement will be binding upon and will inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns where permitted by this Agreement.

E. This Agreement may be amended or modified only by an instrument in writing executed by all parties hereto. This Agreement cannot be assigned by any party without the prior written consent of the other parties.

F. This Agreement has been drawn and prepared as the result of the bilateral negotiations between the parties hereto, and this Agreement will, in the event of any dispute over its meaning, application, interpretation or construction, be construed reasonably, such that no ambiguities will be resolved presumptively against any party as a matter of law.

G. This Agreement will be construed under and in accordance with the laws of the State of Texas without regard to choice of law rules. Any action arising out of or related to this Agreement shall be subject to binding arbitration in Travis County, Texas.

H. Any waiver of any breach hereof or default hereunder will not constitute a waiver of any subsequent breach or default of the same or any other provision contained herein.

I. Time is of the essence for this Agreement.

J. The covenants contained in this Agreement which, by their terms, require or contemplate their performance after the expiration or termination of this Agreement will be enforceable notwithstanding the expiration or termination of this Agreement.

K. The headings or captions of the numbered paragraphs within this Agreement are for convenience only and will not limit or enlarge the scope or meaning of the various and several paragraphs hereof.

L. Words of any gender used in this Agreement will be held and construed to include any other gender, and words in the singular number will be held to include the plural, unless the context otherwise requires.

M. For the purposes of this Agreement: (i) those words, names, or terms which are specifically defined herein will have the meaning specifically ascribed to them; (ii) the words “hereof”, “herein”, “hereunder”, and words of similar import, when used in this Agreement, will refer to this Agreement as a whole, and not to any particular provision of this Agreement; (iii) all references to designated “Articles”, “Sections”, and to other subdivisions are to the designated Articles, Sections, and other subdivisions of this Agreement as originally executed; (iv) all references to “Dollars” or “\$” shall be construed as being United States dollars; (v) the term “including” is not limiting and means “including without limitation”; and (vi) all references to all statutes, statutory provisions, regulations, or similar administrative provisions will be construed as a reference to such statute, statutory provision, regulation, or similar administrative provision as in force at the date of this Agreement and as may be subsequently amended.

N. This Agreement may be executed through the use of separate signature pages or in any number of counterparts as may be deemed necessary and/or convenient, and each of such counterparts will, for all purposes, constitute one agreement binding on all the parties, notwithstanding that all parties are not signatories to the same counterpart.

O. Facsimile copies and electronic copies (e.g. .PDF) of executed signatures to this Agreement will be accepted with the same force and effect as original signatures hereto.

14. Representations and Warranties. THE UNDERSIGNED PARTIES HEREBY ACKNOWLEDGE, AGREE, REPRESENT AND WARRANT TO EACH OTHER THAT: (a) THEY HAVE CAREFULLY READ AND REVIEWED THIS ENTIRE AGREEMENT; (b) THEY HAVE BEEN ADVISED OF THEIR RIGHT TO CONSULT WITH THEIR SEPARATE LEGAL, TAX, AND FINANCIAL COUNSEL ABOUT THE TERMS, MEANING AND CONSEQUENCES OF THIS AGREEMENT; (c) THEY HAVE HAD ADEQUATE OPPORTUNITY TO CONSULT WITH THEIR SEPARATE COUNSEL BEFORE SIGNING THIS AGREEMENT; (d) THEY FULLY UNDERSTAND THE CONTENTS, RISKS, OBLIGATIONS AND CONSEQUENCES OF THIS AGREEMENT; (e) THEY ARE NOT RELYING ON ANY ADVICE OR REPRESENTATIONS OF ANY OTHER OWNER; (f) THEY ENTER THIS AGREEMENT FREELY AND WITHOUT ANY DURESS OR COERCION OF ANY KIND, AND (g) THEY HAVE FULL POWER AND AUTHORITY TO ENTER INTO THIS AGREEMENT AS THE OWNER FOR WHOM THEY ARE SIGNING.

15. Enforcement. In connection herewith, any one or more of the Owners shall be entitled to specific performance, injunctive relief, or any other applicable legal or equitable remedy to enforce the provisions of this Agreement against any other Owners, on an expedited or emergency basis, without the necessity for a bond or any other form of judicial security, or if any such bond is required, the Owners stipulate that a bond in the amount of \$100.00 will be

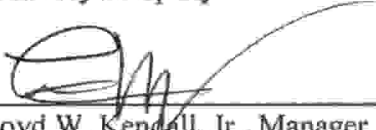


sufficient and adequate for all purposes and in all circumstances.

The foregoing Tenants-In-Common Reorganization Agreement was executed by the parties hereto as of the Effective Date.

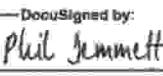
**VIRTUA:**

**VIRTUA PARTNERS LLC**, an Arizona limited liability company

By:   
Lloyd W. Kendall, Jr., Manager

**BREAKWATER:**

**Breakwater Equity Partners, LLC**, a California limited liability company

By:   
Phil Jemmett, Sole Member

**OWNERS:**

**NNN Met Center 15, LLC**, a Delaware limited liability company

By: Triple Net Properties, LLC, a Virginia limited liability company, its Manager

By: \_\_\_\_\_  
For: \_\_\_\_\_  
Its: \_\_\_\_\_

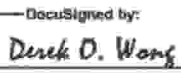
**NNN Met Center 15 5, LLC**, a Delaware limited liability company

By: George Estes and Marie Estes, Trustees of the George and Marie Estes Family Trust, dated January 16, 1996, Sole Member

By: \_\_\_\_\_  
George Estes, Trustee

**NNN Met Center 15 4, LLC**, a Delaware limited liability company

By: \_\_\_\_\_  
Marie Estes, Trustee

By:   
Derek O. Wong, a married man, Sole Member

**EXHIBIT "B"**

List of Tenant-in-Common Owners and Affiliates

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<u>Name of Debtor</u>	<u>Owner/Manager</u>	<u>Address</u>	<u>% Ownership</u>
NNN Met Center 15, LLC *	Vantage Point Consulting, LLC, Manager	17242 W. Watkins Street Goodyear, AZ 85338	5.440
NNN Met Center 15 4, LLC	Derek O. Wong, Sole Member	109 S. Galaxy Drive Chandler, AZ 85226	1.625
NNN Met Center 15 5, LLC	George and Marie Estes Family Trust	1270 Elmwood Drive Walnut Creek, CA 94596	3.375
NNN Met Center 15 6, LLC	Judith D. Johnson, Sole Member	20012 Lake Drive Escondido, CA 92029	2.125
NNN Met Center 15 7, LLC	Sushil K. Arora and Chander Arora Trust	721 Harrier Place Davis, CA 95616	1.875
NNN Met Center 15 8, LLC	Keith Staub Revocable Trust Scott Staub Trust	1717 N. Bayshore Drive #1951 Miami, FL 33132	4.250
NNN Met Center 15 9, LLC	Chicago-Houston Partners, LLC	24901 Dana Point Harbor Dr., Ste 230 Dana Point, CA 92629	3.750
NNN Met Center 15 10, LLC	Darcy R. Ritzau, Sole Member	7478 Evergreen Drive Golita, CA 93117	5.500
NNN Met Center 15 11, LLC	Erik W. Ritzau, Sole Member	7478 Evergreen Drive Golita, CA 93117	5.500
NNN Met Center 15 12, LLC	In Sea Lee, Sole Member.	1825 McMinville Hwy Manchester, TN 37355	1.625
NNN Met Center 15 13, LLC	Hyeong Jin Lee, Sole Member	1825 McMinville Hwy. Manchester, TN 37355	1.625
NNN Met Center 15 16, LLC	Robert L. Sparks and Julie N. Sparks	2201 Private Road Newport Beach, CA 92660	1.625
NNN Met Center 15 18, LLC	James P. Swindle, Sole Member	173 222nd Street Baldwin, WI 54002	2.750
NNN Met Center 15 19, LLC	Montesano Holding Corp	60 Joseph Street Sayville, NY 11782	1.000
NNN Met Center 15 20, LLC	Dean Dal Bozzo, Sole Member	921 Jamaica Street Foster City, CA 94404	2.000
NNN Met Center 15 21, LLC	Lorraine R. Bier, Sole Member	8101 Asmara Drive Austin, TX 78750	10.375
NNN Met Center 15 22, LLC	Jennifer and Edward Pahoa Living Trust	30296 Gulf Stream Drive Canyon Lake, CA 92587	1.875
NNN Met Center 15 23, LLC	Wastal Family Trust	5372 Beck Circle Huntington Beach, CA 92649	4.125
NNN Met Center 15 25, LLC	Robert G. Deason Trust	4121 Roundhill Road Arlington, VA 22207	4.000
NNN Met Center 15 26, LLC	Nancy R. Smith 2005 Revocable Trust	480 E. Valerio Street Santa Barbara, CA 93101	1.625
NNN Met Center 15 28, LLC	Margret M Buelow, Sole Member	3775 Moldoc Road, SM 288 Santa Barbara, CA 93104	3.250
NNN Met Center 15 29, LLC	48 Purchase Street Realty Trust	182 Water Street Newburyport, MA 01950	3.250
NNN Met Center 15 30, LLC	Lynda J. South, Sole Member	760 Harbor Bend Road, Apt. 207 Memphis, TN 78103	4.125
NNN Met Center 15 31, LLC	Stromfeld Living Trust	2145 Westmoreland Ct. San Jose, CA 95124	6.000
NNN Met Center 15 32, LLC	Michel C. and Susan L. Napolitano Trust	917 I Avenue Coronado, CA 92118	3.250
NNN Met Center 15 33, LLC	Betty Jo Grajeda Family Trust	2521 West Loughlin Drive Chandler, AZ 85224	1.750

NNN Met Center 15 34, LLC	David R. Hernandez Living Trust	20058 W. Grant Line Road Tracy, CA 95391	3.250
NNN Met Center 15 35, LLC	Linda K. Mosure Trust	2310 Via Zafiro San Clemente, CA 92673	0.500
NNN Met Center 15 36, LLC	John and Marilyn Osgood Revocable Living Trust	179 Canon Drive Santa Barbara, CA 93105	2.625
NNN Met Center 15 38, LLC	Richard Tidd Family Revocable Trust	4457 Nueces Drive Santa Barbara, CA 93110	2.250
NNN Met Center 15 39, LLC	Robert J. and Constance Rose Sickenger	332257 Devonshire Street Union City, CA 94587	2.500
NNN Met Center 15 40, LLC	Rex Arnold Lindaman, Sole Member	2008 SW 58 <sup>th</sup> Terrace Tualatin, OR 97062	0.592
NNN Met Center 15 41, LLC	Rex Arnold Lindaman, Sole Member	2008 SW 58 <sup>th</sup> Terrace Tualatin, OR 97062	0.593

* Interest Holders in NNN Met Center 15, LLC	<u>Name of Owner</u>	<u>Address</u>	<u>% Ownership of 5.440 %</u>
	Aufill Family Trust	5501 Morendo Drive Las Vegas, NV 89107	15.3186
	Dareld J. Shaver	770 Rockbridge Road Santa Barbara, CA 93108	30.6373
	Ira C. Rigger RLT	1501 Ivy Hill Road Cockeysville, MD 21030	3.8297
	Jeff Seabloom	4015 Shady Point Drive Rhinelander, WI 54501	3.8297
	John & Susan Cleereman	9993 Gunpowder Road Newald, WI 54511	0.4289
	OKMF 2009 Trust	P.O. Box 26 Kremmling, CO 80459	3.8297
	Pen-Ning Kang & Po-Yun Wu	11620 Allen Tustin, CA 92782	9.1912
	Preston & Barbara Schmidt Miller	12 Alcalde Road Sante Fe, NM 87508	5.3615
	Robert & Helen Schmidt	6146 Averill Way, Apt. 105-E Dallas, TX 75225	3.8297
	Ronald A. Leathers	1 Lyn Lane Barrington, ILI 60010	3.8297

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**EXHIBIT "C"**

Tenants-in-Common Agreement

4/11/2015  
JLH

RECORDING REQUESTED BY )  
WHEN RECORDED MAIL TO: )

Triple Net Properties, LLC )  
1551 N. Tustin Avenue )  
Suite 200 )  
Santa Ana, CA 92705 )  
Attention: Anthony W. Thompson )



RGH 2805153512  
88 PGS

Above Space for Recorder's Use

**TENANTS IN COMMON AGREEMENT**

This Tenants in Common Agreement ("Agreement") is made and effective by and among the parties listed on Exhibit "A" attached hereto and incorporated herein (each sometimes referred to as a "Tenant in Common" or collectively as the "Tenants in Common"), as of the date the Tenants in Common acquire the Property (as defined below) with reference to the facts set forth below.

**RECITALS**

A. The Tenants in Common will acquire real property and improvements thereon, including an office building commonly known as "Met Center 15" located in Austin, Texas, as more particularly described in Exhibit "B" attached hereto and incorporated herein (the "Property").

B. The Tenants in Common desire to enter into this Agreement to provide for the orderly administration of the Property and to delegate authority and responsibility for the operation and management of the Property.

C. The Tenants in Common intend that the terms of this Agreement shall comply in all material respects with the requirements for an advance ruling set forth in Revenue Procedure 2002-22, 2002-1 C.B. 733.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as set forth below.

1. Nature of Relationship Between Co-Tenants.

1.1 Tenants in Common Relationship: No Partnership. The Tenants in Common shall each own their respective interests in the Property (the "Interests") as tenants-in-common. The Tenants in Common do not intend by this Agreement to create a partnership or joint venture among themselves, but merely to set forth the terms and conditions upon which each of them shall hold their respective Interests. In addition, the Tenants in Common do not intend to create a partnership or joint venture with the Property Manager (as defined in Section 2). Therefore, each Tenant in Common hereby elects to be excluded from the provisions of Subchapter K of Chapter 1 of the Internal Revenue Code of 1986, as amended (the "Code"), with respect to the tenant in common ownership of the Property. The exclusion elected by the Tenants in Common hereunder shall commence with the execution of this Agreement.

1.2 Reporting as Direct Owners and Not a Partnership. Each Tenant in Common hereby covenants and agrees to report on his federal and state income tax returns all items of income, deduction and credits which result from his Interests. All such reporting shall be consistent with the exclusion of the Tenants in Common from Subchapter K of Chapter 1 of the Code, commencing with the first taxable year following the execution of this Agreement. Further, each Tenant in Common covenants and agrees not to notify the Commissioner of Internal

Revenue that he desires that Subchapter K of Chapter 1 of the Code apply to the Tenants in Common. Each Tenant in Common hereby agrees to indemnify, protect, defend and hold the other Tenants in Common free and harmless from all costs, liabilities, tax consequences and expenses (for example, taxes, interest and penalties), including, without limitation, attorneys' fees and costs, which may result from any Tenant in Common so notifying the Commissioner in violation of this Agreement or otherwise taking a contrary position on any tax return, report or other document.

1.3 Voting - General. The Tenants in Common must unanimously approve the following: (i) hiring the Property Manager (as defined in Section 2), or any substitute property manager, the Management Agreement (as defined in Section 2) and all amendments and renewals thereof, and the negotiation of any other management agreements; (ii) all leases and amendments thereof in accordance with Section 2.6 of the Management Agreement; (iii) all financings and refinancing of the Property; and (iv) sale of the Property (other than a sale pursuant to the Purchase Option or Call Option described in Section 11). All other decisions regarding the Property will be made only with the approval of the Tenants in Common who own more than 50% of the Property.

1.4 Voting - Property Manager and Affiliates. The Property Manager and any affiliates who own interests will not participate in any vote to terminate the Management Agreement.

1.5 No Agency. Except as provided in Section 1.6 below, no Tenant in Common is authorized to act as agent for, to act on behalf of, or to do any act that will bind, any other Tenant in Common, or to incur any obligations with respect to the Property.

1.6 Communications With Lender. Each Tenant in Common authorizes NNN Met Center 15, LLC, a Delaware limited liability company, (the "Company") to be the only party General Electric Capital Company (and its successors and assigns, the "Lender") need notify or provide written notice or other communication pursuant to the loan documents executed by the Tenants in Common (the "Loan Documents") in connection with the loan from the Lender to acquire the Property (the "Loan"). Any such notice shall be valid and effective under the Loan as though given to all Tenants in Common. The Company hereby agrees to provide such notice to each Tenant in Common, but failure to do so will not alter the effect of such notice under the Loan.

1.7 Subordination to Lender. Notwithstanding anything to the contrary contained herein, this Agreement and the rights of the parties hereunder are, and shall be, subordinate to the rights of the Lender pursuant to the note evidencing the Loan and the other instruments, agreements and documents related to the Loan.

2. Management. The Tenants in Common hereby unanimously consent to this Agreement and the Management Agreement ("Management Agreement") with Triple Net Properties Realty, Inc., a California corporation ("Property Manager"), and the Property Manager's standard lease form. Pursuant to and as set forth in the Management Agreement, the Property Manager shall be the sole and exclusive manager of the Property to act on behalf of the Tenants in Common with respect to the management, operation, maintenance and leasing of the Property, subject to the right of each Tenant in Common to terminate the Management Agreement on an annual basis as set forth in Section 10.1 thereof. Neither (a) the death, retirement, removal, withdrawal, termination or resignation of the Property Manager, (b) any assignment for the benefit of creditors by or the adjudication of bankruptcy or incompetency of the Property Manager, nor (c) the termination of the Management Agreement shall cause the termination of this Agreement and this Agreement shall remain in full force and effect notwithstanding any such events.

3. Income and Liabilities. Except as otherwise provided herein and in the Management Agreement, each of the Tenants in Common shall be entitled to all benefits and obligations of ownership of the Property in accordance with their interests. Accordingly, each of the Tenants in Common shall (a) be entitled to all benefits of ownership of the Property, on a gross and not a net basis, including, without limitation, all items of income and proceeds from sale or refinance or condemnation, in proportion to their respective interests, and (b) bear, and shall be liable for, payment of all expenses of ownership of the Property, on a gross and not a net basis, including by way of illustration, but not limitation, all operating expenses and expenses of sale or refinancing or condemnation, in proportion to their respective interests, except for such amounts as may be reasonably determined by the Property Manager to be retained for reserves or improvements in accordance with the Management Agreement. The Property

Manager shall disburse to each of the Tenants in Common his pro rata share of the revenue from the Property, after payment of all operating expenses, debt service and such amounts as may be determined by the Property Manager to be retained for reserves or improvements, within three (3) months from the date of receipt by the Property Manager.

4. Tenants in Common Obligations. The Tenants in Common each agree to perform such acts as may be reasonably necessary to carry out the terms and conditions of this Agreement, including, without limitation:

4.1 Documents. Executing documents required in connection with a sale or refinancing of the Property in accordance with Section 5 below and such additional documents as may be required under this Agreement or may be reasonably required to effect the intent of the Tenants in Common with respect to the Property or any loans encumbering the Property, provided that such actions have been properly approved by the Tenants in Common in accordance with Section 1.3.

4.2 Additional Funds. Each Tenant in Common will be responsible for a pro rata share (based on each Tenant in Common's respective interests) of any future cash needed in connection with the ownership, operation, management and maintenance of the Property as determined by the Property Manager pursuant to the Management Agreement. Without limiting the foregoing, each Tenant in Common agrees that in the event any loan for the Property provides for recourse liability to the Company (the "Company"), or any affiliate, and non-recourse liability to one or more of the other Tenants in Common, and if the Company or any affiliate pays more than its pro rata share of the liability related to the loan (as compared to its ownership interest) as a result of such recourse liability ("Excess Payment"), each of the Tenants in Common agree to reimburse the Company or any affiliate for the Tenants in Common's pro rata share of such Excess Payment. To the extent any Tenant in Common fails to pay any such funds within fifteen (15) days after the Property Manager or Company delivers notice that such additional funds are required, the Property Manager is hereby authorized and directed to withhold any and all sums from such nonpaying Tenant(s) in Common until such funds have been reserved or paid in full. Alternatively, in the Property Manager's discretion, any other Tenant(s) in Common may advance such funds to the nonpaying Tenant(s) in Common, who shall be liable on a fully recourse basis to repay the paying Tenant(s) in Common the amount of any such advance plus interest thereon at the rate of ten percent (10%) per annum (but not more than the maximum rate allowed by law) within thirty-one (31) days of funding the advance. If the nonpaying Tenant in Common is a single member limited liability company, the owner of the limited liability company will be personally liable to repay such advance. In addition, the Property Manager is hereby authorized and directed to pay the Tenant(s) in Common entitled to be repaid the sums loaned (with interest thereon as provided above) out of future cash from operations or from sale or refinancing of the Property or other distributions due the nonpaying Tenant(s) in Common. The remedies against a nonpaying Tenant in Common provided for herein are in addition to any other remedies that may otherwise be available, including by way of illustration, but not limitation, the right to obtain a lien against the interests of the nonpaying Tenant(s) in Common to the extent allowed by law. By executing this Agreement, each Tenant in Common agrees (i) that any such short-term advance will be made on a fully recourse basis, (ii) if such Tenant in Common is a single member limited liability company, such advance shall be recourse to the single member of the limited liability company, and (iii) to repay such advance within thirty-one (31) days of funding. All of the rights contained in this Section 4.2 shall be subject to the terms and conditions set forth in the Loan Documents with the Lender.

5. Sale or Encumbrance of Property.

5.1 Sale. In accordance with the Management Agreement, the Property Manager shall be entitled to seek and negotiate the terms of financing for the Property, including loans secured by the Property, and the sale of the Property (or portions thereof) to third-party purchasers. In accordance with Section 1.3 hereof, any loan encumbering the Property and any sale of the Property shall be subject to unanimous approval by the Tenants in Common, which approval shall be communicated to the Property Manager by written response to a written request by the Property Manager for approval. Any such written request of the Property Manager shall be accompanied by summary thereof setting forth the material terms of the proposed loan or sale. By their execution hereof, the Tenants in Common confirm their approval of that certain loan made (or to be made immediately after the execution of this Agreement) by the Lender to the Tenants in Common to acquire the Property, which Loan is secured by, among other things, a deed of trust on the Property.



5.2 Distribution of Loan or Sales Proceeds. Notwithstanding any other provisions of this Agreement, proceeds of a loan or sale shall be distributed at the closing of the loan or the sale as follows:

5.2.1 To the extent necessary, the proceeds shall first be used to pay in full any loans encumbering title to the Property.

5.2.2 To the extent necessary, and subject to the terms and conditions in the Loan Documents with the Lender, the proceeds shall next be used to pay in full any unsecured loans made to the Tenants in Common with respect to the Property.

5.2.3 The proceeds shall next be used to pay all outstanding costs and expenses incurred in connection with the holding, marketing and sale of the Property.

5.2.4 The proceeds shall next be used to pay all outstanding fees and costs as set forth in the Management Agreement.

5.2.5 Any proceeds remaining shall be paid to each Tenant in Common in accordance with their respective Interests as provided in Section 3 above.

6. Possession. The Tenants in Common intend to lease the Property at all times. Accordingly, no Tenant in Common shall have the right to occupy or use the Property at any time during the term of this Agreement.

7. Transfer or Encumbrance.

7.1 Subject to compliance with the specific terms of this Agreement, applicable securities laws and compliance with the terms of any loan (and associated loan agreement and documents) secured by the Property, each Tenant in Common may sell, transfer, convey, pledge, encumber or hypothecate the Interests (or any part thereof). Any such transferee shall take such Interests subject to this Agreement and the transferor and transferee shall execute and cause to be recorded an assignment and assumption agreement whereby (i) transferor assigns to transferee all of his right, title and interest in and to this Agreement and the Management Agreement; and (ii) transferee assumes and agrees to perform faithfully and to be bound by all of the terms, covenants, conditions, provisions and agreements of this Agreement and the Management Agreement with respect to the Interests to be transferred. Upon execution and recordation of such assumption agreement, the transferee shall become a party to this Agreement without further action by the other Tenants in Common.

7.2 Notwithstanding anything to the contrary herein, no Tenant in Common may sell or transfer its Interest unless (i) the transferee enters into this Agreement on or prior to such transfer and (ii) each of the transferees shall meet all requirements of the Lender, including special purpose entity criteria, as set forth in the Loan Documents so long as the Loan is outstanding.

8. Right of Partition.

8.1 General. Subject to the provisions of Section 8.2 below, the Tenants in Common agree generally that any Tenant in Common (and any of his successors-in-interest) shall have the right, while this Agreement remains in effect, to file a complaint or institute any proceeding at law or in equity to have the Property partitioned in accordance with and to the extent provided by applicable law. The Tenants in Common acknowledge and agree that partition of the Property may result in a forced sale by all of the Tenants in Common. To avoid the inequity of a forced sale and the potential adverse effect on the investment by the other Tenants in Common, the Tenants in Common agree that, as a condition precedent to filing a partition action, the Tenant in Common filing such action shall follow the buy-sell procedure set forth in Section 10.

8.2 Lender Mandate. Notwithstanding the general provisions of Section 8.1, the Tenants in Common each hereby acknowledge that the Property has been acquired by the Tenants in Common for long-term investment purposes, and that a premature forced sale or division of the Property would significantly and adversely affect that investment and the value of their respective Interests in the Property and the interests and requirements of

the Lender. As required by the Lender as a condition of making the Loan to the Tenants in Common, notwithstanding any other provision of this Agreement to the contrary, no Tenant in Common may exercise any right of partition with respect to the Property.

9. **Bankruptcy.** The Tenants in Common agree that the following shall constitute an Event of Bankruptcy with respect to any Tenant in Common and his Successors (as defined in Section 12.1): (a) if a receiver, liquidator or trustee is appointed for any Tenant in Common; (b) if any Tenant in Common becomes insolvent, makes an assignment for the benefit of creditors or admits in writing its inability to pay its debts generally as they become due; (c) if any petition for bankruptcy, reorganization, liquidation or arrangement pursuant to federal bankruptcy law, or similar federal or state law shall be filed by or against, consented to, or acquiesced in by, any Tenant in Common; provided, however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by such Tenant in Common then, upon the same not being discharged, stayed or dismissed within thirty (30) days thereof. To avoid the inequity of a forced sale and the potential adverse effect on the investment of the other Tenants in Common, the Tenants in Common agree that, as a condition precedent to entering into this Agreement, any Tenant in Common that becomes a debtor in a bankruptcy proceeding or otherwise causes an Event of Bankruptcy shall follow the buy-sell procedure set forth in Section 10, which includes the right of the other Tenants in Common to purchase such Tenant in Common's Interest at fair market value based on an independent appraisal, as described below.

10. **Buy-Sell Procedure.** Upon the filing of a partition action in accordance with Section 8.1 (to the extent such right has not been waived as provided in Section 8.2) or the occurrence of an Event of Bankruptcy in accordance with Section 9, the Tenant in Common filing such action or the subject of the Event of Bankruptcy (hereinafter, "Seller") shall first make a written offer ("Offer") to sell its Interests to the other Tenants in Common at a price equal to (a) the Fair Market Value (as defined below) of the Seller's Interests minus (b) (i) Seller's proportionate share of any fee or other amount that would be payable to the Property Manager or any affiliates (including any real estate commission) under the Management Agreement upon the sale of the Property at a price equal to the Fair Market Value and (ii) selling, prepayment or other costs that would apply in the event the Property was sold on the date of the offer. The other Tenants in Common shall be entitled to purchase a portion of the selling Tenant in Common's interest in proportion to their undivided interest in the Property. In the event any Tenant in Common elects not to purchase its share of the Seller's interest, the other Tenants in Common shall be entitled to purchase additional interests based on their undivided interest in the Property. "Fair Market Value" shall mean the fair market value of Seller's undivided interest in the Property on the date the Offer is made as determined in accordance with the procedures set forth below. The other Tenants in Common shall have twenty (20) days after delivery of the Offer to accept the Offer. If any or all of the other Tenants in Common ("Purchaser") accept the Offer, Seller and Purchaser shall commence negotiation of the Fair Market Value within fifteen (15) days after the Offer is accepted. If the parties do not agree, after good faith negotiations, within ten (10) days, then each party shall submit to the other a proposal containing the Fair Market Value the submitting party believes to be correct ("Proposal"). If either party fails to timely submit a Proposal, the other party's submitted proposal shall determine the Fair Market Value. If both parties timely submit Proposals, then the Fair Market Value shall be determined by final and binding arbitration in accordance with the procedures set forth below. The parties shall meet within seven (7) days after delivery of the last Proposal and make a good faith attempt to mutually appoint a MAI certified real estate appraiser who shall have been active full-time over the previous five (5) years in the appraisal of comparable properties located in the County or City in which the Property is located to act as the arbitrator. If the parties are unable to agree upon a single arbitrator, then the parties each shall, within five (5) days after the meeting, each select an arbitrator that meets the foregoing qualifications. The two (2) arbitrators so appointed shall, within fifteen (15) days after their appointment, appoint a third arbitrator meeting the foregoing qualifications. The determination of the arbitrator(s) shall be limited solely to the issue of whether Seller's or Purchaser's Proposal most closely approximates the fair market value. The decision of the single arbitrator or of the arbitrator(s) shall be made within thirty (30) days after the appointment of a single arbitrator or the third arbitrator, as applicable. The arbitrator(s) shall have no authority to create an independent structure of fair market value or prescribe or change any or several of the components or the structure thereof; the sole decision to be made shall be which of the parties' Proposals most closely corresponds to the fair market value of the Property. The decision of the single arbitrator or majority of the three (3) arbitrators shall be binding upon the parties. If either party fails to appoint an arbitrator within the time period specified above, the arbitrator appointed by one of them shall reach a decision which shall be binding upon the parties. The cost of the arbitrators shall be paid equally by Seller and Purchaser. The arbitration shall be

conducted in Orange County, California, in accordance with California Code of Civil Procedure sections 1280 et seq., as modified by this Agreement. The parties agree that Federal Arbitration Act, Title 9 of the United States Code shall not apply to any arbitration hereunder. The parties shall have no discovery rights in connection with the arbitration. The decision of the arbitrator(s) may be submitted to any court of competent jurisdiction by the party designated in the decision. Such party shall submit to the superior court a form of judgment incorporating the decision of the arbitrator(s), and such judgment, when signed by a judge of the superior court, shall become final for all purposes and shall be entered by the clerk of the court on the judgment roll of the court. If one party refuses to arbitrate an arbitrable dispute and the party demanding arbitration obtains a court order directing the other party to arbitrate, the party demanding arbitration shall be entitled to all of its reasonable attorneys' fees and costs in obtaining such order, regardless of which party ultimately prevails in the matter. BY EXECUTING THIS AGREEMENT YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE ARBITRATION OF DISPUTES PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY EXECUTING THIS AGREEMENT YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

## 11. Purchase and Call Options.

11.1 Purchase Option. The Property Manager or its affiliates have the option (the "Purchase Option") to purchase all or any portion of the Property at the Appraised Value (as defined below) from one or more of the Tenants in Common beginning 36 months after the date of this Agreement. In addition, the Property Manager may exercise the Purchase Option at any time, with respect to the Interests owned by any Tenants in Common who do not renew the Management Agreement. However, the Property Manager or its affiliates will not exercise the Purchase Option under any circumstances unless Tenants in Common who own 66 2/3% or more of the Interests approve the purchase. For purposes of the foregoing, the Property Manager and its affiliates may only vote Interests owned by them that were acquired in connection with the initial offering of the Interests.

11.2 Call Option. The Tenants in Common have the option to purchase any Interests of Tenants in Common (the "Call Option") who do not consent to a sale or refinancing of the Property or fail to take action to prevent or cure an event of default under the loan documents relating to the Property ("Dissenting Tenants in Common"). The Call Option may only be exercised if Tenants in Common owning 66 2/3% or more of the Property consent to such a sale or refinancing or to take action to prevent or cure an event of default under secured loan documents relating to the Property ("Consenting Tenants in Common"). However, the Property Manager shall have a 30-day right of first refusal to purchase any Interests of Dissenting Tenants in Common before the Call Option may be exercised by the Consenting Tenants in Common. If the Property Manager does not exercise its 30-day right of first refusal, the Interests will be offered to the Consenting Tenants in Common, as provided below.

The Consenting Tenants in Common may purchase the Interests of a Dissenting Tenant in Common by giving Property Manager written notice within 30 days of the exercise of the Call Option. The Interests to be purchased will be offered to the Consenting Tenants in Common on a *pro rata* basis according to their Interests and any remaining Interests as decided by the Property Manager, in its sole and absolute discretion (and after the Property Manager's 30-day right of first refusal to purchase Interests of Dissenting Tenants in Common has lapsed without being exercised by the Property Manager). Any of the Interests not purchased by the Consenting Tenants in Common will be offered to the Property Manager, its affiliates, successors or assigns.

11.3 Determination of Value and Payment. If the Property Manager, its affiliates, successors or assigns or the Consenting Tenants in Common, as the case may be (the "Buyer"), desire to exercise the Purchase Option or Call Option the fair market value of the Property shall be determined (the "Appraised Value") in the manner described below by computing the net proceeds that would have been distributable to the selling Tenants in Common had the Property been sold for its Appraised Value and reducing this amount by the sum of (i) 1% for imputed costs of sale that ordinarily would be associated with the sale of the Property to a third party and (ii) the Selling Commission (as defined in the Management Agreement). The Buyer, in its sole discretion, will select an

MAI certified appraiser with at least 5 years of experience in the city or county where the Property is located to perform an MAI appraisal of the Property (the "Qualified Appraiser"). The Qualified Appraiser shall not be an affiliate of the Buyer, Property Manager or any Tenant in Common, and will be paid by the Buyer. The Qualified Appraiser shall notify the Buyer, Property Manager and the selling Tenants in Common of its determination of the fair market value of the entire Property without a discount for the tenant in common ownership arrangement.

The selling Tenants in Common by unanimous vote shall have the right to approve or reject the Appraised Value within 30 days of receiving the notification of Appraised Value. They may reject the Appraised Value by giving the Buyer written notice that must be received by the Buyer within 30 days of their receipt of the notification of Appraised Value, in which event, the selling Tenants in Common shall have the right to select their own Qualified Appraiser who shall be required to satisfy the same requirements as described above. The average of the two appraisals shall then be deemed the Appraised Value unless there is more than a 5% difference between the highest and lowest Appraised Value, in which case a third Qualified Appraiser (with the qualification described above) shall be selected by mutual agreement of the first two appraisers and the average of the three appraisals shall be deemed the Appraised Value.

Once the Appraised Value has been determined, the Buyer shall have up to 90 days in which to purchase the Property for all cash or such other terms as may be approved by the Buyer and the selling Tenants in Common. At the closing, each of the parties shall bear their share of all ordinary closing costs and expenses in accordance with local real estate practice. If the Buyer does not complete the purchase of the Property within the 90-day period described above, that option shall lapse unless extended by the parties as described above. If the Buyer elects to exercise the Purchase Option or Call Option in the future, they shall be required to begin again the process of selecting the Qualified Appraiser to determine the Appraised Value. There are no limits on the number of times the Buyer may seek to exercise the Purchase Option or Call Option. The Property Manager will be entitled to the Selling Commission upon a sale pursuant to the Purchase Option or Call Option.

The Buyer shall pay for the first appraisal and, if applicable, half of the third appraisal. The selling Tenants in Common, on a *pro rata* basis in accordance with their ownership of the Interests, shall pay for the second appraisal and, if applicable, half of the third appraisal.

If the Buyer is acquiring a portion of the Property, the purchase price shall be the *pro rata* amount of the Appraised Value for the Interests (that is, the portion of the Property) being purchased without any minority interest or similar discounts. The Appraised Value as determined above shall be final and binding on the parties if the Buyer elects, in its sole discretion, to complete the purchase.

11.4 Exchange Cooperation. The Buyer shall cooperate, at no cost or expense, with any of the selling Tenants in Common who wish to structure the sale of their Interests as a tax-deferred exchange pursuant to Section 1031 of the Code. The Buyer shall, upon direction of the Tenants in Common electing to exchange, consent to the assignment of the Purchase Option or Call Option to a qualified intermediary of their choosing and the payment of their net proceeds into customary exchange escrow accounts.

## 12. General Provisions.

12.1 Mutuality; Reciprocity; Runs With the Land. All provisions, conditions, covenants, restrictions, obligations and agreements contained herein or in the Management Agreement are made for the direct, mutual and reciprocal benefit of each and every part of the Property; shall be binding upon and shall inure to the benefit of each of the Tenants in Common and their respective heirs, executors, administrators, successors, assigns, devisees, representatives, lessees and all other persons acquiring any undivided interest in the Property or any portion thereof whether by operation of law or any manner whatsoever (collectively, "Successors"); shall create mutual, equitable servitudes and burdens upon the undivided interest in the Property of each Tenant in Common in favor of the interest of every other Tenant in Common; shall create reciprocal rights and obligations between the respective Tenants in Common, their interests in the Property, and their Successors; and shall, as to each of the Tenants in Common and their Successors operate as covenants running with the land, for the benefit of the other Tenants in Common pursuant to applicable law, including, but not limited to, the laws of the State of Texas. It is

expressly agreed that each covenant contained herein or in the Management Agreement (a) is for the benefit of and is a burden upon the undivided interests in the Property of each of the Tenants in Common, (b) runs with the undivided interest in the Property of each Tenant in Common and (c) benefits and is binding upon each Successor owner during its ownership of any undivided interest in the Property, and each owner having any interest therein derived in any manner through any Tenant in Common or Successor. Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Property is and shall be conclusively deemed to have consented and agreed to every restriction, provision, covenant, right and limitation contained herein or in the Management Agreement, whether or not such person or entity expressly assumes such obligations or whether or not any reference to this Agreement or the Management Agreement is contained in the instrument conveying such interest in the Property to such person or entity. The Tenants in Common agree that, subject to the restrictions on transfer contained herein, any Successor shall become a party to this Agreement and the Management Agreement upon acquisition of an undivided interest in the Property as if such person was a Tenant in Common initially executing this Agreement.

12.2 Binding Arbitration. Any dispute, claim or controversy arising out of or related to this Agreement, the breach hereof, the termination, enforcement, interpretation or validity hereof, or an investment in the Interests shall be settled by arbitration in Orange County, California, in accordance with the rules of The American Arbitration Association, and judgment entered upon the award rendered may be enforced by appropriate judicial action pursuant to the California Code of Civil Procedure. The arbitration panel shall consist of one (1) member, which shall be the mediator if mediation has occurred or shall be a person agreed to by each party to the dispute within thirty (30) days following notice by one party that he desires that a matter be arbitrated. If there was no mediation and the parties are unable within such thirty (30) day period to agree upon an arbitrator, then the panel shall be one (1) arbitrator selected by the Orange County office of The American Arbitration Association, which arbitrator shall be experienced in the area of real estate and limited liability companies and who shall be knowledgeable with respect to the subject matter area of the dispute. The losing party shall bear any fees and expenses of the arbitrator, other tribunal fees and expenses, reasonable attorney's fees of both parties, any costs of producing witnesses and any other reasonable costs or expenses incurred by him or the prevailing party or such costs shall be allocated by the arbitrator. The arbitration panel shall render a decision within thirty (30) days following the close of presentation by the parties of their cases and any rebuttal. The parties shall agree within thirty (30) days following selection of the arbitrator to any prehearing procedures or further procedures necessary for the arbitration to proceed, including interrogatories or other discovery.

12.3 Attorneys' Fees. If any arbitration, action or proceeding is instituted between all or any of the Tenants in Common arising from or related to or with this Agreement, the Tenant in Common or Tenants in Common prevailing in such action or arbitration shall be entitled to recover from the other Tenant in Common or Tenants in Common all of his or their costs of action, proceeding or arbitration, including, without limitation, reasonable attorneys' fees and costs as fixed by the court or arbitrator therein.

12.4 Entire Agreement. This Agreement, together with the Management Agreement, constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and all prior and contemporaneous agreements, representations, negotiations and understandings of the parties hereto, oral or written, are hereby superseded and merged herein.

12.5 Governing Law; Venue. This Agreement shall be governed by and construed under the internal laws of the State of Texas without regard to choice of law rules. Any action arising out of or relating to this Agreement shall be subject to binding arbitration in Orange County, California, in accordance with Section 12.2.

12.6 Modification. No modification, waiver, amendment, discharge or change of this Agreement shall be valid unless the same is in writing and signed by the party against which the enforcement of such modification, waiver, amendment, discharge or change is or may be sought. In addition, so long as the Loan with the Lender is outstanding, this Agreement may not be modified or amended without express written consent of Lender.

12.7 Notice and Payments. Any notice to be given or other document or payment to be delivered by any party to any other party hereunder may be delivered in person, or may be deposited in the United

States mail, duly certified or registered, return receipt requested, with postage prepaid, or by Federal Express or other similar overnight delivery service, and addressed to the Tenants in Common at the addresses specified in Exhibit "A" hereto. Any party hereto may from time to time, by written notice to the others, designate a different address which shall be substituted for the one above specified. Unless otherwise specifically provided for herein, all notices, payments, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly given and received (a) upon personal delivery, or (b) as of the third business day after mailing by United States registered or certified mail, return receipt requested, postage prepaid, addressed as set forth above, or (c) the immediately succeeding business day after deposit with Federal Express or other similar overnight delivery system.

**12.8 Successors and Assigns.** All provisions of this Agreement shall inure to the benefit of and shall be binding upon the Successors of the parties hereto.

**12.9 Term.** This Agreement shall commence as of the date of recordation and shall terminate at such time as the Tenants in Common or their successors-in-interest or assigns no longer own the Property as tenants-in-common. In no event shall this Agreement continue beyond December 31, 2035. The bankruptcy, death, dissolution, liquidation, termination, incapacity or incompetence of a Tenant in Common shall not cause the termination of, or have any other effect on, this Agreement.

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

**12.11 Counterparts.** This Agreement may be executed in counterparts, each of which, when taken together, shall be deemed one fully executed original.

**12.12 Severability.** If any portion of this Agreement shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in full force and effect to the fullest extent permissible by law.

**12.13 Securities Laws.** THE UNDIVIDED INTERESTS IN THE PROPERTY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, NOR APPROVED OR DISAPPROVED BY THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION, OR BY THE SECURITIES REGULATORY AUTHORITY OF ANY STATE, NOR HAS ANY COMMISSION OR AUTHORITY PASSED UPON OR ENDORSED THE MERITS OF THE OFFERING OR THE ACCURACY OR ADEQUACY OF ANY DISCLOSURE MADE IN CONNECTION THEREWITH. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE. THE INTERESTS MAY NOT BE RESOLD WITHOUT REGISTRATION UNDER THE SECURITIES ACT OF 1933 AND APPLICABLE STATE SECURITIES LAWS OR EXEMPTION THEREFROM.

**12.14 Time is of the Essence.** Time is of the essence of each and every provision of this Agreement.

**12.15 Relationship to Other Agreements.** Each Tenant in Common agrees that, for so long as the Loan remains outstanding, notwithstanding any conflict that may exist between any provision contained herein and any provision of any other agreement binding a party hereto with respect to the subject matter contained herein, this Agreement, and in particular, Sections 1.6, 1.7, 7.2, 8.2, 9 and 12.6 hereof, shall govern and control.

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

**TENANTS IN COMMON:**

**NNN MET CENTER 15, LLC,**  
a Delaware limited liability company

By: **TRIPLE NET PROPERTIES, LLC,**  
a Virginia limited liability company, its Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**NNN Met Center 15 4, LLC,**  
a Delaware limited liability company

By: *Derek O. Wong*  
Derek O. Wong, a single man, Sole Member  
*Member*  
*Dan*

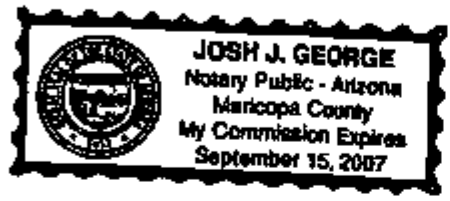
STATE OF Arizona )

CITY/COUNTY OF Maricopa )

) ss: Josh George

on 29th day of July 2005 before me, Derek Wong, personally appeared Josh George ~~Josh George~~ ~~Derek Wong~~, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature on the instrument the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



[Signature]  
Notary Public

STATE OF California )

CITY/COUNTY OF Orange )

) ss:

On Aug. 1, 2005 before me, Yena Han, personally appeared Jack Mauer, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature on the instrument the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



[Signature]  
Notary Public



ACKNOWLEDGEMENT

STATE OF California )  
 ) SS.  
COUNTY OF Orange )

On Aug. 10, 2005 before me, Yena Han a Notary Public in and for said County and State, personally appeared ~~Anthony W. Thompson~~ Anthony W. Thompson personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal

*Yena Han*  
Signature of Notary



**Exhibit A**

**Tenants In Common**

**Interest**

NNN Met Center 15, LLC, a Delaware limited liability company	5.440%
NNN Met Center 15 4, LLC, a Delaware limited liability company	1.825%
NNN Met Center 15 5, LLC, a Delaware limited liability company	3.375%
NNN Met Center 15 6, LLC, a Delaware limited liability company	2.125%
NNN Met Center 15 7, LLC, a Delaware limited liability company	1.875%
NNN Met Center 15 8, LLC, a Delaware limited liability company	4.250%
NNN Met Center 15 9, LLC, a Delaware limited liability company	3.750%
NNN Met Center 15 10, LLC, a Delaware limited liability company	5.500%
NNN Met Center 15 11, LLC, a Delaware limited liability company	5.500%
NNN Met Center 15 12, LLC, a Delaware limited liability company & NNN Met Center 15 13, LLC, a Delaware limited liability company	3.250%
NNN Met Center 15 16, LLC, a Delaware limited liability company	1.625%
NNN Met Center 15 18, LLC, a Delaware limited liability company	2.750%
NNN Met Center 15 19, LLC, a Delaware limited liability company	1.000%
NNN Met Center 15 20, LLC, a Delaware limited liability company	2.000%
NNN Met Center 15 21, LLC, a Delaware limited liability company	2.875%
NNN Met Center 15 22, LLC, a Delaware limited liability company	1.875%
NNN Met Center 15 23, LLC, a Delaware limited liability company	4.125%
NNN Met Center 15 25, LLC, a Delaware limited liability company	4.000%
NNN Met Center 15 26, LLC, a Delaware limited liability company	1.825%
NNN Met Center 15 27, LLC, a Delaware limited liability company	7.500%
NNN Met Center 15 28, LLC, a Delaware limited liability company	3.250%
NNN Met Center 15 29, LLC, a Delaware limited liability company	3.250%
NNN Met Center 15 30, LLC, a Delaware limited liability company	4.125%
NNN Met Center 15 31, LLC, a Delaware limited liability company	6.000%
NNN Met Center 15 32, LLC, a Delaware limited liability company	3.250%
NNN Met Center 15 33, LLC, a Delaware limited liability company	1.750%
NNN Met Center 15 34, LLC, a Delaware limited liability company	3.250%
NNN Met Center 15 35, LLC, a Delaware limited liability company	0.500%
NNN Met Center 15 36, LLC, a Delaware limited liability company	2.625%
NNN Met Center 15 38, LLC, a Delaware limited liability company	2.250%
NNN Met Center 15 39, LLC, a Delaware limited liability company	2.500%
NNN Met Center 15 40, LLC, a Delaware limited liability company & NNN Met Center 15 41, LLC, a Delaware limited liability company	1.185%

**EXHIBIT "B"**

**Description of Property**

#685928 v1 021255.03800

**Recorder's Memorandum-At the time of recordation this instrument was found to be inadequate for the best reproduction, because of illegibility, carbon or photocopy, discolored paper, etc. All blockouts, additions and changes were present at the time the instrument was filed and recorded.**

EXHIBIT B

**TRACT 1: Lot 5-F, Block "B", AMENDED PLAT OF THE RESUBDIVISION OF LOT 5, BLOCK B, METRO CENTER SECTION 6, a subdivision in the City of Austin, Travis County, Texas, according to the map or plat thereof, recorded under Document No. 200400295 of the Official Public Records of Travis County, Texas.**

**TRACT 2: Easement Estate for a storm water detention pond and for stormwater lines appurtenant to Tract 1 above, over and across a portion of Lots 5-G and 5-H, Block "B", AMENDED PLAT OF THE RESUBDIVISION OF LOT 5-E, BLOCK B, AMENDED PLAT OF THE RESUBDIVISION OF LOT 5, BLOCK B, METRO CENTER SECTION 6, a subdivision in the City of Austin, Travis County, Texas, according to the map or plat thereof, recorded under Document No. 200500071 of the Official Public Records of Travis County, Texas, as created by and further described in Detention Pond and Stormwater Line Easement recorded under Document No. 2000195250 of the Official Public Records, as amended in instruments recorded under Document No. 2001005126 and 2004217464 of the Official Public Records, all of Travis County, Texas.**

**TRACT 3: License Estate for parking facilities, a roadway and fiber optic lines appurtenant to Tract 1 above, as created by and further described in License Agreement recorded under Document No. 2000182975 and partially assigned in instruments recorded under Document No. 2004111335, Document No(s). 2004225913 and 2005098473, all of the Official Public Records of Travis County, Texas.**

**FILED AND RECORDED**

OFFICIAL PUBLIC RECORDS

*Dana DeBeauvoir*

2005 Aug 22 08:35 AM 2005153512

KNOWLES \$183.00

DANA DEBEAUVOIR COUNTY CLERK

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**EXHIBIT "D"**

National Asset and Property Management Agreement, dated January 27, 2012 with NAS

**ASSET AND PROPERTY  
MANAGEMENT AGREEMENT**

This PROPERTY AND ASSET MANAGEMENT AGREEMENT (the "Agreement"), dated for reference purposes January 27, 2012, is entered into by and among the tenant in common owners (the "Tenants in Common" or "Co-Owners") of the property and improvements commonly known as "Met Center 15" located in Austin, Texas and as more particularly described in Exhibit "A" attached hereto and incorporated herein (the "Project") and National Asset Services, Inc., a Delaware corporation (the "Property Manager").

The Tenants in Common desire to engage the Property Manager to supervise, asset manage, property manage, and assist Co-Owner's in leasing, operating, and maintaining the Project. The Tenants in Common have previously entered into that certain Tenants in Common Agreement (the "Tenants in Common Agreement") in connection with the Project to provide for the orderly ownership and operation of the Project, a copy of which is attached hereto as Exhibit "B" and incorporated herein by this reference. The Tenants in Common intend that the terms of this Agreement shall comply in all material respects with the requirements for an advance ruling set forth in Revenue Procedure 2002-22, 2002 1 C.B. 733 (the "Revenue Procedure").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **COMMENCEMENT AND TERMINATION DATES; AUTHORITY OF TENANTS IN COMMON.**

1.1 Condition to Effectiveness of Agreement. This Agreement shall be effective when and on condition that all the following events occur (the "Effective Date"): (i) Lender (defined herein) consents in writing to the Tenants in Common entering into this Agreement, (ii) the full execution and delivery of counterpart signature pages to this Agreement by all of the Tenants in Common and (iii) payment of the Start Up Fee of \$8,000.00 to Property Manager. In the event that the conditions listed in clause (i) above are not satisfied within 60 days of the date of this Agreement, Property Manager may terminate this Agreement at its election.

1.2 Commencement and Termination. Subject to Section 1.1 above, Property Manager's duties and responsibilities under this Agreement shall begin on the Effective Date and shall terminate on the earlier of: (i) the sale of the Project (other than any sale of an undivided interest held by a Tenant in Common to a party that will acquire such interest subject to the Tenants in Common Agreement), or (ii) termination as provided in Section 10.

1.3 Approval of the Tenants in Common. Unanimous approval by the Tenants in Common shall be required for: (a) this Agreement and all amendments and renewals hereof in accordance with Section 10.1; (b) all leases and amendments thereof in accordance with Sections 2.6; (c) all new financing and refinancing of the Project; and (d) a sale of the Project. All other actions in this Agreement requiring approval of the Tenants in Common may be taken by the approval of Tenants in Common holding more than fifty percent (50%) of the undivided interests in the Property. Whenever in this Agreement the consent or approval of the Tenants in Common is required or otherwise requested, the Tenants in Common shall have fifteen (15) days from the date the request for consent or approval is submitted by Property Manager in which to approve or disapprove of the matter in writing, unless a longer or shorter period for response is specifically provided for herein or is deemed reasonably necessary or appropriate by the Property Manager to meet time restrictions/deadlines required by other contractual obligations of the Tenants in Common or otherwise avoid and/or mitigate unforeseen third party liabilities

and damages.. A Tenant in Common who does not convey his/her/its written approval or disapproval of a matter submitted to him/her/it within the fifteen (15) days required, or other time period designated by the Property Manager, as applicable, shall be automatically deemed to have approved the matter. Tenant in Common approval for any matter arising pursuant to the terms of the Tenants in Common Agreement shall be governed pursuant to the terms of the Tenants in Common Agreement.

1.4 Authority to Act. The Property Manager shall have no obligation to comply with any requests or directions that are not within the scope of Property Manager's services herein, or that fall within the scope of services but are made by less than the appropriate percentage of the Co-Owners required by this Agreement or by the Co-Owners Agreement (with this Agreement superseding in the event of any conflict). The Property Manager is authorized to act on behalf of the Co-Owners if such action falls within the scope of Property Manager's Services, subject to the Property Manager obtaining approvals and consent of the Co-Owners as may be expressly required herein, or as may be sought by the Property Manager in its discretion, from time to time.

1.5 Conflicting Instructions / Interpretation: In event the Property Manager shall receive conflicting instructions or directions from any one or more Co-Owners regarding the performance of any act, the Property Manager may resolve such conflict pursuant to the terms provided herein or according to other attached agreements, or it may abstain from proceeding as it deems appropriate until such time that the Co-Owners resolve such conflict. The Property Manager shall not be responsible for interpreting provisions within agreements among or involving the Co-Owners, and it shall be held harmless of damages sustained by the inability or discretionary choice not to act, in its reasonable discretion, in the face of conflicts, discrepancies, ambiguities or unresolved issue created by such Agreements which are not resolved by the Co-Owners. Property Manager may retain legal counsel or other professional opinions regarding interpretation of document/agreement.

## 2. PROPERTY MANAGER'S RESPONSIBILITIES.

2.1 Status of the Property Manager. The Tenants in Common and the Property Manager do not intend to form a joint venture, partnership or similar relationship. Instead, the parties intend that Property Manager shall act solely in the capacity of an independent contractor for the Tenants in Common. Nothing in this Agreement shall cause Property Manager and the Tenants in Common to be joint venturers or partners of each other, and neither shall have the power to bind or obligate the other party by virtue of this Agreement, except as expressly provided in this Agreement. Although Property Manager may act for the benefit of the Tenants in Common pursuant to this Agreement, it shall have no obligation to, and shall not be deemed to have, assumed any obligation or liability undertaken by the Co-Owners through Property Manager as authorized herein, or by the Co-Owners own collective or individual acts/omissions. Nothing in this Agreement shall deprive or otherwise affect the right of either party to own, invest in, manage, or operate, or to conduct business activities that compete with the business of the Project.

2.1.1 Management. The Property Manager shall provide those services described in Schedule A, attached hereto, which are reasonably necessary for the effective management, operation and maintenance of the Property subject to (a) applicable governmental requirements and (b) the terms and provisions of this Agreement (the "Services"). Property Manager shall keep the Project in good condition and repair, subject to the Tenants in Common incurring, at their sole expense and based on their undivided interests in the Project, all necessary costs for same. Property Manager shall act in a fiduciary capacity with respect to properly protecting and accounting for all revenue generated from the Project. In this capacity, Property Manager shall deal at arms length with all parties, including affiliated companies and subsidiaries.

2.2 Lender Related Services. In addition to the foregoing, the Property Manager may, as reasonably needed, direct, interface and communicate with Lender (defined below) and its successors and assigns, to, among other things, (i) designate changes in address for the Tenants in Common and their management providers, (ii) receive notices, including default notices on behalf of the Tenants in Common, (iii) request and receive amounts out of any reserve or escrow accounts maintained by lender, or its successors and assigns, for and on account of repairs, capital improvements, tenant improvements, leasing commissions, real estate taxes/assessments and insurance proceeds or otherwise; (iv) with the consent of the Tenants in Common, request waivers of provisions under the Loan Documents and negotiate conditions to any such requested waivers that might be granted by the Lender and its successors and assigns, (v) deposit rents or other revenues in any lockbox account maintained under such Loan Documents, (vi) receive and deposit into an operating account to be maintained by Property Manager for the benefit of the Tenants in Common all disbursements made out of any such lockbox and for the payment of operating expenses of the Project, repairs, capital improvements, tenant improvements, leasing commissions, real estate taxes and assessments and insurance proceeds or other required expenditures for the maintenance and operation of the Project. The above services are separate from any that may be provided by Property Manager pursuant to Section 9.5 below.

2.3 Employees/Independent Contractors of Property Manager. Property Manager shall, in its reasonable discretion, employ, directly or through third party contractors (e.g. leasing broker), employees and/or independent contractors to enable Property Manager to perform its Services properly, adequately, safely and economically. All matters pertaining to the supervision of such employees shall be the responsibility of Property Manager. All salaries and benefits and positions of employees who perform work in connection with the Project shall be consistent with the Budget (as defined in Section 2.5)

2.4 Compliance with Laws, Mortgages and Other Matters.

2.4.1 Property Manager shall comply, and cause the Project to be in compliance, with any Loan Documents affecting the Project and all applicable governmental requirements, including by way of illustration, but not limitation, Board of Fire Underwriters or other similar body, relative to the performance of its duties hereunder, ordinances, rules, regulations, and requirements applicable to the Project (collectively "laws"). Property Manager may implement such procedures with respect to the Project as Property Manager may deem advisable for the efficient and economic management and operation thereof. The Property Manager shall pay from the Operating Account (defined in Section 6.1) expenses incurred to remedy violations of laws. However, the Property Manager shall not be obligated to remedy violations of law if sufficient funds are not available in the Operating Account or if the Tenants in Common do not provide sufficient additional funds to do so.

2.4.2 Property Manager shall furnish to the Tenants in Common, promptly after receipt, any notice of violation of any material governmental requirement or order issued by any governmental entity, any Board of Fire Underwriters or other similar body against the Project, any notice of default from a Lender or any notice of termination or cancellation of any insurance policy.

2.5 Budgets and Operating Plan.

2.5.1 The Property Manager shall prepare and submit to the Tenants in Common annually, for their approval, a capital and operating budget ("Budget") containing financial projections, estimations and goals for the promotion, operation, leasing, repair, maintenance and improvement of the Project for each calendar year. The approval or consent of the Tenants in Common holding more than fifty (50%) of the undivided interests in the Project shall be required for the approval



of the Budget. The Budget for the initial calendar year will be prepared and submitted by the Property Manager to the Tenants in Common for approval within ninety (90) days of the Effective Date and upon approval will be attached hereto as Exhibit "C" and incorporated herein by this reference. During the ninety (90) day window of preparing the new Budget, the Property Manager will manage the Project according to the previously approved Budget. Any expenditures that would result in a negative cash-flow deviation from the Budget exceeding ten percent (10%), and which would be greater \$5,000.00, shall first require the approval of the Tenants in Common.

2.5.2 Following the initial Budget, the Property Manager shall deliver each subsequent, proposed Budget for each subsequent calendar year on or prior to December 1st. The Tenants in Common shall have fifteen (15) days after delivery of the Budget to approve or disapprove of the Budget (the "Initial Approval Period"). If a Tenant in Common neither approves nor disapproves of the Budget in writing within the Initial Approval Period, that Tenant in Common shall be deemed to have approved the Budget in its entirety. Submissions of approvals or disapprovals following the end of the Initial Approval Period shall be disregarded and that Tenant in Common shall be deemed to have approved the Budget in its entirety. Tenants in Common who disapprove of the Budget, shall submit a written disapproval containing a descriptive list of the specific items in the Budget that he/she/it disapproves of (the "Disapproved Budget Items"). Failure to disapprove of any specific item in writing shall be deemed an approval of that item. The Property Manager shall process the written approvals and disapprovals received within the Initial Approval Period, only, and in the event the Budget is not approved in its entirety, the Property Manager shall notify the Tenants in Common of same and specify which items were disapproved of by 50% or more of the Tenants in Common interests (the "Notice of Disapproval"). The Tenants in Common shall negotiate in good faith, either among themselves or by and through the Property Manager as mediator, to resolve the Disapproved Budget Items. If the parties are unable to reach an agreement on the Disapproved Budget Items within 15 days of the delivery of the Notice of Disapproval, excepting leasing matters, the Disapproved Budget Items in issue shall be submitted to and resolved by binding arbitration as set forth in Section 14.5, with the disapproving Tenants in Common on the one hand, and the other Tenants in Common on the other hand, each paying fifty percent (50%) of the costs of the arbitration. Pending resolution through Arbitration, or otherwise, the Property Manager may proceed under the terms of the proposed Budget, and may take any action with respect to Permitted Expenditures (as defined in Section 2.5.4 below) however only for those items which are not Disapproved Budget Items. All leasing matters shall be addressed in accordance with Section 2.6.2. In the event Disapproved Budget Items are operational expenditures, as opposed to capital expenditures, the Property Manager shall be entitled to operate the Project using the prior year's Budget until a resolution is reached on those items.

2.5.3. The Property Manager may at any time submit a revised Budget to the Tenants in Common for their approval, which will be governed by the terms of this Article and shall continue to operate the Project under the previously approved Budget until the revised Budget is approved or disapproved. The Property Manager shall provide the Tenants in Common with such information regarding the Budget as may be, from time to time, reasonably requested by the Tenants in Common. Property Manager shall be held harmless from and against any and all damages or liabilities of any nature stemming from the approval or disapproval of any Budget; and/or the failure to resolve any Disapproved Budget Item, it being understood and acknowledged that it is the Tenants in Common who ultimately approve and/or disapprove of the Budget.

2.5.4 The Property Manager shall charge all expenses to the proper account as specified in the Budget, provided that the Property Manager may reallocate savings from one line item to other line items for the benefit of the Tenants in Common. The Property Manager shall submit (subject to the same procedures as set forth in Section 2.5.1) a revised Budget to the Tenants in Common before making any expenditure not within the Budget unless the expenditure is (a) less than \$5,000, or (b) is, in

the Property Manager's reasonable judgment, required to avoid personal injury, significant property damage, depreciation of the Project, a default under any loan encumbering the Project, a violation of applicable law or the suspension of a service (collectively, "Permitted Expenditures").

2.5.5 Together with the submission of the Budget, Property Manager shall submit each year to the Tenants in Common, for approval by the Tenants in Common, an operating plan for the general operation of the Project, including a proposed list of improvements to the Project, general insurance plan, marketing plan and plan for the general operation and maintenance of the Project (the "Operating Plan"). Property Manager may submit a revised Operating Plan to the Tenants in Common at any time for approval in accordance with the terms of this Agreement.

2.5.6 The Property Manager shall be required to provide the Lender copies of all budgets or reports relating to the Project as may be required by any Loan Documents and comply with the provisions applicable to the Property Manager set forth in the Loan Documents.

2.5.7 During each calendar year, in the regular quarterly reports sent to the Tenants in Common, the Property Manager shall inform the Tenants in Common of any material increases in costs and expenses not foreseen and not included in the Budget within a reasonable time after the Property Manager learns of such changes.

2.5.8 Any controversy arising out of or related to any dispute regarding the Budget as set forth in Section 2.5.2 shall be settled by binding arbitration as provided in Section 14.5.

2.5.9 Co-Owners acknowledge that the Budget is not a statement of facts, but a projection of desired economic goals with respect to the Project. Co-Owners acknowledge that circumstances may arise in a given year which are unforeseen and could impact financial requirements of the Project, good or bad. Although Property Manager shall provide Services within the Budget or as otherwise permitted/agreed herein, it does not make any representation to Co-Owners that the approved budget/projections are statements of sufficient expenditures for the operating or maintenance of the Project, or any other fact.

## 2.6 Leasing.

2.6.1 Each Tenant in Common hereby approves all Leases (as defined in Section 2.6.2) presently in effect on the date hereof.

2.6.2 Property Manager shall, as agent for the Tenants in Common, engage a leasing agent or agents to obtain tenants for all leasable space in the Project and to renew Leases and rental agreements. The costs and expenses of and the commissions payable to any such leasing agent shall be paid directly by Project funds and/or the Tenants in Common. The Property Manager shall not be responsible for any leasing agent functions or other such matters related to the Property. The Tenants in Common hereby grant to Property Manager a special power of attorney to execute all leases approved by the Tenants in Common pursuant to this Agreement ("Leases").

2.6.3 The Property Manager is hereby authorized to execute any and all Subordination and Non-Disturbance Agreements, Tenant Estoppel Certificates and Tenant Notices with respect to the Project.

2.6.4 Property Manager may engage contractors, engineers, architects and other consultants on behalf of the Tenants in Common to design and construct improvements to the Project other than those required to be performed by tenants under their leases. For any contract requiring

capital expenditures in excess of \$25,000, Property Manager shall follow the bidding procedures specified in Section 2.9 below.

2.6.5 Notwithstanding anything to the contrary herein, and except as otherwise limited by any loan documents relating to a loan secured by a mortgage, deed of trust or deed to secure debt on the Property (the "Loan Documents"), Property Manager shall be obligated to disburse to each of the Tenants in Common their pro rata share of the net revenue from the Project promptly following receipt and, in all events, within forty-five (45) days from the date of receipt of such revenues unless the Budget, as approved by the Tenants in Common in accordance with the terms of this Agreement, assumes otherwise. All distributions shall be made according to the interests specified in Exhibit D, subject to changes in the interests of Co-Owners following execution of this Agreement (example, sales, transfer of ownership, etc...). Property Manager may, in the face of dispute, ambiguity, uncertainty or conflicting instruction, retain legal and accounting professionals, as needed, to determine various rights of the Tenants in Common pursuant to applicable agreements, and may rely on such professionals without incurring liability to the Tenants in Common.

2.6.6 Leases, lease amendments and lease renewals (other than the exercise by tenants of lease extension options under the terms of their respective leases) shall contain material terms and conditions that substantially conform to the leasing parameters approved by unanimous consent of the Co-Owners (the "Leasing Parameters"). With respect to the negotiation and execution of new leases, the Co-Owners shall provide the Property Manager with a standard form of Lease, in the form attached hereto as Exhibit E, which has been approved by Lender, as required, and which is hereby unanimously pre-approved by them and which may be used by the Property Manager and modified by it to substantially comply with Leasing Parameter terms (also unanimously approved by the Co-Owners). Property Manager, on behalf of Co-Owners, is authorized to and may negotiate and modify lease provisions that are not the subject of Leasing Parameters, on condition that the Lender approved lease is used, Lender approval is sought when deemed applicable, and that those lease provisions which are subject of existing Leasing Parameters fall within those parameters, and Co-Owners hereby unanimously consent without recourse to such Leases as modified. In the event no such Lease is provided and attached, the Property Manager is hereby authorized to use it's standard lease form(s), a copy of which is attached as Exhibit E, the terms of which are hereby approved by each Tenant in Common, subject to modification within unanimously approved Leasing Parameters, and Lender approval. The Property Manager cannot and does not warrant the conduct or performance of any tenant under lease with the Co-Owners.

2.7 Collection of Rents and Other Income. Unless otherwise required by any Loan Documents affecting the Project, Property Manager shall bill all tenants and shall use its commercially reasonable efforts to collect all rent and other charges due and payable from any tenant or from others for services provided in connection with the Project. Property Manager shall deposit all monies so collected in the Operating Account (as defined in Section 6.1). The Property Manager shall allocate all income, revenue and expense from the Project to the Tenants in Common according to their percentage interest in the Project as set forth on Exhibit "D", attached hereto and incorporated herein by this reference.

2.8 Repairs and Maintenance. Property Manager shall on behalf of Co-Owners provide for the maintenance of the buildings, appurtenances and common areas of the Project other than areas that are the responsibility of the tenants, including, without limitation, all repairs, cleaning, painting, decorations and alterations, for example electrical, plumbing, carpentry, masonry, elevators and such other routine repairs as are necessary or reasonably appropriate in the course of maintenance of the Project (subject to the limitations of this Agreement). Property Manager shall pay actual and reasonable expenses for materials and labor for such purposes from the Operating Account. Property Manager shall take reasonable precautions against fire, vandalism, burglary and trespass to the Project. However,

Property Manager shall only provide ordinary and customary services to tenants of the Project and shall provide no other services, as may be determined under relevant tax law, to the tenants or others on behalf of the Tenants in Common.

2.9 Capital Expenditures. Property Manager may on behalf of Co-Owners make any capital expenditure within any Budget approved by the Tenants in Common without any further consent, provided that Property Manager follows the bid procedures prescribed below when applicable. All other capital expenditures, other than Permitted Expenditures or those under \$5,000.00, shall be subject to submittal of a revised Budget to the Tenants in Common, as further defined in Section 2.5.4. Unless the Tenants in Common specifically waive such requirements, or approve a particular contract, Property Manager shall award any contract for a capital improvement exceeding \$25,000 in cost on the basis of competitive bidding, solicited from a minimum of two (2) written bids. Property Manager shall accept the bid of the lowest bidder believed by Property Manager to be responsible, qualified and capable of completing such improvements on a reasonable schedule.

2.10 Service Contracts, Supplies and Equipment.

2.10.1 Property Manager may, on behalf of Co-Owners, enter into or renew any contract for cleaning, maintaining, repairing or servicing the Project or any of the constituent parts of the Project (including contracts for fuel oil, security or other protection, extermination, landscaping, architectural or engineering services) that is both contemplated by the Budget and/or the Operating Plan with any unrelated third party and generally consistent with service contracts of a similar nature for commercial properties located in the same geographic area as the Project without the consent of the Tenants in Common. Each such service contract shall (a) be in the name of the Tenants in Common or the Property Manager as agent for the Tenants in Common, (b) be assignable to the transferee of the Tenants in Common, and (c) be for a term not to exceed one (1) year, unless the circumstances require otherwise in the sole discretion of the Property Manager. Unless the Tenants in Common specifically waive such requirements or approve a particular contract, all service contracts for amounts in excess of \$25,000 per year shall be subject to the bidding requirements specified in Section 2.9.

2.10.2 If this Agreement terminates pursuant to Section 10, Property Manager, at the option of the Tenants in Common, shall assign to the nominee of the Tenants in Common all of Property Manager's interest in the service agreements pertaining to the Project, if any.

2.10.3 At the expense of the Tenants in Common, Property Manager shall purchase, provide, and pay for any needed janitorial and maintenance supplies, tools and equipment, restroom and toilet supplies, light bulbs, paints, and similar supplies necessary to the efficient and economical operation and maintenance of the Project. Such supplies and equipment shall be the property of the Tenants in Common based on their undivided interests in the Project, if the Leases allow. All such supplies, tools, and equipment generally shall be delivered to and stored at the Project and shall be used only in connection with the management, operation, and maintenance of the Project.

2.10.4 Property Manager shall use reasonable efforts to purchase all goods, supplies or services at the lowest cost reasonably available from reputable sources in the metropolitan area where the Project is located. In making any contract or purchase hereunder, Property Manager shall use reasonable efforts to obtain favorable discounts for the Tenants in Common and all discounts, rebates or commissions under any contract or purchase order made hereunder shall inure to the benefit of the Tenants in Common based on their undivided interests in such Project. Property Manager shall make payments under any such contract or purchase order to enable the Tenants in Common to take advantage of any such discount if the Tenants in Common provide sufficient funds therefor.

2.11 Taxes and Mortgages. Property Manager, unless otherwise requested, shall obtain and verify bills for real estate and personal property taxes, general and special real property assessments and other like charges (collectively "Taxes") which are, or may become, liens against the Project. Property Manager shall report any such Taxes that materially exceed the amounts contemplated by the Budget to the Tenants in Common prior to Property Manager's payment thereof. Property Manager, if requested by the Tenants in Common, will assist and cooperate with tax professionals retained to prepare an application and otherwise seek a correction of the assessed valuation (in cooperation with representatives of the Tenants in Common) to be filed with the appropriate governmental agency. Property Manager shall pay, within the time required to obtain discounts, from funds provided by the Tenants in Common or from the Operating Account, all utilities, Taxes and payments due under each lease, mortgage, deed of trust or other security instrument, if any, affecting the Project. To the extent contemplated by the Budget and/or the Operating Plan (as either may be revised from time to time), Property Manager may make any such payments and pay customary rates to tax professionals for related tax services without the additional approval of the Tenants in Common. Notwithstanding the foregoing, Co-Owners acknowledge that Property Manager's Services do not include consultation or advice regarding tax planning and other tax matters affecting the Project. Co-Owners have been advised and encouraged to refer all tax matters affecting the Project and/or their individual interests in the Project to their respective tax professionals.

2.12 Tenant Relations; Compliance. Property Manager will use reasonable efforts to develop and maintain good relations with the tenants in the Project. At all times during the term hereof, Property Manager shall use its reasonable efforts to retain existing tenants in the Project. Property Manager shall use its reasonable efforts to secure compliance by the tenants with the terms and conditions of their respective Leases.

2.13 Miscellaneous Duties. Property Manager shall (a) maintain at Property Manager's office address as set forth in Section 12.1, or at the subcontractor to the Property Manager or at the Project, and readily accessible to the Tenants in Common, orderly files containing rent records, insurance policies, leases and subleases, correspondence, receipted bills and vouchers, bank statements, canceled checks, deposit slips, debit and credit memos, and all other documents and papers pertaining to the Project or the operation thereof; (b) provide information about the Project necessary for the preparation and filing by each of the Tenants in Common of their individual income or other tax returns required by any governmental authority, including annual statements, identifying each Tenant in Common's undivided percentage of all expenses paid and income received by such Tenant in Common (or, if requested by a Tenant in Common, all expenses of and income from the Project allocable to such Tenant in Common's undivided interest in the Project); (c) consider and record tenant service requests in systematic fashion showing the action taken with respect to each, and thoroughly investigate all complaints of a nature which might have a material adverse effect on the Project or the Budget; and (d) check all bills received for the services, work and supplies ordered in connection with maintaining and operating the Project and, except as otherwise provided in this Agreement, pay such bills when due and payable. All such records are the property of the Tenants in Common and will be made available to the Tenants in Common upon request.

2.14 Right to Subcontract Property Management Functions. Property Manager reserves the right, in its sole discretion, to subcontract some or all of the management functions described herein to local property managers and certain other parties, including the right to execute Approved Leases on behalf of the Tenants in Common; provided, however, that in no event shall Property Manager subcontract any of the property management functions to Grubb & Ellis or Thompson National Properties, Inc., or either of their affiliates, agents, assigns and subsidiaries. However, except as expressly provided herein, the fees to be paid to Property Manager under this Agreement are inclusive of fees payable to such third parties. In addition, notwithstanding any such subcontract, Property Manager

shall remain fully liable under the terms and conditions of this Agreement. The Property Manager reserves the right, on behalf of the Tenants in Common and at the expense of the Project, to engage and retain professional services to assist in the orderly management of the Project, including, but not limited to, legal and accounting services and opinions related to the sale of the Property; provided, however, that the Property Manager shall at all times remain primarily obligated for the performance of the duties and obligations under this Agreement.

### 3. INSURANCE.

#### 3.1 Insurance.

3.1.1 Property Manager, at the Tenants in Common's expense, based on their undivided interests in the Project, will obtain and keep in force on behalf of the Tenants in Common adequate insurance against physical damage (such as fire with extended coverage endorsement, boiler and machinery) and against liability for loss, damage or injury to property or persons that might arise out of the occupancy, management, operation or maintenance of the Project, as contemplated by any Loan Documents affecting the Project and, notwithstanding, including the following: (a) "All risk" direct damage property insurance for the Property on a replacement cost basis. If the Property is under construction, "all risk" builder's risk insurance shall be carried covering the full cost of construction; (ii) Commercial general liability insurance (current ISO form CG 00 01) on an "occurrence" basis in an amount not less than \$10,000,000 each occurrence, which may be satisfied through primary and umbrella coverage; (iii) Loss of rental income, business interruption and extra expense coverage or similar insurance protecting against lost income due to damage to the Property; and (iv) boiler and machinery insurance covering the building, fixtures and equipment located at the Property for mechanical failure or explosion of pipes or boilers (such insurance to include loss of use coverage/business interruption due to such failures). Such insurance shall be obtained for each of the Tenants in Common and shall include each of the Tenants in Common as a named insured. All policies providing for such coverage shall waive all the insurer's right of subrogation against Property Manager. Property Manager shall not be required to obtain terrorism, earthquake or flood insurance unless required by the Loan Documents or otherwise expressly directed to do so by a specific written notice from the Tenants in Common, but may do so in Property Manager's reasonable discretion. Property Manager and any permitted subcontracted managers (per paragraph 2.14) shall be named insureds on all property damage insurance and an additional insured on all liability insurance maintained with respect to the Project. In the event the Property Manager receives insurance proceeds for the Project, the Property Manager will take any required actions as set forth in any Loan Documents affecting the Project. In the event that the Property Manager receives insurance proceeds that are not governed by the terms of any Loan Documents affecting the Project, yet are for an insurable loss for the Co-Owners relative to the Project, the Property Manager will either (i) use such proceeds to replace, repair or refurbish the Project or (ii) distribute such proceeds to the Tenants in Common, as directed by the Tenants in Common. Any insurance proceeds distributed to the Tenants in Common will be distributed subject to and after the payment of fees due and owing to the Property Manager pursuant to this Agreement and/or any tax liability incurred by Property Manager as a result of the receipt of insurance proceeds, including retaining a tax professional to assess any such liability. The foregoing notwithstanding, in all events the Property Manager will obtain on behalf of the Tenants in Common, at the Tenants in Common's expense, all applicable insurance coverage as may be required by the terms of any Loan Documents.

3.1.2 Property Manager may advise the Tenants in Common in writing and make recommendations with respect to the proper insurance coverage for the Project, taking into account the insurance requirements set forth in any mortgage on the Project. However, the Tenants in Common acknowledge that Property Manager is not a licensed insurance agent or insurance expert. Accordingly, Property Manager shall be entitled to rely on the advice of a reputable insurance broker or consultant regarding the proper insurance for the Project. Property Manager shall furnish such information as the Tenants in Common may reasonably request to obtain insurance coverage and shall reasonably aid and cooperate with respect to such insurance and any loss thereunder.

3.1.3 Subject to the provisions of any Loan Documents, Property Manager shall investigate and submit, as soon as reasonably practicable, a written report to the insurance carrier and the Tenants in Common as to all accidents, claims for damage relating to the ownership, operation and maintenance of the Project, any damage to or destruction of the Project and the estimated costs of repair thereof, and prepare and file with the insurance company in a timely manner required reports in connection therewith. Notwithstanding the foregoing, Property Manager shall not be required to give such notice to the Tenants in Common if the amount of the claims, damage or destruction, as reasonably estimated by Property Manager, does not exceed \$5,000 for any one occurrence. Subject to the provisions of any Loan Documents, Property Manager is authorized to settle, in its discretion, all claims against insurance companies arising out of any policies, including the execution of proofs of loss, the adjustment of losses, signing and collection of receipts and collection of money, except that Property Manager shall not settle claims in excess of \$25,000 without the prior approval of fifty percent (50%) of the Tenants in Common.

3.2 Additional Insurance. Any insurance obtained by Property Manager for its own account, and not for the benefit of the Tenants in Common or the Project shall be at Property Manager's own expense, and the proceeds of any insurance claims shall be for the Property Manager's sole benefit.

3.3 Contractor's and Subcontractor's Insurance. Property Manager shall require all contractors and subcontractors entering upon the Project to perform services to have insurance coverage at the contractor's or subcontractor's expense, in the following minimum amounts or such other amounts as may be required under the terms of any mortgage on the Project: (a) worker's compensation – statutory amount; (b) employer's liability (if required) - \$1,000,000; and (c) comprehensive general liability insurance, including comprehensive auto liability insurance covering the use of all owned, non-owned and hired automobiles, with bodily injury and property damage limits of \$2,000,000 per occurrence. The Property Manager may waive such requirements in its reasonable discretion. The Property Manager shall obtain and keep on file a certificate of insurance which shows that each contractor and subcontractor is so insured.

3.4 Waiver of Subrogation. To the extent available at commercially reasonable rates, all property damage insurance policies required hereunder shall contain language whereby the insurance carrier thereunder waives any right of subrogation it may have with respect to the Tenants in Common or Property Manager and their respective shareholders, members, employees, agents and sub-managers.

#### 4. FINANCIAL REPORTING AND RECORD KEEPING.

4.1 Books of Accounts. The Property Manager shall maintain adequate and separate books and records for the Property with the entries supported by sufficient documentation to ascertain their accuracy with respect to the Property. Such books and records shall contain a separate allocation of

income and expenses to each Tenant in Common. The Tenants in Common agree to provide to the Property Manager any financial or other information reasonably requested by the Property Manager to carry out its services hereunder in regards to the Mortgage loan and Lender. To the extent such information is received, the Property Manager will keep the financial information confidential, except as may be required in order for Property Manager to perform its Services. The Property Manager shall maintain such books and records at the Property Manager's office. The Property Manager shall oversee accounting and financial transactions as is commercially reasonably necessary to better protect the Tenants in Common's assets from theft, error or fraudulent activity by the Property Manager's employees. The Property Manager shall bear material losses arising from such instances, including, without limitation, the following: (a) theft of assets by the Property Manager's employees, principals, or officers; (b) overpayment or duplicate payment of invoices arising from either recklessness, fraud, negligence or willful misconduct of the Property Manager, unless credit is subsequently received; (c) overpayment of labor costs arising from either the duplicate payment of invoices, fraud or willful misconduct of the Property Manager, unless credit is subsequently received by the Tenants in Common; (d) overpayment resulting from payment from suppliers to the Property Manager's employees arising from the purchase of goods or services for the Property; and (e) unauthorized use of facilities by the Property Manager or the Property Manager's employees.

4.2 Financial Reports. On or about the 20th day following the end of each month, Property Manager shall furnish to the Tenants in Common a report of all significant transactions occurring during such prior month. These reports shall include, a current rent roll, balance sheet, statement of income and expenses, accounts receivable, general ledger, check register, bank account statements and reconciliations, and mortgage statement. The Property Manager also shall endeavor to deliver to the Tenants in Common within sixty (60) days following (i) the end of each calendar year and (ii) the end of this Agreement, a report showing, in summary form, all collections, delinquencies, uncollectible items, vacancies and other matters pertaining to the management, operation, and maintenance of the Project during the prior year or such applicable portion thereof. The annual report shall also contain a statement of income and expenses, a balance sheet for the Project and such other financial information deemed applicable in Property Manager's reasonable discretion. The statement of income and expenses, the balance sheet, and all other financial statements and reports shall be prepared on a cash basis and in compliance with all reporting requirements relating to the operations of the Project and required under any deed of trust or mortgage affecting the Project

4.3 Supporting Documentation. At the expense of the Tenants in Common, Property Manager shall maintain and make available at Property Manager's office, as set forth in Section 12.1, or at the office of the subcontractor to the Property Manager, at the Project or at a designated office in the region of the Project, copies of the following, if available: (a) all bank statements, bank deposit slips, bank debit and credit memos, canceled checks, and bank reconciliations; (b) detailed cash receipts and disbursement records; (c) trial balance for receivables and payables and billed and unbilled revenue items; (d) rent roll of tenants; (e) paid invoices (or copies thereof); (f) summaries of adjusting journal entries as part of the annual accounting process; (g) supporting documentation for payroll, payroll taxes and employee benefits; (h) appropriate details of accrued expenses and property records; and (i) a market study of competition (quarterly). Property Manager shall maintain, on a ledger basis, separate income and expense accounts for each Tenant in Common.

4.4 Tax Information. The Property Manager shall provide the Tenants in Common with sufficient information so that the Tenants in Common can prepare their income tax returns on the cash method of accounting or, if requested, with appropriate adjustment to convert the information to an accrual basis.



5. Right to Audit. Upon the Property Manager's receipt of at least ten (10) days' prior written notice, each of the Tenants in Common and their representatives, including the lender under the Loan Documents, may examine all books, records and files maintained for the Tenants in Common by Property Manager. Any such party may perform any audit or investigations relating to Property Manager's activities at any office of Property Manager if such audit or investigation relates to Property Manager's activities for the Tenants in Common. Should any of the Tenants in Common discover defects in internal control or errors in record keeping, Property Manager shall undertake with all appropriate diligence to correct such discrepancies either upon discovery or within a reasonable period of time. Property Manager shall inform the Tenants in Common in writing of the action taken to correct any audit discrepancies.

6. **BANK ACCOUNTS.**

6.1 Operating Account. To the extent funds are not required to be placed in a lockbox pursuant to any Loan Documents affecting the Project, the Property Manager shall deposit all rents and other funds collected from the operation of the Project in a reputable bank or financial institution in a special trust or depository account or accounts for the Project maintained by the Property Manager for the benefit of the Tenants in Common. The Property Manager shall maintain books and records of the funds deposited in the accounts and withdrawals therefrom (including records of deposits and withdrawals credited and charged to each Tenant in Common) (such accounts together with any interest earned thereon, shall collectively be referred to herein as the "Operating Account"). The Property Manager shall pay from the Operating Account, on behalf of each Tenant in Common with respect to their share of Project operating expenses, based on their undivided interests in the Project, the operating expenses of the Project and any other payments relating to the Project as required by this Agreement. If more than one account is necessary to operate the Project, each account shall have a unique name, except to the extent any Lender requires sub-accounts within any account. Promptly following receipt, but in all events within forty-five (45) days after receipt by the Property Manager, all rents and other funds collected in the Operating Account after payment of all operating expenses, debt service and such amounts as may be reasonably determined by the Property Manager to be retained for reserves or improvements, shall, unless otherwise provided by any Loan Documents, be paid to the Tenants in Common in proportion to their respective interests in the Project. Property Manager anticipates that such distributions will be made on a monthly basis.

6.2 Security Deposit Account. Property Manager shall open, on behalf of the Tenants in Common, a separate account at a reputable bank or other financial institution for the purposes of segregating security deposits. Property Manager shall maintain such account in accordance with applicable law and/or the applicable Loan Documents. Property Manager shall use the account only to maintain security deposits on behalf of the Tenants in Common. Property Manager shall require the bank or financial institution to hold the funds in trust for the Tenants in Common. Property Manager shall maintain detailed records of all security deposits deposited, and allow the Tenants in Common or their designees access to such records. Subject to any contrary terms of any Loan Documents, Property Manager may return such deposits to any tenant in the ordinary course of business in accordance with the terms of the applicable lease and applicable law.

6.3 Access to Account. As authorized by signature cards, representatives of Property Manager shall have access to and may draw upon all funds in the accounts described in Sections 6.1, 6.2 and 6.3 without the approval of the Tenants in Common. Additionally, representatives of the Property Manager shall have access to and may draw upon any funds escrowed or held in reserve for capital expenditures without the approval of the Tenants in Common, provided that the requirements of Section 2.9 and any additional Lender requirements with respect to such amounts are satisfied. The Tenants in Common may not withdraw funds from such accounts without Property Manager's prior

written consent, except following the Property Manager's default after expiration of any applicable notice and cure periods or the termination of this Agreement.

7. **PAYMENT OF EXPENSES.**

7.1 **Costs Eligible for Payment from Operating Account.** Property Manager shall pay all expenses of the operation, maintenance and repair of the Project contemplated by this Agreement and the Budget directly from the Operating Account subject to the conditions set forth in Section 2.5, and include, but are not limited to, the following to the extent applicable: (a) costs of the gross salary and wages or proportional shares thereof, payroll taxes, payroll processing fees, worker's compensation insurance, employee education, training and certification and all other benefits of employees required to manage, operate and maintain the Project properly, adequately, safely and economically, subject to this Agreement, provided that Property Manager shall not pay such employees in advance; (b) cost to comply with the terms of any Loan Documents and/or to correct the violation of any governmental requirement relating to the leasing, use, repair and maintenance of the Project, or relating to the rules, regulations or orders of the local Board of Fire Underwriters or other similar body; (c) actual and reasonable cost of making all repairs, decorations and alterations; (d) cost incurred by Property Manager in connection with all service agreements; (e) cost of collection of delinquent rents collected by a collection agency or attorney; (f) accounting and legal support fee and reasonable accounting and legal fees of attorneys for the costs of services otherwise provided herein; (g) cost of capital expenditures subject to the restrictions in Section 2.9 and in this Section; (h) cost of printed checks for each account required for the Project and the Tenants in Common; (i) [omitted]; (j) cost of advertising, marketing and resident surveys; (k) cost of printed forms and supplies required for use at the Project; (l) management compensation set forth in Section 9; (m) the cost of tenant improvements to the Project subject to the restrictions in Section 2.9 and this Section 7.1; (n) all hiring, relocation and termination costs for any employees whose salaries and benefits are paid by the Tenants in Common; (o) brokers' commissions; (p) the cost of utilities consumed at the Project only, services, contractors and insurance; (q) reimbursement of Property Manager's out-of-pocket costs and expenses to the extent not prohibited by Section 8, including travel expenses to/from the Project and lodging; (r) general accounting and reporting services within the reasonable scope of the Property Manager's responsibility to the Tenants in Common; (s) cost of forms, papers, ledgers, postage and other supplies and equipment used in the Property Manager's office in connection with the Property only; (t) computer/information technology (IT) support and the cost of electronic data processing equipment, including personal computers located at the Property Manager's office at the Project for preparation of reports, information and returns to be prepared by the Property Manager under the terms of this Agreement; and (u) cost of electronic data processing provided by computer service companies for preparation of reports, information and returns to be prepared by the Property Manager under the terms of this Agreement, including but not limited to any costs associated with property management software.

7.2 **Operating Account Deficiency.** If there are not sufficient funds in the Operating Account (or any reserve account held by the lender) to make any such payment, Property Manager shall notify the Tenants in Common, if possible, at least twenty (20) days prior to any delinquency so that the Tenants in Common have an opportunity, based on their interests in the Project, to deposit sufficient funds in the Operating Account to allow for such payment prior to the imposition of any penalty or late charge. In no event shall the Property Manager be required to expend any of its own funds for the operation or maintenance of the Project.

8. **PROPERTY MANAGER'S COSTS NOT TO BE REIMBURSED.**

8.1 Non-reimbursable Costs. The following expenses or costs incurred by or on behalf of Property Manager in connection with the management and leasing of the Project shall be at the sole cost and expense of Property Manager and shall not be reimbursed by the Tenants in Common: (a) cost of insurance purchased by Property Manager for its own account; and (b) Property Manager's cost of overhead, salaries and other items except as expressly provided in Section 7.1.

8.2 Litigation. Property Manager will be responsible for and hold the Tenants in Common harmless from, all fees, costs, expenses, and damages relating to disputes with Property Manager's employees for worker's compensation (to the extent not covered by insurance), discrimination or wrongful termination, including legal fees and other expenses,.

9. **COMPENSATION.** Each Tenant in Common shall pay the fees set forth below based on their undivided interest in the Project.

9.1 Property Management Fee. Co-Owners agree to pay and Property Manager shall receive for its Services, a monthly property management fee (the "Property Management Fee") equal to 4.0% of the monthly Gross Revenues (defined below) generated from the Project, but in no event shall the Property Management Fee be less than \$8,000.00 per month. The Property Management Fee shall be in addition to any out-of-pocket and on-site personnel costs that are reimbursable pursuant to Section 7 and any other compensation due pursuant to other provisions of this Article 9. "Gross Revenues" shall be all monthly gross billings from the operations of the Project, including rental receipts, late fees, application fees, damages, lease buy-out payments, and reimbursements by tenants for common area expenses, operating expenses and taxes and similar pass-through obligations paid by tenants, but excluding (i) security deposits received from tenants and interest accrued thereon for the benefit of the tenant until such deposits or interest are included in the taxable income of the Tenants in Common; (ii) advance rents (but not lease buy-out payments) until the month in which payments are to apply as rental income; (iii) reimbursements by tenants for work done for that particular tenant, (iv) proceeds from the sale or other disposition of all or any part of the Project (which compensation therefrom shall be governed by Section 9.4), (v) insurance proceeds received by the Tenants in Common as a result of any insured loss (except proceeds from rent insurance or the excess of insurance proceeds for repairs over the actual costs of such repairs), (vi) condemnation proceeds not attributable to rent, (vii) capital contributions made by the Tenants in Common; (viii) proceeds from capital, financing and any other transactions not in the ordinary course of the operation of the Project, (ix) income derived from interest on investments or otherwise, (x) abatement of taxes, awards arising out of takings by eminent domain, discounts and dividends on insurance policies, and (xi) rental concessions not paid by third parties. The Property Management Fee shall be payable monthly from the Operating Account or from other funds timely provided by the Tenants in Common. Upon termination of this Agreement, the parties will prorate the Property Management Fee on a daily basis to the effective date of such cancellation or termination. The Property Management Fee shall be paid monthly in arrears, no later than the date that is five (5) days after the last day of each calendar month.

9.2 Additional Fees / Construction Management Fee.

9.2.1. Additional Fees. In additional to the other fees set forth in this Article 9, the Tenants in Common shall pay Property Manager additional fees at the rate of \$250/hour per employee (such fees, the "Additional Fees") as compensation for Property Manager's time expended on services provided to the Tenants in Common that are not within the scope of services to be provided by Property Manager pursuant to this Agreement Additional Fees shall only be payable to Property Manager to the

extent included within the Budget or otherwise approved by the Tenants in Common in advance in writing.

9.2.2 Construction Management Fee. The Property Manager, or an affiliate, shall receive, for its services in supervising any renovation or construction project in or about the Project, if a scope of such services are approved in advance in writing by the Tenants in Common and Property Manager, a construction management fee (the "Construction Management Fee") equal to 5% of the cost of the amount (including related professional services) that is expended, payable 50% on the general construction contract execution and the remainder upon substantial completion of the construction. The Construction Management Fee shall not apply or be payable to Property Manager on account of routine maintenance or repair expenditures.

9.3 Start-Up Fee. The Property Manager shall receive a one-time start-up fee of \$8,000.00, which fee shall be fully earned and due and payable to Property Manager together with the first months property management fee.

9.4 Sale Fee. If Co-Owners holding more than fifty percent (50%) of the Interests in the Property approve the Property Manager to assist in a sale of the Project, in addition to any compensation otherwise due Property Manager hereunder, upon a sale of all or substantially all of the Project or interests therein (but not a sale of individual Interests pursuant to the Tenants in Common Agreement), the Tenants in Common shall pay Property Manager a fee (the "Sale Fee") in an amount equal to one-half percent (0.5%) of the sales price. The Sale Fee shall be due and payable to Property Manager upon the closing of the sale so long as such sale closes prior to a termination of this Agreement or within twelve (12) months after a termination of this Agreement; provided, however, that such Sale Fee shall not be due and payable to Property Manager if Owner terminates this Agreement effective prior to such sale "for cause" pursuant to the terms of Section 10.2 below. Property Manager is authorized on behalf of Co-Owners to instruct any subject escrow holder to pay the Sale Fee to Property Manager upon a close of the subject Escrow and pursuant to the terms herein. Co-Owners' acknowledge that the Sale Fee is separate and apart from any other fees or expenses that may be incurred by them relative and incidental to a sale of the Property, including but not limited to real estate broker/agent commissions.

9.5 Loan Renegotiation/Refinance Fee.

9.5.1 The Co-Owners hereby authorize and retain Property Manager to assist Co-Owners with efforts to refinance or otherwise renegotiate the terms of their current loan(s) encumbering the Project (the "Loan"). Property Manager is hereby authorized by Co-Owners to communicate with, and provide such information and documents to new and existing Lenders, including confidential information concerning Co-Owners, and to act as its exclusive designated and authorized agent for purposes of applying for and seeking a refinance or renegotiation of the Loan terms (hereafter referred to as the "Refinance"). Co-Owners agree to promptly provide Property Manager with all information and documents reasonably requested in furtherance of applying for and securing the Refinance. In any event, the unanimous consent of the Co-Owners shall be required for agreement to any terms of Refinance.

9.5.2 In exchange for its Refinance services, Co-Owners shall pay Property Manager, or an affiliate of Property Manager if applicable, a fee in an amount equal to one half of one percent (.5%) of the total loan amount Refinanced (the "Loan Refinancing Fee"). The Loan Refinancing Fee shall be due and payable **only** upon a successful Refinance of the Loan. Property Manager's entitlement to a Loan Refinancing Fee shall survive termination of this Agreement, such that any Refinance efforts commenced with identifiable Lenders prior to a termination which result in a successful Refinance with such Lenders following termination shall give rise to the Loan Refinancing Fee. Co-Owners agree to, and Property

Manager is authorized to, instruct Lenders or escrow holders, if applicable, to pay the Loan Refinancing Fee direct to Property Manager pursuant to the terms herein.

9.6 Monthly Payments. The Property Management Fee, and any Additional Fees, and all other sums due Property Manager hereunder shall, unless provided for otherwise herein (and as above) be payable monthly in arrears out of the funds held by the Property Manager prior to making any distributions to the Tenants in Common, no later than the date that is five (5) days after the last day of each calendar month. All payments due Property shall be made from Operating Accounts and, if funds are unavailable, from the Tenants in Common in accordance with their interests in the Property.

9.7 Survival. The provisions of this Section 9 shall survive the expiration or earlier termination of this Agreement.

10. **RENEWAL; TERMINATION.** Each of the Tenants in Common shall have the right to terminate this Agreement as provided below in accordance with Section 6.12 of the Revenue Procedure.

10.1 Renewal or Termination by Tenants in Common not “for cause”. The Tenants in Common shall have the right to terminate this Agreement by a vote of Tenants in Common holding at least fifty percent (50%) of the undivided interests in the Project for any reason, without cause, at any time, upon sixty (60) days notice to Property Manager. No earlier than ninety (90) days nor later than sixty (60) days before the first anniversary of the date of this Agreement, and each subsequent anniversary thereafter, the Property Manager shall notify each of the Tenants in Common of the imminent termination of this Agreement. Such notice (the “Renewal Notice”) shall prominently state that if a Tenant in Common fails to respond in writing before the then-current expiration date of this Agreement it shall be deemed to have renewed the Agreement. The Renewal Notice shall be delivered to each of the Tenants in Common by mail or email as provided in Article 12 below. Each of the Co-Owners shall have the right to either terminate or renew this Agreement for a term of one (1) year by giving written notice to the Property Manager any time between the delivery of the Renewal Notice and the then-current expiration date of this Agreement. In the event a Co-Owner elects to terminate pursuant to the preceding sentence, in addition to any Notice required to be delivered to the Property Manager, the terminated Co-Owner shall also be required to (i) deliver a copy of its written notice to terminate (the “Notice to Terminate”) to all other Co-Owners in the same manner that Property Manager is required to serve notice on Co-Owners pursuant to Article 12 and (ii) provide Property Manager with a signed writing verifying that the notice requirements of (i) above have been met (the “Proof of Delivery”) . Upon receipt of a Notice to Terminate and Proof of Delivery from any one or more Co-Owners, this Agreement shall be terminated. Any such termination of this Agreement shall be effective as of the earlier of the last day of the calendar year in which such termination occurred or sixty (60) days from the date of such termination. Absent receipt by the Property Manager of a Notice to Terminate and Proof of Delivery within the time prescribed, this Agreement shall be deemed renewed for a term of one (1) year. Property Manager shall be held harmless of any and all damages sustained to the Project or the Co-Owners as a result of the termination or non-renewal of this Agreement and Property Manager’s cessation of Services following the effective date of such Termination, whether or not Co-Owners secured new management.

10.2 Termination by Tenants in Common “for Cause”. Each of the Tenants in Common shall have the right to terminate this Agreement “for cause,” upon written notice to Property Manager and effective as of the date indicated in such notice, including, without limitation, for the (a) gross negligence or fraud of Property Manager, (b) willful misconduct or willful breach of this Agreement by Property Manager, (c) bankruptcy, insolvency or inability of Property Manager to meet its obligations as the same come due, or (d) the conviction of a felony of any of the Property Manager’s officers or directors, or of any of Property Manager’s agents or employees working on Services for the Project if

Property Manager fails to promptly discharge such agents and/or employees promptly after learning of such felony conviction.

10.3 Termination by Property Manager or Lender. Property Manager shall have the right to terminate this Agreement, (i) immediately if Tenants in Common are in default in the performance of any of their obligations hereunder, and such default remains uncured for thirty (30) days following the Property Manager's giving of written notice of such default; or (ii) at any time by giving at least 90 days prior notice to Tenants in Common of its election to terminate. Property Manager may also opt to not renew this Agreement by providing written notice of such option to the Tenants in Common no later than 90 days prior to expiration of the existing term. The Lender may terminate this Agreement in accordance with the Loan Documents. These termination rights may, among others, be triggered by the following, if set forth in Loan Documents: (i) upon a change in control of the Property Manager, (ii) a continuing default by the Tenants in Common (beyond any applicable grace or cure period) under the Loan Documents, (iii) Property Manager becoming insolvent or a debtor in any bankruptcy or insolvency proceeding, (iv) a continuing default by Property Manager (beyond any applicable grace or cure period) under this Agreement, (v) Property Manager provides cause for termination, including without limitation, gross negligence, willful misconduct or fraud, or (vi) in the event lender acquires title to the Project by foreclosure or otherwise.

10.3 Termination on Sale. This Agreement shall automatically terminate upon the sale of the entire Project and payment of all fees due the Property Manager hereunder.

10.4 Final Accounting. Within sixty (60) days after termination of this Agreement for any reason, Property Manager shall deliver to each Tenant in Common based on their undivided interest in the Project, the following: (a) a final accounting, setting forth the balance of income and expenses on the Project as of the date of termination; (b) transfer to any account indicated by the Tenants in Common any balance or monies of the Tenants in Common or tenant security deposits held by Property Manager with respect to the Project (or transfer the accounts in which such sums are held as instructed by the Tenants in Common); and (c) deliver to a subsequent property manager or other agent indicated by the Tenants in Common all materials and supplies, keys, books and records, contracts, leases, receipts for deposits, unpaid bills and other papers or documents which pertain to the Project. For a period of thirty (30) days after such expiration or cancellation for any reason other than the Tenants in Common's default, the Property Manager shall be available, through its senior executives familiar with the Project, to consult with and advise the Tenants in Common or any person or entity succeeding to the Tenants in Common as owner of the Project or such other person or persons selected by the Tenants in Common regarding the operation and maintenance of the Project. In addition, Property Manager shall cooperate with the Tenants in Common in notifying all tenants of the Project of the expiration and termination of this Agreement, and shall use reasonable efforts to cooperate with the Tenants in Common to accomplish an orderly transfer of the operation and management of the Project to a party designated by the Tenants in Common. Property Manager shall receive its monthly Property Management Fee for such services. The Property Manager shall, at its cost and expense, promptly remove all signs wherever located indicating that it is the Property Manager and replace and repair any damage resulting therefrom. Termination of this Agreement shall not release either party from liability for failure to perform any of the duties or obligations as expressed herein and required to be performed by such party for the period prior to the termination.

11. **CONFLICTS.** Property Manager may deal with or engage, or purchase goods or services ("affiliated services") from any subsidiary or affiliated company of Property Manager in connection with the management of the Project on condition that the terms for said affiliated services are reasonably competitive with those offered by parties similarly situated (experience, reliability, etc...) and for like services (in kind, quality, etc...) in the applicable market place.

12. NOTICES.

12.1 Notices. All notices, demands, consents, approvals, reports and other communications to the Tenants in Common as provided for in this Agreement (collectively “Notices”) shall be in writing and shall be delivered/addressed to the Tenants in Common at their physical addresses as set forth in Exhibit “D”, or at such other address as they may specify hereafter in writing. Notices may be delivered via regular mail, personal delivery or by email with a “read receipt” or other proof acknowledging tender/receipt of the email, each of which shall (alone or together with other forms of delivery) be deemed proper delivery. The Tenants in Common shall be responsible for notifying the Asset Manager in writing of any changes to their physical or email addresses, facsimile numbers, and/or any other contact information. Notices sent by the Asset Manager to the addresses set forth in Exhibit D, or to such other addresses (physical or virtual) as are updated by the Co-Owners pursuant to the preceding sentence, shall, as soon they are deposited in the mail or otherwise sent by Property Manager, be deemed effectively delivered and in compliance with Asset Manager’s notice obligations herein.

All Co-Owner required Notices shall be delivered via certified mail to the Property Manager at the following address and/or by email with a “read receipt” to an agent of Property Manager expressly authorized in writing to accept such Notices from Co-Owners:

National Asset Services, Inc.  
9841 Airport Boulevard, Suite 1107  
Los Angeles, California 90045  
Attention: Karen E. Kennedy

13. ENVIRONMENTAL CONDITIONS

13.1 Co-Owners acknowledge and understands that Property Manager does not have specific qualification to, and shall require qualified third party assistance/service to (i) evaluate the presence or absence of hazardous or toxic substances, mold, waste, materials, electromagnetic field, radon, radioactive materials, or other environmental concerns under applicable law, upon, within, above, or beneath the Property (collectively, “Hazardous Materials”); (ii) maintain or evaluate compliance with environmental, Hazardous Materials or waste laws, rules and regulations; or (iii) conduct or ensure clean-up or remediation of Hazardous Material spills or contamination. Any environmental assessment report of the Property will be obtained from an independent environmental consultant. Property Manager shall not be obligated to make independent determinations as to the presence or absence of Hazardous Materials, or whether the Project or any particular tenant is in violation or compliance with any laws relating to Hazardous Materials (“Hazardous Materials Laws”). Property Manager shall have no obligation or liability with respect to the abatement, clean-up or remediation of any spill of or contamination from any Hazardous Materials relating to the Property and Co-Owner acknowledge and agree that, with respect to any abatement, clean-up or remedial action that Co-Owners shall employ a qualified and licensed environmental clean-up company to undertake such responsibilities.

13.2 Co-Owners hereby agree to indemnify, defend, and hold harmless Property Manager and its affiliates from any claim, liability, demand, damages, penalty, injury or expense (including attorneys’ fees) arising out of or relating to (A) the act or omissions of Property Manager following suggestions, directives or other advice of environmental consultants or Co-Owners regarding environmental matters; (B) the failure of Co-Owners to authorize and fully fund expenses for the fulfillment of recommendations contained in any environmental assessment reports; (C) the acts, omissions or negligence of environmental remediation contractors or environmental consultant, or the failure of any such contractor or consultant to fulfill its obligations with respect to the Property; (D) any

actual or alleged violation of the Property with respect to Hazardous Materials Laws; (E) any personal or property damage caused as a result of Hazardous Materials on the property; (F) any attempt to designate Property Manager as an “operator” or “generator” under applicable law, or otherwise liable as a party under any other environmental law; and (G) any condition or circumstance arising initially prior to the date of this Agreement (regardless of whether such condition or circumstance continues). The indemnities herein shall survive expiration or termination of this Agreement.

14. **MISCELLANEOUS.**

14.1 **Assignment.** Property Manager may not assign this Agreement without the prior written consent of each of the Tenants in Common, except with respect to an assignment to an affiliate, including, but not limited to a wholly-owned subsidiary, which shall be permissible under this Agreement, which consent may be withheld in the Tenants in Common’s sole and absolute discretion; provided, however, that the Property Manager may assign, subcontract or delegate the day-to-day management responsibilities, leasing services and/or disposition services to one or more local property managers or leasing companies in its sole discretion so long as the Property Manager continues to supervise the overall management of the Project. Subject to the Tenants in Common Agreement, a Tenant in Common may assign its rights under this Agreement to a party acquiring its undivided interest in the Project (“Successor Tenant in Common”) and upon assignment and the assumption of this Agreement by the Successor Tenant in Common pursuant to an agreement whereby (a) the assigning Tenant in Common assigns to the Successor Tenant in Common all of its right, title and interest in and to this Agreement and (b) the Successor Tenant in Common assumes and agrees to perform faithfully and to be bound by all of the terms, covenants, conditions, provisions and agreements of this Agreement with respect to the undivided interest to be transferred, the assigning Tenant in Common shall be relieved of all liability accruing after the effective date of the assignment and, without further action by Property Manager or the other Tenants in Common, the Successor Tenant in Common shall become a party to this Agreement.

14.2 **Gender.** Each gender shall include each other gender. The singular shall include the plural and vice-versa.

14.3 **Amendments.** Except as otherwise provided, each amendment, addition or deletion to this Agreement shall not be effective unless approved by the parties in writing.

14.4 **Attorneys' Fees.** In any action or proceeding between Property Manager and the Tenants in Common arising from or relating to this Agreement or the enforcement or interpretation hereof, the party prevailing in such action or proceeding shall be entitled to recover from the other party all of its reasonable attorneys' fees and other costs and expenses of the action or proceeding.

14.5 **Binding Arbitration.** Any controversy between the parties hereto arising out of or related to this Agreement or the breach thereof shall be settled by arbitration in the Austin, Texas metropolitan area, in accordance with the rules of The American Arbitration Association, and judgment entered upon the award rendered may be enforced by appropriate judicial action. The arbitration panel shall consist of one member, which shall be the mediator if mediation has occurred or shall be a person agreed to by each party to the dispute within thirty (30) days following notice by one party that he or she desires that a matter be arbitrated. If there was no mediation and the parties are unable within such thirty (30) day period to agree upon an arbitrator, then the panel shall be one arbitrator selected by the Austin, Texas metropolitan area office of The American Arbitration Association, which arbitrator shall be experienced in the area of real estate and limited liability companies and who shall be knowledgeable with respect to the subject matter area of the dispute. The losing party shall bear any fees and expenses of the arbitrator, other tribunal fees and expenses, reasonable attorneys’ fees of both parties, any costs of



producing witnesses and any other reasonable costs or expenses incurred by the losing party or the prevailing party or such costs shall be allocated by the arbitrator. The arbitration panel shall render a decision within thirty (30) days following the close of presentation by the parties of their cases and any rebuttal. The parties shall agree within thirty (30) days following selection of the arbitrator to any prehearing procedures or further procedures necessary for the arbitration to proceed, including interrogatories or other discovery; provided, in any event each Tenant in Common shall be entitled to discovery in accordance with applicable Texas law.

BY EXECUTING THIS AGREEMENT YOU ARE AGREEING TO HAVE CERTAIN DISPUTES DECIDED BY NEUTRAL ARBITRATION AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE SUCH DISPUTES LITIGATED IN A COURT OR JURY TRIAL. BY EXECUTING THIS AGREEMENT YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

14.6 Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Texas without regard to any choice of law rules. Any action relating to or arising out of this Agreement shall be subject to binding arbitration in accordance with Section 13.5.

14.7 Headings. All headings are only for convenience and ease of reference and are irrelevant to the construction or interpretation of any provision of this Agreement.

14.8 Acknowledgments. Unless otherwise expressly provided for in this Agreement or any other written agreement, Co-Owners acknowledge that: (i) Property Manager cannot and does not make any representation, promise or guaranty regarding the conduct of any third parties relating to the Project, including the performance of any obligation owed to the Co-Owners or Property Manager; (ii) Property Manager has not represented or guaranteed any specific outcome to be derived from entering into this Agreement; (iii) Property Manager is not and shall not be liable for the prior acts or omissions of any previous asset or property managers of the Project, or any other third party previously retained to perform/provide services relative to the Project; and (iv) any expression or conveyance by the Property Manager of projections, expectations, goals, beliefs, hopes, approximations, intentions, estimations, and strategies for or regarding the future relating to the Project in any way, including those relating to Sale and Refinance efforts, are not statements of fact or representations or guarantees by Property Manager of future outcome, performance or realization.

14.9 Indemnification by the Property Manager. Property Manager shall indemnify, defend and hold the Tenants in Common and their shareholders, officers, directors, members, partners and employees harmless from any and all claims, demands, causes of action, losses, damages, fines, penalties, liabilities, costs and expenses, including reasonable attorneys' fees and court costs, sustained or incurred by or asserted against the Tenants in Common where it is determined by final judicial determination that such loss, cost or expense was the result of the acts of the Property Manager which arise out of the negligence, willful misconduct or fraud of the Property Manager, its agents or employees or the Property Manager's material breach of this Agreement. If any person or entity makes a claim or institutes a suit against the Tenants in Common on a matter for which the Tenants in Common claim the benefit of the foregoing indemnification, then (a) the Tenants in Common shall give the Property Manager prompt notice thereof in writing; (b) the Property Manager may defend such claim or action by counsel of its own choosing provided such counsel is reasonably satisfactory to the Tenants in Common; and (c) neither the Tenants in Common nor the Property Manager shall settle any claim without the other's written consent.

14.10 Indemnification by the Tenants in Common. The Tenants in Common shall indemnify, defend and hold Property Manager and its shareholders, members, partners, officers, directors, managers, employees, subcontractors and submanagers (collectively referred to in this paragraph as “Property Manager”) harmless from any and all claims, demands, causes of action, losses, damages, fines, penalties, liabilities, costs and expenses, including reasonable attorneys’ fees and court costs, sustained or incurred by or asserted against the Property Manager by reason of the operation, management, and maintenance of the Project and the performance by the Property Manager of the Property Manager’s Services and obligations under this Agreement but only to the extent of each Tenants in Common’s interest in the Project, except those which arise from the Property Manager’s negligence, willful misconduct or fraud. If any person or entity makes a claim or institutes a suit against the Property Manager on matters for which the Property Manager claims the benefit of the foregoing indemnification, then (a) the Property Manager shall give the Tenants in Common prompt notice thereof in writing; (b) the Tenants in Common may defend such claim or action by counsel of their own choosing provided such counsel is reasonably satisfactory to the Property Manager; (c) neither the Property Manager nor the Tenants in Common shall settle any claim without the other’s written consent; and (d) this subsection shall not be so construed as to release the Tenants in Common or the Property Manager from any liability to the other for a breach of any of the covenants agreed to be performed under the terms of this Agreement.

14.11 Complete Agreement. This Agreement shall supersede and take the place of any and all previous agreements entered into between the parties with respect to the Project.

14.12 Severability. If any provisions of this Agreement or application to any party or circumstances shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Agreement, where the application of such provisions or circumstances other than those as to which it is determined to be invalid or unenforceable shall not be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law.

14.13 No Waiver. The failure by any party to insist upon the strict performance of, or to seek remedy of, any one of the terms or conditions of this Agreement or to exercise any right, remedy, or election set forth herein or permitted by law shall not constitute or be construed as a waiver or relinquishment for the future of such term, condition, right, remedy or election, but such item shall continue and remain in full force and effect. All rights or remedies of the parties specified in this Agreement and all other rights or remedies that they may have at law, in equity or otherwise shall be distinct, separate and cumulative rights or remedies, and no one of them, whether exercised or not, shall be deemed to be in exclusion of any other right or remedy of the parties.

14.14 Binding Effect. This Agreement shall be binding and inure to the benefit of the parties and their respective successors and assigns.

14.15 Enforcement of Property Manager's Rights. In the enforcement of its rights under this Agreement, Property Manager shall not seek or obtain a money judgment or any other right or remedy against any shareholders, partners, members or managers or disclosed or undisclosed principals of the Tenants in Common. Property Manager shall enforce its rights and remedies solely against the estate of the Tenants in Common in the Project or the proceeds of any sale of all or any portion of the Tenants in Common's interest therein.

14.16 Interpretation. Whenever any provision set forth in this Agreement is open to interpretation, this Agreement shall be interpreted, to the maximum extent possible, to comply with all of the requirements for an advance ruling set forth in the Revenue Procedure.

14.17 Counterparts. This Agreement may be executed in several counterparts, executed shall constitute one Agreement, binding on all of the parties hereto, notwithstanding that all of the parties are not signatory to the original or the same counterpart.

14.18 “Days” Defined. As used herein “days” shall mean calendar days EXCEPT when any notice or act required to be given or performed by this Agreement within a time period of 7 days or less, then, in such event, “days” shall mean business days (for purposes of this Agreement, business days shall mean Monday through Friday and not include any nationally recognized holidays).

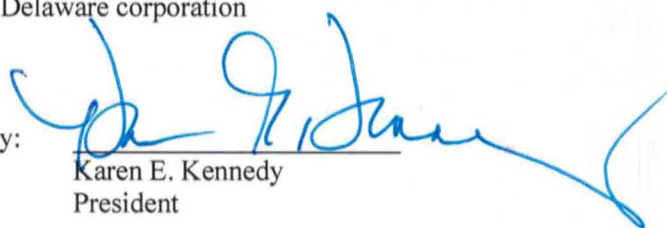
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IN WITNESS WHEREOF the parties hereby execute this Agreement to be effective as of the date set forth above.

PROPERTY MANAGER:

NATIONAL ASSET SERVICES, INC.,  
a Delaware corporation

By:



Karen E. Kennedy  
President

SIGNATURE PAGE TO ASSET AND PROPERTY MANAGEMENT AGREEMENT

FOR

TENANTS IN COMMON

MET CENTER 15 \_\_\_\_\_, LLC,  
a Delaware limited liability company

By: Derek O. Wong

Printed Name: Derek O. Wong

Title: \_\_\_\_\_

Date: 2-9-12

Phone Number: 480-695-3514

Email Address: Derek.O.Wong@Microchip.com

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**EXHIBIT "E"**

Financial Data

ENTITY: EVY001  
Accounting Basis  
Cash  
Report ID: PHLA\_CF

CBRE STANDARD  
Met Center 15  
Statement of Cash Flow

Page: 1  
Date: 4/8/2014  
Time: 10:16 AM

Current Month  
1 Month  
Dec 2013  
Year-To-Date  
12 Months  
Dec 2013

REVENUES

TENANT RENTS	1,687,481.37	2,392,531.15
OPERATING EXP RECOVERIES	0.00	129,587.57
PROP TAX RECOVERIES	0.00	114,792.58
INSURANCE RECOVERIES	0.00	8,336.76
CAM REVENUE CHARGES	524,031.23	536,255.23
OTHER REVENUES	0.00	1,011.62
TOTAL REVENUES	2,211,512.60	3,182,514.91

OPERATING EXPENSES

ELECTRIC	3,403.12	37,205.37
WATER AND SEWER	6,767.06	84,210.25
WATER IRRIGATION	0.00	1,561.91
STEAM	0.00	92.01
DAY PORTER	0.00	243.56
ROOF REPAIRS	0.00	2,162.84
ELECTRICAL SUPPLIES	1,827.52	3,438.28
EXT. REPAIR AND MAINT	0.00	19,749.03
R & M - SALARY	40,444.45	42,874.47
FIRE AND SAFETY	0.00	750.00
REPAIR AND MAINT-OTHER	0.00	1,470.04
CONTRACT SERV-LOT SWEEP	73.07	803.77
PEST CONTROL	0.00	878.22
CONTRACT SERV-LANDSCAPE	0.00	56,777.77
REPAIRS & MAINT-LNSCPNG	986.83	4,429.70
SIGNAGE	0.00	741.51
LOT AND LANDSCAPE-OTHER	0.00	8,013.17
MANAGEMENT FEE	33,370.12	77,694.58
ONSITE OFFICE EXPENSES	0.00	482.28
MGMT OFC - POSTAGE	0.00	58.49
ONSITE WAGES & BENEFITS	(20,259.60)	0.00
OTHER-BANK SVC CHRG	0.00	1,473.24
REIMB-OFFICE EXP./MGMT.	0.00	129.39
PROPERTY TAXES	0.00	530,581.02
CONSULTING-PROP. TAXES	5,000.00	5,000.00
PROP DAMAGE AND LIAB	68,033.70	69,651.70
PARKING CONTRACT EXPENSE	0.00	853.44
PARKING SUPPLIES & EQUIP	0.00	2,710.47
PARKING REPAIRS	0.00	5,290.18
TOTAL OPERATING EXPENSES	139,646.27	959,326.69
NET OPERATING INCOME	2,071,866.33	2,223,188.22

OTHER INCOME/EXPENSES

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CBRE STANDARD  
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Statement of Cash Flow

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	Current Month 1 Month Dec 2013	Year-To-Date 12 Months Dec 2013
BUILDING IMPRV EXPENSE	0.00	43,500.00
BLDG REPAIRS & MAINT-N/R	0.00	2,551.48
GENERAL & ADMINISTRATIVE	151,123.01	151,123.01
ACCOUNTING FEES	0.00	2,697.82
LEGAL FEES	(16,000.00)	(13,141.00)
ASSET MGMT FEES	17,022.07	39,183.36
PROFESSIONAL FEES-OTHER	196,797.83	255,414.26
REFINANCING EXPENSES	(54,258.15)	0.00
GEN & ADMIN-OTHER	68,877.00	68,877.00
MORTGAGE INT. EXPENSE	685,451.89	969,478.34
TOTAL MISC. OWNER EXPENSES	1,049,013.65	1,519,684.27
NET INCOME	1,022,852.68	703,503.95
PREPAIDS/OTHER		
REAL ESTATE ESCROW	280,185.13	123,942.36
	280,185.13	123,942.36
LIABILITIES		
PAYABLES-OTHER	(62,577.04)	(344,675.44)
PERM MORTGAGES-1ST	(3,083,421.83)	0.00
PERM MORTGAGES-2ND	3,449,322.68	(24,550,677.32)
	303,323.81	(24,895,352.76)
CAPITAL EXPENDITURES		
LAND	0.00	1,460,000.00
BUILDING IN SERVICE	0.00	36,035,184.00
BUILDING IMPROVEMENTS	0.00	169,648.53
ACQUISITION FEES	0.00	2,145,415.25
OTHER FIXED ASSETS	0.00	1,558.00
BLDG SHELL-ACCUM DEPR	0.00	(972,463.22)
LEASE COMMISSIONS	0.00	5,613.77
	0.00	38,844,956.33
CASH FLOW BEFORE EQUITY	439,343.74	(13,370,041.98)
EQUITY		
CAPITAL CONTRIBUTIONS	0.00	11,347,200.00
PARTNER 1 CONTRIBUTION	0.00	652,800.00
OTHER CONTRIBUTIONS	(402,271.00)	0.00
DISTRIBUTIONS	0.00	(5,746,949.62)
PARTNER 1 DISTRIBUTIONS	0.00	(330,620.59)
OTHER DISTRIBUTIONS	31,749.15	0.00
RETAINED EARNINGS	0.00	7,931,368.96
	(370,521.85)	13,853,798.75



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CBRE STANDARD  
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Statement of Cash Flow

Page: 3  
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	Current Month 1 Month Dec 2013	Year-To-Date 12 Months Dec 2013
NET CASH FLOW	68,821.89	483,756.77
CASH, BEGINNING OF MONTH	414,934.88	0.00
CASH, END OF MONTH	483,756.77	483,756.77

ENTITY: EVY001  
Accounting Basis  
Cash  
Report ID: PHLA\_CF

CBRE STANDARD  
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Date: 2/17/2015  
Time: 07:00 PM

Report includes an open period. Entries are not final.

	Current Month 1 Month Dec 2014	Year-To-Date 12 Months Dec 2014
REVENUES		
TENANT RENTS	1,346,262.36	3,560,526.36
CAM REVENUE CHARGES	293,520.00	1,088,440.00
TOTAL REVENUES	1,639,782.36	4,648,966.36
OPERATING EXPENSES		
ELECTRIC	529.71	50,546.13
WATER AND SEWER	6,892.71	76,091.00
WINDOW WASH- EXTERIOR	0.00	2,078.40
ROOF REPAIRS	0.00	5,280.44
ELECTRICAL REPAIRS	0.00	1,046.78
ELECTRICAL SUPPLIES	0.00	439.50
EXT. REPAIR AND MAINT	0.00	64,336.14
R & M - SALARY	2,555.45	31,538.70
FIRE AND SAFETY	0.00	650.00
CONTRACT SERV-LOT SWEEP	73.07	949.91
PEST CONTROL	0.00	4,120.82
CONTRACT SERV-LANDSCAPE	4,934.29	64,145.77
REPAIRS & MAINT-LNSCPNG	347.48	5,177.34
LOT AND LANDSCAPE-OTHER	0.00	9,690.09
MANAGEMENT FEE	11,892.56	144,059.49
OTHER-BANK SVC CHRG	51,665.17	74,627.67
REIMB-OFFICE EXP./MGMT.	67.74	477.72
PROPERTY TAXES	0.00	508,848.19
CONSULTING-PROP. TAXES	0.00	14,000.00
PROP DAMAGE AND LIAB	50,136.00	50,136.00
TOTAL OPERATING EXPENSES	129,094.18	1,108,240.09
NET OPERATING INCOME	1,510,688.18	3,540,726.27
OTHER INCOME/EXPENSES		
PROFESSIONAL FEES-OTHER	0.00	2,984.50
GEN & ADMIN-OTHER	640.90	951.52
MORTGAGE INT. EXPENSE	949,139.44	1,586,611.11
TOTAL MISC. OWNER EXPENSES	949,780.34	1,590,547.13
NET INCOME	560,907.84	1,950,179.14
LIABILITIES		
PAYABLES-OTHER	0.00	62,169.58
PERM MORTGAGES-2ND	428,399.66	709,287.39
	428,399.66	771,456.97

ENTITY: EVY001  
Accounting Basis  
Cash  
Report ID: PHLA\_CF

CBRE STANDARD  
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Statement of Cash Flow

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Date: 2/17/2015  
Time: 07:00 PM

Report includes an open period. Entries are not final.

	Current Month 1 Month Dec 2014	Year-To-Date 12 Months Dec 2014
CASH FLOW BEFORE EQUITY	132,508.18	1,178,722.17
NET CASH FLOW	132,508.18	1,178,722.17
CASH, BEGINNING OF MONTH	1,653,913.12	607,699.13
CASH, END OF MONTH	1,786,421.30	1,786,421.30

ENTITY: EVY001  
Accounting Basis  
Cash  
Report ID: PHLA\_CF

CBRE STANDARD  
Met Center 15  
Statement of Cash Flow

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Date: 8/13/2015  
Time: 11:14 PM

Report includes an open period. Entries are not final.

	Current Month 1 Month Jul 2015	Year-To-Date 7 Months Jul 2015
REVENUES		
TENANT RENTS	0.00	(151,717.00)
CAM REVENUE CHARGES	0.00	151,717.00
TOTAL REVENUES	0.00	0.00
OPERATING EXPENSES		
ELECTRIC	2,882.68	20,937.28
WATER AND SEWER	7,270.71	43,269.83
WINDOW WASH- EXTERIOR	0.00	12,512.62
ROOF REPAIRS	0.00	3,036.41
EXT. REPAIR AND MAINT	(8,849.98)	59,338.69
R & M - SALARY	2,667.11	21,682.13
FIRE AND SAFETY	(20.00)	714.95
CONTRACT SERV-LOT SWEEP	73.07	511.49
PEST CONTROL	113.75	627.05
CONTRACT SERV-LANDSCAPE	4,934.29	34,540.03
REPAIRS & MAINT-LNSCPNG	391.87	7,422.63
LOT AND LANDSCAPE-OTHER	8,849.98	10,064.54
MANAGEMENT FEE	33,206.25	131,584.08
MGMT OFC - POSTAGE	0.00	19.48
REIMB-OFFICE EXP./MGMT.	18.31	2,157.45
PROPERTY TAXES	473,251.80	473,251.80
PROP DAMAGE AND LIAB	45,697.90	45,697.90
TOTAL OPERATING EXPENSES	570,487.74	867,368.36
NET OPERATING INCOME	(570,487.74)	(867,368.36)
OTHER INCOME/EXPENSES		
TOTAL MISC. OWNER EXPENSES	0.00	0.00
NET INCOME	(570,487.74)	(867,368.36)
ESCROW EXPENSE		
REAL ESTATE ESCROW	(473,251.80)	(473,251.80)
	(473,251.80)	(473,251.80)
LIABILITIES		
ACCOUNTS PAYABLE AND OTH	(1,844,360.30)	(1,844,360.30)
	(1,844,360.30)	(1,844,360.30)
CASH FLOW BEFORE EQUITY	1,747,124.36	1,450,243.74

ENTITY: EVY001  
Accounting Basis  
Cash  
Report ID: PHLA\_CF

CBRE STANDARD  
Met Center 15  
Statement of Cash Flow

Page: 2  
Date: 8/13/2015  
Time: 11:14 PM

Report includes an open period. Entries are not final.

	Current Month 1 Month Jul 2015	Year-To-Date 7 Months Jul 2015
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NET CASH FLOW

1,747,124.36

1,450,243.74

CASH, BEGINNING OF MONTH

1,016,288.88

1,313,169.50

CASH, END OF MONTH

2,763,413.24

2,763,413.24

EXHIBIT "F"

CBRE, Inc Appraisal Report dated August 21, 2015

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August 21, 2015

Darvy Mack Cohel  
DARVY MACK COHEL  
7855 Ivanhoe Avenue, Suite 400  
La Jolla, California 92037

RE: Appraisal of Met Center 15  
7301 Metro Center Drive  
Austin, Travis County, Texas 78744  
CBRE, Inc. File No. 15-361HO-4593

Dear Mr. Cohel:

At your request and authorization, CBRE, Inc. has prepared an appraisal of the market value of the referenced property. Our analysis is presented in the following Appraisal Report.

The subject is a 257,600-square foot flex space (industrial/value office) facility located at 7301 Metro Center Drive in Austin, Texas. The one-story improvements were constructed in 2001 and are situated on a 26.83-acre site. The property includes essentially 100% office finish although the property includes loading areas with 7 dock high doors. The property is fully occupied by two tenants, Progressive Casualty Insurance (217,216 SF) and Waste Management (40,384 SF).

The subject property is located in an area which is reported to be impacted by foundation movement. The subject property is reported to be negatively impacted by foundation movement resulting in areas of sloping slab, cracked sheetrock, and separating concrete. A final remediation budget summary was provided with a total remediation cost estimate of \$4,075,858 (budget as of June 18, 2015). Within this appraisal, we have assumed the cost estimate provided is accurate and assumed that the repairs are complete in the next 8 months in a workman-like manner and without any impact on the occupancy of the tenants. The remediation costs have been deducted to arrive at an "as is" value.

The subject has a substantial capital repairs pending and we have provided an as complete value after these costs have been incurred assuming a completion timeline of 8 months from the "as is" date of value. Therefore, in addition to the "as is" value, we have also estimated the prospective "as complete" value as of the effective date of value of April 13, 2016.

Based on the analysis contained in the following report, the market value of the subject is concluded as follows:

<b>MARKET VALUE CONCLUSION</b>			
Appraisal Premise	Interest Appraised	Date of Value	Value Conclusion
As Is	Leased Fee Interest	August 13, 2015	\$32,000,000
As Complete	Leased Fee Interest	April 13, 2016	\$36,600,000

Compiled by CBRE

The report, in its entirety, including all assumptions and limiting conditions, is an integral part of, and inseparable from, this letter.

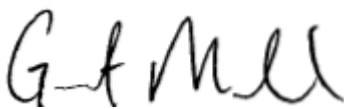
The following appraisal sets forth the most pertinent data gathered, the techniques employed, and the reasoning leading to the opinion of value. The analyses, opinions and conclusions were developed based on, and this report has been prepared in conformance with, the guidelines and recommendations set forth in the Uniform Standards of Professional Appraisal Practice (USPAP), the requirements of the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute. It also conforms to Title XI Regulations and the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) updated in 1994 and further updated by the Interagency Appraisal and Evaluation Guidelines promulgated in 2010.

The intended use and user of our report are specifically identified in our report as agreed upon in our contract for services and/or reliance language found in the report. No other use or user of the report is permitted by any other party for any other purpose. Dissemination of this report by any party to non-client, non-intended users does not extend reliance to any other party and CBRE will not be responsible for unauthorized use of the report, its conclusions or contents used partially or in its entirety.

It has been a pleasure to assist you in this assignment. If you have any questions concerning the analysis, or if CBRE can be of further service, please contact us.

Respectfully submitted,

CBRE - VALUATION & ADVISORY SERVICES



Grant Mueller, MAI  
Vice President  
Texas Certification #1337145-G  
[www.cbre.com/grant.mueller](http://www.cbre.com/grant.mueller)

Phone: (512) 499-4909  
Fax: (512) 499-4999  
Email: [grant.mueller@cbre.com](mailto:grant.mueller@cbre.com)



David Thibodeaux, MAI  
Managing Director  
Texas Certification #1328395-G  
[www.cbre.com/david.thibodeaux](http://www.cbre.com/david.thibodeaux)

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Fax: (512) 499-4999  
Email: [david.thibodeaux@cbre.com](mailto:david.thibodeaux@cbre.com)

**CBRE**



## Certification

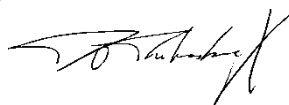
We certify to the best of our knowledge and belief:

1. The statements of fact contained in this report are true and correct.
2. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are our personal, impartial and unbiased professional analyses, opinions, and conclusions.
3. We have no present or prospective interest in or bias with respect to the property that is the subject of this report and have no personal interest in or bias with respect to the parties involved with this assignment.
4. Our engagement in this assignment was not contingent upon developing or reporting predetermined results.
5. Our compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
6. This appraisal assignment was not based upon a requested minimum valuation, a specific valuation, or the approval of a loan.
7. Our analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice, as well as the requirements of the State of Texas.
8. The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute.
9. The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
10. As of the date of this report, Grant Mueller, MAI and David Thibodeaux, MAI have completed the continuing education program for Designated Members of the Appraisal Institute.
11. Grant Mueller, MAI and David Thibodeaux, MAI have made a personal inspection of the property that is the subject of this report.
12. No one provided significant real property appraisal assistance to the persons signing this report.
13. Valuation & Advisory Services operates as an independent economic entity within CBRE, Inc. Although employees of other CBRE, Inc. divisions may be contacted as a part of our routine market research investigations, absolute client confidentiality and privacy were maintained at all times with regard to this assignment without conflict of interest.
14. Grant Mueller, MAI and David Thibodeaux, MAI have not provided services, as an appraiser, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment.




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Grant Mueller, MAI  
Texas Certification No. TX-1337145-G




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David Thibodeaux, MAI  
Texas Certification No. TX-1328395-G

## Executive Summary

<b>Property Name</b>	Met Center 15	
<b>Location</b>	7301 Metro Center Drive, Austin, Travis County, Texas 78744	
<b>Highest and Best Use</b>		
As If Vacant	Industrial	
As Improved	Industrial	
<b>Property Rights Appraised</b>	Leased Fee Interest	
<b>Date of Report</b>	August 21, 2015	
<b>Date of Inspection</b>	August 13, 2015	
<b>Estimated Exposure Time</b>	9 Months	
<b>Estimated Marketing Time</b>	9 Months	
<b>Land Area</b>	26.83 AC	1,168,644 SF
<b>Improvements</b>		
Property Type	Industrial	(Flex Space)
Number of Buildings	1	
Number of Stories	1	
Gross Building Area	257,600 SF	
Clear Height	28 Ft.	
Percent Office	100.0%	
Year Built	2001	
Condition	Average	
<b>Major Tenants</b>		
Progressive	217,216 SF	
<b>Buyer Profile</b>	Institutional	
<b>Financial Indicators</b>		
Current Occupancy	100.0%	
Stabilized Occupancy	93.0%	
Stabilized Credit Loss	0.0%	
Overall Capitalization Rate	7.00%	
Discount Rate	8.25%	
Terminal Capitalization Rate	7.50%	
<b>Pro Forma Operating Data</b>	<b>Total</b>	<b>Per SF</b>
Effective Gross Income	\$3,641,516	\$14.14
Operating Expenses	\$1,157,972	\$4.50
Expense Ratio	31.80%	
Net Operating Income	\$2,483,544	\$9.64

<b>VALUATION</b>	<b>Total</b>	<b>Per SF</b>
Land Value	\$4,650,000	\$3.98
<b>Market Value As Is On</b>	<b>August 13, 2015</b>	
Cost Approach	\$32,200,000	\$125.00
Sales Comparison Approach	\$31,500,000	\$122.28
Income Capitalization Approach	\$32,000,000	\$124.22
Insurable Value	\$27,687,000	\$107.48

<b>CONCLUDED MARKET VALUE</b>			
<b>Appraisal Premise</b>	<b>Interest Appraised</b>	<b>Date of Value</b>	<b>Value</b>
As Is	Leased Fee Interest	August 13, 2015	\$32,000,000
As Complete	Leased Fee Interest	April 13, 2016	\$36,600,000

Compiled by CBRE

## STRENGTHS, WEAKNESSES, OPPORTUNITIES AND THREATS (SWOT)

### Strengths/ Opportunities

- The subject represents an industrial flex facility located in an active area in southeast Austin within the Met Center development;
- The subjects located within the Met Center provides tenants with amenities not found in other industrial locations, including a landscaped park, hike & bike trail, electric substation with redundant power supplies and fiber optic providers;
- The subject is well located within an established industrial and commercial park with easy access to primary roadways, including US Highway 71 and IH-35, the primary north/south roadway connecting Austin to San Antonio to the south and Dallas to the north;
- The subject includes a 28 foot clear height and concrete tilt-wall construction components;
- The recent development/construction of Tollway 130 to the east of the subject provides additional accessibility to the east side of Austin;
- The Austin industrial market has reported improving occupancy and rental rates in recent months;
- The Austin MSA is reported as the fastest growing city (according to Forbes) for three years straight;

### Weaknesses/ Threats

- Waste Management currently occupies 40,384 SF at the subject property. The tenant has been in place since April 2003; however, their lease expired in March 2013. A lease amendment that is retroactive to the prior lease expiration has been executed by the tenant but has not been executed by the landlord. This tenant is effectively occupying their space on a month to month basis;
- Progressive Insurance has a termination option available any time after the 11th anniversary (August 2016) of the commencement date with a termination fee to the tenant of approximately \$12.00 per square foot, or \$2,576,372;
- The subject is reported to be negatively impacted by foundation movement resulting in areas of sloping slab, cracked sheetrock, and separating concrete. A final remediation budget summary was provided with a total remediation cost estimate of \$4,075,858 (budget as of June 18, 2015).

## EXTRAORDINARY ASSUMPTIONS

An extraordinary assumption is defined as “an assumption directly related to a specific assignment, as of the effective date of the assignment results, could alter the appraiser’s opinions or conclusions.”<sup>1</sup>

- Information pertaining to the subject's physical characteristics were obtained from information provided by a representative of the property owner. The improvements were not measured and the site was not surveyed by our firm. Any deviation from the physical characteristics contained herein could affect our value conclusion.
- The subject property is reported to be negatively impacted by foundation movement resulting in areas of sloping slab, cracked sheetrock, and separating concrete. A final remediation budget summary was provided with a total remediation cost estimate of \$4,075,858 (budget as of June 18, 2015). Within this appraisal, we have assumed the cost estimate provided is accurate and assumed that the repairs are complete in the next 8 months in a workman-like manner and without any impact on the occupancy of the tenants.
- Waste Management currently occupies 40,384 SF at the subject property. The tenant has been in place since April 2003; however, their lease expired in March 2013. A lease amendment that is retroactive to the prior lease expiration has been executed by the tenant but has not been executed by the landlord. It was reported by the current property manager (Shelley Lamoglia with CBRE, Inc.) that the lease this lease amendment was produced by the prior property management company without approval by ownership and was not executed. Additionally, the property manager indicated that Waste Management is currently occupying their space on a month to month basis as a lease renewal/amendment was not executed. There were no details reported regarding a lease proposal for this tenant. Waste Management is current occupying 40,384 SF at the subject property and is paying a lease rate of \$19,142 per month on a triple net basis. Within our analysis, we have made the extraordinary assumption that this space would be available for lease at a market rate as of the date of value as the current occupying tenant is on a month to month basis.

## HYPOTHETICAL CONDITIONS

A hypothetical condition is defined as “that which is contrary to what exists but is supposed for the purpose of analysis. Hypothetical conditions assume conditions contrary to known facts about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis.”<sup>2</sup>

- None noted

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<sup>1</sup> The Appraisal Foundation, *USPAP, 2014-2015* ed., U-3.

<sup>2</sup> Appraisal Institute, *The Dictionary of Real Estate Appraisal*, 5<sup>th</sup> ed. (Chicago: Appraisal Institute, 2010), 97.

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**EXHIBIT "G"**

Remediation Budget

# MET CENTER 15

## REMEDIATION BUDGET SUMMARY

<b>GENERAL CONTRACTOR COSTS</b>		
General Contractor Mobilization	\$	95,000.00
Landscape Restoration		10,000.00
Temporary Fencing, Barricades, and Ramps		65,000.00
19' to 22' x 8" Cut-Off Wall (TDWC)		692,010.00
Drainage Pipe for 19' to 22' x 8" Wall		304,765.00
Storm Drain System		839,705.00
Demo Existing Storm Drain System		82,766.00
8" Vertical Realignment		12,000.00
Asphalt Patch Back		140,510.00
Concrete Trench Patch Back/Sidewalk/Curb		443,796.50
<b>TOTAL DIRECT HARD COSTS</b>	<b>\$</b>	<b>2,685,552.50</b>
Performance Bond	\$	67,138.81
CONTINGENCY @ 10% Of Total Hard Costs		268,555.00
GC FEE @ 15% of Total Hard Costs		402,833.00
Pre-construction Meetings		10,000.00
<b>TOTAL GENERAL CONTRACTOR COSTS</b>	<b>\$</b>	<b>3,434,079.31</b>
<b>SOFT COSTS</b>		
<u><b>EPSILON ENGINEERING &amp; MATERIALS, LLC</b></u>		
Tenant Meetings		50,400.00
Helical/Push Piers		97,250.00
Cut-off Wall & Sheet Piles		13,350.00
Roof Drains & Overall Drainage		45,950.00
Pavement		9,350.00
Construction Material Testing		88,478.30
Construction Meetings		9,000.00
Admin & Change Orders		9,000.00
Final As-Built Review & Certification		9,000.00
Structural Engineering Assessment		35,000.00
Preconstruction Open Invoices		50,000.00
<b>Total Epsilon Engineering</b>	<b>\$</b>	<b>416,778.30</b>
<u><b>PRINCIPAL MANAGEMENT SOLUTIONS, LLC</b></u>		
Owners Rep. - Project Management Fee	\$	225,000.00
<b>TOTAL SOFT COSTS</b>	<b>\$</b>	<b>641,778.30</b>
<b>GRAND TOTAL REMEDIATION COSTS</b>	<b>\$</b>	<b>4,075,857.61</b>

**EXHIBIT "H" - MEMBERSHIP INTERESTS IN THE REORGANIZED DEBTOR**

	<u>Name</u>	<u>Street Address</u>	<u>City, State, Zip</u>	<u>Membership %</u>
1	NNN Met Center 15, LLC	17242 W. Watkins Street	Goodyear, AZ 85338	3.3759
2	NNN Met Center 15 4, LLC	109 S. Galaxy Drive	Chandler, AZ 85226	1.0075
3	NNN Met Center 15 5, LLC	1270 Elmwood Drive	Walnut Creek, CA 94596	2.0925
4	NNN Met Center 15 6, LLC	20012 Lake Drive	Escondido, CA 92029	1.3175
5	NNN Met Center 15 7, LLC	721 Harrier Place	Davis, CA 95616	1.1625
6	NNN Met Center 15 8, LLC	1717 N. Bayshore Drive #1951	Miami, FL 33132	2.6350
7	NNN Met Center 15 9, LLC	24901 Dana Point Harbor Dr., Ste 230	Dana Point, CA 92629	2.3250
8	NNN Met Center 15 10, LLC	7478 Evergreen Drive	Golita, CA 93117	3.4100
9	NNN Met Center 15 11, LLC	7478 Evergreen Drive	Golita, CA 93117	3.4100
10	NNN Met Center 15 12, LLC	1825 McMinville Hwy	Manchester, TN 37355	1.0106
11	NNN Met Center 15 13, LLC	1825 McMinville Hwy	Manchester, TN 37355	1.0106
12	NNN Met Center 15 16, LLC	2201 Private Road	Newport Beach, CA 92660	1.0075
13	NNN Met Center 15 18, LLC	173 222nd Street	Baldwin, WI 54002	1.7060
14	NNN Met Center 15 19, LLC	60 Joseph Street	Sayville, NY 11782	0.6200
15	NNN Met Center 15 20, LLC	921 Jamaica Street	Foster City, CA 94404	1.2400
16	NNN Met Center 15 21, LLC	8101 Asmara Drive	Austin, TX 78750	6.4325*
17	NNN Met Center 15 22, LLC	30296 Gulf Stream Drive	Canyon Lake, CA 92587	1.1625
18	NNN Met Center 15 23, LLC	5372 Beck Circle	Huntington Beach, CA 92649	2.5575
19	NNN Met Center 15 25, LLC	4121 Roundhill Road	Arlington, VA 22207	2.4800
20	NNN Met Center 15 26, LLC	408 E. Valerio Street	Santa Barbara, CA 93101	1.0075
21	NNN Met Center 15 28, LLC	3775 Moldoc Road, SM 288	Santa Barbara, CA 93105	2.0150
22	NNN Met Center 15 29, LLC	182 Water Street	Newburyport, MA 01950	2.0150
23	NNN Met Center 15 30, LLC	760 Harbor Bend Road, Apt. 207	Memphis, TN 78103	2.5575
24	NNN Met Center 15 31, LLC	2145 Westmoreland Ct.	San Jose, CA 95124	3.7200
25	NNN Met Center 15 32, LLC	917 I Avenue	Coronado, CA 92118	2.0150
26	NNN Met Center 15 33, LLC	2521 West Loughlin Drive	Chandler, AZ 85224	1.0850
27	NNN Met Center 15 34, LLC	20058 W. Grant Line Road	Tracy, CA 95391	2.0150
28	NNN Met Center 15 35, LLC	2310 Via Zafiro	San Clemente, CA 92673	0.3100
29	NNN Met Center 15 36, LLC	179 Canon Drive	Santa Barbara, CA 93105	1.6275
30	NNN Met Center 15 38, LLC	4457 Nueces Drive	Santa Barbara, CA 93110	1.3950
31	NNN Met Center 15 39, LLC	332257 Devonshire Street	Union City, CA 94587	1.5500
32	NNN Met Center 15 40, LLC	20080 SW 58 <sup>th</sup> Terrace	Tualatin, OR 97062	0.3616
33	NNN Met Center 15 41, LLC	20080 SW 58 <sup>th</sup> Terrace	Tualatin, OR 97062	0.3618
34	Virtua Partners, LLC	141 Woodland Gardens	Piedmont, CA 94611	20.0000
35	Breakwater Equity Partners, LLC	894 W. Washington St.	San Diego, CA 92103	18.0000

\*If Virtua High Growth Fund exercises its Option, its Membership % will be 4.650 reducing NNN Met Center 21, LLC to 1.7825.

Ch 11 Bankruptcy Case Number 15-42359 WJL  
 Disclosure Statement Describing Jointly Proposed  
 Plan of Reorganization for Jointly Administered Cases Dated November 30, 2015

**EXHIBIT "I"- REFINANCING**

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**Exhibit J-1** Colony Capital Acquisitions, LLC Term Sheet dated October 6, 2015

**Exhibit J-2** MacKinzie Capital Management, LP Term Sheet dated November 17, 2015



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**Exhibit "I-1"**

Colony Capital Acquisitions, LLC Term Sheet dated October 6, 2015

# Colony Capital Acquisitions, LLC

October 6, 2015

Ethan Schelin  
Landmark Capital Advisors  
1201 Dove Street, Suite 500  
Newport Beach, CA 92660

Re: Met Center 15  
\$27.8 Million Financing Proposal

Dear Mr. Schelin:

Colony Capital Acquisitions, LLC and its successors and assigns ("Lender") is pleased to present this Loan proposal (this "Loan Proposal") to fund a Loan (the "Loan") secured by the property located at 7301 Metro Center Drive, Austin, TX (the "Property"). As further set forth below, this Loan Proposal is for discussion purposes only and is neither an expressed nor implied commitment to provide any financing or to provide or purchase any loans or securities in connection with the transactions contemplated hereby.

**Sponsor:** Virtua Partners, LLC, Lloyd W. Kendall, Jr., Quinn Palomino and any other such entities or individuals deemed relevant subject to confirmatory due diligence (collectively, "Sponsor").

**Guarantor:** Lloyd W. Kendall, Jr., Quinn Palomino and any other such entities or individuals deemed relevant subject to confirmatory due diligence (collectively, "Guarantor"), will be required to maintain agreed-upon levels of net worth and liquidity.

**Borrower:** Borrower shall be a single purpose, bankruptcy-remote Delaware limited liability company acceptable to Lender.

**Loan Amount:** Subject to Due Diligence, as described below, the aggregate loan amount (the "Loan Amount") shall be the lower of (i) \$27.8 million, (ii) an amount that results in the aggregate loan to "as-is" value ratio (based on MAI/FIRREA appraisals of the Property satisfactory to Lender) of 75%. The numerator in the loan to "as-is" value ratio shall be \$27.8 million less \$4,484,000 for required remediation costs and \$1,920,000 for tenant improvements and leasing commissions and (iii) an amount that results in the aggregate loan to "as-stabilized" value ratio (based on MAI/FIRREA appraisals of the Property satisfactory to Lender) of 76%.

**Collateral:** Lender reserves the right to allocate a portion of the Loan as mezzanine debt in its sole discretion. The mortgage component of the Loan shall be secured by, among other things, (a) a first priority mortgage/deed of trust on the Property; (b) a first priority security interest in and, as applicable to the extent assignable, assignment of all rents, permits, licenses, leases, contracts, agreements, accounts, receivables, personal property, furniture, fixtures and equipment and any other personal property relating to the Property and (c) such other collateral customary for a loan of this type, including escrows, reserves and cash management accounts.

The mezzanine loan component of the Loan, if any, shall be secured by, among other things, a pledge of 100% of the direct ownership interests in the mortgage borrower.

**Recourse:** The Loan shall be made on a non-recourse basis, except for recourse to Guarantor for environmental matters and standard “bad acts”, including (but not limited to) fraud, voluntary or collusive bankruptcy, misrepresentation, waste, misappropriation, prohibited transfers, prohibited liens and material breach of SPE covenants.

**Interest Rate:** 1 Mo LIBOR + 5.90% (Act/360).

**LIBOR Floor:** LIBOR shall not be less than 0.00%.

**Term:** The Loan shall consist of a three (3) year initial Term (the “Initial Term”) and two (2) one- year extension options (“First Extension” and “Second Extension”). The option is exercisable so long as no default or event of default is then in existence, upon (a) payment of a 50 basis point extension fee, (b) purchase and pledge of an Interest Rate Cap meeting the requirements set forth in “Interest Rate Cap” below, and (c) satisfaction of the following minimum Debt Yield tests:

First Extension: 10.0%  
Second Extension: 10.5%

Borrower to have right to pay down Loan without penalty to meet Debt Yield tests.

As used throughout this Loan Proposal, “Debt Yield” shall be calculated as the ratio of trailing three (3) month annualized Net Cash Flow (defined below) over the aggregate outstanding Loan Amount. For purposes of this provision, the Debt Yield tests must be satisfied for the two consecutive fiscal quarters immediately preceding each extension period.

“Net Cash Flow” for any period shall be defined as net operating

income for such period minus the sum of (i) capital expenditures plus (ii) amounts required to be deposited into reserve accounts (other than amounts for property taxes and insurance premiums) for such period. For purposes of the Net Cash Flow calculation, net operating income shall (a) exclude any income associated with leases projected to roll within twelve (12) months of the calculation date, and (b) include any income associated with executed leases projected to resume within three (3) months of the calculation date provided such lease has a minimum term of thirty-six (36) months.

- Amortization:** Interest-only.
- Structuring Fee:** 1.0%, earned and payable at the closing of the Loan (the "Closing").
- Underwriting Fee:** \$5,000, earned in full upon the payment of the Expense Deposit (defined below).
- Exit Fee:** 1.25%, payable at repayment of the Loan.
- Call Protection:** The Loan is pre-payable in full, but not in part during the Initial Term of the Loan subject to a yield maintenance fee equal to the difference between the interest that would have been due on the loan if it were outstanding for eighteen (18) months from the first interest payment date after Closing, calculated as of the date of prepayment using the forward LIBOR curve as published on Bloomberg for each pro-forma interest period, less the actual interest paid up to the prepayment date. Thereafter, Borrower may freely prepay the Loan in full at par subject to the Exit Fee as described above.
- Interest Rate Cap:** At Closing, Borrower shall be required to purchase and pledge to Lender an interest rate cap from a counterparty with that has (i) a long-term unsecured debt rating or counterparty rating of "A+" or higher from Standard & Poor's and (ii) a long-term unsecured debt or counterparty rating of "A1" or higher from Moody's, hedging the Loan Amount by capping its LIBOR exposure to not greater than 1.50% for the Initial Term. Exercise of extension options will require the purchase of a LIBOR cap from a counterparty having the ratings set forth above at the lesser of (1) 1.50% or (2) a strike such that the DSCR based on such strike is  $\geq 1.30x$  based on TTM Net Cash Flow at the time of extension.
- Lender Approval Rights:** The Loan Documents shall give Lender the right to reasonably approve, from time to time, (i) annual operating and capital budgets for the Property, (ii) material contracts with third parties not in the ordinary course of business or not provided for in the approved operating or capital budgets, (iii) any change in ownership or control of Borrower, (iv) any encumbrance of the Property, (v) any sale or

major lease (herein defined as any tenant 40,000 square feet or greater in size) not contemplated in the annual operating or capital budgets approved by Lender, (vi) the initiation of any material litigation or the settlement of any dispute or litigation not covered by insurance or which is material and not in the ordinary course of business, (vii) any material modifications to renovation plans, (viii) any new lease greater than 40,000 square feet in size, and (ix) other material matters to be identified in the Loan Documents (collectively, the “Lender Approval Submissions”).

**Financial Reporting:** The Loan Documents will require Borrower to provide Lender with unaudited monthly (within 45 days of end of period) and quarterly and annual income statements, balance sheets, ARGUS files, rent rolls, aged accounts receivable reports, leasing pipeline, and annual budgets (collectively, the “Financial Statements”). The annual income statement and balance sheets shall be audited by an accounting firm acceptable to Lender. All Financial Statements shall be certified true and correct by the Chief Financial Officer of Sponsor. Lender reserves the right in its sole and absolute discretion to require annual audited financial statements at any time after an event of default or Trigger Period (defined below).

**Annual Budget:** An annual budget will be due 30 days prior to each year end.

**Cash Management:** All rental payments shall be made by tenants directly to a lockbox account (the “Lockbox Account”) under Lender’s control. Amounts in the Lockbox Account will be remitted daily to another Lender controlled account (the “Cash Management Account”), from which debt service, escrows for insurance and property taxes, and any other required ongoing reserves and escrows shall be paid. Absent an event of default or Trigger Period, all amounts remaining in the Cash Management Account after the making of all other required payments will be transferred to Borrower’s operating account.

**Escrows and Reserves:** Borrower shall establish and fund escrows and reserves, at Closing and on an ongoing basis, for taxes and insurance premiums and as otherwise required by Lender following Due Diligence. In addition, at Closing Lender shall fund \$4,484,000 of its Loan to a Lender controlled account which will be held for required remediation costs and \$1,920,000 of its Loan to a Lender controlled account which will be held for Tenant Improvements and Leasing Commissions (the “Remediation Reserve” and “TI/LCs”, respectively). All such escrows and reserves shall be held in interest-bearing accounts, with interest accruing for Lender’s benefit. Such accounts, in which Lender will have a perfected security interest, will serve as additional collateral for the Loan.

**Completion Guaranty:** Sponsor must deliver a completion guaranty in form and substance acceptable to Lender for the required remediation work at the property.

**Dividend Restrictions/ Trigger Period:** Borrower shall not make cash distributions to Sponsor or any other direct or indirect owner of Borrower for the first twelve (12) months of the loan calculated from the Closing (the "Distribution Blackout Period"). Following the Distribution Blackout Period, cash distributions to the Sponsor or any other direct or indirect owner of the Borrower will not be permitted until the Property has achieved all of the following condition: (i) a minimum 10% Debt Yield for two consecutive fiscal quarters following the Distribution Blackout Period, (ii) all required remediation work is completed as determined acceptable by Lender and (iii) confirmation that Progressive Insurance tenant will not exercise their early termination option. Once such distributions are permitted, Borrower shall cease making such distributions during the period from (i) the sixth (6<sup>th</sup>) business day after Borrower has failed to timely deliver the required financial statements until the date such financial statements are delivered and (ii) the end of any fiscal quarter in which the Property fails to achieve a minimum 10% Debt Yield for such fiscal quarter until end of the second of two consecutive fiscal quarters in which the Property achieves a minimum 10% Debt Yield (any such period, a "Trigger Period"). During a Trigger Period all cash shall be held in the Cash Management Account as additional collateral for the Loan; however, Lender will allow Borrower flexibility to utilize cash accumulated in the Cash Management Account (after interest expense and required reserves) to fund approved operating expenses and capital expenditures.

**Management Agreement:** The Property must at all times be managed by a manager approved by Lender pursuant to a management agreement in form and substance satisfactory to Lender. The management agreement shall be fully subordinated to the Loan and management fees shall be subordinated to payment of the Loan interest expense. Subsequent to an event of default, Lender shall have the right to terminate the management agreement and replace the property manager at no cost to Lender. Borrower shall not make any material modifications to the management agreement without Lender's prior written consent.

**Additional Indebtedness:** No additional mortgage debt or partnership interest debt shall be permitted without the prior written approval of Lender in its sole and absolute discretion.

**Transfers:** Sponsor may not sell, transfer or assign any of Sponsor's equity interests in Borrower without the consent of Lender, in its sole discretion, provided that Lender shall allow for transfers in

connection with (i) estate planning, (ii) death of an individual Sponsor, subject to customary requirements and (iii) transfers made to affiliates that satisfy minimum capitalization requirements. Further, Sponsor may transfer up to 49% of its economic interests in Borrower without Lender consent, provided Sponsor maintains voting control.

**Insurance Requirements:**

Borrower shall maintain (a) “all risk” hazard insurance in an amount equal to full replacement cost of the Property, (b) liability insurance in an amount satisfactory to Lender, (c) business interruption / rental loss insurance in an amount equal to 12- months gross revenues, (d) seismic insurance as required by Lender, (e) flood insurance if the Property is located in a flood hazard zone, and (f) such other insurance as may be reasonably required by Lender. All policies shall be from providers with minimum claims paying ratings acceptable to Lender, which policies must name Lender as additional insured.

**Due Diligence:**

Prior to Closing, Lender shall satisfy itself, in its sole and absolute discretion, with respect to all due diligence items (collectively, “Due Diligence”) including, but not limited to, (i) the financial condition and reputation of Borrower, Sponsor and Guarantor, (ii) management, and operating and service agreements, and (iii) the feasibility, viability and quality of the Property, including but not limited to a satisfactory review of the prior five years historical unaudited financial statements, relevant budgets, leases, appraisal, environmental database search (including, if necessary, phase one and phase two environmental reports), architectural and engineering reports, seismic report, title report, survey, title insurance policy, and all other insurance policies and/or other reports as reasonably deemed necessary by Lender. Lender shall determine if the results of Due Diligence shall be satisfactory in its sole discretion.

**Conditions Precedent to Funding:**

Among other things, in Lender’s sole and absolute discretion, (i) approval of Lender’s investment committee, (ii) satisfactory completion of Due Diligence and other conditions described herein, (iii) satisfactory opinions of counsel including non-consolidation and customary corporate and enforceability opinions, (iv) accuracy of representations and warranties, (v) Sponsor’s contribution of no less than \$1,400,000 of cash equity, (vi) if applicable, Lender’s review and approval of all members of Borrower not affiliated with Sponsor, (vii) satisfactory review and approval of REA agreements, (viii) satisfactory review of Sponsor’s and Guarantor’s net worth and liquidity, (ix) satisfactory review and approval of Sponsor’s business plan, (x) satisfactory review and approval of management agreements, (xi) confirmation of Borrower’s purchase and pledge to Lender of an acceptable Interest Rate Cap, (xii) satisfactory Loan Documents and (xiii) approval from the United States Bankruptcy

Court for the Northern District of California in case of NNN Met Center 15 39, a Delaware Limited Liability Company, case no. 15-42359 WJL, and all jointly administered cases (the “Bankruptcy Court”), of the loan transaction separately or as part of Plan of Reorganization.

**Closing Date:** Provided Sponsor’s timely delivery of due diligence materials and satisfaction of all Conditions Precedent, Closing of the Loan is anticipated to occur on or before January 29, 2016.

**Expense Deposit:** The signed Loan Proposal must be accompanied by an expense deposit of \$130,000 (the “Expense Deposit”), \$5,000 of which will constitute a non-refundable underwriting fee. All out-of-pocket expenses actually incurred by Lender in connection with the Loan will be paid by Borrower regardless of whether the Loan closes. These out-of-pocket expenses shall include but not be limited to Lender’s due diligence, legal fees, appraisals, environmental reports, engineering reports, and all other out-of-pocket third party expenses related to the Closing. Moreover, if prior to the Closing, Lender determines that the Expense Deposit will be insufficient to pay all expenses, Sponsor shall promptly deliver to Lender funds in the amount of such shortfall. In the event that the Loan closes, any unused portion of the Expense Deposit will be applied to the Structuring Fee due and payable to Lender.

**Sale, Assignment or Participation:** Lender will have the right to sell, assign or participate the Loan, in whole or in part without the consent of Sponsor, Borrower or any affiliate thereof. Borrower shall reasonably cooperate with any such sale, assignment or participation.

**Brokers:** The Loan Documents shall provide that Guarantor and Borrower shall indemnify and hold harmless Lender and its affiliates against any and all loss, cost, damage, liability and expenses suffered or incurred by Lender or its affiliates arising out of, or in connection with, any claims by brokers, agents or finders claiming to have assisted or represented Sponsor or Borrower in connection with the Loan.

**Attorneys’ Fees:** In the event any party shall institute any action or proceeding against the other party relating to this Loan Proposal, the party not prevailing in such action or proceeding shall reimburse the prevailing party for its disbursements incurred in connection therewith and for its reasonable attorneys’ fees and costs. In addition to the foregoing award of attorneys’ fees and costs to the prevailing party, the prevailing party shall be entitled to its attorneys’ fees and costs incurred in any post-judgment proceedings to collect or enforce the judgment, and the foregoing provision is separate and several and



shall survive the merger of this Loan Proposal into any such judgment.

**Exclusivity:** Sponsor and Borrower agree that so long as Lender is willing to provide the Loan on the terms and conditions set forth herein, neither of them will negotiate or deal with any party to obtain financing in substitution of or in addition to the Loan with respect to the Property or any portion thereof or interest therein until the date that is one hundred twenty (120) days after the date hereof.

**Governing Law:** The Loan Documents shall be governed by the laws of the State of New York, provided that any mortgage/deed of trust will be governed by the state(s) where the Property is located.

**Not a Commitment:** **Except for the sections titled Brokers, Attorneys' Fees, Expense Deposit, Exclusivity, and the confidentiality provisions contained in this "Not a Commitment" section, which shall each be binding on all parties, this Loan Proposal does not purport to be and does not constitute a binding agreement among the parties, and the parties hereto shall have no obligations whatsoever, express or implied, written or oral, with regard to this Loan Proposal. This Loan Proposal is for discussion purposes only and does not in any way whatsoever constitute a commitment to lend or an agreement to issue a commitment, and Lender has made no commitments or agreements whatsoever, express or implied, written or oral, to Sponsor or Borrower or with regard to any of the matters covered by this Loan Proposal. The terms of this Loan Proposal are not all-inclusive and should not be construed as to reflect all of the provisions to be included in the Loan Documents and may be varied as the parties may determine in their sole and absolute discretion. No oral agreements between or among the parties shall be binding under any circumstances at any time. The terms included in this Loan Proposal and any information shared by or on behalf of Lender in connection herewith shall be kept strictly confidential, shall not be reproduced or disclosed, and shall not be used other than by you in connection with evaluating the transaction described herein.**

As evidenced by the signature below, Sponsor desires to proceed with negotiating terms as outlined above. Unless otherwise extended in writing by Lender, this Loan Proposal will expire on October 30, 2015 (the "Loan Proposal Expiration Date"). Please indicate your willingness to deliver the expense deposit and proceed subject in all respects and for all purposes to the non-binding nature of this Loan Proposal by signing below and returning this Loan Proposal with the Expense Deposit no later than the Loan Proposal Expiration Date. If this letter is not signed and returned by the Loan Proposal Expiration Date together with the applicable Expense Deposit, we will assume that you have elected not to proceed with us regarding a loan.

Please do not hesitate to call Ryan R. Riemer at (310) 552-7174 if you have any questions.

Sincerely,

**COLONY CAPITAL ACQUISITIONS, LLC**

By: *Mesa Ji*  
Authorized Signatory

Acknowledged and agreed as of ~~September~~ <sup>October</sup> 8 2015 by:

**Virtua Partners, LLC, an Arizona limited liability company**

By: *Quynh Palomino*  
Name: *Quynh Palomino*  
Title: *Manager*

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**Exhibit "I-2"**

MacKinzie Capital Management, LP Term Sheet dated November 17, 2015

November 17, 2015

BY E-MAIL ([rob@mackenziecapital.com](mailto:rob@mackenziecapital.com)) AND  
OVERNIGHT DELIVERY

Mr. Rob Dixon  
Managing Director and Chief Investment Officer  
MacKenzie Capital Management, LP  
1640 School Street  
Moraga, California 94556

**Re: Mezzanine Financing for Met Center 15 – Term Sheet**

Dear Rob:

The following term sheet (the "Term Sheet") sets forth the proposed terms and conditions for mezzanine financing relating to the recapitalization of Met Center 15. The Effective Date of this Term Sheet will be the earlier of the date that it is accepted by MacKenzie Capital Management, LP, a California limited partnership ("MacKenzie"), or November 20, 2015.

**TRANSACTION SPONSOR:** Virtua Partners, LLC an Arizona LLC ("Virtua").

**PROPERTY DESCRIPTION:** Met Center 15, located at 7301 Metro Center, Austin, Texas 78744 ("the Property"). The Property is an office building, with approximately 257,600 square feet of net rentable area, on approximately 26.83 acres.

**CURRENT OWNERSHIP:** The Property is owned by 33 Delaware limited liability companies (each, a "TIC," and collectively, the "TICs") through a tenant-in-common structure. Each of the TICs filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code on July 31, 2015 (collectively, the "Chapter 11 Cases") with the United States Bankruptcy Court for the Northern District of California (the "Bankruptcy Court"). The lead bankruptcy case number for the Chapter 11 Cases is 15-42359 WJL.

**TRANSACTION BACKGROUND:** Recapitalization of the Property in accordance with a Chapter 11 reorganization plan (the "Chapter 11 Plan"), as confirmed by the Bankruptcy Court. The TICs, pursuant to an exchange under 26 U.S.C. § 721, will roll up into a successor limited liability company (the "Rollup LLC"). As part of the exchange and in accordance with the Chapter 11 Plan, the TICs will convey 100 percent of the fee simple interest in the Property to a special purpose entity ("SPE"). The SPE will be a limited

liability company whose membership interest is owned, directly or indirectly, by Rollup LLC. Virtua (or its designee) will be manager of the Rollup LLC and SPE. Both the Rollup LLC and SPE will be manager-managed subject to: (a) approval of decisions relating to sale, encumbrance, or disposition of the Property by holders of at least a majority of their membership interests; and (b) any terms or conditions required by Colony Capital Acquisitions, LLC ("Colony") in connection with the Replacement Mortgage Loan (as defined below).

**RECAPITALIZATION STRUCTURE:** The Property is subject to a mortgage loan (the "Current Mortgage Loan"). The holder of the Current Mortgage Loan is GECMC 2005-C4 Metro Center, LLC, a Texas limited liability company ("GE"). According to GE's proof of claim filed in the Chapter 11 Cases, the Current Mortgage Loan had a principal balance of \$22,499,136.66 as of July 31, 2015. The Current Mortgage Loan and all other TIC obligations will be paid in full as required by the Chapter 11 Plan. Recapitalization will be funded through a Replacement Mortgage Loan and Mezzanine Loan (both as defined below).

**REPLACEMENT MORTGAGE  
LOAN:**

Sponsor has accepted Colony's proposal for replacement mortgage loan funding in the anticipated principal amount of \$27.8 million (the "Replacement Mortgage Loan"). The Replacement Mortgage Loan will be secured by a first position lien against the Property. SPE will be the obligor for the Replacement Mortgage Loan. The Replacement Mortgage Loan will be funded on the Closing Date. The Replacement Mortgage Loan will have a three-year initial term with two (2) one-year extension options. Interest on the Replacement Mortgage Loan will accrue at 1 month LIBOR plus 5.90%. Colony may fund part of the Replacement Mortgage Loan as mezzanine financing. Any Colony mezzanine financing will be separate from and in addition to the Mezzanine Loan (as defined below).

**MEZZANINE LOAN:**

The recapitalization of the Property also will be funded through a supplemental mezzanine loan (the "Mezzanine Loan"). The total principal amount of the Mezzanine Loan will be \$3.0 million. The Mezzanine Loan will have a three-year term and be repaid with a 30% internal rate of return. The Mezzanine Loan may be paid in full without penalty at any time after 12 months following the Closing Date. No payment will be required on the Mortgage Loan until the end of its term. Rollup LLC will be the obligor under the Mezzanine Loan. The Mezzanine Loan will be secured by either: (a) a first position security interest against LLC membership interests if Colony allocates all of the Replacement Mortgage Loan to a mortgage component; or (b) a second position security interest

against LLC membership interests if Colony allocates a portion of the Replacement Mortgage Loan to mezzanine financing.

**MACKENZIE COMMITMENT:** Upon and by executing this Term Sheet, MacKenzie, subject to all of the terms and conditions of this Term Sheet, commits to fund up to \$3.0 million of the Mezzanine Loan less any Owner Advances (the "Mezzanine Loan Commitment"). Owner Advances are advances by principals of TICs that elect to participate in the Mezzanine Loan *pari passu* with MacKenzie.

**DUE DILIGENCE:** MacKenzie will have 60 days from the Effective Date (the "Due Diligence Period") to complete due diligence relating to the Property and recapitalization. MacKenzie, in its sole and absolute discretion, may terminate its acceptance of this Term Sheet at any time before the end of the Due Diligence Period.

**CLOSING DATE:** The Mezzanine Loan will close and be funded by the effective date of the Chapter 11 Plan (the "Closing Date"). MacKenzie may terminate the Mezzanine Loan Commitment, in its sole and absolute discretion, if for any reason the Closing Date does not occur by 5:00 p.m. PST on March 31, 2016.

**MEZZANINE LOAN CONTINGENCIES:** The Mezzanine Loan Commitment is subject to: (a) negotiation and execution of transaction documents for the Mezzanine Loan acceptable to MacKenzie in its sole and absolute discretion; (b) confirmation by the Bankruptcy Court of the Chapter 11 Plan in a final order; (c) the funding of the Replacement Mortgage Loan; (d) MacKenzie's determination, in its reasonable discretion, that there have been no significant and material adverse changes with respect to the Property from and after the end of the Due Diligence Period; and (e) all of the other terms and conditions of this Term Sheet.

**ESCROW:** Landmark Title Assurance Agency

**EXPIRATION:** November 20, 2015, at 5 p.m. PST

Thank you for your time and consideration.

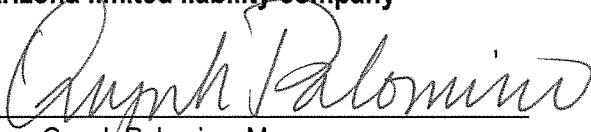
Sincerely,

**VIRTUA PARTNERS, LLC**  
an Arizona limited liability company

Thank you for your time and consideration.

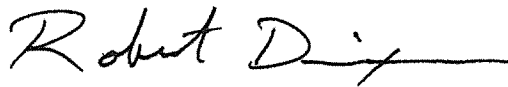
Sincerely,

**VIRTUA PARTNERS, LLC**  
an Arizona limited liability company

By:   
Quynh Palomino, Manager

ACCEPTED AS OF NOVEMBER 17, 2015, BY:

**MACKENZIE CAPITAL MANAGEMENT, LP**  
a California limited partnership



By: \_\_\_\_\_  
Printed Name: Robert Dixon  
Its: Senior Vice President

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**EXHIBIT J - UNEXPIRED LEASES TO BE ASSUMED**

Upon the Effective Date, Debtors ASSUME the obligations as Lessor under the office and/ or commercial leases at the Property as follows:

Unit No.	Tenant	GLA Sq. Ft.	Start Date	Term Date
100	Waste Management, Inc.	40,384	10/14/2002	03/31/2018
200	Progressive Casualty Insurance Company	217,216	08/05/2005	08/04/2020



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**EXHIBIT K - EXECUTORY CONTRACTS TO BE ASSUMED/REJECTED**

A. The Reorganized Debtor will assume, upon confirmation of the Plan, the following executory contracts

1. Tenant-In-Common Reorganization Agreement dated May 12, 2014 to the extent that it is effectuated by this Plan. This executory contract is not in default, nor otherwise requiring cure.

2. Consulting Services Agreement with Breakwater Equity Partners, LLC dated December 31, 2012. Upon Confirmation of the Plan and payment as provided therein, this executory contract is not in default, nor otherwise requiring cure.

3. Asset and Property Management Agreement, dated January 27, 2012, with National Asset Services, Inc. (NAS) for management of the Property. Upon Confirmation of the Plan and payment as provided therein, this executory contract is not in default, nor otherwise requiring cure.

4. The following contracts and agreement for materials and supplies provided, or services rendered in the remediation of the Property, to the extent that the same remain executory and unperformed by either the Reorganized Debtors, or the Debtors, and the respective Contractor or contracting party:

a. Agreement Between Owners and Project Manager as Advisor for Construction Management Services dated June 22, 2015 with Principal Management Solutions, LLC

b. Agreement Between Owners and Engineer for Professional Services dated June 22, 2015 with Epsilon Engineering & Material, LLC

c. Agreement Between Owners and Contractor for Construction Contract (Cost Plus) dated June 22, 2015 with Set Construction, LLC

d. Assignment of Construction Contracts by Borrower (Debtors) to GECMC 2005-C4 Metro Center, LLC and dated June \_\_, 2015.

e. Insurance Proceeds Reserve Agreement dated as of \_\_\_\_\_, 2013 between Debtors as "Borrower" and GECMC 2005-C4 Metro Center, LLC's predecessor in interest.

1 f. Agreement for Services between Owners and Gemma Companies dated  
2 July 24, 2015.

3 B. Debtors and the Reorganized Debtor will reject upon or before confirmation of the plan the  
4 following executory contracts.

5 1. Any and all purported executory agreements between Debtors and GECMC 2005-C4  
6 Metro Center, LLC, by virtue of its being the successor in interest to the lender in the original syndication, not  
7 assumed as set forth in Paragraphs A.4.d. and e. of this Exhibit E, above, and except to the extent that the  
8 rights, duties and obligations therefor are specifically provided for in this Plan.

9 2. Any and all purported executory agreements, other than those listed in as Executory  
10 Leases in Exhibit "D," to this Plan, or specifically listed as being assumed in Section A of this Exhibit "E"  
11 are rejected.

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