

# AMC International Law Associates

SAMPLE

JOINT VENTURE (LF)



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**JOINT VENTURE AGREEMENT**

THIS AGREEMENT entered into this the \_\_\_\_\_ day of \_\_\_\_\_, 200 \_\_\_\_, by and between \_\_\_\_\_ ( \_\_\_\_\_ ) of \_\_\_\_\_, city of \_\_\_\_\_, state of \_\_\_\_\_, and \_\_\_\_\_ ( \_\_\_\_\_ ) of \_\_\_\_\_, city of \_\_\_\_\_, state of \_\_\_\_\_;

**WITNESSETH:**

WHEREAS, ( \_\_\_\_\_ ) is in the business of: \_\_\_\_\_, and  
WHEREAS, ( \_\_\_\_\_ ) is in the business of: \_\_\_\_\_, and  
WHEREAS, both parties desire to work together for the purpose of:

NOW THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, and the mutual promises and benefits to be derived by the parties, they do hereby agree to the following terms and conditions:

**Article I  
Formation**

**Section 1.1 Formation and Name.**

1.1.1 **Formation.** The Joint Venturers hereby confirm that they have formed a Joint Venture for the purposes and scope set forth in this Agreement.

1.1.2 **Name.** The name of the Joint Venture is and shall continue to be \_\_\_\_\_. The business and affairs of the Joint Venture shall be conducted solely under that name and under no other unless modified in writing by addendum to this agreement.

**Section 1.2 Purposes and Scope of the Joint Venture.**

The purpose of the Joint Venture is to:

**Section 1.3 Principal Place of Business.**

The principal place of business of the Joint Venture shall be initially located at

**Section 1.4 Term.**

The term of the Joint Venture shall commence on the first above written day, and shall continue, unless sooner terminated in accordance with other provisions of this Agreement, until \_\_\_\_\_, 200 \_\_\_\_.

**Section 1.5 No Partition.**

No Joint Venturer shall have the right and each Joint Venturer hereby agrees not to withdraw from the Joint Venture nor to dissolve, terminate, partition, or liquidate, or to petition a court for the dissolution, termination, partition, or liquidation of the Joint Venture or its assets, except as provided in this Agreement, and no Joint Venturer at any time shall have the right to petition or to take any action to subject the operation of the Project or any part thereof or the Joint Venture assets or any part thereof to the authority of any court of bankruptcy, insolvency, receivership, or similar proceeding.

**Article II**

**Capital Contributions, Reserves, Voting, Financing, and Distributions**

**Section 2.1 Joint Venture Percentage Interest.**

The Joint Venturers shall have the following undivided percentage interests in the Joint Venture (individually a Percentage Interest and joint Percentage Interests):

_____	_____	%
_____	_____	%
_____	_____	%

**Section 2.2 Adjustments and Interest.**

Unless otherwise approved by the Joint Venturers, no adjustment to the Percentage Interest of any Joint Venturer shall be made except as otherwise provided herein or as a result of a transfer of a Joint Venturers Joint Venture interest or a portion thereof. It is the specific intent of the parties to equally split all fees and profits generated from the joint venture.

**Section 2.3 Capital Accounts.**

2.3.1 **General.** As used herein, the term Capital Account shall refer to the capital account of each Joint Venturer reflecting the value of each Joint Venturers relative interest in the capital of the Joint Venture as calculated pursuant to this Agreement. A Capital Account, as defined herein, shall be maintained for each Joint Venturer and shall be subject to adjustment as provided in subsection 2.3.3.2.3.2 **Initial Capital Contribution and Initial Capital.** Upon the execution of this Agreement, the parties shall mutually decide an amount for initial capitalization of the venture. The determined amount will be fulfilled by contributions proportionate to ownership. Thereafter, as additional capital is needed for the operation of the venture, it will be contributed in the same ratio.

2.3.3 **Adjustments to Capital Accounts.** The Capital Account of each Joint Venturer shall from time to time be:

- (a) increased by:
  - (i) any additional capital contributions of such Joint Venturer.
- (b) decreased by:
  - (i) all distributions to or for the account of such Joint Venturer, whether of capital or income (other than payments received by a Joint Venturer in payment of a loan permitted by the provisions hereof or a Contribution Loan);
  - (ii) such Joint Venturers allocable share of Net Capital Loss and Net Ordinary Loss of the Joint Venture during such fiscal year.

**Section 2.4 Additional Capital Contributions.**

2.4.1 **General.** If additional capital for the operation of the venture is needed, then the parties shall make such additional capital contributions in the same percentage as their percentage interests.

2.4.2 **Notice by Manager.** Notice of any additional capital contributions required to be made pursuant to this Section 2.4 shall be given by the Manager as hereinafter defined to each Joint Venturer in the manner provided in this Agreement. Such notice shall name the Joint Venturers voting for additional capital contributions and shall specify in reasonable detail the amount of and purpose of any such additional capital contributions. Each Joint Venturer shall, within \_\_\_\_\_ ( \_\_\_\_\_ ) days of the receipt of such notice from the Manager, contribute to the Joint Venture the additional capital contribution required of such Joint Venturer as set forth in such notice.

**2.4.3 Contribution Loans.** In the event any Joint Venturer (Noncontributing Joint Venturer) fails to make a required additional capital contribution pursuant to subsection 2.4.2 within the time specified, the other Joint Venturers (the Contributing Joint Venturers) shall have the right to contribute an amount equal to such Noncontributing Joint Venturers additional capital contribution. Any amounts so advanced to the Joint Venture by the Contributing Joint Venturers pursuant to this subsection 2.4.3 shall be treated as a loan by such Contributing Joint Venturers to the Noncontributing Joint Venturer (Contribution Loan), followed by the Noncontributing Joint Venturer making his or its required additional capital contribution to the Joint Venture of the proceeds of such Contribution Loan.

**2.4.4 Interest Repayment through Distributions.** In the event the Contributing Joint Venturers elect to make a Contribution Loan, then the Contribution Loan shall bear interest at a rate equal to the maximum allowed by law. In addition to other remedies, including, without limitation, those set forth in subsection 2.4.5, the Contribution Loan to the Noncontributing Joint Venturer shall be repaid out of any subsequent distributions from the Joint Venture made pursuant to this Agreement to which the Noncontributing Joint Venturer for whose account the Contribution Loan was made would otherwise be entitled, which amounts shall be applied first to interest accrued on the Contribution Loan and then to the principal due under the Contribution Loan, until the Contribution Loan is paid in full. In no event shall the principal or interest on any such Contribution Loan be an obligation of or paid by the Joint Venture. Contribution Loans shall be repaid on a first-in, first-out basis.

**2.4.5 Remedies.** In the event any Contribution Loan has not been repaid in full by the Noncontributing Joint Venturer within \_\_\_\_\_ ( \_\_\_\_\_ ) days of the date the Contribution Loan is made, then at any time thereafter the Contributing Joint Venturers may proceed under subparagraphs (a) or (b) below:

(a) Upon \_\_\_\_\_ ( \_\_\_\_\_ ) days prior written notice, such Contributing Joint Venturer may elect to convert the Contribution Loan to an interest in the Joint Venture, whereupon, as of the effective date of such election, the Percentage Interest of the Contributing Joint Venturer and the Noncontributing Joint Venturer with respect to which the Contribution Loan relates shall be recalculated as provided below and the capital account of such Contributing Joint Venturer shall be increased by an amount equal to the principal plus accrued but unpaid interest on such Contribution Loan and the capital account of the Noncontributing Joint Venturer with respect to which the Contribution Loan relates shall be reduced accordingly. Upon determination of such value, the Noncontributing Joint Venturer shall be deemed to have transferred to the Contributing Joint Venturer that portion of the Noncontributing Joint Venturers Percentage Interest of a value, calculated as provided above, as is equal to the Contributing Joint Venturers Contribution Loan plus accrued but unpaid interest.

(b) Until a Contributing Joint Venturer has elected to proceed under subparagraph (a) above, such Contributing Joint Venturers Contribution Loan shall remain in place and shall bear interest and be repaid as provided in subsection 2.4.4 above; provided, however, that this provision shall not operate to prohibit the Contributing Joint Venturer from declaring the Noncontributing Joint Venturer to be in default in the payment of any such Contribution Loan by reason of such nonpayment or from exercising any other rights or remedies of the Contributing Joint Venturer provided herein or at law.

**Section 2.5 Distributions to Joint Venturers of Cash Flow.**

**2.5.1 Definition of Net Cash Flow.** In each fiscal year of the Joint Venture, the Manager shall determine the Joint Ventures Net Cash Flow. Net Cash Flow shall be distributed between the parties according to their ownership interest subject to the adjustments described in Section 2.5.2 hereafter.

**2.5.2 Definition of Distributable Cash Flow.** Distributable Cash Flow shall consist of the Net Cash Flow reduced by all reasonable amounts of reserved cash as shall be determined by a majority in interest of the Joint Venturers to be necessary or advisable for: (i) the repayment of Joint Venture indebtedness due or coming due in a future time period; (ii) the improvement, development, management, operation (including, but not limited to, insurance and property taxes and assessments), maintenance, replacement, or preservation of the Project; (iii) increases in working capital and other contingencies.

**Section 2.6 Allocations of Profits and Losses to Joint Venturers.**

All profits and losses shall be allocated according to ownership interest.

**Section 2.7 Withdrawals of Capital.**

Except as otherwise provided herein, no portion of the capital of the Joint Venture may be withdrawn at any time without the approval of all the parties. However, upon termination of the Joint Venture, the Joint Ventures capital shall be distributed pursuant to Section 6.3.4 hereof.

**Section 2.8 Voting.**

Except as otherwise provided, all actions of the venture shall be mutually agreed upon by the parties.

**Section 2.9 Time Limit for Approval**

Where an issue arises needing a vote, such vote shall be given within five (5) calendar days of a written request by the other party for a vote. Should a response not be returned within the stated period, then the vote will be considered in the affirmative.

**Article III  
Management**

**Section 3.1 Joint Venture Manager**

\_\_\_\_\_ is hereby appointed Manager or Venture Manager of the Joint Venture and shall be responsible for the internal operation of the venture. Any direct cost incurred shall be paid out of Joint Venture funds. **Section 3.2 Other Business Activities.**

Nothing herein is to be construed as giving any party an interest in other business of the parties except those construed specifically by this Agreement or incorporated by an amendment hereto.

The parties mutually acknowledge that each is involved in additional businesses and are not restricted to participating with each other except as stated in the first right of refusal for additional projects.

**Article IV  
Accounting**

**Section 4.1 Books, Records, and Fiscal Year.**

**4.1.1 General.** The Joint Ventures books and records of account shall be maintained in accordance with generally accepted accounting principles consistently applied on the cash basis and shall be adequate to provide any Joint Venturer with all financial information as may be needed by any Joint Venturer or any Affiliate of any Joint Venturer for purposes of satisfying the financial reporting obligations of any Joint Venturer or his or its respective affiliate or affiliates. The fiscal year of the Joint Venture shall end on December 31 of each year. The books and records shall be maintained at the Joint Venturers principal place of business and shall be available to any Joint Venturer or its representative during normal business hours. Any such Joint Venturer may at any time request that the Joint Ventures independent accountants audit the books and records. The cost of such audit shall be borne by the requesting Joint Venturer unless said audit shall disclose a substantial discrepancy, in

which case it shall be borne by the Joint Venture.

#### Section 4.2 **Budget.**

The Joint Venture Manager of the business shall prepare and submit to the Joint Venturers for their approval a budget (the Budget) setting forth the estimated receipts and expenditures of the Joint Venture for the operation, management, and marketing of the business. No later than sixty (60) days prior to the end of each fiscal year of the Joint Venture, the Joint Venture manager shall prepare and submit a proposed Budget for the operation of the business of the Joint Venture in the next fiscal year for approval by the Joint Venturers. Upon adoption of an annual Budget, the Joint Venture manager shall be authorized, without the need for further approval by the Joint Venturers (except as otherwise provided), to make the expenditures and incur the obligations provided for in the Budget.

#### Section 4.3 **Statements of Financial Condition.**

The Joint Venture Manager shall prepare statements of financial condition of the Joint Venture as of the last day of each month of each fiscal year, and such statements shall be submitted promptly to the Joint Venturers. The Joint Ventures accountants shall prepare financial statements showing, among other things, income and Net Cash Flow of the Joint Venture for each fiscal year, copies of which shall be furnished to each of the Joint Venturers within thirty (30) days after they are prepared.

#### Section 4.4 **Other Accounting Decisions.**

All accounting decisions and tax elections for the Joint Venture (other than those specifically provided for in other Sections of this Agreement) shall be made from time to time as required and approved by the Joint Venturers.

### **Article V**

#### **Sale, Transfer, or Mortgage**

##### Section 5.1 **General.**

Except as expressly permitted herein, no Joint Venturer shall sell, assign, transfer, mortgage, charge, or otherwise encumber, or permit any of the foregoing, whether voluntarily or by operation of law (herein sometimes collectively called a transfer), any part or all of his or its Joint Venture interest without the prior written approval of the other Joint Venturers, and any attempt to do so shall be void.

##### 5.1.1 **Permitted Transfers**

(a) Any Joint Venturer may transfer or assign his or its interest in the Joint Venture to any corporation or general partnership that is controlled by such Joint Venturer, or to any limited partnership in which the Joint Venturer would be the general partner, and such transfers or assignments shall not be subject to this subsection, but the transferee thereof shall be subject to all the terms and conditions of this Agreement, including without limitation this subsection, and as a condition precedent to any such transfer, such transferee shall enter into a written agreement agreeing to be bound by the terms hereof.

(b) Except as provided in subsection 5.1.1.(a) above, no Joint Venturer may assign his or its interest in this Joint Venture without first obtaining the written approval and waiver of right of first refusal from the other Joint Venturers.

##### Section 5.2 **Right of First Refusal.**

5.2.1 Except for permitted transfers, each party to this Agreement shall give the others thirty (30) days to meet any offer to purchase his interest in the Joint Venture on the same terms and conditions being offered. If, within the thirty (30) day period a modification of acceptance by the offering party is not received, he is free to sell his interest for the offered amount, but not on terms more favorable.

Any purchasing party must agree in writing to execute this Agreement and be bound as though he were an original party.

**5.2.2 Limitations on Exercise.** Notwithstanding anything to the contrary contained in this Section 5.2, an Offeree who has committed an Event of Default that is still continuing and that has not been cured shall not be entitled to exercise its or his right to purchase any portion of the Offerors interest in the Joint Venture.

**5.2.3 Death of a Joint Venturer.** The death of a Joint Venturer shall not dissolve the Joint Venture as to the other Joint Venturers, nor shall such a death cause any interruption in the conduct of the business of the Joint Venture. Upon the death of a Joint Venturer, the remaining Joint Venturers shall have the right, privilege, and option of purchasing, from the personal representative of the estate of the deceased Joint Venturer, all, but not less than all, of the interest in the Joint Venture owned by the deceased Joint Venturer at the time of his or her death, at the price and upon the terms and conditions hereinafter set forth. Should the other Joint Venturers desire to exercise such option, they shall give notice in writing to the personal representative of the estate of the deceased Joint Venturer within sixty (60) days after the date of death of the deceased Joint Venturer. The estate of the deceased Joint Venturer shall be obligated to sell its interest in the Joint Venture should any of the surviving Joint Venturers desire to exercise the option as set forth above. In the event that none of the surviving Joint Venturers desire to purchase the interest in the Joint Venture of the deceased Joint Venturer, the interest of such deceased Joint Venturer shall be transferred by testamentary instrument or by operation of law to any other person or persons or to any public charitable organization so designated by the deceased Joint Venturer.

The purchase price of a deceased Joint Venturers interest in the Joint Venture shall be an amount equal to the fair market value of such interest as determined in Article VII hereof. An amount equal to \_\_\_\_\_ percent ( \_\_\_\_\_ %) of the total purchase price of the deceased Joint Venturers interest in the Joint Venture shall be paid at closing, and the balance of the purchase price shall be paid in three (3) equal consecutive annual installments of principal and interest, with the first of said remaining installments being due and payable on the anniversary of the Closing. The deferred portion of the purchase price shall be evidenced by the purchasing Joint Venturers negotiable promissory note(s), payable with interest at the rate of \_\_\_\_\_ percent ( \_\_\_\_\_ %) per annum from Closing until paid in full. Such note or notes shall provide for the acceleration of the due date of the remaining balance due in the event of default of the payment of any installment due on any such note, or interest due thereon, and shall also give the maker thereof the option of prepayment, in whole or in part, at any time, without penalty. If any of such notes are executed by a corporation as maker, then the shareholders of such corporation shall guarantee the payment thereof.

In the event a corporation is a Joint Venturer in the Joint Venture, the restrictions on the transfer of a shareholders stock in such corporation upon his or her death shall be governed by a separate stock transfer agreement to be entered into between such corporate Joint Venturer and its shareholders, which agreement shall generally provide for restrictions as set forth above upon the death of an individual Joint Venturer, except that the remaining shareholders in the corporate Joint Venturer shall first have the option to purchase the deceased shareholders stock in the corporation before the stock is offered for sale to the other Joint Venturers in the Joint Venture.

### Section 5.3 Closings.

**5.3.1 Termination of Obligations.** As of the effective date of any transfer not prohibited hereunder by a Joint Venturer of its entire interest in the Joint Venture, such Joint Venturers rights and obligations hereunder shall terminate except as to items accrued

as of such date and except as to any indemnity obligations of such Joint Venturer attributable to acts or events occurring prior to such date. Thereupon, except as limited by the preceding sentence, this Agreement shall terminate as to the transferring Joint Venturer but shall remain in effect as to the other Joint Venturers. In the event of a transfer of its or his entire Joint Venture interest by a Joint Venturer to another Joint Venturer, the Joint Venturer to whom such interest is transferred shall indemnify, defend, and hold harmless the Joint Venturer so transferring its or his Joint Venture interest from and against any and all claims, demands, liabilities, expenses, actions, lawsuits, and other proceedings, judgments, awards, and costs (including reasonable attorneys fees) incurred in or arising directly or indirectly, in whole or in part, out of operation of the business of the Joint Venture, excluding only those matters listed above, if any, accruing prior to the date of such transfer.

#### Section 5.4 **Withdrawals.**

Each of the Joint Venturers does hereby covenant and agree that it will not withdraw or retire from the Joint Venture, except as a result of a permitted transfer of its entire interest in the Joint Venture pursuant to the terms of this Agreement, and that it will carry out its duties and responsibilities hereunder until the Joint Venture is terminated, liquidated, and dissolved.

### **Article VI**

#### **Default and Dissolution**

##### Section 6.1 **Events of Default.**

6.1.1 **Definitions and Cure Periods.** The occurrence of any of the following events shall constitute an event of default (Event of Default) hereunder on the part of the Joint Venturer with respect to whom such event occurs (Defaulter) if within thirty (30) days following written notice of such default from the Joint Venture Manager the Defaulter fails to pay such monies, or in the case of nonmonetary defaults, fails to commence substantial efforts to cure such default or thereafter fails within a reasonable time to prosecute to completion with diligence and continuity the curing of such default; provided, however, that the occurrence of any Act of Insolvency (as hereafter defined in subsection 6.1.2) shall constitute an Event of Default immediately upon such occurrence without any requirement of notice or passage of time except as specifically set forth in any such subparagraph:

- (a) the failure by a Joint Venturer to make any additional capital contribution to the Joint Venture as required;
- (b) the violation by a Joint Venturer of any of the restrictions set forth in Article V of this Agreement upon the right of a Joint Venturer to transfer its Joint Venture interest;
- (c) the failure of a Joint Venturer to repay a Contribution Loan as required;
- (d) the failure of a Joint Venturers personal representative or heirs to assume in writing and agree to be bound by all of the deceased Joint Venturers obligations;
- (e) the occurrence of an Act of Insolvency by any Joint Venturer (as defined in subsection 6.1.2); and
- (f) default in performance of or failure to comply with any other agreements, obligations, or undertakings of a Joint Venturer herein contained.

The death of a Joint Venturer shall not comprise an Event of Default, nor shall it result in the dissolution of the Joint Venture.

6.1.2 **Act of Insolvency.** The occurrence of any of the following events shall constitute an Act of Insolvency, as said term is used in this Agreement:

- (a) institution by a Joint Venturer of proceedings of any nature under any laws of the United States or of any state, whether now existing or subsequently enacted or amended, for the relief of debtors wherein such Joint Venturer is seeking relief as debtor;
- (b) a general assignment by a Joint Venturer for the benefit of creditors;

(c) the institution by a Joint Venturer of a proceeding under any section or chapter of the Federal Bankruptcy Act as now existing or hereafter amended or becoming effective;

(d) the institution against a Joint Venturer of a proceeding under any section or chapter of the Federal Bankruptcy Act as now existing or hereafter amended or becoming effective, which proceeding is not dismissed, stayed, or discharged within a period sixty (60) days after the filing thereof, or if stayed, which stay is thereafter lifted without contemporaneous discharge or dismissal of such proceeding.

#### Section 6.2 **Causes of Dissolution.**

The Joint Venture shall be dissolved only if a Dissolving Event shall occur. A Dissolving Event shall occur when:

(a) an Event of Default has occurred as provided in Section 6.1 and the nondefaulting Joint Venturers elect to dissolve the Joint Venture as provided in Section 6.3 hereof;

(b) one or more of the Joint Venturers elect to dissolve or terminate the Joint Venture pursuant to any provision of this Agreement permitting such election to be made; or

(c) the Joint Venture, by its terms as set forth in this Agreement, is terminated.

#### Section 6.3 **Election of Nondefaulting Joint Venturer.**

**6.3.1 Purchase of Defaulters Interest.** Upon the occurrence of an Event of Default by any Joint Venturer (Defaulter), the other Joint Venturers (Nondefaulters) shall have the right to acquire all, but not less than all, of the Joint Venture interest of the Defaulter for cash, except as provided in subsection 6.3.2 hereof, at a price determined pursuant to the appraisal procedure set forth in Article VII, subject to adjustment as otherwise herein set forth (and except for the provisions set forth in subsection 6.4.5, which shall govern in such circumstances). In furtherance of such right, a Nondefaulter (the Electing Nondefaulter) may notify the Defaulter at any time following an Event of Default of its election to institute the appraisal procedure set forth in Article VII. Upon receipt of notice of determination of the fair market value of the Defaulters Joint Venture interest, the Electing Nondefaulter may notify the Defaulter of its election to purchase the interest of the Defaulter.

**6.3.2 Purchase in Event of Act of Insolvency.** If the Event of Default is also an Act of Insolvency, a Joint Venturer who elects to purchase the Joint Venture interest of the Defaulter shall have the right to purchase such Joint Venturers interest by down payment of \_\_\_\_\_ percent ( \_\_\_\_%) of the purchase price, as determined by the appraisal procedure pursuant to Article VII, of such Joint Venture interest at Closing, with the balance of the purchase price to be payable in equal monthly installments over a period of \_\_\_\_\_ ( \_\_\_\_ ) years, and with the unpaid balance of such purchase price bearing interest equal to the prime rate in effect at that time at \_\_\_\_\_, city of \_\_\_\_\_, state of \_\_\_\_\_, or its successors in interest as of the date of Closing, with the right of prepayment of any amount at any time without penalty.

**6.3.3 Defaulters Right to Cure.** The right of a Defaulter to cure an Event of Default shall expire upon a Joint Venturer giving to the Defaulter a notice of election to purchase the Defaulters interest in the Joint Venture.

**6.3.4 Distribution upon Dissolution.** The assets of the Joint Venture shall be applied or distributed in liquidation upon the happening of a Dissolving Event in the following order of priority:

(a) in payment of debts and obligations of the Joint Venture owed to third parties, which shall include any Joint Venturer as the holder of any secured loan;

(b) in payment of debts and obligations of the Joint Venture to any Joint Venturer;

(c) to the Joint Venturers in the same manner and in the same priorities and percentages as Net Proceeds are allocated and distributed to the Joint Venturers as set forth herein.

Notwithstanding the foregoing, in the event that there are any outstanding Contribution Loans at the time of any distribution pursuant to this subsection 6.3.4, then the Joint Venturer to whom such Contribution Loan is owed shall be entitled to payment of the Contribution Loan on a priority basis out of the distributions to which the Joint Venturer for whose benefit the Contribution Loans were made is entitled, to be applied to the Contribution Loans in order of priority based on the chronological order in which they were made, the earliest to be paid first in full, and to each Contribution Loan in payment first of interest and then of principal.

## **Article VII**

### **Appraisal**

#### **Section 7.1 General.**

Whenever this Agreement provides for the valuation of an interest in the Joint Venture to be purchased or sold, the value of such interest in the Joint Venture shall be determined in the following manner. The parties shall first attempt to agree upon the net fair market value of the Joint Venture and of the interests in the Joint Venture to be purchased or sold. Net fair market value of the Joint Venture shall be determined using accepted appraisal methods utilized in the appraisal industry, including the capitalization of income approach and the comparable sale approach. The net fair market value of a Joint Venture interest shall mean the value of the interest to be sold or purchased, based on the net fair market value of the Joint Venture.

#### **Section 7.2 Appraisal Procedure.**

In the event the Joint Venturers are unable to mutually agree upon the net fair market value of the Joint Venture and of the Joint Venture interests to be sold or purchased within thirty (30) days of the date the appraisal procedure of this Article VII is instituted, the Joint Venturers shall then attempt to agree upon the appointment of three disinterested appraisers, who shall be members of the American Institute of Appraisers. If the Joint Venturers are unable to agree upon the selection of three appraisers within thirty (30) days of the date the appraisal procedure is instituted, then a petition may be made by any Joint Venturer to the presiding judge of the Circuit Court for the county of \_\_\_\_\_, state of \_\_\_\_\_, for such selection. Each Joint Venturer shall have the right to submit the names of three (3) appraisers so qualified, and the judge shall select the three (3) appraisers from the names so submitted. Each appraiser so selected shall furnish the Joint Venturers and the certified public accountants for the Joint Venture with a written appraisal within ninety (90) days of his selection, setting forth his determination of the net fair market value of all real estate and other tangible assets owned by the Joint Venture as of the date of institution of this appraisal procedure. Such appraisal shall assume that the use of the Property, Improvements, and other tangible Joint Venture assets shall be the use for which the Property, Improvements, and other tangible Joint Venture assets are then being utilized, and the appraisal shall not include any value for goodwill. The average of the two closest evaluations of such appraisers shall be treated as the net fair market value of the Property, Improvements and other tangible assets of the Joint Venture. Upon receipt of the appraisals of the net fair market value of such assets, the independent certified public accountants of the Joint Venture shall make the final determination as to the net fair market value of the Joint Venture and of the Joint Venture interest to be sold or purchased, and in making their determination shall decide what effect, if any, should be given to the terms and provisions of this Agreement. The accountants shall notify the Joint Venturers in writing of their determination within sixty (60) days of the date of receipt of the appraisals prepared by the appraisers. The determination of the accountants shall be treated as the net fair market value of the Joint Venture and of the Joint Venture interest to be sold or purchased determined pursuant to this Article VII, and the determination shall be final and

binding on the Joint Venturers. The cost of the appraisal shall be an expense of the Joint Venture.

## **Article VIII**

### **Insurance**

#### **Section 8.1 General.**

The Joint Venture shall carry and maintain in force the following insurance, the premium for which shall be a cost and expense in connection with the operation of the Joint Venture.

#### **Section 8.2 Workers Compensation.**

Workers Compensation Insurance covering all employees of the Joint Venture employed in, on, or about the property of the Joint Venture to provide statutory benefits as required by the laws of the state of \_\_\_\_\_.

#### **Section 8.3 Comprehensive General Liability.**

Comprehensive General Liability Insurance on an occurrence basis for the benefit of the Joint Venturers and the Joint Venture as named insureds against claims for personal injury liability, including, without limitation, bodily injury, death, or property damage liability with limits of not less than \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) in the event of personal injury to one (1) person and not less than \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) in the event of injury to any number of persons in any one (1) occurrence, with a limit of not less than \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) for property damage; such insurance shall also include coverage against liability for bodily injury or property damage arising out of the use by or on behalf of the Joint Venturers of any owned, nonowned, or hired automotive equipment for limits not less than those specified above.

#### **Section 8.4 Umbrella.**

Comprehensive umbrella coverage for the benefit of the Joint Venturers and the Joint Venture with limits of not less than \_\_\_\_\_ Dollars (\$ \_\_\_\_\_).

#### **Section 8.5 Extended Coverage.**

The Joint Venturers shall keep the Improvements insured against loss or damage by fire and the risks embraced within the term Extended Coverage in such amount or amounts as a majority in interest of the Joint Venturers may require and insured against such other hazards and risks as may be reasonably required by the Joint Venturers, in such amount or amounts as may be reasonably required by said Joint Venturers, with such insurance company or companies as the Joint Venturers or their respective successors or assigns may approve, and the Manager shall retain the policies of such insurance and of any additional insurance that shall be taken out upon such buildings.

#### **Section 8.6 Other Insurance.**

Such other insurance as may be approved by the Joint Venturers.

#### **Section 8.7 Named Insured.**

All such aforesaid policies shall be issued in the name of the Joint Venturers and the Joint Venture, as named insureds.

## **Article IX**

### **General Provisions**

#### **Section 9.1 Complete Agreement; Amendment; Notice.**

9.1.1 **Entire Agreement.** This Agreement embodies the entire understanding of the parties, and any changes must be made in writing and signed by all parties.

9.1.2 **Amendment.** This instrument may be amended or modified only by an instrument of equal formality signed by all of the respective parties hereto.

9.1.3 **Notice.** All notices under this Agreement shall be in writing and shall be delivered by personal service, or by certified or registered mail, postage prepaid, return receipt requested, to the Joint Venturers (and where required, to the person required to be copied with the notice) at the addresses herein or at such other address as the addressee may designate in writing, and to the Joint Venture at its principal place of business as set forth in Section 1.3 hereof, and shall be effective upon receipt (or refusal to accept).

The addresses for notices to the Joint Venturers are as follows:

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**Section 9.2 Attorneys Fees.**

Should any litigation be commenced between the parties hereto or their representatives, or should any party institute any proceeding in a bankruptcy or similar court which has jurisdiction over any other party hereto or any or all of his or its property or assets concerning any provision of this Agreement or the rights and duties of any person or entity in relation thereto, the party or parties prevailing in such litigation shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for his or its or their attorneys fees and court costs in such litigation or in a separate action brought for that purpose.

**Section 9.3 Validity.**

In the event that any provision of this Agreement shall be held to be invalid or unenforceable, the same shall not affect in any respect whatsoever the validity or enforceability of the remainder of this Agreement.

**Section 9.4 Survival of Rights.**

Except as provided herein to the contrary, this Agreement shall be binding upon and inure to the benefit of the parties signatory hereto, their respective heirs, executors, legal representatives, and permitted successors and assigns.

**Section 9.5 Governing Law.**

This Agreement has been entered into in the state of \_\_\_\_\_, and all questions with respect to this Agreement and the rights and liabilities of the parties hereto shall be governed by the laws of \_\_\_\_\_, and the venue of any action brought hereunder shall be in \_\_\_\_\_ County, state of \_\_\_\_\_.

**Section 9.6 Waiver.**

No consent or waiver, express or implied, by a Joint Venturer to or of any breach or default by another Joint Venturer in the performance by such other Joint Venturer of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other Joint Venturer hereunder. Failure on the part of a Joint Venturer to complain of any act or failure to act of another Joint Venturer or to declare another Joint Venturer in default, irrespective of how long such failure continues, shall not constitute a waiver by such Joint Venturer of its rights hereunder. The giving of consent by a Joint Venturer in any one instance shall not limit or waive the necessity to obtain such Joint Venturers consent in any future instance.

**Section 9.7 Remedies in Equity.**

The rights and remedies of any of the Joint Venturers hereunder shall not be mutually exclusive i.e., the exercise of one or more of the provisions hereof shall not preclude the exercise of any other provisions hereof. Each of the Joint Venturers confirm that damages at law may be an inadequate remedy for a breach or threatened breach of this Agreement and agree that, in the event of a breach or threatened breach of any provision hereof, the respective rights and obligations hereunder shall be enforceable by specific performance, injunction, or other equitable remedy, but nothing herein contained is intended to, nor shall it, limit or affect any rights at law or by statute or otherwise of any party aggrieved as against the other for a breach or threatened breach of any provision hereof, it being the intention by this Section to make clear the agreement of the Joint Venturers that the respective rights and obligations of the Joint Venturers hereunder shall be enforceable in equity as well as at law or otherwise.

**Section 9.8 Indemnification.**

Each Joint Venturer (Indemnifying Venturer) hereby agrees to indemnify and hold the other Joint Venturers and the Joint Venture harmless from and against any and all claims, demands, actions, and rights of action (including attorneys fees and costs) that shall or may arise by virtue of anything done or omitted to be done by the Indemnifying Venturer (through or by its agents, employees, or other representatives) outside the scope of, or in breach of the terms of, this Agreement; provided, however, that the other Joint Venturers shall be notified promptly of the existence of any such claim, demand, action, or cause of action and shall be given reasonable opportunity to participate in the defense thereof. In the event that one Joint Venturer shall be held severally liable for the debts of the joint venture he shall be awarded contribution from the other Venturers so that each Joint Venturer shall only be obligated to pay that portion of such liability as shall be proportionate to such Joint Venturers interest in the Joint Venture.

**Section 9.9 Counterparts.**

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same Agreement.

**Section 9.10 Further Assurances.**

Each party hereto agrees to do all acts and things and to make, execute, and deliver such written instruments as shall from time to time be reasonably required to carry out the terms and provisions of this Agreement.

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

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
By  
Witness Authorized Representative

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
By  
Witness Authorized Representative