PARTICIPATION AGREEMENT

AGREEMENT, made as of the ____ day of _____,____, between _____, a duly organized New York banking corporation with offices at _____, _____ (hereinafter "Lead Bank") and _____ , with offices at _____, (hereinafter "Participant"), [Lead Bank and Participant(s) are collectively referred to herein as "Banks".]

W I T N E S S E T H

WHEREAS, Lead Bank has made a [construction and] permanent mortgage loan in the amount of _____ (hereinafter "Loan") to _____, a New York _____ with an office at _____ (hereinafter "Borrower") pursuant to a commitment letter dated _____ ("Commitment") as accepted; and

WHEREAS, the Borrower has on _____ executed its note to Lead Bank to secure payment of such Loan (the "Note") and executed its first mortgage to be recorded in the _____ County Clerk's Office (the "Mortgage") to secure such Note (the Note and Mortgage, together with all other documents executed in connection with the Loan including the building loan agreement referred to herein are collectively referred to herein as "Loan Documents") on property known as Section __, Block __, Lots _____ upon which Borrower has constructed a _____

_____

_____ (such property is sometimes referred to herein as "Project" and "Mortgaged Premises");

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WHEREAS, the proceeds of the Loan will be disbursed by Lead Bank, which shall act as lead bank pursuant to the terms of the [Building Loan Agreement and the] Note and Mortgage, between Lead Bank and Borrower all dated _____, and pursuant to the terms of this Participation Agreement (hereinafter referred to as the "Agreement");

[WHEREAS, the proceeds of the Loan are to be used by Borrower to construct and expand the Project;]

WHEREAS, Participant wishes to acquire and Lead Bank wishes to provide for the acquisition by Participant of a participating interest in the Loan and Loan Documents so that Banks will each have undivided interests in Loan and Loan Documents, all in accordance with the terms of this Agreement;

WHEREAS, Lead Bank and Participant wish to set forth the manner of Participant's acquisition of such participating interest; and

WHEREAS, Lead Bank and Participant wish to prescribe the manner of the ownership, management, control and servicing of the Loan.

NOW, THEREFORE, in consideration of the premises and the sum of TEN ($10.00) DOLLARS, lawful money of the United States of America and other good and valuable consideration by each of the parties to the other in hand paid, receipt whereof is hereby acknowledged, that each Bank mutually covenants and agrees as follows:

1. Each Bank has reviewed and approved each Loan Document.

2. Lead Bank shall sell and Participant shall purchase an undivided interest in the Loan and Lead Bank shall retain an undivided interest (the "Retained Interest") therein, in the proportions and amounts herein set forth. Subject to the terms and conditions of the Agreement, each Bank hereby agrees that Banks each shall have an undivided interest in the Loan and in all repayments and income therefrom, in Loan Documents and any other collateral securing said

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Loan, all of which is encompassed in the term "Loan". Each Bank shall advance up to the following amounts at such time as and if the Loan is fully disbursed:

	Interest	Maximum Amount to be advanced:
Lead Bank	_____%	_____
Participant	_____%	_____

Participant shall advance its pro-rata portion of the proceeds of Loan to Lead Bank immediately before an advance is made by Lead Bank to Borrower, notice of which advance shall be given to Participant at least three (3) days before the date of the advance in the manner hereinafter provided. All funds received by Lead Bank from Participant pursuant to this Agreement in advance of Lead Bank funding the Loan shall be held in trust by Lead Bank in a segregated account for the benefit of Participant until the pro-rata advances of the Loan by both Participant and Lead Bank are disbursed by Lead Bank to Borrower as herein provided. The advances shall be evidenced by participation certificates (in the form attached hereto as Exhibit A), executed and delivered at the time of the request for an advance by Lead Bank to Participant, which participation certificate shall evidence a sale by Lead Bank to each Participant of an undivided interest ("Participation Loan Share") in the Loan and Loan Documents, all proceeds thereof and collections thereon, all such Participation Loan Shares to be in proportion to the sums actually advanced by Banks. The proceeds of Loan will be disbursed by Lead Bank only in compliance with this Agreement, and the Loan Documents.

Each Participant hereby irrevocably designates and appoints Lead Bank as agent of such Participant to act as Lead as specified herein and in the other Loan Documents, and each such Participant hereby irrevocably authorizes Lead Bank to take such actions, exercise such powers and perform such duties as are expressly delegated to or conferred upon Lead Bank by the terms of this Agreement and the other Loan Documents, together with such other powers as are

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reasonably incidental thereto. Lead Bank agrees to act as such upon the express conditions contained in this Agreement. Lead Bank shall not have any duties or responsibilities except those expressly set forth herein or in the other Loan Documents, nor shall it have any fiduciary relationship with any Participant, and no implied covenants, responsibilities, duties, obligations or liabilities shall be read into this Loan Agreement or otherwise exist against Lead Bank. The provisions of this Agreement are solely for the benefit of Lead Bank and the Participants, and the Borrower shall not have any rights as a third party beneficiary of any of the provisions hereof. Lead Bank shall be responsible for administering the Loan on a day-to-day basis. In the exercise of such administrative duties, Lead Bank shall use the same diligence and standard of care that is customarily used by Lead Bank with respect to similar loans held by Lead Bank solely for its own account (the "Standard of Care Obligation").

Each Participant delegates to Lead Bank the full right and authority on its behalf to take the following specific actions in connection with its administration of the Loan:

(i) to fund Loan in accordance with the provisions of the Loan Documents, but only to the extent of immediately available funds provided to Lead Bank by the respective Participants for such purpose together with Lead Bank's pro-rata share of such funds;

(ii) to receive all payments of principal, interest, fees and other charges paid by, or on behalf of, the Borrower and, except for fees to which Lead Bank is solely entitled pursuant to the Commitment and Loan Documents or otherwise, to distribute all such funds to the respective Participants as provided for hereunder;

(iii) to keep and maintain complete and accurate files and records of all material matters pertaining to the Loan, and make such files and records available for inspection and copying by each Participant and its respective employees and agents during normal business hours upon reasonable prior notice to Lead Bank; and

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(iv) to do or omit doing all such other actions as may be reasonably necessary or incident to the implementation, administration and servicing of the Loan and the rights and duties delegated hereinabove.

Lead Bank may execute any of its duties under this Agreement or any other Loan Document by or through its agents or attorneys-in--fact, and shall be entitled to the advice of counsel concerning all matters pertaining to its rights and duties hereunder or under the Loan Documents. Lead Bank shall not be responsible for the negligence or misconduct of any agents or attorneys-in-fact selected by it with reasonable care.

Neither Lead Bank nor any of its officers, directors, employees, agents, attorneys-in-fact or affiliates shall be liable for any action lawfully taken or omitted to be taken by it or them under or in connection with this Agreement or the other Loan Documents, except for its or their gross negligence or willful misconduct. Neither Lead Bank nor any of its officers, directors, employees, agents, attorneys-in-fact or affiliates shall be responsible for or have any duty to ascertain, inquire into, or verify (i) any recital, statement, representation or warranty made by the Borrower or any of its officers or agents contained in this Agreement or the other Loan Documents or in any certificate or other document delivered in connection therewith; (ii) except for the Standard of Care Obligation the performance or observance of any of the covenants or agreements contained in, or the conditions of, this Agreement or the other Loan Documents; (iii) the state or condition of any properties of the Borrower or any other obligor under the Loan Documents constituting collateral for the obligations of the Borrower under Loan, or any information contained in the books or records of the Borrower; (iv) the validity, enforceability, collectibility, effectiveness or genuineness of this Agreement or any other Loan Document or any other certificate, document or instrument furnished in connection therewith; or (v) the validity, priority or perfection of any lien securing or purporting to secure the Loan obligations or the value or sufficiency of any of the collateral.

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Lead Bank shall be entitled to rely, and shall be fully protected in relying, upon any notice, consent, certificate, affidavit, or other document or writing reasonably believed by it to be genuine and correct and to have been signed, sent or made by the proper person or persons, and upon the advice and statements of legal counsel (including, without, limitation, counsel to the Borrower), independent accountants and other experts selected by Lead Bank. Lead Bank shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless it shall first receive such advice or concurrence of the Banks holding at least 51% of the Participation Loan Shares hereunder (herein the "Required Lenders") or it shall first be indemnified to its satisfaction by the Participants against any and all liability and expense which may be incurred by it by reason of the taking or failing to take any such action. Lead Bank shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement and the other Loan Documents in accordance with any written request of the Required Lenders, and each such request of the Required Lenders, and any action taken or failure to act by Lead Bank pursuant thereto, shall be binding upon all of the Participants; provided, however, that Lead Bank shall not be required in any event to act, or to refrain from acting, in any manner which is contrary to the Loan Documents, advice of counsel or to applicable law.

Lead Bank shall not be deemed to have knowledge or notice of the occurrence of any default or event of default unless Lead Bank has actual knowledge of the same or has received such notice from a Participant or the Borrower referring to this Agreement, describing such default or event of default and stating that such notice is a "notice of default". In the event that Lead Bank obtains such actual knowledge or receives such a notice, Lead Bank shall give prompt notice thereof to each of the Participants. Lead Bank shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders. Unless and until Lead Bank shall have received such direction, Lead Bank may (but shall not be

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obligated to) take such action, or refrain from taking such action, with respect to any such default or event of default as it shall deem advisable in the best interest of the Participants.

3. Each Bank shall have an undivided interest in the Loan proportionate to its Participation Loan Share. Interest and all other amounts collected with respect to the Loan shall be apportioned, as received, between the Banks as provided herein in accordance with their Participation Loan Share.

4. All Banks' Participation Loan Shares shall at all times be equal in priority, pari passu.

5. Lead Bank shall give written notice to each Participant of each request for a Loan, by facsimile transmission, hand delivery or overnight courier, not later than 11:00 a.m. (New York time) (i) three (3) Business Days prior to any advance. Each such notice shall be accompanied by a written summary of the request for a Loan and shall specify (a) the date of the requested Loan, (b) the aggregate amount of the requested Loan and, (c) each Bank's pro rata share of the requested Loan. Each Participant shall, before 11:00 a.m. (New York time) on the date set forth in any such request for a Loan, make available to Lead Bank, at an account to be designated by Lead Bank in same day funds, each Bank's ratable portion of the requested Loan. After Lead Bank's receipt of such funds and upon Lead Bank's determination that the applicable conditions to making the requested Loan have been fulfilled, Lead Bank shall make such funds available to Borrower as provided for in this Agreement. Within a reasonable period of time following the making of each Loan, but in no event later than ten (10) Business Days following such Loan, Lead Bank shall deliver to each Participant a copy of Borrower's request for Loan advance and such Participant's participation certificate. Promptly after receipt by Lead Bank of written request from any Bank, Lead Bank shall deliver to the requesting Bank the accompanying certifications and such other instruments, documents, certifications and approvals delivered by or on behalf of Borrower to Lead Bank in support of the requested Loan.

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6. Lead Bank, as mortgagee of record, shall hold in New York State, in its storage facility where it stores documents on loans held for its own account from time to time during the term of the Loan, all Loan Documents executed and delivered in connection with said Loan including, but not limited to, the Note, Mortgage, title insurance policies and endorsements and hazard insurance policies, which shall be held by it for the benefit of and in trust for the Banks to the extent of each Participant's Participation Loan Share therein. Without the prior consent of the Bank's, Lead Bank shall not make or consent to any release of the Borrower from any liability thereunder, or waive any claim against Borrower or other obligor or guarantor under Loan Documents. Lead Bank also will not pledge, encumber, sell, transfer, assign, modify or extend the Note, Mortgage or Loan Documents, release any portion of the Mortgaged Premises from the lien of the Mortgage except in accordance with the release provisions contained in the Loan Documents (if any) nor make any advance of the Loan which is not insured by a title company. Lead Bank shall, upon request and at Participant's expense, furnish Participant prior to execution with copies of all Loan Documents.

7. Lead Bank covenants, represents and warrants to Participants that: (a) it will notify Participants if monthly payments due under the Note or Mortgage are more than thirty (30) days delinquent; (b) it will notify Participants within ten (10) days of the time of receipt of knowledge of any default under the Loan Documents executed by Borrower; (c) Lead Bank is the owner of the Loan and has all right title and interest to sell the Participation Loan Shares to Participants and no other person or entity will have any interest in Lead Bank's position in respect of the Loan and Loan Documents other than Lead Bank without first obtaining the Required Lender's written consent not to be unreasonably refused or delayed; (d) Lead Bank will not further sell, assign, pledge or otherwise hypothecate, in whole, or part its Retained Interest or any Participant's interest in the Loan or any instrument evidencing or securing the Loan, except as permitted by this Agreement.

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8. Except as hereinafter provided, Participants shall not sell or otherwise dispose of all or any part of its interest in said Loan without the prior written approval of Lead Bank, which approval shall not be unreasonably withheld but will be subject to the following conditions.

(i) Except as provided herein, each Participant may assign to one or more lending institutions, banks, investment banks or insurance companies (hereinafter an "Eligible Assignee") all or a portion of its interests, rights and obligations under this Agreement upon satisfaction of the following conditions:

(a) Lead Bank shall have given its prior written consent to such assignment such consent will not be unreasonably withheld;

(b) each such assignment shall be of a constant, and not a varying, percentage of all the assigning Participant's rights and obligations under this Agreement,

(c) each assignment shall be in an amount that is at least $1,000,000 and is a whole multiple of $100,000,

(d) the parties to such assignment shall execute and deliver to Lead Bank, for recording in the Register (as hereinafter defined), an assignment and acceptance, (an "Assignment and Acceptance").

Upon such execution, delivery, acceptance and recording, from and after the effective date specified in each Assignment and Acceptance, which effective date shall be at least five (5) Business Days after the execution thereof, (a) the assignee thereunder shall be a party hereto and, to the extent provided in such Assignment and Acceptance, have the rights and obligations of a Bank hereunder, and (b) the assigning Bank shall, to the extent provided in such assignment and upon payment to Lead Bank of the registration fee referred to hereafter, be released from its obligations under this Agreement.

(ii) By executing and delivering an Assignment and Acceptance, the parties to the assignment thereunder confirm to and agree with each other and the other parties hereto as follows:

(a) other than the representation and warranty that it is the legal and beneficial owner of the interest being assigned thereby free and clear of any adverse claim, the assigning Bank makes no representation or warranty, express or implied, and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement or the execution, legality, validity, enforceability, genuineness,

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sufficiency or value of this Agreement, the Loan Documents or any other instrument or document furnished pursuant hereto or the attachment, perfection or priority of any security interest or mortgage;

(b) the assigning Bank makes no representation or warranty and assumes no responsibility with respect to the financial condition of the Borrower and its subsidiaries or any other person primarily or secondarily liable in respect of any of the Loan obligations, or the performance or observance by the Borrower or any other person primarily or secondarily liable in respect of any of the Loan obligations of any of their obligations under this Agreement or any of the other Loan Documents or any other instrument or document furnished pursuant hereto or thereto;

(c) such assignee confirms that it has received a copy of this Agreement, and has reviewed copies of the most recent financial statements provided by the Borrower as required by the terms of the Loan Documents, together with such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance;

(d) such assignee will, independently and without reliance upon the assigning Bank, Lead Bank or any other Bank and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement;

(e) such assignee represents and warrants that it is an Eligible Assignee;

(f) such assignee appoints and authorizes Lead Bank to take such action as agent on its behalf and to exercise such powers as Lead under this Agreement and the other Loan Documents as are delegated to Lead Bank

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by the terms hereof or thereof, together with such powers as are reasonably incidental thereto;

(g) such assignee agrees that it will perform in accordance with their terms all of the obligations that by the terms of this Agreement are required to be performed by it as a Participant and/or Bank; and

(h) such assignee represents and warrants that it is legally authorized to enter into such Assignment and Acceptance.

(iii) Lead Bank shall maintain a copy of each Assignment and Acceptance delivered to it and a register or similar list (the "Register") for the recordation of the names and addresses of the Participants, the Participant's Participation Loan Share, and principal amount of the Loan owing to the Participant from time to time. The entries in the Register shall be conclusive, in the absence of manifest error, and the Borrower, Lead Bank and the Participants may treat each Person whose name is recorded in the Register as a Participant hereunder for all purposes of this Agreement.

The Register shall be available for inspection by the Borrower and the Participants at any reasonable time and from time to time upon reasonable prior notice. Upon each such recordation, the assigning Bank agrees to pay to Lead Bank a registration fee in the sum of $1,000.

(iv) Each Participant may sell sub-participations to one or more banks or other financial institutions in all or a portion of such Participant's rights and obligations under this Agreement and the other Loan Documents; provided that (a) each such sub-participation shall be in a minimum amount of $100,000, (b) each sub-participant shall meet the requirements of an Eligible Assignee, (c) any such sale or sub-participation shall not affect the rights and duties of the selling Participant hereunder to the Borrower, and (d) the only rights granted to the sub-participant pursuant to such participation arrangements with respect to waivers, amendments or modifications of the Loan Documents shall be the rights to approve waivers, amendments or

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modifications that would reduce the principal of or the interest rate on Loan, extend the term or increase the amount of the commitment of such Participant as it relates to such sub-participant, reduce the amount of any commitment fees to which such sub-participant is entitled or extend any regularly scheduled payment date for principal or interest.

(v) The Borrower agrees that in addition to disclosures made in accordance with standard and customary banking practices, any Participant may disclose information obtained by such Participant pursuant to this Agreement to assignees or sub-participants and potential assignees or sub-participants hereunder; provided that such assignees or sub-participants or potential assignees or sub-participants shall agree (a) to treat in confidence such information unless such information otherwise becomes public knowledge, (b) not to disclose such information to a third party, except as required by law or legal process and (c) not to make use of such information for purposes of transactions unrelated to such contemplated assignment or sub-participation.

(vi) Any assigning Participant shall retain its rights to be indemnified with respect to any claims or actions arising prior to the date of such assignment. If any assignee is not incorporated under the laws of the United States of America or any state thereof, it shall, prior to the date on which any interest or fees are payable hereunder or under any of the other Loan Documents for its account, deliver to the Borrower and Lead Bank certification as to its exemption from deduction or withholding of any United States federal income taxes.

(vii) Anything to the contrary notwithstanding, any Participant may at any time pledge all or any portion of its interest and rights under this Agreement to any of the twelve Federal Reserve Banks organized under the Federal Reserve Act, 12 U.S.C. 341. No such pledge or the enforcement thereof shall release the pledgor Participant from its obligations hereunder or under any of the other Loan Documents.

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9. So long as Lead Bank serves as Lead, the Loan will be serviced by Lead Bank at an annual charge to Participants of ¼ of 1% of the interest portion of Collections (as hereinafter defined) under the Loan for each year or portion thereof this Agreement is in force and effect, and in the performance of such servicing Lead Bank shall:

(a) Demand, and use its best efforts as provided hereinafter to collect from Borrower amounts due under the Loan as and when due;

(b) Distribute to itself and Participant promptly upon receipt, the Participation Loan Share of each Bank in all payments made with respect to the Loan by Borrower and others. Lead Bank warrants that, in its servicing of the Loan, even though it is not obligated to establish a separate account for the Loan, the funds attributable to the Loan will not be commingled with the general assets of Lead Bank other than to the extent Lead Bank may utilize a portion of its general assets to maintain minimum balances;

(c) Keep proper books of account and records reflecting the interest of the Participants in the Loan including the Register, which books and records shall be available for inspection and copying by Participant at all reasonable times during Lead Bank's regular business hours;

(d) Receive, hold and disburse pursuant to the terms of the Mortgage and Loan Documents any proceeds of fire or other insurance covering the Mortgaged Premises, or of any award for the condemnation of all or part thereof, it being understood that, to the extent permitted by the Mortgage and Loan Documents, the same shall be disbursed to the Participants in accordance with their Participation Loan Shares;

(e) Advance for the account of the Banks in accordance with their Participation Loan Shares such funds as may be necessary for hazard insurance premiums, real estate taxes, water rates and similar items, or for the preservation of the Mortgaged Premises, whenever in Lead Bank's judgment such advances shall be necessary or desirable to preserve the Mortgaged

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Premises or the security of the Mortgage and upon the making of such advance, Participant shall reimburse Lead Bank for its pro-rata share of such disbursements by transmitting the same by good Federal Funds promptly after receipt of the advice of payment and a copy of the bill or invoice paid.

(f) Demand of Borrower full performance of all material terms, covenants and conditions of the Note, Mortgage and other Loan Documents on the part of Borrower to be performed, granting no indulgence, waiver or extension of time beyond thirty (30) days for such performance unless Required Lenders shall otherwise consent in writing.

10. It is expressly understood and agreed that, in its administration and servicing of the Loan, Lead Bank shall be required to exercise the same standard of care that it exercises in the administration and servicing of loans for its own account.

11. Banks as far as practical shall decide by mutual consent upon the exercise of any and all rights in connection with said Loan and any legal action to be taken. Lead Bank shall, with reasonable promptness, notify Participants of any default by Borrower or any other matter which, in its best judgment, materially affects the joint or respective interests of Banks in said Loan. If Required Lenders should fail to mutually agree upon any action required to be taken within such period as the circumstances may require, or within a reasonable period, if none be prescribed or there be doubt as to the period, Banks then owning at least fifty one (51%) percent of the Loan, shall have the right to determine the question as to the others and their bona fide decision shall be binding upon the other Banks with the same force and effect as if all had concurred therein.

Notwithstanding the foregoing, the unanimous written approval of all the Banks (except for Banks in default hereunder) shall be required with respect to any proposed amendment, waiver, discharge, termination, or consent which:

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(i) has the effect of (a) extending the final scheduled maturity or the date of any amortization payment of Loan or Note, (b) reducing the rate or extending the time of payment of interest or fees thereon, (c) increasing or reducing the principal amount thereof, or (d) otherwise postponing or forgiving any indebtedness thereunder,

(ii) releases or discharges any material portion of the collateral pledged under Loan other than in accordance with the express provisions of the Loan Documents,

(iii) amends, modifies or waives any provisions of this paragraph 11,

(iv) amends any of the financial covenants set forth in this Agreement,

(v) reduces the percentage specified in the definition of Required Lenders,

(vi) except as otherwise provided in this Agreement, changes the amount of any Bank's Participation Loan Share, or

(vii) releases or waives any guaranty of the Loan obligations or indemnifications provided in the Loan Documents;

and provided, further, that without the consent of Lead Bank, no such action shall amend, modify or waive any provision of this Agreement or any other provision of any Loan Document which relates to the rights or obligations of Lead Bank.

With respect to any requested amendment, waiver, consent or other action which requires the approval of the Required Lenders or all of the Banks, as the case may be, in accordance with the terms of this Agreement, or if Lead Bank is required hereunder to seek, or desires to seek, the approval of the Required Banks or all of the Banks, as the case may be, prior to undertaking a particular action or course of conduct, Lead Bank in each such case shall provide each Bank with written notice of any such request for amendment, waiver or consent or any other requested or proposed action or course of conduct, accompanied by such detailed background information and explanations as may be reasonably necessary to determine whether to approve or disapprove

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such amendment, waiver, consent or other action or course of conduct. Lead Bank may (but shall not be required to) include in any such notice, printed in capital letters or boldface type, a legend substantially to the following effect:

> "THIS COMMUNICATION REQUIRES IMMEDIATE RESPONSE. FAILURE TO RESPOND WITHIN TEN (10) CALENDAR DAYS FROM THE RECEIPT OF THIS COMMUNICATION SHALL CONSTITUTE A DEEMED APPROVAL BY THE ADDRESSEE OF THE ACTION REQUESTED BY THE BORROWER OR THE COURSE OF CONDUCT PROPOSED BY THE LEAD BANK AND RECITED ABOVE,"

and if the foregoing legend is included by Lead Bank in its communication, a Bank shall be deemed to have approved or consented to such action or course of conduct for all purposes hereunder if such Bank fails to object to such action or course of conduct by written notice to Lead Bank within ten (10) calendar days of such Bank's receipt of such notice.

12. In the event of a default by Borrower in the making of required payments or complying with any of the terms, covenants and conditions of the Loan Documents, and the continued existence of such default after the expiration of any applicable period of grace (or of any applicable period of indulgence), Lead Bank shall then give to Participant, notice of such default and shall within thirty (30) days after the expiration of such applicable period of grace, proceed upon the determination of the Required Lenders, pursuant to the procedure for reaching agreement outlined in paragraph 11, to declare the principal sum secured by the Mortgage to be due and payable and/or foreclose the Mortgage (or to acquire the Project by a deed in lieu thereof if such be acceptable in the opinion of Lead Bank's counsel), employing such counsel as Banks may agree upon or absent such agreement such counsel as Banks having a majority of Participation Loan Shares shall agree upon. The expenses of the foreclosure proceeding or the

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acquisition of the Project by deed in lieu thereof shall be borne by the Banks in accordance with their Participation Loan Shares.

13. Lead Bank shall collect on behalf of Banks, the interest and principal paid on the Loan, release fees, premiums, and origination fee, condemnation awards, proceeds of title insurance and fire insurance, and all other amounts paid in respect of the Loan all of which are hereafter referred to as "Collections". Bank's Participation Loan Share of Collections received by Lead Bank as agent shall be held by it for the benefit of and in trust for each Participant until such time as actually paid over to such Participant. Within two (2) business days of receipt of Collections, Lead Bank shall pay over to each Participant its Participation Loan Share of all such Collections. If for any reason, any Bank has disbursed more or less than its pro rata share of the Loan, its share of the interest and principal will be adjusted accordingly for such period of time as its disbursements are more or less than the other Banks' pro rata share.

Subject to the terms and conditions hereof, Lead Bank shall distribute all Collections in the order and manner set forth below:

First: To Lead Bank, towards any fees and any expenses for which it is entitled to reimbursement under this Agreement or the other Loan Documents not theretofore paid to Lead Bank.

Second: To all in Banks accordance with their Participation Loan Share until all Banks have been reimbursed for all expenses which such Banks have previously incurred and not theretofore paid to such Bank.

Third: To all Banks in accordance with their Participation Loan Share until all Banks have been paid in full all principal and interest due to such Banks under the Loan, with each Bank applying such proceeds for purposes of this Agreement first against the outstanding principal balance due to such

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Bank under the Loan and then to accrued and unpaid interest due under the Loan.

Fourth: To all Banks in accordance with their Participation Loan Share until all Banks have been paid in full all other amounts due to such Banks under the Loan including, without limitation, any costs and expenses incurred directly by such Banks to the extent such costs and expenses are reimbursable to such Banks by the Borrower under the Loan Documents.

Fifth: To the Borrower or such third parties as may be entitled to claim collections.

If, after Lead Bank has paid each Bank's Participation Loan Share of any payment received or applied by Lead Bank in respect of the Loan, that payment is rescinded or must otherwise be returned or paid over by Lead Bank, whether pursuant to any bankruptcy or insolvency law, sharing of payments clause of any loan agreement or otherwise, such Bank shall, at Lead Bank's request, promptly return its proportionate share of such payment or application to Lead Bank, together with the Bank's proportionate share of any interest or other amount required to be paid by Lead Bank with respect to such payment or application.

If any Bank (including Lead Bank), acting in its individual capacity, shall exercise any right of setoff against a deposit balance or other account of the Borrower held by such Bank on account of the obligations of the Borrower under Loan Documents, such Bank shall remit to Lead Bank as Lead all such sums received pursuant to the exercise of such right of setoff, and Lead Bank shall apply all such sums for the benefit of all of the Banks hereunder in accordance with the terms of this Agreement.

If in the reasonable opinion of Lead Bank distribution of any amount received by it in such capacity hereunder or under the Note or under any of the other Loan Documents might involve any liability, it may refrain from making distribution until its right to make distribution

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shall have been adjudicated by a court of competent jurisdiction or has been resolved by the mutual consent of all Banks. In addition, Lead Bank may request full and complete indemnity, in form and substance satisfactory to it, prior to making any such distribution. If a court of competent jurisdiction shall adjudge that any amount received and distributed by Lead Bank is to be repaid, each person to whom any such distribution shall have been made shall either repay to Lead Bank its proportionate share of the amount so adjudged to be repaid or shall pay over to the same in such manner and to such persons as shall be determined by such court.

14. In the case of satisfaction, sale or other disposition of the Loan, Lead Bank will promptly account for and, as soon as collected, pay over to each Participant its Participation Loan Share. Participants shall have the right to an accounting for all moneys and/or other property received by Lead Bank in connection with the Loan and Lead Bank shall be deemed a trustee of each Bank's Participation Loan Share.

15. So far as the rights of Participants are concerned, the security for the Loan shall be deemed to be that hereinabove specifically described, together with any substitutions therefor agreed to by Banks.

16. In connection with the Loan, each Bank shall pay all of its own legal expenses and other expenses except to the extent that Borrower pays same. Banks agree and understand that any expenses incurred in connection with litigation (including, but not limited to, actions brought against any or all Banks by Borrower or outside parties relative to Loan) and/or foreclosure proceedings will be paid by each Bank in accordance with its Participation Loan Share.

17. In case at any time after the Loan is fully advanced, any Bank has payment or payments made to it (except by offset) on Loan in a greater proportion than such payments made on the participation held by the other Banks, the Bank so receiving such greater participation payment agrees to pay to Lead Bank the portion of such payment which exceeds the receiving

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Bank's Participation Loan Share thereof and Lead Bank shall distribute such payment to the Banks in such amounts as shall result in the same participation by each Bank in the aggregate principal amount of the Loan outstanding as existed immediately prior to such disproportionate payment or payments. If any Bank shall be required to refund any amounts which have been paid or received on account of Loan for its participation, then the other Banks shall repurchase their Participation Loan Share of such refund for cash from such Bank. In case such payment or payments is disturbed by legal process or otherwise, appropriate further pro rata adjustments shall be made.

18. All Loan disbursements, including all sums which may have to be paid for taxes, assessments, or similar or dissimilar items, costs, expenses, attorneys' fees and other disbursements incurred in the protection of the security for the Loan or the enforcement of Bank's rights and remedies, or for or by reason of the acquisition, completion, operation, ownership or sale of the Mortgaged Premises in the event of the acquisition of title to collateral shall be made or borne by Banks in proportion to its or their Participation Loan Share.

19. (a) In the event that any Bank receives payment of indebtedness owing by Borrower in connection with the Loan by means of an offset, then such Bank shall deliver to Lead Bank as Lead and Lead Bank shall distribute an amount of money equal to the amount of such offset between the Banks for application to the following items and in the following order of priority:

(i) To the Bank delivering same, for reasonable expenses incurred in connection with such transaction;

(ii) To accrued and unpaid interest on the Note;

(iii) To reimbursement for any advances which shall have been made pursuant to this Agreement or the Mortgage; and

(iv) To the outstanding principal balance of the Note.

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(b) All funds applied pursuant to Subsections (ii), (iii) and (iv) of Section 19(a) shall be remitted to the Banks pro rata. However, if, following remittance of such money to the Bank, the offset is adjudged invalid and is set aside, then the Bank receiving such payment shall remit back to the Bank that received such offset a like amount of money.

20. Neither the execution of this Agreement, nor any sharing in the benefits and burdens of the Banks in respect of the Loan or in the proceeds and avails thereof, is intended to constitute, nor shall it be construed to constitute, the formation of a partnership or joint venture between or among the Banks, nor shall it be construed to be an extension of credit or a loan by Participant to Lead Bank or vice versa.

21. In the event foreclosure occurs or a deed in lieu thereof is delivered then title to the Project shall be taken in the name of Lead Bank as agent, assuming Lead Bank is not in default of its obligations hereunder or has not been removed as Lead, or its nominee approved by Banks and Lead Bank shall, either itself or through a managing agent selected by it (which may be an affiliate of Lead Bank), manage and operate the Project and sell the same upon such terms as hereinafter provided. All reasonable expenses of such operation shall be borne by the Banks in accordance with their Participation Loan Share. With the prior written consent of Required Lenders, Lead Bank may sell the Project at such price and upon such terms as may be approved in such written consent. Promptly after such sale the net cash proceeds shall be distributed between the Banks according to their Participation Loan Shares. Any purchase money mortgage taken in connection with such sale shall name Lead Bank and Participants or their nominees as mortgagees.

22. Should there be appointed for any Bank a receiver, conservator or trustee, or should there be any assignment of all or substantially all of the assets of any Bank (other than in its usual course of business), or should any bankruptcy or insolvency proceeding be taken by or against it under federal or state law, then the interest of such Bank (called for the purpose of this

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paragraph the "Insolvent Bank"), upon demand of the others, will vest in a proportion equal to a fraction, the numerator of which will be the amount Insolvent Bank has advanced and the denominator of which will be equal to the total amount ultimately advanced under the Loan Documents. Should the Loan not be fully advanced at the time of the insolvency, Lead Bank may proceed to advance the remaining amounts to be advanced under Loan Documents, acquiring a greater proportion of Loan or it may sell the balance of the Loan remaining to another financial institution. Should Lead Bank be the Insolvent Bank, it will assign to Participants or their designee the Loan Documents and Participants shall have the right to an accounting for all money and other property received by Lead Bank in connection with the Loan. Upon assignment of the Loan under this section, Participants or its designees shall become and be the Lead under this Agreement in the place and stead of Lead Bank, with all the powers and obligations conferred or imposed by this Agreement and Loan Documents but without any obligation as to acts committed or omitted to be taken prior to such assignment.

23. Wherever the context may require, any pronouns used herein shall include the corresponding masculine, feminine and neuter forms; and the singular form of any noun or pronoun shall include the plural and vice versa.

24. All notices directed to Lead Bank or Participants shall be sent to their respective offices at the addresses set forth in the preamble.

25. This Agreement and any right or liability arising hereunder shall be construed in accordance with the laws of the State of New York.

26. This Agreement together with the Loan Documents and commitment letter, set forth the entire agreement of the parties and cannot be modified, amended or discharged, nor can any provision thereof be waived, except by written instrument signed by the party or parties against whom enforcement of any such modification, amendment, discharge or waiver is sought.

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27. Upon the request of any Bank, this Agreement shall be recorded in the land records of the jurisdiction where the Project is located and upon any such request Lead Bank as Lead shall deliver to the Bank so requesting, execution counterparts of this Agreement so as to provide Participant with a fully executed counterpart hereof in recordable form.

28. No Bank makes or has made any representation (except as herein specifically set forth) or warranty to any of the others, and none assumes responsibility with respect to the legality, sufficiency, enforceability or collectibility of the Loan or any document relative thereto, or of any collateral held as security for the Loan but each Bank warrants that each has full power and authority to enter into this Agreement and to complete the transaction contemplated hereby. No Bank assumes any responsibility for the financial condition or credit worthiness of the Borrower, for the security value of any collateral, or for the performance of any obligations of the Borrower, or any other obligor or guarantor. Although Lead Bank will furnish Participant with copies of such documents as Lead Bank shall receive, Lead Bank assumes no responsibility with respect to the authenticity, validity or enforceability thereof.

Each Bank acknowledges that it has, independently and without reliance upon Lead Bank or any other Bank, and based on the financial statements prepared by the Borrower and such other documents and information as it has deemed appropriate, made its own credit analysis and investigation into the business, assets, operations, property, and financial and other condition of the Borrower and has made its own decision to enter into this Agreement and the other Loan Documents. Each Bank also acknowledges that it will, independently and without reliance upon Lead Bank or any other Bank, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in determining whether or not conditions precedent to closing any Loan hereunder have been satisfied and in taking or not taking any action under this Agreement and the other Loan Documents.

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29. The entire commitment fee payable under Loan shall be paid to and retained by Banks in the same percentage as each Bank's Participation Loan Share.

30. This Agreement may be executed in any number of counterparts, but all of such counterparts shall be deemed to constitute one instrument.

31. The Participants agree to reimburse and indemnify Lead Bank, ratably in proportion to their respective Participation Loan Shares, for (i) any amounts not reimbursed by the Borrower for which Lead Bank is entitled to reimbursement by the Borrower under this Agreement or the other Loan Documents, (ii) any other expenses incurred by Lead Bank on behalf of Banks in connection with the preparation, execution, delivery, administration, amendment, waiver and/or enforcement of this Agreement and the other Loan Documents, and (iii) any liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind and nature whatsoever which may imposed on, incurred by or asserted against Lead Bank in any way relating to or arising out of this Agreement or the other Loan Documents or any other document delivered in connection therewith or any transaction contemplated thereby, or the enforcement of any of the terms hereof or thereof, provided that no Participant shall be liable for any of the foregoing to the extent that they arise from the gross negligence or willful misconduct of Lead Bank. If any indemnity furnished to Lead Bank for any purpose shall, in the opinion of Lead Bank, be insufficient or become impaired, Lead Bank may call for additional indemnity and cease, or not commence, to do the action indemnified against until such additional indemnity is furnished.

32. With respect to its Participation Loan Share as a Bank, Lead Bank shall have the same rights and powers hereunder and under any other Loan Document as any Bank and may exercise the same as though it were not the Lead, and the term "Bank" or "Banks"' shall, unless the context otherwise indicates, include Lead Bank in its individual capacity. Lead Bank may accept deposits from, lend money to, and generally engage in any kind of banking or trust

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business with the Borrower or any subsidiary or affiliate of the Borrower as if it were not the Lead hereunder.

33. Lead Bank may resign as Lead at any time by giving thirty (30) days' prior written notice to the Banks and Borrower. The Required Lenders, for good cause, may remove Lead Bank as Lead at any time by giving thirty (30) days' prior written notice to Lead Bank, the Borrower and the other Banks. Upon any such resignation or removal, the Required Lenders shall have the right to appoint a successor Lead. If no successor shall have been so appointed by the Required Lenders and accepted such appointment within thirty (30) days after the retiring Lead's giving notice of resignation or the Required Lenders' giving notice of removal, as the case may be, then the retiring Lead may appoint, on behalf of the Borrower and the Banks, a successor Lead. Each such successor shall be a financial institution which meets the requirements of an Eligible Assignee. Upon the acceptance of any appointment as Lead hereunder by a successor such successor Lead shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Lead, and the retiring Lead shall be discharged from its duties and obligations hereunder and under the other Loan Documents. After any retiring Lead's resignation hereunder, the provisions of this section shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as the Lead hereunder.

34. If for any reason any Bank shall fail or refuse to abide by its obligations under this Agreement, including without limitation its obligation to make available to Lead Bank its pro rata share of any Loan, expenses or setoff (a "Delinquent Lender") and such failure is not cured within ten (10) days of receipt from Lead Bank of written notice thereof, then, in addition to the rights and remedies that may be available to Lead Bank, other Banks, the Borrower or any other party at law or in equity, and not at limitation thereof, (i) such Delinquent Lender's right to participate in the administration of, or decision-making rights related to, the Loan, this

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Agreement or the other Loan Documents shall be suspended during the pendency of such failure or refusal, and (ii) a Delinquent Lender shall be deemed to have assigned any and all payments due to it from the Borrower, whether on account of Loan, interest, fees or otherwise, to the remaining non-delinquent Banks for application to, and reduction of, their proportionate shares of Loan until, as a result of application of such assigned payments the Banks' respective pro rata shares of Loan shall have returned to those in effect immediately prior to such delinquency and without giving effect to the nonpayment causing such delinquency. The Delinquent Lender's decision-making and participation rights and rights to payments as set forth in clauses (i) and (ii) hereinabove shall be restored only upon the payment by the Delinquent Lender of its pro rata share of Loan proceeds or expenses as to which it is delinquent, together with interest thereon at the Prime Rate from the date when originally due until the date upon which any such amounts are actually paid.

The non-delinquent Banks shall also have the right, but not the obligation, in their respective, sole and absolute discretion, to acquire for no cash consideration, pro rata, based on the respective Participation Loan Shares of those Banks electing to exercise such right the Delinquent Lender's commitment to fund future loans, if any (the "Future Commitment"). Upon any such purchase of the pro rata share of any Delinquent Lender's Future Commitment, the Delinquent Lender's share in future loans and its rights under the Loan Documents with respect thereto shall terminate on the date of purchase, and the Delinquent Lender shall promptly execute all documents reasonably requested to surrender and transfer such interest, including, if so requested, an Assignment and Acceptance. Each Delinquent Lender shall indemnify Lead Bank and each non-delinquent Bank from and against any and all loss, damage or expenses, including but not limited to reasonable attorneys' fees and funds advanced by Lead Bank or by any non-delinquent Bank, on account of a Delinquent Lender's failure to timely fund its pro rata share of Loan or to otherwise perform its obligations under the Loan Documents.

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35. This agreement shall inure to the benefit of and be binding upon Banks and their respective successors and assigns.

IN WITNESS WHEREOF, the parties have caused these presents to be executed the day and year first above written.

[LEAD BANK]

By:_____

[PARTICIPANT]

By:_____
Name:
Title:

STATE OF NEW YORK,)
: ss.:
COUNTY OF .)

On the day of _____in the year _____ before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

_____
Notary Public

STATE OF NEW YORK,)
: ss.:
COUNTY OF .)

On the day of _____ in the year _____before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

_____
Notary Public

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EXHIBIT "A"

PARTICIPATION CERTIFICATE

Certificate No. Date:

[LEAD BANK] hereby certifies that **[PARTICIPANT]** has purchased an undivided participation interest in a certain mortgage loan pursuant to the terms and conditions of that certain Participation Agreement, dated _____ by and between **[LEAD BANK]** and **[PARTICIPANT]**.

[LEAD BANK] certifies to the above **[PARTICIPANT]** that there has been advanced to date under the mortgage loan, the aggregate principal sum of $_____ and that Participant's Participation Loan Share (as described in the Participation Agreement) thereof is ____%.

[LEAD BANK]

By:_____
Name:
Title:

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