
Title of Document

**AMENDED AND RESTATED LOAN SERVICING AND
ASSET MANAGEMENT AGREEMENT**

Parties

**Lehman Brothers Holdings Inc.,
For Itself and on Behalf of its Subsidiaries**

TriMont Real Estate Advisors, Inc.

Date

As of September 1, 2004

ATLANTA:4661030.7

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**AMENDED AND RESTATED LOAN SERVICING AND
ASSET MANAGEMENT AGREEMENT**

Introduction

This **AMENDED AND RESTATED LOAN SERVICING AND ASSET MANAGEMENT AGREEMENT** (the "**Agreement**") is dated and effective as of September 1, 2004. The parties are **LEHMAN BROTHERS HOLDINGS INC.**, a Delaware corporation, for itself and on behalf of its subsidiaries and affiliated entities ("**Lehman**") and **TRIMONT REAL ESTATE ADVISORS, INC.**, a Georgia corporation ("**TriMont**"). The address and principal place of business and telephone and telecopier numbers of the parties named above are set forth in Section 12.2. Exhibit A to this Agreement sets forth the definitions of capitalized words and phrases used in this Agreement as well as rules for interpreting other words and phrases.

Background

A. Lehman has acquired and will acquire mortgage and mezzanine loans and participations therein, real property, equity interests in joint ventures, and related assets and collateral.

B. TriMont was formerly known as Hatfield Philips, Inc., and originally had been servicing specified mortgage and mezzanine loans on behalf of Lehman and managing Lehman's investments in certain real estate joint ventures and other real estate assets pursuant to the Performing Loan Servicing Agreement, dated as of September 1, 1997, as amended and restated on December 15, 1998 ("Original 1998 Agreement").

C. Subsequently, Lehman and Hatfield Philips Inc. restated and replaced the Original 1998 Agreement in its entirety pursuant to that certain Loan Services and Asset Management Agreement, dated as of January 1, 2002, which was subsequently amended pursuant to that certain First Amendment to Loan Servicing and Asset Management Agreement, dated and effective as of February 25, 2003, and that certain Second Amendment to Loan Servicing and Asset Management Agreement, dated and effective as of February 25, 2003 (as so amended, the "Original Servicing Agreement").

D. In order to consolidate the Original Servicing Agreement into a singular document and to effectuate certain further amendments to the Original Servicing Agreement, Lehman and TriMont now desire to restate and replace the Original Servicing Agreement in its entirety pursuant to this Agreement.

E. In consideration of the foregoing and the respective representations, warranties, covenants, and agreements set forth herein, Lehman and TriMont agree to the following terms and conditions.

Terms and Conditions

ARTICLE I

APPOINTMENT OF TRIMONT; SCOPE OF ACTIVITIES

Section 1.1 Appointment. Lehman hereby engages TriMont as an independent contractor to act on Lehman's behalf to service the Loans and to manage the Real Estate Interests and other Assets owned or held by Lehman and TriMont hereby accepts its engagement by Lehman, in each case subject to all the terms, conditions and limitations stated in this Agreement.

Section 1.2 Assets Covered by Agreement.

(a) Loans. TriMont shall service the Loans listed on Schedule 1 attached to this Agreement and any additional Loans made to borrowers (wherever organized) with respect to real estate properties located in North America that Lehman shall make or acquire during the term of this Agreement and that Lehman designates and TriMont accepts for servicing under this Agreement in accordance with subsection (c) or as otherwise designated to be subject to this Agreement pursuant to a separate written agreement between the Parties.

(b) Real Estate Interests. TriMont shall manage the Real Estate Interests listed on Schedule 2 attached to this Agreement and the additional Real Estate Interests and other Assets located in North America that Lehman shall acquire during the term of this Agreement and that Lehman designates and TriMont accepts for management under this Agreement in accordance with subsection (c) or as otherwise designated to be subject to this Agreement pursuant to a separate written agreement between the Parties.

(c) Assets Deemed Subject to Agreement. All additional Loans, Real Estate Interests and other Assets listed in (i) the Debt and Equity Cash Flow Reports that TriMont sends to Lehman on a monthly basis pursuant to this Agreement or (ii) a separate written agreement between the Parties shall be deemed to have been designated by Lehman and accepted by TriMont for servicing and management pursuant to subsections (a) and (b) of this Section unless, in the case of the reports under clause (i), either TriMont or Lehman sends a Notice objecting to inclusion of any such Asset in that report within thirty (30) days after TriMont has delivered the relevant report to Lehman.

Section 1.3 General Requirements. TriMont shall service the Loans and manage the Real Estate Interests on behalf of Lehman in accordance with all terms, conditions and limitations stated in this Agreement. TriMont shall also review the requirements of this Agreement applicable to the Assets listed in Schedules 1 and 2 and apply those requirements in the future to the Assets listed therein to the extent necessary.

Section 1.4 Special Requirements. Lehman may, at the time it designates a new Asset for servicing or management, state special requirements that will apply to that Asset and those requirements shall apply if TriMont accepts the Asset for servicing or management pursuant to this Agreement. Lehman may, from time to time, request in writing that TriMont comply with additional reasonable requirements not stated in this Agreement for one or more Assets, and

TriMont agrees that it will comply with such additional requirements, subject to the provisions of Section 7.11 regarding possible adjustment in the compensation payable to TriMont.

Section 1.5 Reservation of Authority. Lehman as the owner of the Assets reserves and retains the right to act directly at any time on its own behalf with respect to any Asset, to engage or retain directly contractors, sub-contractors, appraisers, attorneys and other Persons to perform work or services on all or a portion of any Asset and to direct TriMont's actions regarding any Asset at any time for any reason in Lehman's sole and absolute discretion.

Section 1.6 Activities Outside North America. This Agreement does not and shall not apply to loans, real estate interests and other assets made or located outside of North America.

Section 1.7 Coordination with Securitization. Lehman and TriMont recognize that some of the Loans, Real Estate Interests and other Assets covered by this Agreement have been, or shall in the future be, included by Lehman in one or more Securitization Transactions initiated, sponsored or underwritten by Lehman. Lehman and TriMont confirm that existing and future Loans, Real Estate Interests and other Assets covered by this Agreement will also be included in Securitization Transactions, for some of which TriMont may act as master servicer, sub-servicer and/or special servicer. Each Securitization Transaction has been or will be described in and subject to the detailed terms, conditions and limitations set forth in the applicable Securitization Documents and those provisions will not be repeated in this Agreement. TriMont will in general set up the Accounts and the Records so as to facilitate the addition of each Asset to a Securitization Transaction. While an Asset in which Lehman retains an ownership or other interest is covered by Securitization Documents, TriMont shall continue to comply with the requirements of this Agreement applicable to that Asset to the extent TriMont is able to do so without violating any provision of the Securitization Documents. In case of any inconsistency or conflict between a provision of this Agreement and any provision in the Securitization Documents, the Securitization Documents shall control except as to Fees, in which case Section 7.9 and other applicable provisions of this Agreement shall control.

Section 1.8 Other Existing Business Activities of TriMont Other Than Lehman Engagement. TriMont represents that it has disclosed to Lehman all material data regarding loan servicing, asset management and other activities or business investments that it or its Affiliates currently performs or has performed for itself or its Affiliates on behalf of Persons other than Lehman and its Affiliates.

Section 1.9 Other Servicers Engaged by Lehman. Lehman shall have the right to appoint one or more loan servicers and asset or property managers to service loans or manage real estate interests that Lehman makes or acquires at any time for any reason in its sole and absolute discretion. TriMont acknowledges that Lehman has had and shall continue to have this right and agrees in general to cooperate fully with Lehman and those other loan servicers and asset or property managers to the extent requested by Lehman or required by any other provision of this Agreement.

Section 1.10 Replacement of Original Servicing Agreement. The Original Servicing Agreement between Lehman and TriMont is hereby terminated and replaced in its entirety by this Agreement for all purposes, except that Lehman shall pay to TriMont all compensation

accrued and owing to TriMont under the terms of the Original Servicing Agreement and the indemnification provisions set forth in Article 10 shall apply to all assets and activities covered by the Original Servicing Agreement. All other provisions of the Original Servicing Agreement that stated they were to survive the termination of the Original Servicing Agreement have been provided for in this Agreement and TriMont and Lehman agree that those provisions are hereby terminated.

ARTICLE II

STANDARDS APPLICABLE TO TRIMONT'S ACTIVITIES

Section 2.1 General Standards. Subject to the other terms and conditions of this Agreement, TriMont shall in general diligently perform its obligations under this Agreement in good faith in the best interests of Lehman in accordance with the following standards, giving priority to them in the following order:

- (a) applicable law,
- (b) the express terms of this Agreement,
- (c) any reasonable direction or authorization given by Lehman to TriMont,
- (d) the Existing Lehman Procedures and any New Lehman Procedures described in Section 4.4(b),
- (e) the express terms of any applicable Resolution Plan,
- (f) with respect to Mortgage Loans, mortgage loan servicing standards for commercial and/or multifamily mortgage loans (whether performing or in default) and their related properties that are customarily employed by prudent institutional loan servicers with respect to mortgage loans comparable to the Mortgage Loans and mortgaged properties and with a view to the appropriate maximization of timely recovery of principal of, interest on and all other amounts due under the Mortgage Loans ("Mortgage Loan Servicing Standards"),
- (g) with respect to Mezzanine Loans, loan servicing standards for mezzanine loans (whether performing or in default) that are customarily employed by prudent institutional loan servicers with respect to a mezzanine loan comparable to the Mezzanine Loans (taking into account the particular type of Mezzanine Loan, the provisions of any senior loan documents and applicable intercreditor or comparable agreements and the collateral securing such Mezzanine Loan) with a view to the appropriate maximization of timely recovery of principal of, interest on and all other amounts due under the Mezzanine Loans ("Mezzanine Loan Servicing Standards"), and
- (h) with respect to the Real Estate Interests and other Assets, asset management servicing standards that are customarily employed by prudent institutional asset managers who manage real estate properties and other interests and assets comparable to the Real Estate Interests and other Assets with a view toward the appropriate maximization of the revenue, profit and cash flow from the Real Estate Interests and the other Assets and the timely

recovery of all amounts that Lehman has invested in the Real Estate Interests and the other Assets ("Asset Management Standards").

Section 2.2 Conflicts of Interest. TriMont shall conduct its activities and comply with its obligations under this Agreement without regard to any interest that TriMont or one of its Affiliates may have in the Asset or with a Person other than Lehman who is a Mortgagor or Guarantor of a Loan or the holder of a partial ownership or equity interest in a Real Estate Interest.

ARTICLE III

ACCOUNTS; ADMINISTRATION OF FUNDS

Section 3.1 Account Setup. TriMont shall establish and maintain all escrow, reserve and other accounts required by the Loan Documentation for a Loan ("Special Accounts") promptly after the Loan becomes subject to this Agreement. TriMont shall also establish and maintain for purposes of this Agreement one or more general accounts ("Central Account") into which TriMont shall deposit promptly after their receipt all funds that TriMont receives for or on account of Lehman and that are not required to be deposited into a Special Account. Each Special Account and the Central Account (a) shall bear interest or be invested to the extent required by the Loan Documents or other applicable documents or Approved by Lehman (except to the extent as to any such account the minimum balance maintained, number of withdrawals per month or other limitations under the applicable depository account agreements with the depository bank preclude from time to time the earning of such interest) and (b) shall be opened only in banks or other financial institutions Approved by Lehman in a general authorization or for a particular purpose in a specific transaction. Lehman acknowledges its Approval of Wachovia Bank, National Association and Lehman Brothers Bank, FSB as acceptable depositories for the Central Account and all other accounts referred to in this Agreement. Upon thirty (30) days prior Notice to TriMont, Lehman may terminate its Approval of one or both of the banks named in the preceding sentence or add one or more banks to the list of acceptable depositories at any time and from time to time without the approval of TriMont and in the sole and absolute discretion of Lehman. The Special Accounts and the Central Account are sometimes referred to below as an "Account."

Section 3.2 Account Title. Each Account, as appropriate, shall be in the name of the applicable borrower party for the benefit of Lehman or its Affiliate who made the Loan or shall be in the name of Lehman or its Affiliate who owns the Asset, and shall be set up with such title and with respect to any such Loan in such form as is necessary to evidence the control by Lehman of all funds in such Account as necessary to establish and perfect any security interest therein in favor of Lehman or such Affiliate of Lehman. If Approved by Lehman, an Account can be established in the name of TriMont "in trust for" or "for the benefit of" Lehman or its Affiliate who made the Loan or owns the Asset or some other designation that will reflect that all funds in the Account are owned by Lehman or its Affiliate solely and exclusively and are not property or assets of TriMont for any purpose, including bankruptcy, reorganization or similar proceedings involving TriMont.

Section 3.3 Account Signatures. Only those Persons nominated by TriMont and Approved by Lehman ("Account Signatories") shall have authority to withdraw funds from the Accounts in any manner, whether by writing checks on the Account, wiring funds from the Account to other Persons or otherwise. TriMont and Lehman shall update the list of Account Signatories at least once each calendar year and more frequently as required. Lehman may require that more than one Account Signatory must Approve withdrawals from an Account in specified amounts, for stated purposes or other reasons.

Section 3.4 Termination of Account Signatory Authorization. Lehman may terminate the authority of all Account Signatories and appoint new or replacement Account Signatories (who may be solely employees or designees of Lehman) at any time for any reason in its sole and absolute discretion by giving a Notice to TriMont and the bank or other financial institution holding the Account. If Lehman sends such a Notice, TriMont shall immediately advise the Account Signatories whose authority has been terminated of that action by Lehman and shall immediately sign all documents and take whatever other action is necessary to carry out Lehman's directions regarding Account Signatories.

Section 3.5 Deposits into Accounts.

(a) Receipts by TriMont. Immediately after TriMont identifies the purpose for which it received the funds, TriMont shall deposit all funds that it receives into the proper Special Account or, if no Special Account is identified, into the Central Account. TriMont shall use its commercially reasonable efforts to cause or direct all payments with respect to all Assets in connection with principal, interest, fees, return of or on capital, and any other amounts that are (in the aggregate) greater than \$1,500,000 to be made directly to Lehman to an account that Lehman designates in a Notice to TriMont. If TriMont itself receives any such amount in excess of \$1,500,000, TriMont shall use commercially reasonable efforts to transfer to Lehman all such funds on the day of receipt, but shall in no event make such transfer later than the second Business Day following receipt.

(b) Receipts by Lehman. Lehman shall retain all funds and other payments that Lehman receives directly from a Borrower, Guarantor or other Person. Lehman shall, however, promptly notify TriMont by e-mail not later than the next Business Day following receipt of its receipt of all amounts paid directly to it so that TriMont can maintain proper Records regarding such payments.

Section 3.6 Payments from Accounts. TriMont is hereby authorized to make all payments of escrow requirements, real estate taxes, third party debt service, insurance premiums, disbursements for attorneys, accountants and other professional fees and other out-of-pocket disbursements, and all other payments if and to the extent required by (a) the Loan Documentation, (b) the documents governing the Real Estate Interests, (c) any applicable Business Plan or Budget Approved by Lehman and (d) any other plan or document Approved by Lehman, in each case on or before the due dates.

Section 3.7 Weekly Projections of Receipts and Disbursements. TriMont shall prepare and deliver to Persons designated by Lehman on a weekly basis a written projection of all amounts of receipts and disbursements that TriMont expects to make or receive with respect

to any Asset covered by this Agreement pursuant to the Loan Documentation or this Agreement during such week. TriMont shall use commercially reasonable efforts to deliver the written projection by 5:00 p.m. on the first Business Day of each week during the Term of this Agreement (but in no event later than 3:00 p.m., Eastern Standard or Daylight Savings Time, as appropriate, on the second Business Day of the such week).

Section 3.8 Payment of Fees. On or after the 15th day of each month, TriMont is authorized to withdraw from the Central Account only (and not from any Special Account or from funds received by TriMont pursuant to this Agreement but not yet deposited into the Central Account or any Special Account) and pay to itself all or part of the Fees and expenses payable to TriMont as described in Article 7 with respect to that month, subject to adjustment as provided in Section 7.12.

Section 3.9 Commingling. Amounts that TriMont holds for the purpose of paying real estate and other taxes, insurance premiums and any other requirement under any Loan Documentation or otherwise requested by Lehman may be commingled into one Account to the extent that TriMont determines that such commingling is permitted by the applicable Loan Documentation and other documentation and by applicable law; provided, however, no such amounts may be commingled with any funds held by TriMont for any party that has engaged TriMont other than Lehman and its Affiliates. TriMont shall, however, pay or apply funds that are so commingled only for the specific purpose for which they are being held and no other. Interest earned on such commingled funds shall be allocated as promptly as practicable to the appropriate Loan, Real Estate Interest and other Assets to the extent required by relevant Loan Documentation or other agreements. All other interest on commingled funds that is not required to be so allocated shall be paid or credited to Lehman. Except to the extent stated above, funds held by TriMont pursuant to this Agreement shall immediately be deposited into the proper Account and shall not be commingled at any time with funds of TriMont or any other Person except to the extent expressly authorized by this Agreement.

Section 3.10 Delivery of Funds to Lehman. TriMont shall promptly deliver to Lehman or its designee all or a specified portion of the funds in the Accounts or held by TriMont on behalf of Lehman pursuant to this Agreement promptly after (a) the end of the Term of this Agreement, (b) the earlier termination of this Agreement pursuant to Article 9 or (c) Notice to TriMont by Lehman in its sole and absolute discretion.

Section 3.11 Setoff. TriMont hereby waives and releases any right of setoff or comparable right it may have against funds of Lehman that are held in the Accounts or directly by TriMont with respect to any Settlement Payment or partial transfer payment pursuant to Article 9, but not otherwise. TriMont shall give prompt Notice to Lehman of all amounts that it sets off.

Section 3.12 No Lien on Assets and Accounts. TriMont agrees that it shall not create, incur or subject any Assets, or any funds that are deposited in any custodial Account, escrow Account or other Account provided for in this Agreement, or any funds that otherwise are or may become due or payable to Lehman, if applicable, to any claim, lien, security interest, judgment, levy, writ of attachment or other encumbrance, nor assert by legal action or otherwise any claim

or right of setoff against any Assets or any funds held by TriMont or in Accounts or provided for in this Agreement, except to the extent permitted by Section 3.11.

Section 3.13 Review of Account Procedures. At least once each calendar year, TriMont and Lehman shall review the Account policies, practices and procedures described in this Article and, if either or both of them propose one or more changes, shall negotiate in good faith to agree on appropriate modifications to one or more provisions of this Article. If the Parties agree on revisions to this Article, the Parties shall sign an amendment to this Agreement or another written document to memorialize the change(s). If the Parties fail to agree on all changes requested, any provision in dispute or under discussion shall remain in effect as before. Any modification of this Article shall be subject to possible adjustment pursuant to Section 7.11 in the compensation payable to TriMont.

ARTICLE IV

TRIMONT'S SERVICING AND MANAGEMENT AUTHORITY AND DUTIES

Section 4.1 Power and Authority. Subject to the terms, conditions and limitations stated in this Agreement, TriMont shall have full power and authority to do any and all acts or things that it may deem necessary or desirable in connection with the servicing, management and administration of the Assets.

Section 4.2 Evidence of TriMont's Authority. Lehman shall execute and deliver or cause to be executed and delivered such powers of attorney, certificates and other documents as TriMont may reasonably request from time to time to evidence TriMont's authority to act for or on behalf of Lehman pursuant to this Agreement, to enable TriMont to service, manage and administer the Assets and otherwise to carry out its duties under this Agreement.

Section 4.3 Servicing and Management Procedures. In servicing, managing and administering the Assets, TriMont shall (i) employ procedures consistent with Accepted Servicing Practices, the Existing Lehman Procedures and any New Lehman Procedures, (ii) comply with the express requirements of this Agreement and (iii) comply with all applicable laws.

Section 4.4 Implementation of Lehman Policies and Procedures.

(a) Existing Lehman Procedures. Lehman has distributed to its own personnel, closing counsel and others as well as to TriMont the memorandum described in the table below. This memorandum set forth the policies and procedures that Lehman requires that the recipients observe regarding Lehman's due diligence, acquisition, ownership, securitization, payoff, disposition and other aspects of the Loans, Real Estate Interests and other Assets that are or may be covered by this Agreement.

<u>Date</u>	<u>Author</u>	<u>Description</u>
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REDACTED

These existing policies and procedures are sometimes referred to as the "Existing Lehman Procedures" in this Agreement.

(b) **New Lehman Procedures.** Lehman shall have the right to adopt new policies and procedures or other reasonable requirements relating to the reporting on or accounting for the Loans, the Real Estate Interests and the other Assets covered by this Agreement and to reasonably amend, update, expand, revoke or otherwise change the Existing Lehman Procedures, in each case at any time and from time to time in Lehman's sole and absolute discretion and without the Approval of TriMont but with, in all cases, sufficient Notice to TriMont. These new or revised policies and procedures are sometimes referred to as the "New Lehman Procedures" in this Agreement. If TriMont reasonably determines that TriMont's implementation or compliance with all or any portion of any New Lehman Procedures will result in increased work, cost or liability for TriMont, TriMont may at its option send to Lehman a Notice of its determination and of the amount(s) of additional compensation that TriMont requests that Lehman should pay to TriMont. If TriMont sends such a Notice, Lehman and TriMont shall negotiate in good faith for additional compensation to TriMont or other appropriate measure to resolve TriMont's concern pursuant to Section 7.11.

(c) **TriMont Compliance with Lehman Procedures.** TriMont shall comply with all Existing Lehman Procedures and subject to Lehman and TriMont agreeing upon the additional compensation to TriMont for complying with and sufficient Notice of New Lehman Procedures, any New Lehman Procedures and shall cause all current and new employees of TriMont and its Affiliates who perform services under this Agreement (1) to review the Existing Lehman Procedures promptly after the date of signing of this Agreement, (2) to review promptly any New Lehman Procedures adopted pursuant to subsection (b) of this Section, and (3) to comply with and implement in all respects applicable to TriMont the policies and procedures stated in the Existing Lehman Procedures that are applicable to TriMont and its services under this Agreement.

Section 4.5 TriMont Procedures Manuals.

(a) **Existing Procedures Manuals.** TriMont has advised Lehman that TriMont has previously prepared ~~and~~ distributed to its officers and employees certain policy and procedures manuals containing detailed instructions regarding the policies, procedures and practices to be observed by them when they provide services and comply with duties and obligations relating to the servicing of Loans and management of Real Estate Interests and other Assets on behalf of Lehman ("Procedures Manuals"). TriMont shall use commercially reasonable efforts to keep all Procedures Manuals in compliance with the requirements of this Agreement and Existing Lehman Procedures and New Lehman Procedures, when and if implemented by Lehman and applicable to TriMont.

(b) **Compliance.** TriMont shall use commercially reasonable efforts to manage and supervise each officer and employee of TriMont so as to cause each other officer

and employee of TriMont to comply fully and completely with the applicable requirements of this Agreement as reflected in the Procedures Manuals.

(c) **Training.** TriMont will conduct from time to time meetings, seminars and other training methods that are reasonably sufficient to train and inform existing and new officers and employees of TriMont regarding the applicable material requirements of this Agreement and the Procedures Manuals. Representatives of Lehman shall be entitled to participate in any of these training meetings, seminars or other methods.

(d) **Updating of Procedures Manuals.** TriMont will amend and update the Procedures Manuals as necessary from time to time to reflect fully and accurately (i) amendments to this Agreement, (ii) changes in Accepted Servicing Practices or adoption of New Lehman Procedures, (iii) reasonable changes requested by Lehman or (iv) any other changes that TriMont considers necessary or desirable for TriMont to carry out its responsibilities, duties and obligations in full conformity with the requirements of this Agreement.

(e) **Conflict between Agreement and Procedures Manual.** If a conflict exists between any requirement of this Agreement and any provision in a Procedures Manual, the requirement stated in this Agreement shall control.

Section 4.6 Collection and Review of Files. Promptly after the Transfer Date for each Asset to Lehman, TriMont shall assemble from Lehman's closing counsel and other appropriate sources and the Loan Files and the Real Estate Interest Files, review them and input information about each Asset in a computer database in accordance with specifications reasonably provided by Lehman or standard in the industry. TriMont shall use its commercially reasonable efforts to complete such review within three (3) months of the Transfer Date and in any case shall complete its review within six (6) months of the Transfer Date, unless prevented from completing such review by factors beyond TriMont's control, which factors shall be reported to Lehman.

Section 4.7 Scope of Review. TriMont's review of the Loan Files and Real Estate Interest Files shall include, but not be limited to, the following tasks, except as reasonably determined by TriMont to be unnecessary and undesirable for a particular Asset: (i) file review, data collection and data verification based upon tape and data formats established by Lehman and attached to this Agreement as Exhibit B; (ii) an initial review of each Asset, including any bankruptcy and litigation described or referenced in the applicable File and any other legal aspects of the Asset that sophisticated non-legal mortgage servicing personnel would be able to identify for the purpose of determining whether further review by legal counsel would be appropriate; (iii) identify and catalog all material real property, pledges of ownership and other equity interests, performance, completion and other guarantees and bonds, letters of credit and other credit enhancements, and other material collateral securing each Loan (but excluding non-material personal property and other ancillary and non-material collateral such as general intangibles taken as security in connection with a mortgage on any Asset); (iv) ascertain any additional funding requirements based upon physical inspections, engineering reports, environmental reviews and other available data, indicating specifically any estimates of value that may be included in any file; (v) undertake such other tasks that TriMont determines are

necessary or desirable; and (v) at Lehman's expense, undertake such other tasks that are determined by Lehman to be reasonably necessary or desirable after consultation with TriMont.

Section 4.8 Assistance with Asset Transfers. Promptly after the Transfer Date, TriMont shall arrange for, and effect the transfer to it of the servicing and management of the Assets required to be serviced under this Agreement. This shall include, but is not limited to, the following, except as reasonably determined by TriMont to be unnecessary and undesirable: (i) preparing and sending notices to Mortgagors, partners and other relevant Persons (including participants, insurance companies, tenants, the Internal Revenue Service and similar state authorities), real estate taxing authorities and other applicable governmental agencies; (ii) preparing and sending notices to any existing asset managers or sub-contractors; (iii) assisting in the physical transfer of the files to the applicable Persons; and (iv) transferring to Lehman or its designee relevant file information for the Assets.

Section 4.9 Asset Servicing Duties. TriMont agrees that, in addition to any obligations and responsibilities set forth elsewhere in this agreement, TriMont, shall be responsible to carry out and implement the following items relating to the servicing or management of Assets:

- (a) setting up servicing files, asset management files and computer systems for servicing and asset management;
- (b) setting up necessary and appropriate escrow, operating and bank accounts;
- (c) use of commercially reasonable efforts to collect payments of principal, interest and other amounts owed with respect to the Assets;
- (d) use of commercially reasonable efforts to obtain financial, informational or other statements required to be delivered with respect to the Assets;
- (e) if requested by Lehman, and at Lehman's expense, coordinate the obtaining of existing environmental, engineering, appraisal and all other reports regarding the economic value and condition of the Assets;
- (f) at Lehman's expense, causing the performance of environmental audits, structural inspections, appraisals or other reviews or inspections as TriMont deems necessary or as Lehman reasonably directs to determine the economic value and condition of the Assets;
- (g) at Lehman's expense, obtain an updated title report on Real Estate Interests and an updated lien and security interest report on each Mezzanine Loan or other Asset in or under which Lehman has a lien or security interest (i) annually for each such Asset in which Lehman's aggregate investment is \$10,000,000 or more and (ii) on each such Asset that becomes subject to Special Servicing within sixty (60) days thereafter;
- (h) at Lehman's expense, obtain appropriate evidence of the initial filing of UCC-1 financing statements or other documentation and the taking of other action necessary to perfect Lehman's security interest in all collateral securing each outstanding Mezzanine Loan

within ninety (90) days after the making of such Mezzanine Loan and (ii) on an annual basis thereafter, the continuation of perfection of Lehman's security interest in that collateral;

(i) arrangement of the issuance and maintenance, at Lehman's expense, of the necessary and appropriate insurance coverage on the underlying property comprising the Real Estate Interest or the property securing the Loans to the extent not maintained by the Borrower as described in Article 6;

(j) monitoring the compliance of all payment, insurance, escrow deposit and other obligations with respect to Assets;

(k) Tracking issuance of trust or comparable receipts by depositories or other custodians of Assets or documentation related to Assets and obtaining relevant data regarding exceptions, if any, stated in such receipts from law firms and other Persons retained or employed by Lehman; and

(l) performance of all related record keeping and other activities.

Section 4.10 Inspections and Asset Reviews. TriMont shall, at Lehman's expense, perform or cause to be performed such inspections, environmental audits, property evaluations, title searches, structural inspections and other reviews of inspection of the Mortgaged Properties and the underlying real estate comprising the Real Estate Interest at such times and in such manner as shall be consistent with Accepted Servicing Practices or as Lehman reasonably directs. TriMont shall conduct or cause to be conducted property inspections and, if requested by Notice from Lehman to TriMont and at Lehman's expense, appraisals (a) at least once in each twelve (12)-month period for each Asset and (b) with respect to any Asset that becomes subject to Special Servicing, within sixty (60) days thereafter. TriMont may rely on any environmental audits, inspection reports, appraisals, title searches and other materials that are in the Mortgage Files or Real Estate Interest Files, rather than Lehman incurring the costs of obtaining new ones, to the extent TriMont reasonably believes such information in the Mortgage Files or Real Estate Interest Files is current, reliable and accurate. Upon request, and at Lehman's expense, TriMont shall provide to Lehman copies of the written reports, including photographs, relating to all such inspections, appraisals and other reports.

Section 4.11 Taxes, Insurance and other Assessments. Subject to the accuracy of the records obtained from the related Mortgagors, TriMont shall maintain, or cause to be maintained, records accurate in all material respects with respect to each Mortgaged Property reflecting the amount and status of payment of ground rents, real estate, school and other taxes, assessments, water rates, sewer rates and other similar items that are or may become a lien on the Mortgaged Property and the amount and status of payment of standard hazard insurance policy premiums and other insurance premiums contemplated by Article 6 payable with respect to the Mortgaged Property. TriMont shall obtain from time to time all bills or invoices for the payment of such items (including in the case of insurance renewal premiums) and shall effect, or cause to be effected, payment of such bills or invoices prior to the applicable penalty or termination date, employing for such purpose funds in escrow Accounts as allowed under the terms of the related Loan Documentation. To the extent that a Mortgage Loan does not require a Mortgagor to make payments for taxes, standard hazard insurance policy premiums and similar items in escrow,

TriMont shall use its commercially reasonable best efforts in accordance with Accepted Servicing Practices and the applicable Loan Documentation to require that any such payments be made directly by the Mortgagor. If Lehman shall have deposited any amount in any escrow Account or directly advances for purposes of paying any delinquent Escrow Amounts with respect to any Mortgage Loans, then TriMont shall promptly remit to Lehman any such amounts so deposited in the escrow Account by Lehman upon payment of any such delinquent Escrow Amounts by the related Mortgagors. TriMont shall promptly send Notice to Lehman in each instance in which TriMont becomes aware of the fact that any unpaid item described in this Section has become a lien, security interest or other encumbrance upon a Mortgaged Property or any other Asset subject to this Agreement.

Section 4.12 Substitutions of Collateral. Except as otherwise provided in any Securitization Documentation as to which TriMont has been appointed as Servicer, TriMont may permit the Borrower to substitute collateral for all or a portion of the Mortgaged Property or any property securing the Loan, pledge additional collateral for the Loan or release part of the Mortgaged Property or any other property securing the Loan if TriMont shall have first determined, after completing such diligence as it deems necessary or appropriate, that such substitution of collateral, release of collateral or pledge of additional collateral is consistent with the Business Plan.

Section 4.13 Realization Under Defaulted Loans or On Other Assets.

(a) Foreclosure or Repossession. Subject to subsection 4.13(b) below, TriMont shall use its commercially reasonable efforts in accordance with Accepted Servicing Practices, the related Business Plan (unless otherwise directed in writing by Lehman) and Loan Documentation to foreclose upon, repossess or otherwise comparably take from the Borrower the ownership of Mortgaged Properties or any other property securing any Loan that is in default and as to which no satisfactory arrangements could be made for collection of delinquent payments.

(b) Environmental Assessment. Prior to completing any foreclosure, deed in lieu of foreclosure, repossession or other voluntary or involuntary proceeding that will or may result in Lehman's becoming the owner or operator of any Mortgaged Property or any other property securing a Loan, TriMont shall obtain at Lehman's expense a new or updated Phase I or comparable environmental report covering such Mortgaged Property or other property and deliver it promptly to the Deal Manager for the Loan. If that environmental report discloses no material environmental problem, TriMont may rely on such report and continue and complete any planned foreclosure or other proceeding. In the event the Phase I or comparable environmental report fails to disclose clearly or discloses inaccurately any material environmental problem, TriMont shall have no liability whatsoever to Lehman as a result of such error or as a result of TriMont's reasonable reliance upon such report. If the environmental report discloses one or more material environmental problems, TriMont shall (1) consult with the Deal Manager to formulate a plan of action to remediate or remove any existing environmental problem, (2) give Notice describing the plan of action in reasonable detail to Christopher S. McKenna, David S. Broderick, Anthony Barsanti and any other individual or department within Lehman as Lehman may designate for this purpose by Notice to TriMont, such Notice to be given at least ten (10) Business Days prior to the implementation of such plan of action, (3) assist the Borrower and the Deal Manager in implementing any remediation or removal plan described

in clause (1) and (4) not take or permit any action that would result in Lehman's becoming the owner or operator of such Mortgaged Property or other property until (y) the applicable remediation or removal plan has been completed or (z) Lehman otherwise consents to such actions. TriMont shall have no liability or obligation with respect to its implementation of or compliance with any plan of action Approved by Lehman as described in this subsection unless and only to the extent that TriMont has engaged in willful misconduct or is found to have been grossly negligent in connection with such implementation. Lehman shall indemnify TriMont pursuant to Section 10.2 against Losses caused by, resulting from or arising out of TriMont's implementation or compliance with any such plan of action except for those Losses caused by, resulting from or arising out of TriMont's willful misconduct or gross negligence as described in the preceding sentence.

Section 4.14 Authorization to Discharge Loan. Subject to Section 4.13 and Section 4.19, TriMont is hereby authorized and empowered, when TriMont believes it is appropriate in its best judgment and in accordance with Accepted Servicing Practices and the applicable Business Plans and Loan Documentation, to execute and deliver, on behalf of itself or Lehman, any and all instruments of satisfaction or assignment of mortgage without recourse or cancellation, or of partial or full release or discharge and all other comparable instruments, with respect to the Loans and with respect to the Mortgaged Properties or any other properties securing the Loans.

Section 4.15 Management of Equity Interests.

(a) Description. Equity Interests included in the Assets covered by this Agreement generally involve ownership by Lehman of real estate, buildings and other improvements with one or more partners or members who are not affiliated with Lehman through limited partnerships, limited liability companies or other legally-recognized entities that are not taxed as corporations for federal or state income tax purposes.

(b) General Responsibilities. TriMont shall be responsible on behalf of Lehman for managing and monitoring all aspects of Lehman's investment in Equity Interests, including all operations, construction and renovation activities, disputes with contractors, suppliers and others, procurement of insurance, payment of real estate and other taxes and other obligations, preparation of periodic business plans and budgets, and relationships with lenders and other creditors.

(c) Review of Documentation.

REDACTED

(d) Reporting and Other Requirements.

(e) Compliance.

REDACTED

(f) Notice of Problems.

(g) Major Decisions.

REDACTED

Section 4.16 Assets Subject to Special Servicing. An Asset shall become subject to "Special Servicing" and shall be a "Specially Serviced Asset" under this Agreement when one or more of the following events has occurred and is continuing with respect to that Asset:

(a) When an event of default has been declared under a Mortgage Loan or a Mezzanine Loan (whether or not payment of the principal and other amounts due under such Loan has been accelerated);

(b) When a Mortgage Loan or a Mezzanine Loan has matured and the principal, interest and all other amounts due under such loan have not been paid in full by the end of the second month after the maturity date;

(c) When a Mortgaged Property or other real property securing a Loan has become REO Property for purposes of this Agreement;

(d) With respect to an Equity Interest, when any problem that TriMont has deemed material by Notice to Lehman and with Lehman's Approval has continued for a period of ninety (90) consecutive days after the problem arose; or

(e) When TriMont or Lehman has requested in writing that an Asset become subject to Special Servicing and, if the request was made by TriMont, Lehman has Approved that request.

Schedule 1 identifies the Loans and Schedule 2 identifies the Real Estate Interests subject to Special Servicing at the date of this Agreement. TriMont shall promptly send a Notice to Lehman describing each Loan or other Asset that becomes subject to Special Servicing after the date of this Agreement.

Section 4.17 Specially Serviced Assets.

(a) Resolution Plans. TriMont shall submit a Resolution Plan substantially in the form attached as Exhibit C ("Resolution Plan") for Lehman's Approval covering each Loan, Equity Interest, Real Estate Interest and other Asset that becomes a Specially Serviced Asset pursuant to this Agreement within ninety (90) days after the date of execution of this Agreement and within ninety (90) days for each additional Asset that becomes a Specially Serviced Asset pursuant to Section 4.16. Upon written notification by Lehman to TriMont of the Approval of a Resolution Plan, TriMont shall commence the implementation of such Resolution Plan, including the application or execution of the method or methods of recovery specified in the Resolution Plan for a Specially Serviced Asset. TriMont shall not initiate any exercise of remedies or other action to recover collateral related to a Specially Serviced Asset, including the commencement of any action against a Borrower or Guarantor of a Loan to collect any deficient

portion of such Loan not recovered in connection with any foreclosure or deed in lieu of foreclosure transaction with respect to such Loan, unless such action is set forth in the approved Resolution Plan for such Specially Serviced Asset or Approved by Lehman.

(b) Updates. TriMont shall review and prepare a proposed update for each Resolution Plan no less than annually and modify the Resolution Plan at any time requested by Lehman or at any time when a material change to the Specially Serviced Asset has occurred, as determined by TriMont. Any proposal for the update or modification of a Resolution Plan shall be submitted to Lehman for Approval and include a report which details the status of the implementation of the Resolution Plan and include such recommendations for modifications to the Resolution Plans as TriMont or Lehman determines may be necessary or appropriate.

(c) Budgets.

REDACTED

(d) Estimated Cash Recovery Forecasts. Within ninety (90) days of the date of this Agreement and thereafter within forty-five (45) days of the end of the period ending on December 31, 2001 and each subsequent annual period, and at any time reasonably requested by Lehman after consultation with TriMont or at which time TriMont shall determine that a material change has occurred with respect to any Specially Serviced Asset until the termination of this Agreement (each such period, an "ECR Period"), TriMont will prepare and deliver to Lehman an estimated cash recovery forecast ("ECR") estimating the amount and timing of expected receipts from each Specially Serviced Asset or any particular Specially Serviced Asset, as the case may be, including payments of interest, principal, fees, rentals, other income and any expected proceeds of a sale or other disposition, for ECR Periods for the succeeding five years. Receipts should represent gross cash flow (netting of expenses or present value discounts should not be utilized); provided, however, that if the Agreement is terminated pursuant to Section 9.2 then TriMont will provide an updated ECR for each Specially Serviced Asset to the extent that there has been a material change to the applicable Specially Serviced Asset since the last ECR delivered to Lehman. The ECR should specify (x) the ECR Period in which each item of payment or proceeds is expected to be received and (y) the amount expected to be received in each ECR Period, except that any amount to be received at any time later than the last ECR Period will be allocated to such last ECR Period. In addition, with respect to REO Property, each ECR shall itemize, on an asset-by-asset basis and in the aggregate for each ECR Period, (i) gross expected cash flow from the sale of property, (ii) gross expected cash flow from rental or other activities, (iii) total expected operating expenses and (iv) total expected capital expenses.

(e) Meetings. TriMont and Lehman shall confer by telephone and meet at such times as Lehman shall reasonably request regarding the status of the Specially Serviced Assets. TriMont shall use its commercially reasonable efforts to make available at such conferences and meetings all relevant staff assigned to the Specially Serviced Assets being

considered so that they can discuss the status of the implementation of the Resolution Plans and all other relevant matters.

Section 4.18 Specific TriMont Duties for Specially Serviced Assets.

(a) Subject to Accepted Servicing Practices, the applicable Resolution Plans, the Existing Lehman Procedures and the Procedures Manuals and the discretion of TriMont concerning the appropriate execution of such Resolution Plans on an Asset by Asset basis, the general scope of TriMont's duties that TriMont agrees to provide pursuant to the terms and conditions of this Agreement as special servicer in respect of the Specially Serviced Assets includes, but is not limited to, the following:

- (1) customary loan servicing (including the initial servicing transfer);
- (2) Loan File reviews, site inspections and other appropriate due diligence;
- (3) enforcement of all rights and remedies under the Loan Documentation in accordance with the Resolution Plans;
- (4) investigation of Borrowers and other relevant Persons, properties, documents and electronic data relating to the Specially Serviced Assets;
- (5) collection of Loan payment and REO Property rents and revenues;
- (6) maintenance of cash receipt and disbursements books and records regarding the Specially Serviced Assets and consultation and cooperation with Lehman's Accountants in connection with their audit of Lehman's financial statements and their preparation of any federal, state and local income tax reports, returns and other filings that they may prepare for Lehman;
- (7) arrangement for and coordination of customary real property asset management services;
- (8) monitoring of and arrangements for payment of real property taxes and insurance;
- (9) hiring and supervision of contract service providers;
- (10) notification of Lehman upon knowledge of TriMont of any breach or default by Borrower;
- (11) preparation and delivery of default notices (in conjunction with counsel if necessary) in accordance with applicable law;
- (12) with respect to securitized loans or loans in financing facilities, acting as sub-servicer for the special servicer at Lehman's direction;

(13) with the prior Approval of Lehman, enforcement of all rights and remedies of Lehman under the Loan Documents or under the other documents governing Equity Interests, Real Estate Interests and other Assets;

(14) engagement of counsel with Lehman approval;

(15) performance of mortgage file reviews, site inspections and other appropriate diligence;

(16) asset disposition services (including the receipt, review, analysis and negotiation of offers and closing sales);

(17) monitoring and enforcement of the representations and warranties and rights and remedies under relevant agreements;

(18) coordination of all communications with Borrowers and other relevant Persons with respect to Specially Serviced Assets;

(19) restructuring or modification of the Loans relating to Specially Serviced Assets;

(20) check for and attempt to resolve deficiencies in the documentation relating to the Specially Serviced Assets; and

(21) assistance in connection with originating (but TriMont shall not be required to fund) loans to facilitate the disposition of REO Property.

(b) Lehman shall pay or reimburse to TriMont all costs and expenses paid or payable by TriMont directly or on behalf of Lehman for all services provided by Persons other than TriMont or its Affiliates pursuant to subsection (a).

Section 4.19 REO Property. In the event that title to any REO Property has been acquired or is acquired in respect of any Mortgage Loan by Lehman, then the deed or certificate of sale shall be issued to Lehman or to its designated Affiliate or nominee. TriMont shall use its commercially reasonable efforts to sell or take any other action with respect to any REO Property as expeditiously as possible in accordance with the applicable Business Plan or Resolution Plan. TriMont shall be responsible to carry out and implement, in each case, pursuant to and in accordance with the terms of this Agreement, the following items relating to the servicing of REO Properties:

(a) Arrange for and coordinate customary real property management services;

(b) Submit a business plan (including annual budget) to Lehman for Approval and implement the Approved business plan and update it at least annually;

(c) Assist with originating loans to facilitate disposition of REO Property;

- (d) Provide asset disposition services, including the retention of sales agents or brokers;
- (e) Monitor and arrange for payment of property taxes and insurance;
- (f) Collect REO property rents and revenues;
- (g) Coordinate all communications with respect to the REO property;
- (h) Use reasonable efforts to sell or take other action with respect to any REO property as expeditiously as possible in accordance with applicable Business Plan or Resolution Plan; and
- (i) Prior to sale or other disposition of REO property, retain independent contractors as needed for the operation and management of such property, and supervise such independent contractors.

Section 4.20 Securitization of Loans. In preparation for the inclusion of one or more Loans in a securitization, TriMont shall prepare asset summaries, historical and normalized statements of net operating income, lease summaries and lease expiration schedules in the form attached hereto as Schedule 3, which may be modified by Lehman from time to time subject to reasonable Approval by TriMont. TriMont shall also supervise and coordinate third party contractors with respect to property inspections, market study reports, environmental reports and other similar reports and inspections. In addition, TriMont shall use its commercially reasonable efforts to assist pursuant to reasonable directions from Lehman in the negotiation with the Borrower under each such Loan of any modifications (such as substituting a fixed interest rate for a variable one or extending the maturity date) that may be necessary so that such Loan will be eligible for securitization on terms specified by Lehman or one of its Affiliates.

Section 4.21 Securitization of Equity Interests. In preparation for the inclusion of one or more Equity Interests in a securitization, TriMont shall prepare asset summaries, historical and normalized statements of net operating income and projected net operating income in the form attached hereto as Schedule 4, which may be modified by Lehman from time to time subject to reasonable Approval by TriMont. TriMont shall also supervise and coordinate the activities of third party contractors with respect to property inspections, market study reports, environmental reports and other similar reports and inspections. In addition, TriMont shall use its commercially reasonable efforts to assist pursuant to reasonable directions from Lehman in the negotiation with Lehman's partners participating in each such Equity Interest that may be necessary so that such Equity Interest will be eligible for securitization on terms specified by Lehman or one of its Affiliates.

Section 4.22 Costs and Expenses. The Approved costs and expenses that relate to any Asset and that are to be paid by Lehman pursuant to the terms and conditions of this Agreement shall be paid from the available funds in the Central Account. If there are insufficient funds in the Central Account to pay for such Approved costs and expenses, TriMont may defer the performance of its duties and obligations related to such costs and expenses until such time as such funds become available; provided, however, if service has already been performed or a cost or expense has already been paid and, in each case, there is not sufficient funds in the Central

Account, Lehman shall pay such amount to TriMont within a reasonable time, but in no event more than sixty (60) days after the service was performed or the amount was paid.

Section 4.23 Transfers.

(a) Disposition of Assets by Lehman. Lehman reserves the right, subject to payment of any applicable fee to TriMont required by Section 9.2, to dispose or direct the disposition of the Assets, separately or in bulk, in compliance with the requirements of any Equity Documentation, Loan Documentation or Securitization Documentation or any other documentation, as applicable.

(b) Closing of Asset Transfers. TriMont shall provide assistance in connection with the closing on the transfer of any Assets, including assisting in the recording of assignments of the Mortgage Loans, the endorsement of the Mortgage Notes and the issuance of the title insurance policies, as requested by Lehman.

Section 4.24 Disposition of Assets. In addition to the other services and duties to be performed by TriMont, upon request by Lehman, TriMont will administer and coordinate the disposition of various Assets as designated by Lehman and, to the extent such services are requested by Lehman, TriMont and Lehman will agree on a case-by-case basis to a disposition fee to be paid by Lehman to TriMont in connection with such services.

Section 4.25 Qualification to Service or Manage. TriMont agrees that it shall, at its own expense, keep in full force and effect such licenses, permits, authorizations and other qualifications as are necessary for it and its officers and employees to perform their duties and obligations under this Agreement.

Section 4.26 TriMont's Status as Independent Contractor. The relationship between Lehman and TriMont created by this Agreement is purely a contractual one that is governed solely by the terms and conditions stated in this Agreement. All rights, benefits, duties and obligations of the Parties are set forth in this Agreement and neither Party shall have any duty or obligation to the other Party except for any implied obligation of good faith, fair dealing or other obligation implied under applicable law. Nothing in this Agreement shall be deemed or construed to create a partnership, joint venture or employer-employee relationship between the Parties. TriMont shall render services under this Agreement through its officers and employees as an independent contractor acting on its own behalf and for its own account. Except to the extent expressly stated in this Agreement or as expressly authorized by Lehman in writing, TriMont shall have no authority, express or implied, to act as agent of, or trustee or fiduciary for, Lehman or any of its Affiliates.

Section 4.27 TriMont Personnel.

(a) TriMont Responsible for its Own Employees. TriMont shall be solely responsible for (i) recruiting, hiring, managing and discharging all officers and employees of TriMont and (ii) paying all compensation and other benefits to the officers and employees of TriMont. No officer or employee of TriMont shall be, or be deemed to be, an officer or employee of Lehman or any of its Affiliates for any purpose. TriMont shall collect, pay and

remit to the proper governmental authorities all withholding, social security, unemployment and other taxes or amounts required by applicable law.

(b) **Benefits for TriMont Employees.** TriMont shall be solely responsible for paying or providing to its officers and employees all health, life, disability and other insurance, pension or other retirement benefits, vacation allotments and accruals, and all other benefits that TriMont chooses to provide to its officers and employees in TriMont's sole and absolute discretion. Lehman shall have no right, obligation or responsibility to participate in any way in any matter described in this subsection or subsection (a).

(c) **No Conflicts of Interests.** TriMont shall be responsible for maintaining the integrity, competence, experience, fitness and absence of conflicts of interest for its employees engaged in the performance of duties and obligations of TriMont pursuant to this Agreement. To facilitate the elimination of such conflicts of interest, or the inference of such impropriety, TriMont will implement and use commercially reasonable efforts to enforce policies and programs designed to maintain the confidentiality of Asset related information, including disposition strategies.

Section 4.28 Legal Counsel. TriMont shall use and engage only such legal counsel as it shall be directed by Lehman with respect to any Asset or group of Assets covered by this Agreement.

Section 4.29 Sub-Contractors.

(a) A list of all existing sub-contractors who have been retained by TriMont at the request of Lehman as of the date of this Agreement and a brief description of the service(s) they perform for TriMont with respect to the Assets is attached as Schedule 5. Lehman and TriMont each acknowledge and confirm that (1) TriMont retained the existing sub-contractors listed in Schedule 5 at the direction and request of Lehman and pursuant to terms and conditions that Lehman specified and (2) TriMont shall have no responsibility or obligation for determining whether the services of the existing sub-contractors listed in Schedule 5 were needed or continue to be needed.

(b) TriMont shall have the right to contract with any new sub contractor for the purpose of performing any of TriMont's duties and obligations described in this Agreement, provided, that:

(1) TriMont determines that one or more services are necessary for an Asset, determines that TriMont does not have the staff or expertise to perform the service(s) to be sub-contracted, gives Notice to Lehman of that determination and obtains Lehman's Approval to retain a new sub-contractor to perform such necessary service(s);

(2) TriMont uses reasonable care and diligence in the selection and supervision of the activities of the new sub-contractor; and

(3) the terms and conditions of any agreement with such new sub-contractor must be fully consistent with this Agreement.

(c) If an existing or new sub-contractor prepares any Report or other document required by this Agreement or the agreement with the sub-contractor, TriMont's personnel shall review such Report or document before it is finalized and delivered to Lehman to ensure that it is accurate and complete in all material respects and complies in all material respects with the applicable standards set forth in Section 2.1 and all other applicable provisions of this Agreement; and

(d) TriMont shall be solely responsible for the payment of the compensation of each existing and new sub-contractor out of Fees it receives under this Agreement and/or its own funds.

(e) TriMont shall be obligated and fully liable to Lehman with respect to all services undertaken by the sub-contractor to the same extent as if TriMont alone was performing all such duties and obligations, provided, that this requirement shall not apply to any sub-contractor retained by TriMont at the direction of Lehman or employed or retained by Lehman with respect to Assets serviced by TriMont, unless in either case TriMont directs or requests such sub-contractor to provide or take or refrain from providing or taking any service or other action. Notwithstanding the foregoing, in no event will TriMont be liable to Lehman for any act or omission of any sub-contractor undertaken pursuant to directions furnished by Lehman to such sub-contractor or TriMont.

ARTICLE V

REPORTS AND RECORDS

Section 5.1 Reports.

(a) **Asset Summary Reports.** TriMont shall prepare a document named and defined in this Agreement as an "Asset Summary Report" for each Asset subject to this Agreement. The content and form of the Asset Summary Report shall be in a form that is mutually agreed to by Lehman and TriMont from time to time. TriMont shall prepare and deliver to Lehman a fully updated Asset Summary Report for each Asset reflecting all relevant information regarding changes in such Asset (whether material or not), on or before the twelve-month anniversary of the date of the last full Asset Summary Report prepared and delivered to Lehman for such Asset. TriMont shall prepare and deliver to Lehman an Asset Summary Report for each new Asset covered by this Agreement within eight (8) months after such Asset becomes subject to this Agreement.

(b) **Additional Updates to Specific Asset Summary Reports.** In addition to any other Asset Summary Reports to be delivered to Lehman pursuant to this Section 5.1, TriMont shall prepare and deliver to Lehman a fully updated Asset Summary Report for the following categories of Assets: (1) each Asset for which Lehman's book or carrying value has materially changed from the value stated or reflected in the last Asset Summary Report for that Asset because or as a result of any material development, event or action (including the making by Lehman of any protective advance or additional loan or other funding or additional equity investment or other payment) not contemplated by the applicable Loan, Business Plan, Budget or other agreement or document with respect to such Asset, (2) an Asset that has experienced any

other material change (whether adverse or not) from the information shown in the last Asset Summary Report for that Asset delivered to Lehman pursuant to this Section, and (3) an Asset for which TriMont has conducted an inspection and/or review pursuant to Section 4.10. TriMont shall deliver each such updated Report to Lehman as soon as reasonably practicable after one or more of the conditions or events described in clause (1), (2) or (3) have been satisfied (but in no event later than thirty (30) days thereafter).

(c) Updates of Asset Summary Reports at Lehman's Request. In addition to any other Asset Summary Reports to be delivered to Lehman pursuant to this Section 5.1, TriMont shall prepare and deliver to Lehman an update of the last Asset Summary Report for a specified Asset as promptly as practicable after receiving Notice from Lehman requesting such update.

(d) Monthly Data Exports. TriMont shall prepare and delivery to Lehman on a monthly basis an export of key data elements, including all Lehman debt, equity and REO balance sheet investments managed by TriMont (the "Export"). The Export shall contain (i) all necessary identifying and characterizing fields (such as MTS number, position name, deal manager, type, location, etc.), (ii) market data to facilitate portfolio stressing based on historical simulation, (iii) components of the investments' capital structure along with current and projected values of associated collateral, (iv) details of the additional funds necessary to achieve property stabilization and/or Lehman's exit values along with the anticipated sources of those funds, (v) relevant dates such as maturity, extension, exit and stabilization, and (vi) structural terms of the investment. The Export shall include the index type, payment margin and rate, and accrual margin and rate should be included for Loans. The Export shall include structural data, including the ownership percentage, priority, preferred return rate, and split percentages applicable to Lehman's ownership position for Equity Interests. The Export shall contain variances from the prior monthly Export on significant data points and be accompanied by a variance report, as necessary.

The specific format of the Export may vary depending on Lehman's needs from time to time and may be delivered in one or more files; however, the content is expected to be materially consistent with the aspects described above.

(e) Additional Reports. TriMont shall prepare and deliver to Lehman such other additional regular and special reports that Lehman shall reasonably request, subject to the additional compensation provisions in Section 7.11 and Section 4.4(b).

(f) Persons to Receive Asset Summary Reports.

REDACTED

Section 5.2 Records.

(a) **Ownership of Records.** All books, records, accounts papers and documents, tax receipts, insurance policies and premium receipts, correspondence and other records of whatever kind or description, whether developed by TriMont or not, that relate to the Assets ("Asset Records") shall be and remain at all times the property of Lehman. Any such records that are in or come into the possession of TriMont are retained by TriMont solely for the purpose of TriMont's servicing duties and obligations as described in this Agreement. Upon termination of this Agreement and payment by Lehman to TriMont of all undisputed Fees and other undisputed amounts that are owed to TriMont pursuant to this Agreement, TriMont shall, in addition to complying with Section 9.5, immediately deliver all such records to or as directed by Lehman. TriMont shall immediately deliver such records to or as directed by Lehman, even if TriMont claims that Lehman owes disputed amounts to TriMont. TriMont agrees that it will not claim or assert in any manner or form any lien, security interest or other interest of any other type in any such records.

(b) **Record-Keeping.** TriMont shall maintain records, accurate and complete in all material respects, (including agreements and correspondence) with respect to its servicing of the Assets to the extent necessary or appropriate to evidence compliance by TriMont with this Agreement.

(c) **Access and Audit.** TriMont shall permit representatives, agents and Accountants of Lehman to examine, access and audit all Asset Records during regular business hours upon reasonable prior written notice.

(d) **Copies of Documents.** TriMont shall transmit to Lehman or the Custodian such documents and instruments coming into the possession of TriMont as from time to time are requested by Lehman and/or required by the terms of this Agreement to be delivered to Lehman or the Custodian at Lehman's expense.

(e) **Holding Period for Records.** TriMont shall maintain the Asset Records, including, but not limited to, approved Business Plans, approved Budgets, final recovery estimates and Final Recovery Determinations and records regarding Liquidation Proceeds, Liquidation Expenses, Property Improvement Expenses and Property Protection Expenses, until the earlier of (i) its termination as servicer pursuant to this Agreement and the transfer of such records to a successor servicer or as designated by Lehman, (ii) as to any Asset, three (3) years after the liquidation of such Asset or (iii) the expiration of the period of time during which such records are required by any governmental authority to be maintained or as required by the applicable accounting policies, if any.

Section 5.3 Assistance With Preparation of Tax Returns and Financial Statements. TriMont shall, to the extent such information is TriMont's possession, make available to Lehman and its Accountants upon reasonable notice such information regarding the Loans, Equity Interests, Real Estate Interests and other Assets subject to this Agreement as is necessary to provide for the timely preparation of quarterly and annual financial statements and tax returns, reports and information statements and tax related governmental filings for Lehman and its Affiliates. TriMont shall assist Lehman's Accountants in performing audits of Lehman, in

internal control reviews and such other procedures as such Accountants shall reasonably suggest. TriMont shall comply with the reasonable instructions of such Accountants and shall be entitled to rely on the instructions of the Accountants as being consented by Lehman absent express knowledge from a written instrument that such action is not permitted or consented by Lehman.

Section 5.4 Annual Officer's Certificate from TriMont. TriMont shall furnish an Officer's Certificate to Lehman on or before April 30 of each year to the effect that, with respect to the most recently ended fiscal year of TriMont, TriMont has performed its servicing and management obligations in compliance with the Uniform Single Audit Program for Mortgage Bankers and this Agreement in all material respects, except for such exceptions or errors as are set forth in such statement and such exceptions that, in the reasonable opinion of TriMont, the Uniform Single Audit Program for Mortgage Bankers does not require it to report.

ARTICLE VI

INSURANCE

REDACTED

REDACTED

ARTICLE VII

COMPENSATION TO TRIMONT; EXPENSES

REDACTED

REDACTED

REDACTED

REDACTED

ARTICLE VIII

ASSIGNMENT

Section 8.1 No Assignment or Delegation by Servicer. Except to the extent expressly provided in the next sentence, Section 4.29 or elsewhere in this Agreement, TriMont shall not assign or transfer any of its rights, benefits or privileges under this Agreement to any other Person, or delegate to or subcontract with, or authorize or appoint any other Person to perform any of the duties, covenants or obligations to be performed by TriMont under this Agreement without the specific and prior Approval of Lehman, which Lehman may withhold, delay or condition in its sole and absolute discretion. Lehman acknowledges that TriMont has at the date of this Agreement certain contracts with third parties that are listed in Schedule 5 to this Agreement and that TriMont entered into at the direction of Lehman. TriMont shall have the right to delegate or assign to or subcontract with or authorize or appoint an Affiliate of TriMont to perform and carry out any duties, covenants or obligations to be performed and carried out by TriMont under this Agreement. In no case, however, shall any such delegation, subcontracting or assignment to an Affiliate of TriMont relieve TriMont of any liability under this Agreement. Notice of such permitted assignment shall be given promptly by TriMont to Lehman.

Section 8.2 Assignment, Delegation and Other Actions by Lehman. Lehman may assign or transfer its rights, benefits or privileges under this Agreement at any time for any reason in Lehman's sole and absolute discretion and without the Approval of TriMont only to (a) an Affiliate of Lehman but only if Lehman remains responsible with such Affiliate for payment of all amounts owed to TriMont under this Agreement or (b) any Person who is not an Affiliate of Lehman and into whom Lehman merges or to whom Lehman sells all or substantially all of its total assets (and not just the Assets subject to this Agreement).

ARTICLE IX

TERM; TERMINATION

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

ARTICLE X
INDEMNIFICATION

REDACTED

ARTICLE XI
REPRESENTATIONS AND COVENANTS

REDACTED

REDACTED

ARTICLE XII

NOTICES

Section 12.1 Notices. All notices, consents, requests for Approval, demands, waivers or other communications required to be sent or otherwise applicable under this Agreement shall be in writing and shall be sent to each applicable Party, its or their legal counsel at the addresses set forth below (collectively referred to as a "Notice"). A Notice that complies with the requirements of this Section shall be deemed to have been duly given and received: (a) when delivered personally; (b) three (3) Business Days after being mailed, registered or certified mail, return receipt requested and with postage prepaid by the sender; (c) one (1) Business Day after being delivered to a reputable overnight courier service, marked for next day delivery and with delivery charges prepaid by the sender; or (d) on the first Business Day after receipt, if delivered by facsimile transmission to the facsimile number of the addressee shown below, if (1) receipt is

confirmed in writing by the sending facsimile machine and (2) the Notice is also sent by any means described in clause (a), (b) or (c) above.

Section 12.2 Addresses for Notices. Notices shall be sent and addressed as follows:

REDACTED

Section 12.3 Notice of Deadline. Any Notice given pursuant to this Agreement that sets forth a deadline or other time period within which the recipient must respond (which deadline is permitted by the express terms of this Agreement) shall state in capital letters at the top of the first page of the Notice and, if delivered in an envelope or other container or package, on the envelope or container: "URGENT - CORRESPONDENCE CONTAINS DEADLINE FOR RESPONSE" or words comparable in meaning. The failure of a Notice to comply with the requirement in the preceding sentence shall not, however, affect the validity of the Notice unless the recipient can demonstrate clearly that the failure to so comply was a material factor in the recipient's failure to respond by the deadline stated in the Notice.

Section 12.4 Change of Address. Each Party and its Permitted Successors shall have the right from time to time and at any time during the term of this Agreement to change its address for Notices or facsimile number by giving Notice of such claim to each other Party as provided in Section 12.2. Each Party shall have the right to specify as its address any other address located within the United States of America.

ARTICLE XIII

MISCELLANEOUS

Section 13.1 Entire Agreement. This Agreement, together with all Exhibits and Schedules, constitutes the entire agreement among the Parties pertaining to its subject matter. This Agreement supersedes any prior agreement or understanding among the Parties with respect to its subject matter (including the Original Agreement), but shall not amend, modify, supersede or in any way affect any other agreement or understanding among the Parties or their Affiliates that do not relate to the subject matter of this Agreement.

Section 13.2 Amendments. No provision of this Agreement may be amended, supplemented or waived except in a written instrument signed by Lehman and TriMont.

Section 13.3 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their Permitted Successors.

Section 13.4 No Third Party Beneficiaries. All other terms and provisions of this Agreement are for the sole and exclusive benefit of the Parties and their Permitted Successors and shall not be deemed to create any rights for the benefit of any other Person.

Section 13.5 Governing Law. This Agreement and all rights, benefits, privileges, obligations, liabilities and responsibilities of the Parties with respect to the subject matter of this Agreement under all legal and equitable theories (including contract, tort, strict liability or other basis and whether or not arising under or out of the provisions of this Agreement) shall be governed by, interpreted and enforced in accordance with the internal laws of the State of New York without regard to principles of conflicts of laws.

Section 13.6 Forum; Service of Process. Each Party hereby irrevocably (a) submits to the exclusive jurisdiction of any New York State or Federal court sitting in the County of New York (New York) in any action or proceeding arising out of or relating to this Agreement, the relations between the Parties and any matter, action or transaction described in this Agreement, (b) agrees that any such court shall have exclusive jurisdiction over such actions or proceedings, (c) waives the defense of inconvenient forum to the maintenance and continuation of such action or proceeding, (d) consents to the service of any and all process in any such action or proceeding by the mailing of copies (certified mail, return receipt requested and postage prepaid) of such process to them at their addresses specified in Section 12.2 and (e) agrees that a final and non-appealable judgment rendered by any such court in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

Section 13.7 Confidentiality.

(a) By TriMont. TriMont agrees that TriMont and its Affiliates will hold in confidence all information about the material terms and conditions of this Agreement, the acquisition, operation and disposition of the Assets, the Business Plans, Resolution Plans, disposition strategies and methods, schedules, reports, other formats, computer software, Mortgagor information and all other information and data coming into TriMont's possession or

otherwise coming to be known by it by virtue of its activities under this Agreement. TriMont agrees that TriMont and its Affiliates shall disclose such information, directly or indirectly, to Persons who are not parties to this Agreement, except (1) to TriMont's accountants, attorneys, lenders, rating agencies and others who have a need to know or have access to some or all of such information, (2) as may be Approved in writing by Lehman, (3) as may be compelled by law or by subpoena, order of court or other judicial process or governmental authority, in which event TriMont shall deliver to Lehman, prior to such disclosure, a Notice that such disclosure has been compelled, the basis for such disclosure being compelled and the nature of the information to be disclosed or (4) such information or data may be disclosed without Notice to or Approval by Lehman if and to the extent that such information is generally available to the public (other than as a result of a breach of this Agreement).

(b) By Lehman. Lehman agrees that Lehman and its Affiliates will hold in confidence all financial statements of TriMont delivered to Lehman pursuant to this Agreement and all other information regarding TriMont's ownership, operations, finances, taxes and other confidential information and data coming into Lehman's possession or otherwise coming to be known by Lehman by virtue of its activities under this Agreement. Lehman agrees that Lehman and its Affiliates shall not disclose such information, directly or indirectly, to Persons who are not parties to this Agreement, except (1) to Lehman's accountants, attorneys, lenders, rating agencies and others who have a need to know or have access to some or all such information, (2) as may be Approved in writing by TriMont, (3) as may be compelled by law or by subpoena, order of court or other judicial process or governmental authority, in which event Lehman shall deliver to TriMont prior to such disclosure a Notice that such disclosure has been compelled, the basis for such disclosure being compelled in the nature of the information to be disclosed or (4) such information or data may be disclosed without Notice to or Approval by TriMont if and to the extent such information is generally available to the public (other than as a result of a breach of this Agreement).

Section 13.8 WAIVER OF JURY TRIAL. EACH PARTY, FOR ITSELF AND ON BEHALF OF ITS AFFILIATES, HEREBY WAIVES ITS RIGHT TO TRIAL BY JURY IN ANY ACTION, LAWSUIT OR PROCEEDING RELATING TO ANY BREACH OR DISPUTE ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT, ANY TRANSACTION DESCRIBED IN THIS AGREEMENT OR ASSET COVERED BY THIS AGREEMENT OR ANY OTHER DISPUTE BETWEEN THE PARTIES (INCLUDING DISPUTES THAT ALSO INVOLVE OTHER PERSONS).

Section 13.9 Severability. If any provision of this Agreement or the application of such provision to any Party or circumstance shall be held invalid or unenforceable, the remainder of this Agreement or the application of that provision to another Party or circumstance shall not be affected thereby.

Section 13.10 Cumulative Remedies. Except to the extent expressly stated in this Agreement, (a) no remedy conferred upon any Party pursuant to this Agreement is intended to be exclusive of any other remedy available under this Agreement or applicable law and (b) each remedy shall be cumulative and shall be in addition to every other remedy available under this Agreement or applicable law now or in the future.

Section 13.11 No Waiver. No waiver by a Party of any default, breach or violation of this Agreement shall be deemed to be a waiver of any other default, breach or violation of any kind or nature, whether or not similar to the default, breach or violation that has been waived or failure to enforce a particular provision in one instance shall not be deemed a waiver or modification of rights or preclude the enforcement thereafter. No acceptance of payment or performance by a Party after any such default, breach or violation shall be deemed to be a waiver of any default, breach or violation of this Agreement, whether or not such Party knows of such default, breach or violation at the time it accepts such payment or performance. Subject to any applicable statutes of limitation, no failure or delay on the part of a Party to exercise any right it may have under this Agreement shall prevent its exercise by such Party, and no such failure or delay shall operate as a waiver of any default, breach or violation of this Agreement.

Section 13.12 Counterparts. This Agreement may be executed in several counterparts. If so executed, each of such counterparts shall be deemed an original for all purposes and all counterparts shall, collectively, constitute one agreement. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart and photocopies may be used.

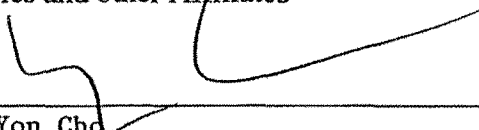
Section 13.13 Facsimile Signature. Any Party may deliver its signature to this Agreement or any Notice or other document described in this Agreement or relating to any Asset by facsimile transmission to the proper recipient. Any document signed by a Party by facsimile transmission and reasonably believed by the recipient to have been sent by or on behalf of that Party shall (a) be binding upon and fully enforceable against that Party as though it had delivered a manually-signed counterpart to the recipient and (b) be accepted by any Court as equivalent to a manually-signed counterpart for purposes of any evidentiary rule. No Party will object to the effectiveness or validity of any such facsimile signature.

Section 13.14 Resolution of Dispute. If TriMont and Lehman are unable to agree upon any disputed item with respect to which this Agreement provides for arbitration of such dispute, the Parties shall submit the unresolved item(s) for binding arbitration to a Person selected mutually by TriMont and Lehman ("Arbiter"). The arbitration shall be conducted in accordance with the commercial arbitration rules of the American Arbitration Association as then in effect. If the Parties are unable to agree on the identity of the Arbiter within the time period in which they are required to do so, the American Arbitration Association shall do so in accordance with its rules. The Arbiter's written opinion shall be final, conclusive and binding upon the Parties upon delivery of the Arbiter's opinion to them. The fees and expenses of the Arbiter shall be shared equally by the Parties. Each Party shall pay its own fees and expenses in connection with the arbitration, including the fees and expenses of its legal counsel and other experts and professional advisors.

[Remainder of Page Intentionally Left Blank; Signature Page Follows]

Signature Page to Loan Servicing and Asset Management Agreement

LEHMAN BROTHERS HOLDINGS INC.,
a Delaware corporation, for itself and on behalf of
its subsidiaries and other Affiliates

By: 
Name: Yon Cho
Title: Authorized Signatory

TRIMONT REAL ESTATE ADVISORS, INC.,
a Georgia corporation

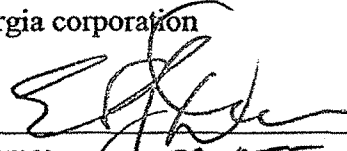
By: _____
Name: _____
Title: _____

Signature Page to Loan Servicing and Asset Management Agreement

LEHMAN BROTHERS HOLDINGS INC.,
a Delaware corporation, for itself and on behalf of
its subsidiaries and other Affiliates

By: _____
Name: _____
Title: Authorized Signatory

TRIMONT REAL ESTATE ADVISORS, INC.,
a Georgia corporation

By:  _____
Name: ERNEST J DAVIS
Title: MANAGING DIRECTOR

Schedule 1

REDACTED

S1-1

ATLANTA:4661030.7

Schedule 3

REDACTED

S3-1

ATLANTA:4661030.7

Schedule 5

REDACTED

S5-1

ATLANTA:4661030.7

Schedule 5

REDACTED

REDACTED

Schedule 6

REDACTED

S6-1

ATLANTA:4661030.7

Schedule 7

REDACTED

S7-1

ATLANTA:4661030.7

Exhibit A

Definitions; Rules Of Interpretation

Whenever used in this Agreement, the following words and phrases, unless the context otherwise requires, shall have the following meanings:

“Accepted Servicing Standards” mean, collectively, the Mortgage Loan Servicing Standards, the Mezzanine Loan Servicing Standards and the Asset Management Standards.

“Account Signatories” has the meaning given to it in Section 3.3 of the Agreement.

“Accountant” means a Person who is (a) a certified public accountant, (b) qualified to practice accounting in each jurisdiction in which he operates and (c) Independent.

“Accounts” means the bank accounts relating to the Assets established and maintained in accordance with the requirements of Article 3 and described in Section 3.1.

“Affiliate” means (1) any officer, director, employee, shareholder, partner or member of a specified Person, (2) any Person controlling, controlled by or under common control with a specified Person, (3) any officer, director, employee, shareholder, partner or member of any Person in a control relationship with a specified Person described in the preceding clause (2); (4) in case of a specified individual, his or her spouse, domestic partner, divorced spouse, parents, cousins, uncles, aunts, stepparents, brothers, sisters, children (natural or adopted), stepchildren, grandchildren and other members of the individual’s extended family or (5) a Person in which any Person described in the preceding clauses (1) through (3) has an ownership or beneficial interest (whether a direct, indirect, residual or contingent interest) or as to which such Person serves as a trustee, general partner, managing member or in a similar fiduciary or decision-making capacity. The Officer’s Certificate from TriMont required by Section 5.5 of this Agreement shall be signed by each of Davis, Charles and Winchester if they are available as well as by one or more of the Treasurer or any Assistant Treasurer or the Secretary or any Assistant Secretary of TriMont.

“Agreement” or “this Agreement” means this Loan Servicing and Asset Management Agreement, as it may be amended from time to time in accordance with its terms.

“Approve”, “Approved” or “Approval” shall refer to the written approval of or written consent to a proposed decision, action, report, business or other plan, budget, election or any other matter that must be or has been approved by or consented to by Lehman or TriMont if and to the extent required by this Agreement.

“Arbiter” has the meaning given to it in Section 7.14(d).

“Asset Management Standards” has the meaning given to it in Section 2.1(h).

“Assets” means all Loans, Real Estate Interests participations and other properties or assets being serviced or managed by TriMont on behalf of Lehman pursuant to the terms and

conditions of this Agreement, but excluding loans and other real estate investments by Lehman in Asia described in Section 4.24 and outside North America.

“Asset Records” has the meaning given to it in Section 5.3(a).

“Asset Sale” has the meaning given to it in Section 9.2(b).

“Asset Summary Report” has the meaning given to it in Section 5.2(a).

“Asset Under Development” means any Asset so designated by Lehman on a case-to-case basis, but is anticipated to include Assets involving a property or properties which are being developed for an interim user (such as a homebuilder in a land development asset), for an end user (such as a homeowner in a for-sale residential property or a build-to-suit for a company), or for an investor who can be a private investor or institutional buyer (such as a life insurance company who purchases an income producing property). Examples of possible Assets Under Development may include land improvement deals (e.g. subdivisions with only horizontal development), new construction deals (single family homes, condos, retail, office, etc.), major renovations of existing properties, and conversion of existing properties to another property type.

“Assignment of Mortgage” means an assignment of the Mortgage, notice of transfer or equivalent instrument, in recordable form, sufficient under the laws of the jurisdiction wherein the related Mortgaged Property is located to reflect the transfer of the Mortgage, which assignment, notice of transfer or equivalent instrument may be in the form of one or more blanket assignment covering the Mortgage Loans secured by Mortgaged Properties located in the same jurisdiction, if permitted by law.

“Borrower” means the Person obligated to pay to Lehman the principal of, interest on and other amounts due under a Mortgage Loan or a Mezzanine Loan.

“Budget” has the meaning given to it in Section 4.17(c).

“Business Day” means any day other than (a) a Saturday or a Sunday, (b) a legal holiday in New York or Georgia or (c) a day on which banking institutions in New York or Georgia are authorized or obligated by law or executive order to be closed.

“Business Plan” means any business plan, budget or other comparable written document prepared by a borrower under a loan or the owner of a Real Estate Interest, but only if and to the extent that Lehman has affirmatively Approved such plan, budget or other document (and not just received it) and notified TriMont that it has Approved it.

“Claim” has the meaning given to it in Section 10.3(a).

“Custodian” means one or more of the custodians who are appointed by Lehman from time to time to hold Assets or documentation relating to Assets and whose identity has been made known to TriMont by Notice from Lehman.

“Deal Manager” means the individual employed by Lehman who is, according to TriMont’s latest records, in charge of making decisions and taking other actions on behalf of

Lehman with respect to any Loan or other Asset covered by this Agreement at the time of any determination or other action required under this Agreement.

“Due Date” means, with respect to a Mortgage Loan, the date on which a Scheduled Payment is due.

“ECR” has the meaning given to it in Section 4.17(d).

“ECR Period” has the meaning given to it in Section 4.17(d).

“Equity Interests” means any partnership, membership, stock or other ownership, profits or equity interest in any Person held by Lehman.

“Escrow Amount” means any amount payable with respect to a Mortgage Loan for taxes; assessments, water rates, Standard Hazard Insurance Policy premiums or comparable items.

“Existing Lehman Procedures” means the existing Lehman policies and procedures described in Section 4.4(a).

“Fee” means one or more of the components of compensation payable to TriMont by Lehman for services under this Agreement as described in Article 7.

“Final Recovery Determination” means a determination by TriMont in respect of any defaulted Mortgage Loan (including a Mortgage Loan that becomes an RBO Property) that all Insurance Proceeds, Liquidation Proceeds and other payments or recoveries which TriMont, in its reasonable judgment, expects to be finally recoverable on such Mortgage Loan without regard to any obligation of TriMont to make payments from its own funds, have been recovered and without regard to any amounts that might be collected pursuant to deficiency judgments.

“Fiscal Year” means each period of twelve (12) consecutive calendar months (or part thereof) ending on December 31 during the Term of this Agreement.

“GAAP” means generally accepted accounting principles applicable to persons operating in the United States, except to the extent that any such principle shall be modified or limited pursuant to written agreement between the Parties.

“Guarantor” means any Person who is a guarantor, indemnitor or surety of all or any portion of a Loan.

“Indemnitee” means a Person that an Indemnitor is obligated to indemnify, defend and hold harmless pursuant to Article 10 as well as all present and former directors, officers, shareholders, partners, members, employees, agents (including accountants, attorneys and other professional advisers) and other Affiliates of the specified Indemnitee.

“Indemnitor” means a Person obligated to indemnify, defend and hold harmless an Indemnitee pursuant to Article 10.

“Independent” means, when used with respect to any Accountant, means a Person who is “independent” within the meaning of Rule 2-01(b) of the Securities and Exchange Commission’s Regulation S-X. Independent means, when used with respect to any other Person (other than an Independent Contractor), a Person who (a) is in fact independent of another specified Person and any Affiliate of such other Person, (b) does not have any material direct or indirect ownership or other financial interest in such other Person or any Affiliate of such other Person and (c) is not connected with such other Person or any Affiliate of such other Person as an officer, employee, promoter, underwriter, trustee, partner, member, director or Person performing similar functions.

“Independent Contractor” means any Person who is not an Affiliate of TriMont and who deals with TriMont on an arms-length basis with respect to all matters on which such Persons transact business with each other.

“Insurance Proceeds” means amounts paid by the insurer under any Insurance Policy, other than amounts required to be paid over to the Mortgagor pursuant to law, the related Mortgage Note or Accepted Servicing Practices.

“Key Executive” has the meaning given to it in Section 11.4(b), with the identity of each Key Executive being subject to change from time to time as described in Section 11.4.

“Lehman Procedures” means the Existing Lehman Procedures and the New Lehman Procedures in effect at the time TriMont and/or Lehman are to sign any document, make any payment or take any other action required or contemplated by this Agreement with respect to the Loans, the Real Estate Interests or the other Assets covered by this Agreement.

“Liquidation Expenses” means, in respect of any Mortgage Loan or REO Property in a Securitization Transaction, out-of-pocket expenses incurred by TriMont on behalf of Lehman or any Sub-Partnership in connection with the liquidation of any defaulted Mortgage Loan or REO Property acquired in respect thereof including, without limitation, legal fees and expenses, committee or referee fees, and, if applicable, brokerage commissions and conveyance taxes, any unreimbursed amounts expended by TriMont pursuant to Section 4.10 and Section 4.11 respecting the related Mortgage Loan and any unreimbursed Servicing Advances hereunder relating to the Mortgaged or REO Property that secures or accrued such Mortgage Loan.

“Liquidation Proceeds” means amounts received by TriMont in connection with the liquidation of a Mortgage Loan or an RBO Disposition, whether through judicial foreclosure; sale or otherwise, including payments in connection with such Mortgage Loan received from the related Mortgagor, Insurance Proceeds, condemnation proceeds or otherwise (other than amounts required to be paid to the Mortgagor pursuant to the terms of the applicable Mortgage or otherwise pursuant to law).

“Loan” or “Loans” means one or more Mortgage Loans, Mezzanine Loans or other loans of any type that Lehman makes or acquires prior to or during the term of this Agreement and that are listed on Schedule 1 to this Agreement or designated by Lehman and accepted by TriMont for servicing in accordance with this Agreement.

“Loan Documentation” means the operative documentation related to any Loan Agreement.

“Loan Files” means collectively, the Mortgage File, the Mezzanine File and Real Estate Interest File.

“Losses” means the dollar amounts of all costs, claims, suits, actions, losses, liabilities, obligations, reasonable fees and expenses of any kind or nature, including costs and expenses of accountants, attorneys and other professionals, judgments, fines, penalties, settlements and all other costs and expenses of any nature or type actually paid or incurred by a specified Person and, in the case of the prevailing Party, all costs and expenses paid or incurred by the prevailing Party in litigating against the other Party or its Affiliates.

“Major Decisions” means any decision constituting a “Major Decision” under any operating agreement, limited partnership agreement or other organizational document with respect to an Equity Interest, or otherwise, any decision by a Person to engage in any of the following: (1) sell or agree to sell all or substantially all of the assets of such Person, (2) merge, consolidate or otherwise combine (or agree to do any of the preceding) with another Person, (3) undertake any action that substantially and materially changes the business purpose or business activities of the Person, (4) issue any equity interest in the Person, (5) grant a security interest in any or all of the assets of the Person or (6) file a voluntary bankruptcy, reorganization or comparable proceeding or consent or agree to the involuntary filing of any such proceeding.

“Maturity Date” means, with respect to any Mortgage Loan as of any date of determination, the date on which the last payment of principal is due and payable under the related Mortgage Note, after taking into account all Principal Prepayments received and any Deficient Valuation, Debt Service Reduction Amount or modification of the Mortgage Loan occurring prior to such date of determination, but without giving effect to (i) any acceleration of the principal of such Mortgage Loan or (ii) any grace period permitted by the related Mortgage Note.

“Mezzanine File” means the mezzanine loan documents pertaining to a particular Mezzanine Loan held by the Custodian.

“Mezzanine Loan” means any Loan other than a Mortgage Loan and includes a Loan that is unsecured or a Loan with a junior lien on the Mortgaged Property, a pledge or security interest of the stock, membership interests or other ownership, profits or equity interests in a Borrower or Guarantor or other types of collateral as security.

“Mezzanine Loan Servicing Standards” has the meaning given to it in Section 2.1(g).

“Mortgage” means the mortgage, deed of trust or other instrument securing a Mortgage Note, including any participation in it, and constituting a first senior lien on the Mortgaged Property.

“Mortgage File” means the mortgage loan documents pertaining to a particular Mortgage Loan held by the Custodian, which may include (but is not limited to):

- (a) the Mortgage Note;
- (b) the Mortgage;

- (c) all modification, consolidation, extension, substitution and assumption agreements, if any;
- (d) an Assignment of Mortgage;
- (e) all intervening assignments of mortgage;
- (f) if the related Assignment of Lesson is separate from the Mortgage, such Assignment of Losses, together with (A) each intervening assignment of such Assignment of Losses, and (B) an assignment of such Assignment of Leases; which assignment may be effected in the related Assignment of Mortgage;
- (g) each guaranty constituting additional security for the repayment of such Mortgage Loan;
- (h) the title insurance policy maintained with respect to such Mortgage Loan;
- (i) with respect to any Participation, the original of the participation certificate and/or participation agreement relating thereto.

“Mortgage Loan” means any Asset that is a first and senior or subordinated loan evidenced by a Mortgage Note and secured by a related Mortgage.

“Mortgage Loan Servicing Standards” has the meaning given to it in Section 2.1(f).

“Mortgage Note” means the note or other evidence of the indebtedness of a Mortgagor under a Mortgage Loan.

“Mortgaged Property” means the real property, together with improvements thereto, securing the indebtedness of the Mortgagor under the related Mortgage Loan.

“Mortgagor” means the obligor on a Mortgage Note.

“New Lehman Procedures” means the new or updated Lehman policies and procedures described in Section 4.4(b).

“North America” means the United States of America, Canada and the United Mexican States.

“Notice” has the meaning given it in Section 12.1.

“Officer’s Certificate” means, with respect to any Person party hereto, as the context requires, a certificate signed by one or more of the Chairman of the Board, any Vice Chairman, the President or any Vice President, and by one or more of the Treasurer or any Assistant Treasurer or the Secretary or any Assistant Secretary of such Person or, if such entity is a partnership; of the general partners) thereof.

“Original Agreement” means the Performing Loan Servicing Agreement dated as of September 1, 1997, as amended and restated on December 15, 1998.

“Participation” means a participation certificate or agreement evidencing an interest in a Mortgage Loan.

“Parties” means one or more of Lehman and TriMont.

“Permitted Successor” means the heirs, legatees, administrators, personal representatives, successors and assigns of a specified Party to the extent that a Transfer of that Party’s rights, benefits, duties, obligations and liabilities is permitted by the terms of this Agreement or has been Approved by the other Parties to the extent required by this Agreement.

“Person” means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization, government or agency or political subdivision thereof, or any other legally-recognized entity.

“Principal Balance” means, with respect to any Mortgage Loan on any date of determination, the principal balance of the Mortgage Loan outstanding as of the Cut-Off Date, or, in the case of any REO Property on the date of determination, the principal balance of the related Mortgage Loan as of the date the Mortgaged Property became REO Property, plus all amounts of Deferred Interest accrued on and added to the Scheduled Principal Balance of such Mortgage Loan to the Due Date in the Collection Period immediately preceding such date of determination, minus the sum of (a) the principal portion of all Scheduled Payments received during or prior to the related Collection Period, (b) all Principal Prepayments and all Insurance Proceeds, Liquidation Proceeds and REO Net Income from the related REO Property to the extent identified and applied by TriMont as recoveries of principal in accordance with the provisions hereof through the end of the related Prepayment Period, and (c) any Realized Loss of principal on such Mortgage Loan realized during such Prepayment Period.

“Principal Prepayment” means any payment of principal by a Mortgagor or other recovery of principal on a Mortgage Loan which is received or recovered in advance of its scheduled Due Date and applied to reduce the Principal Balance of the Mortgage Loan in advance of its scheduled Due Date, including, without limitation, all proceeds to the extent allocable to principal received from the payment of cash in connection with condemnation awards or proceeds in lieu of condemnation other than that portion of such proceeds released to the Mortgagor in accordance with the terms of the Mortgage or Accepted Servicing Practices, but excluding (i) other Liquidation Proceeds and Insurance Proceeds and (ii) any Scheduled Payment received prior to the Due Date on which it was scheduled to be paid.

“Procedures Manuals” has the meaning given to it in Section 4.5.

“Property Improvement Expenses” Any costs and expenses, with respect to a Mortgaged Property or an REO Property, but only to the extent that they are (i) paid to Persons who are generally in the business of providing such goods and services and, unless approved by Lehman or otherwise permitted hereunder, who are not Affiliates of TriMont; (ii) are reasonable for the types of goods or services provided in the geographical area in which such goods or services are provided; and (iii) are either (x) designed to maintain or improve the value of a Mortgaged Property or an REO Property but not immediately necessary, to operate it or (y) incurred in connection with the sale of the related Mortgage Loan or REO Property for the purpose of

facilitating such sale and maximizing the proceeds thereof by engaging in such maintenance or improvement of the Mortgaged Property or the REO Property as TriMont deems advisable under the circumstances, including but not limited to the following:

- (a) cosmetic improvements such as painting and landscaping intended to improve the salability of the property;
- (b) build-out or modification to suit a particular prospective or actual tenant or buyer;
- (c) replacement of items which are obsolescent or wearing out but which are not dysfunctional;
- (d) moneys advanced to a tenant or buyer for a purpose similar to a Property Improvement Expense or Property Protection Expense; and
- (e) reasonable travel expenses incurred by TriMont in connection with any of the foregoing.

“Property Protection Expenses” The following costs and expenses with respect to a Mortgaged Property or an REO Property, but only to the extent that such costs and expenses are paid to Persons who are generally in the business of providing such goods and services and, unless approved by Lehman or otherwise permitted hereunder, who are not Affiliates of TriMont, and are reasonable for the types of goods or services provided in the geographical areas in which such goods or services are provided:

- (a) real estate taxes, assessments and similar charges;
- (b) premiums for casualty, loss of rents, business interruption, comprehensive general public liability and title insurance coverage in respect of a Mortgaged Property or an REO Property;
- (c) utility costs;
- (d) payments required under service contracts, including but not limited to service contracts for heating, ventilation and air conditioning systems, elevators, landscape maintenance, pest extermination, security, furniture, swimming pool service, trash removal, answering service and credit checks;
- (e) payroll costs and benefits for on-site maintenance personnel, including but not limited to housekeeping employees, porters and general maintenance and security employees;
- (f) costs required in connection with the enforcement of any lease, including but not limited to reasonable attorneys’ fees, charges for lock changes and storage and moving expenses for furniture, fixtures and equipment;

- (g) advertising and rent-up expenses, including tenant rent concessions, promotions for existing and prospective tenants, banners and signs;
- (h) out-of-pocket maintenance and repair expenses;
- (i) a property management fee payable monthly in arrears;
- (j) for any REO Property, any expense necessary in order to prevent a material breach by the landlord under a lease with any tenant of such REO Property;
- (k) usual and customary leasing and sales brokerage expenses and commissions and the additional payroll and benefit costs of on site and temporary leasing employees;
- (l) permits, licenses and registration fees and cost;
- (m) any expense necessary in order to prevent a material breach by the Mortgagor under a lease;
- (n) any expense necessary in order to prevent or cure a material violation of any applicable law, regulation, Tax Code or ordinance;
- (o) reasonable legal expenses and other expenses incurred in connection with (judicial or non judicial) foreclosure of Mortgage Loans (or the exercise of a power of sale or a deed-in-lieu transaction) and collection of deficiency judgments against Mortgagors and guarantors, thereunder;
- (p) the fees of any trustee under a deed of trust and other reasonable expenses of foreclosure of Mortgage Loans;
- (q) costs and expenses of any appraisals, valuations, survey, inspections, environmental assessments or market studies conducted at the request of Lehman or by TriMont in accordance with Accepted Servicing Practices;
- (r) costs and expenses of prosecuting remedies for breaches of representations and warranties made to Lehman (including the representations and warranties under the Asset Purchase Agreement);
- (s) litigation expenses of TriMont (provided that such expenses of TriMont do not arise out of any breach of TriMont's obligations, responsibilities or covenants hereunder);
- (t) costs and expenses of buying the remaining interest in a Mortgage Loan or REO Property as to which Lehman or a Sub-Partnership owns a participation;
- (u) the payment of any obligation under a ground lease or secured by a lien senior to that of the related Mortgage Loan;

(v) reasonable travel expenses incurred by TriMont in connection with the foregoing; and

(w) other reasonable fees and expenses incurred by TriMont in connection with the enforcement, collection, (judicial or non-judicial) foreclosure (or deed-in-lieu, workout, forbearance or restructuring), protection (including the exercise of self-help remedies under any Mortgage Loan), lien perfection, management and operation of the Assets and the performance of its servicing activities.

“Real Estate Interest File” mean the documents pertaining to a particular Real Estate Interest.

“Real Estate Interests” means Equity Interests, REO Property and any other real estate, buildings and improvements that Lehman owns directly and that Lehman has designated and TriMont has accepted for management by TriMont pursuant to this Agreement.

“Realized Loss” means, with respect to each Mortgage Loan or REO Property, as the case may be, as to which a Cash Liquidation or REO Disposition has occurred, an amount equal to the sum of (i) (A) the Principal Balance of the Mortgage Loan or REO Property as of the date of the Cash Liquidation or REO Disposition, plus (B) interest at the applicable Mortgage Rate in effect during each Collection Period for which interest has not been paid, from the date as to which interest was last paid, or accrued and added to the Principal Balance of such Mortgage Loan, until the Due Date in the Collection Period in which the Cash Liquidation or REO Disposition occurred on the Principal Balance of such Mortgage Loan outstanding or the Mortgage Loan relating to such REO Property deemed to be outstanding during each Collection Period that a true interest was not paid, minus (C) REO Net Income derived from the operation of such REO Property and deposited in the Collection Account or the Central Account pursuant to Section 3.1 and Liquidation Proceeds received during the Collection Period in which such Cash Liquidation or REO Disposition occurred, net of say Liquidation Expenses with respect to such Mortgage Loan or REO Property; and (ii) the amount of any applicable Bankruptcy Loss.

“Records” means the books, records, accounts and other documents relating to the Assets, established and maintained in accordance with the requirements of Article 5.

“REO Disposition” means the receipt by TriMont of Liquidation Proceeds and other payments and recoveries (including proceeds of a final sale) from the sale or other disposition of REO Property.

“REO Net Income” means, with respect to any REO Property, all income received in connection with such REO Property less any operating expenses, utilities, real estate taxes, management fees, insurance premiums, expenses for maintenance and repairs and any other capital expenses directly related to such REO Property.

“REO Property” means a Mortgaged Property or other real property, together with all buildings and other improvements, the record or beneficial ownership of which is or has been acquired by Lehman or its nominee through foreclosure, deed-in-lieu of foreclosure, abandonment, reclamation from bankruptcy or otherwise in connection with a defaulted Mortgage Loan.

“Resolution Plan” has the meaning given to it in Section 4.17(a).

“Securitization Documentation” means the operative documentation governing any Securitization Transaction.

“Securitization Transaction” means, with respect to any Asset, any performing mortgage loan or non-performing mortgage loan securitization transaction involving such Asset.

“Settlement Notice” has the meaning given to it in Section 10.3(b).

“Settlement Payment” has the meaning given to it in Section 9.2(e).

“Special Accounts” has the meaning given to it in Section 3.1.

“Special Servicing” has the meaning given to it in Section 4.16.

“Specially Serviced Assets” has the meaning given to it in Section 4.16.

“Standard Hazard Insurance Policy” means a fire and casualty extended coverage insurance policy in such amount and with such coverage as required by Section 7.4 hereof.

“Tax Code” means the Internal Revenue Tax Code of 1986, as amended from time to time, and all applicable regulations promulgated thereunder by the Internal Revenue Service.

“Term” of this Agreement means the initial or extended term of this Agreement, determined as provided in Section 9.1.

“Transfer” and related usages of that term means any sale, transfer, assignment, grant of option or right to acquire, pledge, hypothecation or other disposal of all or any part of any direct or indirect ownership, equity or other economic interest in a Party or Asset in any manner, whether directly or indirectly by Transfer of all or a portion of any type of stock, membership, partnership, equity, profits, distribution or other ownership interest, and shall include the ability to approve or have any right to vote on, consent to or veto any decision or matter set forth in this Agreement and a right to receive any share or portion of payments of dividends, distributions or profits of a Party. The term “Transfer” shall not include for any purpose (a) the Transfer of shares of capital stock or preferred equity of Lehman or any LB Affiliate thereof in public or private sales or (b) any Transfer of membership interests in Property Asset Management Inc. or any of its Subsidiaries or Affiliates, so long as Lehman owns and Controls, directly or indirectly, more than 50% of the membership interests of Property Asset Management Inc.

“Transfer Date” means the date that an Asset owned by Lehman becomes subject to this Agreement in accordance with Section 1.2.

“TriMont Shareholders” has the meaning given to it in Section 11.3(a)(1).

Rules of Interpretation

The following rules shall be applied by the Parties and all other Persons (including judges) in the determination, evaluation, interpretation and enforcement of the provisions of this Agreement, unless another provision of the Agreement expressly applies another rule:

(a) All dollar amounts stated in this Agreement are to United States dollars unless otherwise indicated.

(b) All wire transfers described in this Agreement shall be made in immediately available funds.

(c) The provisions of all Exhibits and Schedules to the Agreement are incorporated into and made an integral part of the Agreement as though they had been fully set forth in the actual text of the Agreement.

(d) Any financial or accounting term used, but not otherwise defined, in this Agreement shall have the meaning given to it under generally accepted accounting principles applicable to Persons operating in the United States.

(e) Any reference to a right, benefit, action, decision or other item or matter in this Agreement is intended to allow its making, taking or other exercise to the fullest extent permitted by New York law or other applicable law.

(f) The word "including" is not limiting and shall be construed as meaning "including, without limitation."

(g) Any provision of the Agreement that gives a Party or another Person the right, option or election to take or not take any action in any manner shall not, and shall be deemed or construed to, require or obligate that Party or other Person to take all or any part of such action.

(h) The singular includes the plural and the plural includes the singular.

(i) The masculine gender includes the feminine and neuter and vice versa.

(j) References to a law include any rule or regulation issued under the law, any amendment to a law, rule or regulation, any successor law, rule or regulation and all applicable judicial interpretations of any such law, rule or regulation.

(k) References to an Article, Section, Exhibit or Schedule mean a reference to an Article, Section, Exhibit or Schedule contained in or attached to the Agreement.

(l) The caption headings of Articles and Sections in the Agreement are for convenience only and do not necessarily define, modify, extend, limit or describe the scope or intent of any of the terms of this Agreement.

(m) The Agreement shall be interpreted and enforced in accordance with its provisions and without the aid of any custom or rule of law requiring or suggesting construction against the party drafting, commenting on, or causing the drafting or redrafting of, the provision in question.

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(h) The singular includes the plural and the plural includes the singular.

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