

TENANCY IN COMMONS AGREEMENT  
Property Address: 2335 Avenida Corrientes Comuna 3 Buenos Aires  
Property PIN: 5a67d9500d82b5002c814712  
Smart Contract Address: undefined

**THIS TENANCY IN COMMON AGREEMENT** is made and effective as of January 21, 2010, between 5a639b723e657c002c9cddd1 and 5a6bc3c8c123a22f5df12df0 (each an “Original Tenant in Common” and both collectively “Original Tenants in Common”) with respect to that certain real property described in Exhibit “A” attached hereto and incorporated herein by this reference (the “Property”). The Original Tenants in Common and all subsequent transferees of interests in the Property under the terms of this Agreement are referred collectively herein as “Tenants in Common” and each as a “Tenant in Common.”

A. Whereas, the Property represents an important and valuable asset for each of the Tenants in Common.

B. Whereas, the Property is a vacation home that the Original Tenants in Common inherited from their mother upon her death in 1978 and which they now wish to pass on to their respective children.

C. Whereas, each Original Tenant in Common wishes to establish a vehicle for passing his interest in the property to his children, either by gift during his lifetime or by testamentary disposition at his death, in a manner that provides for ongoing management of the Property, which restricts the ability of persons who are not family members of the Original Tenants in Common from acquiring an interest in the Property, and which provides a means for the resolution of disputes with regard to the use and maintenance of the Property.

**NOW, THEREFORE**, the tenants in Common agree as follows:

1. Initial Property Interests of Tenants in Common. The Original Tenants in Common each hold the Property in the following undivided ownership interests as tenants in common:

5a639b723e657c002c9cddd1 : 0.9902

5a6bc3c8c123a22f5df12df0 : 0.0098

The Ownership Interests of the Original Tenants in Common are also reflected in Exhibit “B” hereto, which is incorporated herein by this reference. Exhibit “B” shall be updated from time to time as necessary to reflect transfers of interests in the Property in accordance with this Agreement.

2. Allocation of Income, Expenses and Use of the Property; Tax Allocations. The Tenants in Common agree that all net income generated from the rental of the Property shall be received by them Proportionately. All of the depreciation deductions attributable to any personal property, real property, improvements or other assets on or about the Property shall be allocated between the Tenants in Common

Proportionately. Any and all expenses required to properly carry and maintain the Property, including, but not limited to, real property taxes, property management fees, liability insurance, maintenance, improvements, repairs (other than repairs necessary due to the gross negligence,

recklessness or intentional acts of a Tenant in Common or his or her guests, which shall be born entirely by such Tenant in Common) and debt service, shall be born by the Tenants in Common Proportionately, subject to Section 5 below. To the extent that the Property is available for the personal use of the Tenants in Common rather than being held for the production of rental income, unless otherwise agreed by the Tenants in Common, such use shall be shared by them Proportionately. The dates and manner of such use shall be determined by the mutual agreement of the Tenants in Common, or, if they cannot agree, by such terms and conditions for the use of the Property as shall be established by employing the procedures set forth Sections 18 (Mediation) and 19 (Arbitration) below.

3. Long Term Investment; Waiver of Right of Partition. The Tenants in Common agree that the Property represents a long term investment for themselves and their respective families. A principal purpose of this Agreement is to provide a means to insure the continued success of this common investment, the long term stability of the ownership and management of the Property, and the pleasurable use of the Property by the Tenants in Common. Consistent with these objectives, the Tenants in Common, for themselves and their successors and assigns, waive the right to seek partition of the Property, or to seek the sale of the Property and partition of the proceeds, including any statutory or common law rights, prior to the termination of this Agreement, as provided in Section 25 below. This waiver shall include, without limitation, a waiver of any such rights arising under Section 872.210 of the California Code of Civil Procedure.

4. Defined Terms. Wherever used in this Agreement, the following terms shall have the meanings set forth below:

(a) “Bankruptcy” shall be deemed to occur when a Tenant in Common makes an assignment for the benefit of creditors, files a petition in bankruptcy, voluntarily takes advantage of any bankruptcy or insolvency laws or is adjudicated as bankrupt or judicially insolvent or, if a petition or an answer is filed proposing the adjudication of such Tenant in Common as a bankrupt and such Tenant in Common consents to the filing thereof or, if the Tenant in Common does not so consent, sixty (60) days after the filing thereof, unless the same shall have been discharged, opposed, or denied prior thereto, or a lien (other than a lien for current taxes or assessments which are not past due) against the Tenant in Common’s Interest in the Property is not removed within thirty (30) days from the date of the attachment of said lien to such Tenant in Common’s Interest in the Property.

(b) “Default Interest Rate” means the rate per annum equal to the lesser of the Wall Street Journal prime interest rate as quoted in the Wall Street Journal’s money rates section, which is also the base rate on corporate loans at large United States money center commercial banks, as its prime commercial or similar reference interest rate, adjusted each year on the anniversary date of the obligation to which the Default Interest Rate is being applied, the Applicable Federal Rate, and the maximum rate permitted by applicable law.

(c) “Family Member” means 5a639b723e657c002c9cddd1 and 5a6bc3c8c123a22f5df12df0, any lineal descendant of either of them, as well as trusts with respect to which only Family Members, or a living Family Member and his or her spouse, have a current beneficial interest, and as to which a majority of the acting trustees are Family Members or corporate Trustees. The foregoing sentence is not intended to override the rights of the Other

Tenants in Common to acquire the Marital Interest of the spouse of a Family Member as provided in this Agreement. References in this Agreement to a “Family Member” shall also mean any corporation, partnership, limited liability company, or other entity in which Family Members, as previously defined, hold, directly or indirectly, at least a seventy-five percent (75%) interest in the capital, the profits and the voting rights.

(d) “Family Member Tenant in Common” means a Tenant in Common who is a Family Member.

(e) “Insolvency” means the state of having liabilities in excess of the fair market value of one’s assets or the state of being unable to satisfy one’s obligations as they become due.

(f) “Marital Interest” means any interest in the Property of the non-Family Member spouse of a Family Member-Tenant in Common, including for these purposes any Property Interest owned directly by, or in trust for the benefit of, such spouse, and the community property or like interest of such spouse in the Property Interest of the Family Member-Tenant in Common, whether such interest was created during the lifetime of either spouse or upon the death of either spouse. The parties agree that any such Marital Interest shall be subject to the provisions of this Agreement.

(g) “Offered Interest” means any Property Interest that is subject to purchase by the Other Tenants in Common pursuant to Section 6 of this Agreement.

(h) “Other Tenants in Common” means a Tenant in Common who has the option to purchase an Offered Interest pursuant to Section 6 of this Agreement.

(i) “Property; Property Interest” means the Property described in Exhibit “A” to this Agreement. “Property Interest” means the undivided fractional interest in the Property held by a Tenant in Common.

(j) “Proportionate” and “Proportionately” means the proportion that the undivided interest in the Property of a Tenant in Common bears to the total undivided interest of all Tenants in Common to whom reference is made.

(k) “Purchase Option Period” means that period of time during which the Other Tenants in Common may exercise their option to purchase an Offered Interest under Section 6 of this Agreement.

(l) “Seller” means a Tenant in Common whose Property Interest is subject to purchase by the Other Tenants in Common pursuant to Section 6 of this Agreement.

(m) “Tenants in Common” means 5a639b723e657c002c9cddd1 and 5a6bc3c8c123a22f5df12df0, and any transferee of a Property Interest in accordance with the terms of this Agreement.

(n) “Transfer” means, when used as a noun, any sale, hypothecation, encumbrance, pledge, assignment, conveyance, exchange, attachment, gift, bequest, alienation, transmutation, or other inter vivos or testamentary transfer, and, when used as a verb, to sell, hypothecate, encumber, pledge, assign, convey, exchange, attach, give, bequeath, alienate,

transmute, or otherwise transfer. As to any Property Interest that is held in a trust or other entity, a transfer of such Property Interest shall be deemed to occur upon any of the following events:

- (i) if such trust or other entity qualifies as a Family Member, any event which causes such trust or entity to fail or cease to qualify as a Family Member;
- (i) if such trust or other entity qualifies as a Family Member, any event which causes such trust or entity to fail or cease to qualify as a Family Member;
- (ii) if such trust is a revocable trust, the date that such trust becomes irrevocable;
- (iii) any change in the then acting trustees of such trust; and
- (iv) the termination of such trust or the dissolution of such entity.

5. Management and Expenses. Except as specifically provided otherwise under this Agreement, the management of the Property shall be governed by applicable California law pertaining to the management rights of Tenants in Common. Notwithstanding the foregoing, Tenants in Common representing ownership of at least 67% of the Property may delegate the management of the Property to a property manager, which property manager may, but need not be, a Tenant in Common or an affiliate of any Tenant in Common. Each of the Tenants in Common shall contribute to the expenses of maintaining the Property as provided in Section 2 above. If the Tenants in Common cannot agree upon the necessity or amount of an expense related to the Property, or upon who is responsible for the expense, such dispute shall be resolved pursuant to the procedures set forth in Sections 18 (Mediation) and 19 (Arbitration) below. Notwithstanding the foregoing, in the event that one or more Tenants in Common believe an expense must be incurred in order to preserve or protect the Property from foreclosure, material default under the terms of an lease or loan agreement, or from imminent damage or other casualty that will result in material loss in the value of the Property, or if such expense if not incurred would materially impact the enjoyable use of, or the ability to rent, the Property, and if such loss or diminution in value, use or income will be incurred or substantially increased if the expenditure is not made before the procedures described in Sections 18 and 19 would be completed, and if any of the other Tenants in Common refuse to contribute to such expense, then the Tenants in Common who assert the necessity of such expense may, but are not required to, pay the entire expense and seek reimbursement from the other Tenants in Common through the procedures established under Sections 18 and 19 below. If the Tenants in Common who incurred the expense can establish to the satisfaction of the arbitrator that such expenses were necessary and appropriate for the preservation of the Property and its investment value, then, in addition to any other rights which such Tenants in Common may have under applicable California law, such Tenants in Common shall be entitled to recover from the other Tenants in Common their proportionate share of the expense incurred with interest at the Default Interest Rate at the time of the expense plus 3% (or the maximum legal rate, if less), computed from the date such expense was incurred, as well as costs and attorneys' fees, as provided in Section 22 below. Such reimbursement obligation shall constitute a lien on the obligors' Property Interests in proportion to their respective reimbursement obligations and all income from the Property that would otherwise be paid to the obligors in accordance with Section 2 above shall first be applied to reduce the accrued interest liability of such obligor and then to reduce the principal.

6. Restrictions on Transfers of Property Interests; Rights of First Refusal. In order to insure the long term stability of the Property for the purposes stated in this Agreement, and to preserve the favorable property tax basis of the Property, the transferability of Property Interests

is subject to reasonable restrictions, as set forth in this Section 6. Neither record title nor beneficial ownership of any Property Interest may be Transferred except as set forth in this Section 6. A Memorandum of Agreement in the form attached hereto as "Exhibit C" may be recorded by any Tenant in Common to insure Transfers may not be made in violation of the Agreement.

(a) Certain Inter Vivos Transfers. Any Tenant in Common may Transfer during his or her lifetime any portion or all of his or her Property Interest to a Family Member, provided such Family Member must become a party to this Agreement, as provided in Section 9 below.

(b) Death or Incapacity of a Tenant in Common

(i) Status of Personal Representative. If a Tenant in Common (including, for this purpose only, the settlor of a revocable trust which holds a Property Interest) should be a minor, incapacitated, or deceased, the executor, administrator, guardian, conservator, successor trustee, or other legal representative (collectively "Personal Representative") of such minor, incapacitated, or deceased Tenant in Common may continue to own the Property Interest for purposes of reasonably administering such Tenant in Common's estate or trust. This provision does not override the rights of the Other Tenants in Common to acquire a Marital Interest pursuant to subparagraph (c)(ii) below of this Section 6.

(ii) Permitted Testamentary Transfers. The Property Interest of a Tenant in Common who is either an individual, or any Property Interest that is held by the trustee of a trust with an individual beneficiary who has a limited or unlimited testamentary power of appointment (including the power to revoke or amend the dispositive provisions of the trust), may be Transferred to a Family Member upon the death of the individual Tenant in Common or such beneficiary,

(1) in accordance with the laws of intestate succession;

(2) in accordance with the terms of the Will of such Tenant in Common, whether or not admitted to probate;

(3) in accordance with the terms of such trust; or

(4) in accordance with the exercise of such beneficiary's power of appointment.

(c) Events Requiring the Sale of a Property Interest

(i) Mandatory Sale of a Property Interest. In the event that:

(1) a Tenant in Common makes an assignment for the benefit of creditors;

(2) the Bankruptcy of a Tenant in Common;

(3) any attempt is made to gain control or ownership of a Tenant in Common's Property Interest by means of attachment, levy, foreclosure, or any other remedy utilized by judgement creditors in aid of execution; or

(4) a Tenant in Common materially breaches this Agreement (including a material failure to contribute his or her share of the expenses of the Property),

the Tenants in Common, excluding the affected Tenant in Common ("Other Tenants in Common"), shall have the right to purchase the Property Interest ("Offered Interest") of such Tenant in Common ("Seller"), pursuant to the provisions of paragraph (d) of this Section 6 as though such event constituted a proposed gratuitous Transfer of the Offered Interest by the Seller other than to a Family Member. The right of the Other Tenants in Common to purchase ("Purchase Option Period") shall begin immediately upon receipt of the Transfer Notice described in subparagraph (d)(i) of this Section 6, regardless of whether any of the Other Tenants in Common had prior actual knowledge of the event, provided, however, the other Tenants in Common, acting unanimously, may, in their discretion waive the requirement of a Transfer Notice based upon actual knowledge of the event at any time after acquiring such knowledge and before receiving a Transfer Notice, in which case the Purchase Option Period shall commence on the date such waiver is delivered to the Seller.

(ii) Mandatory Sale of Marital Interest

(1) Death of a Family Member-Tenant in Common. Upon the death of a Family Member-Tenant in Common (including for these purposes the death of any Family Member who is the settlor of a revocable trust that holds a Property Interest) who is survived by his or her spouse, the spouse of such Family Member-Tenant in Common ("Seller") shall offer to sell his or her Marital Interest ("Offered Interest") to the Other Tenants in Common pursuant to the provisions of paragraph (d) of this Section 6 applicable to proposed gratuitous Transfers of Property Interests other than to Family Members. The right of the Other Tenants in Common to purchase ("Purchase Option Period") shall begin immediately upon the death of the Family Member-Tenant in Common and shall be extended from sixty (60) days to two (2) years.

(2) Death of the Spouse of a Family Member-Tenant in Common. Upon the death of the spouse (or the surviving spouse) of a Family Member-Tenant in Common (including for these purposes the death of a spouse or surviving spouse who is the settlor of a revocable trust that holds a Property Interest), if such Family Member-Tenant in Common does not receive the Marital Interest of the deceased spouse under the deceased spouse's plan of testamentary disposition, and if such Marital Interest does not pass to a Family Member, then the Personal Representative of the deceased spouse's estate, the successor trustee of the deceased spouse's revocable trust, or the deceased spouse's other successor in interest ("Seller") shall offer such deceased spouse's Marital Interest ("Offered Interest") to such Family Member-Tenant in Common, if then living, for the price and upon the terms described in Sections 7 and 8 of this Agreement. If the Family Member-Tenant in Common fails to receive or purchase the Offered Interest within two (2) years of the death of his or her spouse, or if the Family Member-Tenant in Common fails to survive his or her spouse, or does so survive his or her spouse, but subsequently dies before receiving or purchasing the Offered Interest, and if such Marital Interest does not pass to a Family Member, the Other Tenants in Common shall have the option to purchase the Offered Interest pursuant to the provisions of paragraph (d) of this Section 6 applicable to proposed gratuitous Transfers of Property Interests other than to Family Members. For the purpose of applying the provisions of paragraph (d) of this Section 6, the right



of the Other Tenants in Common to purchase ("Purchase Option Period") shall begin immediately upon the earlier of:

(a) the date the Other Tenants in Common receive actual notice from the Family Member-Tenant in Common that he or she will not receive or purchase the Offered Interest and that the Offered Interest will not be transferred to a Family Member, or

(b) two (2) years after the death of the Family Member-Tenant in Common's spouse or surviving spouse.

(3) Dissolution of Marriage of a Family Member-Tenant in Common. Upon the dissolution of the marriage or the legal separation (collectively "Separation") of a Family Member-Tenant in Common and his or her spouse, the estranged spouse of such Family Member-Tenant in Common ("Seller") shall offer his or her Marital Interest ("Offered Interest") to such Family Member-Tenant in Common, for the price and upon the terms described in Sections 7 and 8 of this Agreement. If the Family Member-Tenant in Common fails to purchase or otherwise acquire the Offered Interest within two (2) years after the date of the Separation of the Family Member-Tenant in Common and his or her spouse, the Other Tenants in Common shall have the option to purchase the Offered Interest pursuant to the provisions of paragraph (d) of this Section 6 applicable to proposed gratuitous Transfers of Property Interests other than to Family Members. For the purpose of applying the provisions of paragraph (d) of this Section 6, the right of the Other Tenants in to purchase ("Purchase Option Period") shall begin immediately upon the later of:

(a) the earlier of the date that is two (2) years after the date of the Separation of the Family Member-Tenant in Common and his or her spouse, or the date that the Other Tenants in Common have been notified in writing by the Family-Member Tenant in Common that he or she will not acquire the Offered Interest, or

(b) the date the Other Tenants in Common receive actual notice of the Separation of the Family Member-Tenant in Common and his or her spouse, and shall be extended from sixty (60) days, as provided in this subparagraph (c)(ii)(3), to two (2) years.

The foregoing provisions of this paragraph (c) will not apply to the Marital Interest of any spouse of a Family Member-Tenant in Common if such spouse is also a Family Member.

(4) Declaration of a "Marital Interest". If, on the date that is fifteen (15) months after (a) the death of a Family Member-Tenant in Common; (b) the death of the spouse or the surviving spouse of a Family Member-Tenant in Common; or (c) the date that the Other Tenants in Common have received written notice from a Family Member-Tenant in Common that such Family Member-Tenant in Common and his or her spouse are engaged in a Separation (provided that the Other Tenants in Common, acting unanimously, may, in their sole discretion, accept actual notice of such Separation in lieu of written notice, which waiver shall be deemed to constitute written notice by the Family Member Tenant in Common), it remains unclear whether and to what extent the spouse of the Family Member possesses a Marital Interest, then a Majority in interest of the Other Tenants in Common may, at that time, or at any

time prior to the end of the Purchase Option Period described in subparagraph (c)(ii)(3) above, declare that all or any portion of the Property Interest then held by the Family Member-Tenant in Common and/or his or her spouse constitutes a "Marital Interest" that is subject to the foregoing provisions of this subparagraph (c)(ii). If the determination of a majority in interest of the Other Tenants in Common is made in good faith based upon the written opinion of legal counsel, then such determination shall be conclusive and binding upon all parties.

(d) Restrictions on Voluntary Transfers by Tenants in Common. Without the written consent all of the Tenants in Common, no Tenant in Common ("Seller") shall Transfer any of the Seller's Property Interest to a non-Family Member without first offering such Property Interest to the Tenants in Common excluding the Seller ("Other Tenants in Common") in accordance with the provisions of this paragraph (d). Any attempted Transfer of a Property Interest in violation of this Agreement shall be null and void and of no effect.

(i) Right of First Refusal. Prior to any Transfer of a Tenant in Common's Property Interest subject to the provisions of this paragraph (d), such Tenant in Common's Property Interest ("Offered Interest") shall first be offered to the Other Tenants in Common pursuant to this paragraph (d). The Tenant in Common ("Seller") desiring to transfer the "Offered Interest" shall set forth in a written notice the "Transfer Notice," delivered to the other Tenant (or Tenants) in Common (collectively, "Buyer") the name of the proposed transferee, the consideration to be received, and the terms, if any, upon which such consideration is to be paid to the Seller. The Buyer shall have the right to purchase the Offered Interest for the price and on the terms set forth below:

(1) as to any proposed transfer which is for cash consideration only, the terms shall be either those described in the Transfer Notice or the provisions of Section 8 of this Agreement, as shall be selected by the Buyer;

(2) as to any proposed transfer which is entirely gratuitous, the price and terms shall be those described in Sections 7 and 8 of this Agreement; and

(3) as to any proposed transfer which is other than for cash consideration, the price and terms shall either be those described in the Transfer Notice or Sections 7 and 8 of this Agreement, as shall be selected by the Buyer.

If the Buyer elects to exercise its right to purchase the Offered Interest, the Buyer must provide written notice of such election to the Seller within sixty (60) days after receipt by the Buyer the Transfer Notice or sixty (60) days after the date that the Purchase Price for the Offered Interest has been finally determined pursuant to the procedures established in Section 7 below (in either case, the "Purchase Option Period"). Upon such exercise, the Buyer shall be bound to acquire such Offered Interest provided, however, that a Buyer's exercise may be made contingent upon the exercise by one or more of the Other Tenants in Common. If more than one Buyer exercises the option to purchase the Offered Interest, each Buyer shall be entitled to purchase his or her Proportionate share of the Offered Interest based on the relative Interests in the Property then held by all of the Buyers exercising the option to purchase the Offered Interest.

(ii) Transfer to Proposed Transferee. If the Other Tenants in Common fail to purchase any portion of the Offered Interest described in the Transfer Notice, the Seller shall have a period of thirty (30) days from the earlier of the receipt of actual notice of such



failure or the expiration of the Purchase Option Period in which to complete the Transfer of the Offered Interest to the Proposed Transferee. Such Transfer of the Offered Interest (or the remaining portion thereof) shall be made only upon delivery to the Seller of the exact consideration set forth in the Transfer Notice pertaining to the Transfer of the Offered Interest, if any. Any change in the terms and conditions specified in the Transfer Notice (other than as the result of a smaller Property Interest being Transferred than was anticipated in the Transfer Notice due to the partial purchase of the Property Interest by the Other Tenants in Common) or the failure of the Seller to complete the Transfer in the allotted time frame, shall require giving a new Transfer Notice in compliance with the terms of this Agreement.

(iii) No Transfer in Violation of Loan Agreements. If the Property is encumbered by a mortgage or deed of trust securing a loan or other advance ("Security Instruments"), and if such loan or advance was obtained with the consent of any Tenant in Common or his or her predecessor in interest, then, notwithstanding any other provision of this Agreement, such Tenant in Common shall not Transfer his or her Property Interest in violation of any "due on sale" or other provision of the loan agreement or Security Instruments. Any Transfer or attempted transfer in violation of this subparagraph (d)(iii) shall be null and void and of no effect. Any Tenant in Common attempting a Transfer in violation of this subparagraph (d)(iii) shall be responsible for all consequential damages to all other Tenants in Common that result from such Transfer or attempted Transfer.

7. Purchase Price. Whenever the Purchase Price for an Offered Interest is to be determined by reference to this Section 7, then the Purchase Price for such Offered Interest shall be 92% of its Appraised Value as of the first day of the applicable Purchase Option Period. The 8% reduction in value is not a penalty. Rather, it reflects the estimated future costs that will be incurred by the remaining Tenants-in-Common upon the sale of the Property. Such Appraised Value shall be determined by a qualified residential appraiser selected jointly by the Seller on the one hand and the Buyer (or a majority in interest of the Buyers, if there are more than one) on the other. If the Seller and the Buyer cannot agree on an appraiser, then a qualified residential appraiser shall be appointed by an arbitrator chosen in the manner described in Section 19 below. In determining the Appraised Value of the Offered Interest, the appraiser shall consider any factors which the appraiser determines relevant, including, but not limited to, appropriate discounts for the existence of this Agreement or the general lack of marketability of the Offered Interest, without consideration for family attribution, as the appraiser shall determine appropriate under the circumstances. The Seller shall bear the entire cost of such appraisal.

8. Terms of Purchase. Whenever the terms for the purchase of an Offered Interest are to be determined by reference to this Section 8, then the purchase price for the Offered Interest shall be paid to the Seller pursuant to the following provisions:

(a) Escrow. Within five (5) business days immediately following the applicable notice of purchase or notice of exercise of option to purchase, an escrow account ("Escrow Account") shall be opened with a person or entity (selected by the Buyer or Buyers) acting as escrow holder ("Escrow Agent"). The Seller shall, if he, she, or it has not already done so, execute one or more grant deeds conveying the Offered Interest to the Buyer, which deed or deeds shall be deposited with the Escrow Agent. Thereupon, the Escrow Agent shall deposit such deed or deeds into the Escrow Account, and the Buyer shall transfer into the Escrow Account cash or a promissory note equivalent to the purchase price for the Offered Interest to be purchased. Escrow shall close at a mutually acceptable location on a mutually acceptable date not later than thirty (30) days following the applicable notice of exercise of option to purchase or, in the event the purchase of the Offered Interest requires the prior approval of a federal or state regulatory agency, on such later date that is ten (10) business days after the expiration of any statutory waiting period or the receipt of notice from such agency approving the consummation of the purchase of the Offered Interest. At the closing, the Escrow Agent shall deliver the cash and/or promissory note(s) to the Seller and shall deliver to each Buyer a grant deed for the Offered Interest purchased by such Buyer. Escrow, title, or other costs of closing shall be borne by the Seller and the Buyer in accordance with standard practice for commercial real estate sales. If there is more than one

Buyer, the Buyer's share of such costs shall be born by the Buyers in proportion to their respective Interests in the Property before the purchase.

b. Deferred Payment. In order to reduce the burden upon the resources of the Buyer, any Buyer of an Offered Interest pursuant to the terms provided under this Section 8 may pay the purchase price for such Offered Interest by transferring to the Escrow Account a promissory note in the amount of the purchase price. The promissory note (the "Note") shall bear interest on the unpaid principal balance at the Default Rate. Payments of interest only shall be made on a semi-annual basis, with the entire principal amount of the Note to be paid in full on or before the date that is the fifteenth (15th) anniversary of the Note. The Note shall provide for full privilege of prepayment of all or any part of the principal at any time without penalty or bonus. The Note shall provide that, if a default occurs, at the election of the holder and upon thirty (30) days' written notice of such default without any cure thereof, the entire sum of principal and interest will immediately be due and payable and that the Buyer shall pay reasonable attorneys' fees to the holder if suit is commenced because of default. Each Note shall be secured by a deed of trust encumbering the Offered Interest being purchased in the transaction to which the Note relates, such deed of trust to remain in full force until the Note has been paid in full. The beneficiary of the deed of trust shall be the Seller, and the deed of trust shall contain such other terms and provisions as may be customary and reasonable.

9. Execution of Agreement. Any Transferee of a Property Interest shall execute a counterpart to this Agreement. Exhibit "B" of this Agreement, which lists the Tenants in Common and their respective Property Interests, shall be updated from time to time to reflect such Transfers.

10. Counterparts. This Agreement and any amendment hereto, may be executed in multiple counterparts, each of which shall be deemed an original Agreement, and all of which shall constitute a single Agreement, by and among each of the parties hereto.

11. Amendments. This Agreement may only be amended with the unanimous consent of the Tenants in Common.

12. Notices. Any notice to any party to this Agreement shall be sufficient if sent by first-class United States mail, postage prepaid, mailed to the addresses set forth on the signature page of this Agreement or to such other addresses as such parties shall have advised the party providing notice in writing. Notices shall be deemed received upon the earlier of the actual receipt of such notice or seven (7) days following the deposit in the United States mail as provided herein.

13. Successors. This Agreement shall bind and inure to the benefit of the respective parties, their successors, heirs and permitted assignees.

14. Captions. The Section headings and captions contained herein are inserted solely for convenience and shall in no way define, limit, extend or interpret the scope of this Agreement or any particular section.

15. Severability. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the rest of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

16. Exhibits. All exhibits or descriptions referred to in this Agreement are expressly incorporated herein by reference and set forth in full, whether or not attached hereto.

17. Governing Law. This document shall be construed in accordance with and be governed by the laws of the State of California as applied to agreements among California residents entered into and to be performed entirely within California, without regard to any principles of conflicts of law.

18. Agreement to Mediate. The Tenants in Common have entered into this Agreement in good faith and in the belief that it is mutually advantageous to them. It is with that same spirit of cooperation that they pledge to attempt to resolve any dispute amicably without the necessity of litigation. Accordingly, they agree if any dispute arises between them relating to this Agreement or the management of the Property (the "Dispute"), they will first utilize the procedures specified in this Section 18 (the "Procedure") to attempt to resolve all Disputes.

(a) Initiation of Procedure. The Party seeking to initiate the Procedure (the "Initiating Party") will give written notice to the other Tenants in Common. The notice must describe in general terms the nature of the Dispute and the Initiating Party's claim for relief. Additionally, the notice must identify one or more individuals with authority to settle the Dispute on the Initiating Party's behalf (the "Authorized Individuals"). The Tenants in Common receiving the notice (the "Responding Party," whether one or more) will have five (5) business days within which to designate by written notice to the Initiating Party, one or more individuals with authority to settle the Dispute on the Responding Party's behalf (also the "Authorized Individuals"). The Initiating Party and the Responding Party may authorize themselves as Authorized Individuals. The Initiating Party and the Responding Party will collectively be referred to as the "Disputing Parties" or individually a "Disputing Party."

(b) Direct Negotiations. The Authorized Individuals may investigate the Dispute as they deem appropriate, but they agree to promptly, and in no event later than thirty (30) days from the date of the Initiating Party's written notice, meet in person to discuss the Dispute's resolution. The Authorized Individuals will meet at the times and places and with the frequency as they may agree. If the Dispute has not been resolved within thirty (30) days from their initial meeting date, the Disputing Parties will cease direct negotiations and will submit the Dispute to mediation in accordance with the following procedure.

(c) Mediator Selection. The Authorized Individuals will have five business days from the date they cease direct negotiations to submit to each other a written list of acceptable qualified attorney-mediators not affiliated with any Party. Within five (5) days from the date the list is received, the Authorized Individuals will rank the mediators in numerical order of preference and exchange the rankings. If one or more names are on both lists, the highest ranking person will be designated as the mediator. If no mediator has been selected under this procedure, the Disputing Parties agree to each submit not more than three mediator's names and to draw a mediator's name from those submitted by lot. If the mediator so selected is not available to serve, the parties will proceed to draw the names of mediators in this fashion until they select the name of a mediator who is willing and able to serve.

(d) Mediation Time and Place. In consultation with the mediator selected, the Authorized Individuals will promptly designate a mutually convenient time and place for the mediation. Unless circumstances require otherwise, the time for mediation may not be later than forty-five (45) days after selecting the mediator.

(e) Information Exchange. If any Disputing Party to this Agreement has substantial need for information in another Disputing Party's possession in order to prepare for the mediation, all Disputing Parties will attempt in good faith to agree to procedures to expeditiously exchange the information, with the mediator's help if required. If the parties cannot agree upon such procedures within a time frame deemed reasonable by the mediator, then the mediator shall establish the procedures for the exchange of such information and the mediator's decision in this regard shall be final and binding.

(f) Summary of Views. At least seven (7) days before the first scheduled mediation session, each Disputing Party will deliver to the mediator and to the other Disputing Parties a concise written summary of its views on the matter in Dispute and any other matters required by the mediator. The mediator may also request that a confidential issue paper be submitted by each Disputing Party to him or her.

(g) Parties to be Represented. In the mediation, each Disputing Party will be represented by an Authorized Individual and may be represented by counsel. In addition, each Disputing Party may, with the mediator's permission, bring additional Persons as needed to respond to questions, contribute information, and participate in the negotiations. Such Persons may appear telephonically, if a personal appearance would be unduly burdensome.

(h) Mediation Format. The mediator will determine the format for the meetings. The format must be designated to assure that:

(i) both the mediator and the Authorized Individuals have an opportunity to hear an oral presentation of each Disputing Party's views on the matter in dispute; and

(ii) the Authorized Individuals attempt to negotiate to resolve the matter in dispute, with or without the assistance of counsel or others, but with the mediator's assistance.

(i) Commitment to Participate in Mediation in Good Faith. Consistent with the objectives stated in paragraph (h) above, the mediator is authorized to conduct both joint meetings and separate private caucuses with the Disputing Parties. The mediation session will be private. The mediator will keep confidential all information learned in private caucus with any Disputing Party unless specifically authorized by the Disputing Party to disclose the information to the other Disputing Party. The Disputing Parties agree to sign a document agreeing that the mediator will be governed by Section 1775 of the California Code of Civil Procedure and such other rules as the mediator may prescribe. The Disputing Parties commit to participate in the proceedings in good faith with the intention of resolving the Dispute if at all possible.

(j) Confidentiality. Mediation is a compromise negotiation for purposes of Federal and State Rules of Evidence and constitutes privileged communication under California law. The entire mediation process is confidential and no stenographic, visual, or audio record will be made. All conduct, statements, promises, offers, views, and opinions, whether oral or written,

made in the mediation's course by any Disputing Party, their agents, employees, representatives or other invitees and by the mediator are confidential and will, in addition and where appropriate, be deemed privileged. The conduct, statements, promises, offers, views, and opinions will not be discoverable or admissible for any purpose, including impeachment, in any litigation or other proceeding involving the parties. It will not be disclosed to anyone not any party's agent, employee, expert, witness, or representative. Evidence otherwise discoverable or admissible is not, however, excluded from discovery or admission as a result of its use in the mediation.

(k) Mediation Fees; Disqualification. The mediator's fees and expenses will be shared equally by the Disputing Parties. The mediator will be disqualified as a witness, consultant, expert, or counsel for any Disputing Party with respect to the Dispute and any related matters. Further, the mediator may not serve as arbitrator for purposes of Section 19 below.

(l) Procedure to Terminate Mediation. The Disputing Parties agree to participate in the mediation procedure to its conclusion. The mediation will be terminated by:

- (i) executing a settlement agreement by the Disputing Parties;
- (ii) declaring jointly to the mediator that the mediation is terminated;

or

(iii) a Disputing Party declaring in writing that the mediation  
(m) process is terminated after at least one (1) full day's mediation session is concluded.

(n) If Dispute is Not Resolved. Even if the mediation is terminated without the Dispute's resolution, the Disputing Parties agree not to terminate negotiations and not to commence any arbitration before five (5) days following the conclusion of mediation. Any Disputing Party may, however, commence arbitration within the five-day period if the Dispute could be barred by an applicable statute of limitations.

19. Arbitration. The parties agree to participate in good faith in the mediation procedure to its conclusion. If the Disputing Parties are not successful in resolving the Dispute through mediation, then the Disputing Parties agree that the Dispute shall be settled by arbitration in San Diego County, and judgment upon the award rendered may be entered in any court having jurisdiction thereof. Except as specifically provided herein, the arbitration shall proceed in accordance with the laws of the State of California. The Initiating Party shall give a written demand for arbitration to the other party by registered or certified mail. The demand shall set forth a statement of the nature of the dispute, the amount involved and the remedies sought. No later than twenty (20) calendar days after the demand for arbitration is served, the Disputing Parties shall jointly select and appoint an attorney-arbitrator or a retired judge of the Superior Court of San Diego County, California ("Retired Judges"), to act as the arbitrator. In the event the parties have failed to agree upon the selection of an arbitrator at the end of such 20-day period, the parties will have five (5) additional business days thereafter to submit to each other a written list of acceptable qualified attorney-arbitrators or Retired Judges not affiliated with any Party. Within five (5) days from the date the list is received, the parties will rank the arbitrators in numerical order of preference and exchange the rankings. If one or more names are on both lists, the highest ranking person will be designated as the arbitrator. If no arbitrator has been selected under this procedure, the parties agree to each submit not more than three attorney-arbitrators' or Retired Judges' names and to draw an arbitrator's name from those submitted by lot. If the



arbitrator so selected is not available to serve, the parties will proceed to draw the names of arbitrators in this fashion until they select the name of an arbitrator who is willing and able to serve.

No later than ten (10) calendar days after the arbitrator is appointed, the arbitrator shall schedule the arbitration for a hearing to commence on a mutually convenient date. The hearing shall commence no later than one hundred twenty (120) calendar days after the arbitrator is appointed and shall continue from day to day until completed. As rules for the arbitration, the arbitrator shall apply the provisions of Sections 1282 through 1284.2 of the California Code of Civil Procedure, and the parties may pursue discovery in accordance with California Code of Civil Procedure Section 1283.05, except as specifically provided herein. Absent a showing of good cause, which shall be in the sole discretion of the arbitrator, each party shall be limited to not more than two (2) depositions, twenty (20) interrogatories and ten (10) document requests. All discovery shall be completed no later than the commencement of the arbitration hearing or one hundred twenty (120) calendar days after the date that a proper demand for arbitration is served, whichever occurs earlier, unless upon a showing of good cause the arbitrator extends or shortens that period. The arbitrator shall issue his or her award in writing no later than twenty (20) calendar days after the conclusion of the hearing. The arbitration award shall be final and binding regardless of whether one of the Disputing Parties fails or refuses to participate in the arbitration. The arbitrator is empowered to hear all disputes between the Tenants in Common concerning the subject matter of this Agreement or the management of the Property, and the arbitrator may award monetary damages, specific performance, injunctive relief, rescission, restitution, costs, and attorneys' fees. In construing the foregoing, it is the intent of the parties hereto that the prevailing party or parties in any such arbitration shall be entitled to receive from the other party or parties reasonable attorneys' fees, costs, and expenses incurred in said legal action or arbitration. The results of such arbitration shall be conclusive and binding.

20. Remedies. All rights, remedies, undertakings, obligations, options, covenants, conditions and agreements contained in this Agreement or provided by law shall be cumulative and no one of them shall be exclusive of any other. A party may pursue any one or more of its rights options or remedies hereunder or may seek damages or specific performance in the event of another party's breach hereunder, or may pursue any other remedy by law or equity, whether or not stated in this Agreement.

21. No Waiver. No failure by a party to take action by reason of any default by any other party, whether in a single instance or repeatedly, shall constitute a waiver of any such default or of the performance required of the defaulting party. No express waiver by a party of any provision of this Agreement or a default by any other party in any one instance shall be construed as a waiver of the same provision or default in any subsequent instance.

22. Attorneys' Fees. In the event of any action instituted among the parties in connection with this Agreement, the prevailing party shall be entitled to recover from the losing party all the prevailing party's costs and expenses, including court or arbitration costs and reasonable attorneys' fees, but not including the mediator's fees. "Prevailing party" means the party determined by the court or arbitrator to have most nearly prevailed, even if such party did not prevail in all matters, not necessarily in whose favor a judgment is rendered. If the court or arbitrator fails or refuses to make a determination of the prevailing party, the party who is awarded costs of suit shall also be deemed to be the prevailing party for purposes of awarding attorneys' fees.

23. Gender and Number. In this Agreement (unless the context requires otherwise), the masculine, feminine and neuter genders and the singular and the plural shall be deemed to include one another, as appropriate.

24. Entire Agreement. This Agreement and the attached schedules constitute the entire agreement among the parties pertaining to the subject matter hereof, and the final, complete and exclusive expression of the terms and conditions thereof. All prior agreements, representations, negotiations and understandings of the parties hereto, oral or written, express or implied, are hereby superseded and merged herein. Any agreements, understandings, warranties or representations not expressly contained in this Agreement shall in no way bind any party. To the maximum extent permitted by law, each party expressly waives any right of rescission and all claims for damages by reason of any statement, representation, warranty, promise and/or agreement, if any, not contained in or attached to this Agreement.

25. Termination of Agreement. This Agreement may be terminated with the consent of Tenants in Common holding collectively a 67% or greater Property Interest. Unless earlier terminated pursuant to the foregoing provisions of this Section 25, this Agreement shall in all events terminate on December 31, 2030, unless extended by the Tenants in Common, acting unanimously.

**IN WITNESS WHEREOF** , the Tenants in Common have executed this Tenancy in Common Agreement effective as of the date first above written.