

MASTER LOAN PARTICIPATION AGREEMENT

THIS CREDIT UNION BUSINESS LOAN PARTICIPATION AGREEMENT (the "Agreement") is made between **SUFFOLK FEDERAL CREDIT UNION**, with its principal office located at 3681 Horseblock Road, Medford, NY 11763, and **TIDEMARK FEDERAL CREDIT UNION** with its principal office located at 1941 Bridgeville Hwy, PO Box 1800, Seaford, DE 19973.

1. Overview

The Parties desire to enter into this Agreement wherein either Party may sell or either Party may buy a portion of a loan from the other Party. The loans may be that of closed loans in a Party's portfolio or loans that will be closed in the future. The loans will be identified in the Loan Participation Certificate and Summary. The duties and rights of the respective Parties are more specifically described in the Terms and Conditions attached hereto and made a part hereof as Addendum "B".

2. Definitions

Buyer:	A Party that purchases a portion of a loan that has been originated by another Party.
Borrower	The borrower or co-borrower of the Loan.
Guarantor	Any persons or entities who are guarantors, sureties or other accommodation parties in connection with the Loan.
Loan	The underlying loan being sold by Seller as more fully described in an attached Loan Participation Certificate and Summary.
Loan Documents:	All documents evidencing the terms and agreements of the respective loans, in which Participation Interests are sold under this Agreement, documents used or relied upon in evidencing a security interest and documents pertaining to the loan underwriting process. Without limiting the generality of the foregoing, Loan Documents may include: (a) the note, (b) the documentation required to comply with the agreed underwriting standards (e.g. loan application, income tax returns, balance sheets, cash flow statements, and account verifications); (c) the loan agreement; (d) security instrument in secured loans (e.g. mortgage), appraisals, verifications of loan to value ratio, UCC filings, and any required insurance coverage; (e) if personal guarantees are required, the guaranty agreement and related security documents on the guarantors' interests; and (f) all other documents that pertain to agreed conditions of the loan, including post-closing balance sheets, cash flow statements and income tax returns as may be required by other Loan Documents.

Loan Participation Certificate and Summary	A full description of the loan details and economic terms of a specific loan participation sold under the terms of this Agreement. A sample specimen is attached hereto as Addendum A.
Originator	The lender, or lead lender, that initially funds the Loan and/or is listed as the lender on the original Loan Documents.
Participant:	Any Party that owns a Participation Interest under this Agreement, including Seller.
Participation Interest:	The undivided proportionate legal rights, which may be represented as a percentage value, to the loans purchased or retained by a Participant.
Party:	A signatory to this Agreement
Seller:	A Party to this Agreement that is the Originator of a loan and sells a portion of the loan to a Party to this Agreement.

3. Underwriting Standards

Buyer shall have the opportunity to review the loan file prior to the purchase of a Participation Interest to verify the underwriting and the terms and conditions of a particular loan. Buyer warrants that it is buying the Participation Interest based on its independent review of the Loan Documents.

4. No Additional Obligation to Sell and/or Purchase

By entering into this Agreement, a Party is not obligating itself to either sell or purchase a Participation Interest in any other/additional loans in the future. The agreement to sell and buy a Participation Interest shall be made by the Parties on a loan by loan basis and shall be evidenced by an executed Loan Participation Certificate and Summary.

5. Confidentiality

The Parties hereto shall safeguard any and all non-public personal information obtained regarding the Borrower(s) and only use and/or share the same in accordance with the applicable privacy laws. The Buyer acknowledges that unless expressly required by the Loan Documents, the Seller does not contemplate notifying the Borrower of the Buyer's Participation Interest in the Loan. The Buyer agrees not to make contact with the Borrower or a Guarantor, and unless the Borrower is already aware of the Buyer's Participation Interest in the Loan, the Buyer will not disclose to the Borrower or a Guarantor the existence of such interest without the Seller's prior written consent. Buyer further acknowledges that a business relationship exists between the Borrower and the Seller, and agrees not to solicit Borrower for any other business activity, relationship, and/or services without the express written consent of Seller.

6. Sales on a Non-Recourse Basis

Each sale that is the subject of the Agreement is made by Seller WITHOUT RECOURSE. Each Participant bears the credit risk of loss on the Participation Interest purchased. Seller is not obligated to repurchase a loan that goes into default. Each Participant assumes the risk and collection for all loans in proportion to the Participation Interest held by the respective Participant.

7. Termination

Either party may terminate this Agreement upon thirty (30) days written notice, provided that all outstanding Participation Interests will be governed by this Agreement until all Participation Interest sold herein are paid-off and the payments are properly paid as provided herein.

8. Controlling Law

This Agreement shall be interpreted under the laws of the State of New York, without giving effect to choice of law provisions, except on those issues exclusively controlled by Federal Law.

IN WITNESS WHEREOF, each Party warrants that the signatures below evidence the authorization of the Party to enter into this Agreement, which includes all Addenda attached hereto, on the date indicated.

SUFFOLK FEDERAL CREDIT UNION

Date:

6/27/2023

By:



[INSERT NAME]

THOMAS C. PEONI

Title: [INSERT TITLE]

VP Commercial Lending

TIDEMARK FEDERAL CREDIT UNION

Date: 6/27/2023

DocuSigned by:

By: Pamela A. Fleurette

60E7987F-2820-44E5

[Pamela A Fleurette]

Title: [CEO]

ADDENDUM "A"
LOAN PARTICIPATION CERTIFICATE AND SUMMARY

Date

This certifies that the Seller has received from Participant, the Purchase Price, as defined below, and the Seller hereby sells, conveys, assigns, transfers, and issues to the Participant under the Master Non-Recourse Loan Participation, Trust & Purchase Agreement between Suffolk Federal Credit Union, as Seller, and Member's 1st Federal Credit Union, as Participant, an undivided participation ownership interest ("Participation Interest"), subject to the terms and conditions of said Agreement, in the Loan as summarized below.

Borrower:
Security:

Maximum Principal Amount of Credit Facility:	\$XX,XXX,XXX
Participant's Pro Rata Share:	XX.XXX%
Participated Amount:	\$XX,XXX,XXX
Loan Interest Rate:	X.XXX%
Service Fee:	X.XXX%
Participant's Pass Thur Rate:	X.XXX%
Participant's Participation of Loan Fees:	\$0.00
Price:	\$0.00

Lead Lender's Wire Transfer Instructions:

EasCorp
35 Corporate Drive (Suite 300)
Burlington, MA 01803
ABA No. 211391773

Further Credit to:
Suffolk Federal Credit Union
3681 Horseblock Road
Medford, New York 11763
Account No. 221481181
GL: 99100100

All payments from Lead Lender to the Participant under the Agreement shall be made as follows by wire transfer pursuant to the following information

IN WITNESS WHEREOF, each Party has caused this Participation Certificate to be signed in its corporate name on its behalf by its proper officials duly authorized on the date first set forth above.

SELLER:

SUFFOLK FEDERAL CREDIT UNION

Date: _____ By: _____
[INSERT NAME AND TITLE]

BUYERS:

TIDEMARK FEDERAL CREDIT UNION

Date: 6/27/2023 By: Pamela A. Fleurette
[Pamela A Fleurette]

ADDENDUM "B"

ADDITIONAL TERMS AND CONDITIONS

ARTICLE I

Warranties and Representations

- 1.1 **Seller's Warranties.** Seller makes the following representations and warranties to the Buyer(s), each of which (together with all other factual statements contained herein) Seller represents to be true and correct in all material respects:
- (a) Seller is the Originator of the loan(s) and authorized to sell the Participation Interests described in the loan(s) it offers to sell and that as of the date Buyer buys an undivided Participation Interest in any loan(s) Seller will issue a Loan Participation Certificate and Summary in evidence thereof. Seller is a federally chartered credit union, it will retain an interest in the loan of at least ten (10%) percent of the principal value of the loan for the life of the loan.
 - (b) All loan(s) described in a Loan Participation Certificate and Summary are intended to be made or have been made by Seller pursuant to, and in compliance with, all applicable federal and state laws, rules, and regulations as from time to time amended.
 - (c) At Buyer's request, Seller will provide Buyer with copies of all Loan Documents that were used by Seller as a basis of and for its decision to make the loan(s) to Borrower(s), including any documents that were executed (and/or that are to be executed) by Borrower(s) as well as by other co-makers, guarantors and endorsers.
 - (d) All Borrowers are credit union members of Seller, or if Borrower is a non-natural person and not a member of Seller, all owners of Borrower are credit union members of Seller.
 - (e) Where the loans are presently in existence:
 - (i) There are no known events of default under the Loan Documents.
 - (ii) The loans have not been classified as non-performing on the books of the Seller or otherwise downgraded by Seller.
 - (iii) The loans are presently in accrual status on the books of the Seller.
 - (iv) The terms of the loans have not been renegotiated previously as a result of a prior deterioration in a Borrower's financial condition.

- (v) The mortgages and other security interests for the loan(s) are not cross-collateralized as security for any other obligations by and between Borrower and Seller.
 - (f) The Loan Documents were duly authorized and validly executed by Borrower(s) as well as, to the degree applicable, by the co-borrowers, Guarantors and/or endorsers under the loan(s).
 - (g) To the extent required under applicable law, the security agreements under the loans were properly recorded in order to result in the valid perfection of a security interest in the collateral subject to the lien priority, if any, set forth in the Loan Participation Certificate and Summary.
 - (i) To the extent required under applicable law, the Seller has taken whatever additional actions may be necessary and proper to validly insure, perfect and maintain a security interest on the collateral securing the loan(s).
 - (j) No conduct by Seller, not apparent on the face of written documents provided to Buyer, violates applicable laws or rights of any Borrower so as to affect the full collectability of the loan(s), or provide any Borrower or co-makers or Guarantors with any defense to their obligations under the Loan Documents.
 - (k) Seller has the full right to transfer the Participation Interest sold herein, and the same is not pledged, hypothecated or encumbered for any indebtedness of principal or for any other purpose.
 - (l) Seller has no actual knowledge of any fact, not apparent on the face of the written documentation provided to Participants, which would materially and adversely affect the loan(s).
- 1.2 **Possession of Loan Documents.** Seller (or its designee) has in its possession all Loan Documents representing each such loan and all records required to be maintained for such loans and will provide, upon request, access thereto at any reasonable time during normal business hours and pursuant to applicable law and regulations, and will deliver copies of or make available electronically any such instruments and records to Buyer on Buyer's request.
- 1.3 **Buyer's Warranties.** The Buyer makes the following representations and warranties to the Seller, each of which Buyer represents and warrants to be true and correct in all material respects as of the date hereof, and unless otherwise specified, throughout the term of this Agreement:
- (a) Buyer has the legal right, power and has obtained any/all necessary authority to purchase its Participation Interest in a Loan;

- (b) Buyer has, independently and without reliance upon the Seller undertaken its own due diligence, made various independent inquiries as it has deemed necessary, and as a result thereof, made its own decision to purchase its Participation Interest and enter into this Agreement, and further, acknowledges that neither the Seller, its designee nor the respective officers, employees, agents and representatives thereof, assume any responsibility for the current or future financial condition or creditworthiness of the Borrower or a Guarantor or the performance by the Borrower or a Guarantor of their respective obligations in connection with the Loan and the Loan Documents. In connection with this decision, Buyer has made independently and without reliance on the Seller or any other person or entity affiliated with the Seller, and based on such documents and information as Buyer has deemed appropriate, has evaluated and made its own credit analysis of, and investigation into, the financial condition, creditworthiness, affairs, status, and nature of the Borrower, all Guarantors and the collateral, and in reliance solely on such independent analysis and investigation, has made its decision to purchase the Participation Interest;
- (c) Buyer is a sophisticated lender having the knowledge or experience in financial and business matters as to be capable of evaluating the relevant information regarding the Borrower, all Guarantors, the collateral, the Seller, and the risks of the Buyer's purchase of the Participation Interest, and to the extent necessary, has retained an independent expert to act on the Buyer's behalf who is capable of evaluating the merits and risks of the purchase of the Participation Interest;
- (d) The purchase of the Participation Interest is for the Buyer's own account and not with a view to making any distribution, sale, transfer, assignment or other disposition thereof except in strict accordance with the terms and provisions of this Agreement, and that the Buyer acknowledges that it is able to bear the economic risk and possible adverse consequences of its purchase of the Participation Interest in the event of a default under the Loan or otherwise;
- (e) Buyer has not dealt with any broker, firm, or salesperson in connection with this Agreement or its purchase of its Participation Interest. The Buyer shall indemnify, defend and hold the Seller and any designee harmless from and against, any and all asserted or threatened claims for brokerage commissions, fees, or other compensation made against the Seller or any person or entity affiliated with the Seller, by any broker, firm, salesperson or other party or entity that claims to have dealt with the Buyer in connection with the transactions contemplated by this Agreement, together with any and all loss, liability, cost, damage and expense (including, without limitation, reasonable attorneys' fees and costs) relating to such claims or arising there from or incurred by the Seller or an affiliate in connection with the enforcement of these provisions. The provisions of this

Subsection 8.2(e) shall survive the expiration or sooner termination of this Agreement;

- (f) The total of the Participation Interest, when added to Buyer's existing loans, if applicable, neither exceeds NCUA's aggregate limits on loan portfolio concentration, including but not limited to, the member business loan aggregate cap, the cap on loans to one borrower or group of associated borrowers, and the cap on loan participations purchased from Seller, or otherwise has been duly approved by the appropriate NCUA Regional Director to exceed any of the regulatory lending caps;
- (h) Buyer has performed its own due diligence with respect to its purchase of the Participation Interest and to the extent required, utilized the services of an individual with adequate experience;
- (i) Buyer shall treat the Participation Interest as a loan asset in accordance with NCUA regulations;
- (j) Buyer has a written business loan and participation policies in place which comply with applicable law and rules and regulations, and among other things, set forth the Buyer's loan underwriting standards, and the transactions contemplated by this Agreement, including, without limitation, the Buyer's purchase of its Participation Interest hereunder, fully comply with such policies;
- (k) Buyer has a net worth sufficient to comply with regulatory requirements;
- (l) Buyer, if a federally insured credit union, is in compliance, and shall comply at all times with, the credit union membership rules as may apply to the Buyer under applicable federal or state law or rules and regulations; and
- (m) Buyer is otherwise acquiring its participation pursuant to, and in compliance with, its charter and other governing documents: any contract to which it is bound or obligated; and all applicable federal and state law, rules and regulations now in effect; including, without limitation, any lending limitations or caps on the types or amounts of loans Buyer may hold in its portfolio.

1.4 **Warranties and Representations Effective as of Closing.** Seller and Buyer further represent and warrant that as of the date of any Loan Participation Certificate and Summary and the closing date of any sale of a Participation Interest all representations set forth herein are true and correct.

1.5 **Acknowledgement of Limitation of Seller's Warranties.** Buyer acknowledges that Seller has made no representation or warranty of any kind, whether expressed or implied, with respect to the validity, collectability or enforceability of the loans, the financial

condition of Borrower(s), the validity and enforceability of the Loan Documents, except as expressly set forth in this Agreement, and the documentation provided to Buyer. Buyer has based its decision to purchase a Participation Interest upon the Buyer's own independent evaluation of the Loan Documents provided by Seller and Seller's expressed warranties.

ARTICLE II

Trust Provisions

- 2.1 **Seller as Trustee.** It is agreed that Seller and Buyer are not partners or joint venturers, and that the one Participant is not to act as agent for the other Participant except as provided herein. Seller shall hold legal title to the loans with respect to which Participation Interests are sold under this Agreement as trustee. Seller, or its designee, is to act in all loans administration and servicing matters hereunder for the Participants as an independent contractor, and as a trustee with fiduciary duties to hold the Participation Interests in the loan(s) for the benefit of the Participants, and the loan receipts hereunder, and to make the remittances as specified in this Agreement. No Party shall transfer legal title to such loans except in accordance with Section 5.1 of this Agreement.
- 2.2 **Custody of Loan Documents.** It is agreed that Seller, as trustee, shall retain the physical possession of the Loan Documents, and shall be responsible for seeing that all title evidence and policies of insurance for the account of all Participants hereunder are properly maintained. Seller shall keep all such documents in segregated files appropriately marked to show that a Participation Interest therein has been sold, and all envelopes and files pertaining to such documents shall be so marked. Seller shall hold such loan(s) and documents as trustee for the benefit of all owners of Participation Interests to the extent of their beneficial interests. Any Party, or Party's representative or regulator, including the NCUA and its examiners or supervisory agents, has the right at any reasonable time during normal business hours to request and have access to and examine any and all books, records and documents relating to any loan(s) in which a Participant has a Participation Interest or relating to any of the matters covered by this Agreement.
- 2.3 **Seller Representations Regarding Participation Interests Sold.** Seller shall not represent to any person that Seller owns any portion of the Participation Interest(s) sold under this Agreement. Seller shall reflect the transaction hereunder on its balance sheet and other financial statements as a purchase of assets by Buyer and a sale of assets by Seller in accordance with GAAP.
- 2.4 **Buyer as Holder of Equitable Title and Beneficial Owner of Participation Interests in Loans.** Upon Buyer's payment of the purchase price for any Participation Interest, the Buyer shall be considered for all purposes as the legal and equitable owner of its Participation Interest in the Loan (as set forth in the Loan Participation Certificate and Summary), together with all the rights, privileges and remedies applicable thereto. The Buyer's Participation Interest in the Loan, together with a corresponding interest in the Loan Documents and Security referenced in the Loan Participation Certificate and Summary shall be treated by the Buyer and the Seller for accounting, lending limitations

and all other bona fide purposes as fully vested in the Buyer, and such participation is not and shall not be treated as a loan by the Buyer to the Seller. Buyer agrees that its Participation Interest is not a security subject to any securities law or regulation, and further, agrees not to characterize the Participation Interest as a security in any internal records or other documents or reports nor resell, assign or otherwise transfer its Participation Interest however characterized (as a security or otherwise) except with the prior written consent of the Seller in strict accordance with applicable terms and provisions of this Agreement.

Seller shall keep a continuing record of the Loan transaction appropriately marked to show Buyer's interest therein and, in showing the ownership thereof on its books and in any statements or reports of its financial condition, Seller will include only such portion of the Loan, Loan Documents and Security as shall equal its actual Participation Interest therein, which Participation Interest may change from time to time. The Loan and any liens and/or security interests relating thereto shall be retained by Seller in its own name, but to the extent of Buyer's Participation Interest therein, and subject to Buyer's rights and obligations as provided in this Agreement.

Each of the Seller and the Buyer acknowledge and agree that the indirect relationship which necessarily exists as between the Borrower and the Seller presents an impediment to the Buyer from fully assessing the status of the Loan on an ongoing basis. Accordingly, in addition to the Buyer's right of access to all books, records and documents relating to the Loan as aforesaid, upon the written request of the Buyer (not more frequently than twice yearly), the Seller agrees to provide to the Buyer the Loan status and Borrower credit information which is otherwise available to the Seller on a continuing basis. Such information that the Seller shall ordinarily be able to provide to a Buyer upon the Seller's request therefore, includes, without limitation, current financial statements of the Borrower and any Guarantor (to the extent that such information is periodically made available to the Seller pursuant to the terms of the Loan); any Borrower's certificates or other statements and information submitted by Borrower to the Seller in connection with the Loan; the Seller's records as to Borrower's payment history under the Loan; any information in the possession of the Seller pertaining to the status of the Security securing the Loan or the then current creditworthiness of Borrower; and any other information concerning the Loan in the Seller's possession, including, for example, any regulatory agency report or audit report concerning the Loan.

ARTICLE III

Administration and Servicing of the Loans

- 3.1 Identity of Sub-Servicer.** Unless the Parties agree to the contrary on the Loan Participation Certificate and Summary, Seller shall initially service the loans in which Buyer has a Participation Interest. If the Seller elects to have a third-party service the loans, the third-party will assume the administrative duties herein. The Seller may contract with a sub-servicer to service the loans provided that said sub-servicer shall undertake the servicing of the loan pursuant to a written agreement consistent with the terms and obligations contained herein.

- 3.2 **Seller's Servicing Responsibilities.** Seller, or its designated sub-servicer, represents that, in undertaking responsibility for performance of the services specified in this Agreement, it shall exercise the same, which shall be at least a commercially reasonable, degree of care that Seller exercises with respect to the administration and servicing of business loans for Seller's own account, and that in its function of trusteeship it shall exercise that degree of care which is legally required of a trustee. Seller shall be responsible for the execution of all appropriate notices and all other acts necessary to protect the Participants, or the Participants' successor's and assignee's ownership interest, in the respective Participation Interests in the loans sold under this Agreement, and for preserving all rights in said loan(s) and administering the loan(s) in all respects consistent with applicable laws and regulations, and for servicing the same in a manner consistent with best practice. Seller shall establish a custodial account for the deposit of principal and interest and a separate custodial account for tax and insurance escrow funds if required in the respective loan terms, which account will be administered in the same, and at least a commercially reasonable manner as Seller manages its own custodial accounts. Seller shall be required to monitor the performance of Borrower and guarantors as required by the Loan Documents and Seller's member business loan policy (e.g., inspecting security, obtaining and reviewing financial reporting documents (financial statements tax returns, balance sheets) to confirm that the Borrower and/or guarantors are in compliance with any financial covenants(s) of the loan and periodic inspection of collateral). If there is non-compliance on post-closing conditions, Seller shall notify all Participants and take action to obtain compliance and/or action to protect the Participants' interests as may be permitted by the Loan Documents and principals of law and equity.
- 3.3 **Remittance.** Seller shall be responsible for segregating, reporting, and delivering to all Participants by or before the remittance due date of each month indicated in the Loan Participation Certificate and Summary their pro-rata share of actual principal and interest collected, separately designated, in a manner consistent with the respective Participation Interests then outstanding.
- 3.4 **Prepayments, Payoffs and Other Payments.** In the event that a prepayment is made on any loans, Seller shall be responsible for segregating and delivering to all Participants their pro-rata portion of the amount of principal prepaid in accordance with the remittance schedule set forth in the Loan Participation Certificate and Summary, provided that, notwithstanding anything set forth herein to the contrary, all loan payoffs will be remitted within twenty (20) days of receipt. Funds received on the account of the Borrower for the purpose of paying taxes, assessments, insurance premiums, or other similar purposes will be retained and disbursed by Seller in a timely manner and in accordance with the Loan Documents.
- 3.5 **Intentionally Omitted.**
- 3.6 **Seller's Authority Regarding Loan Modifications.** It is agreed that the exclusive right to decide how the loan(s) participated under this Agreement shall be serviced and collected is hereby vested exclusively in Seller, as trustee for all Participants subject to the terms

hereof. The other Participants are not authorized to give directions to Seller in connection with these matters. Seller shall not, without consent of all Participants, commingle acquired security with any other property held by Seller. Notwithstanding the above stated authority of Seller, Seller shall not have the authority, without the written consent of the Participants in the loan in question, (i) to decrease the interest rate, (ii) modify the payment schedule, (iii) modify the amount of credit or release collateral, guarantors or makers, (iv) make or consent to any amendments in the Loan Documents, (v) waive or release any claim against any Borrower and/or against any co-maker, guarantor or endorser, (vi) commence any type of legal proceeding against a Borrower and/or against any co-maker, guarantor or endorser under the loans, (vii) make or consent to any substitution, exchange, or release of collateral (except as provided for in Section 3.13), or (viii) substitute, exchange, sell, transfer or assign any collateral securing the loan(s).

- 3.7 **Records Maintenance and Reports.** Seller, as trustee, is responsible for maintaining, or requiring the maintenance of, a complete set of books and records, customarily maintained for such loans as may be required by GAAP and/or NCUA and satisfactory to each Participant, as to all the loans in which a Participant has acquired a Participation Interest under this Agreement, including but not limited to a record of each receipt and each disbursement. In addition to making sure that the customary monthly reports and remittances are furnished to each Participant, Seller shall ensure that such reports are accompanied by a monthly report of loan delinquencies, separately indicating the number and aggregate principal amount of loan(s) delinquent greater than thirty (30) days, therefore reflecting all past due loans on a monthly basis and the book value of any security. A monthly report will be submitted indicating the book value of all loans, the due date and the last payment date.

3.8 **Additional/Protective Advances.**

- (a) *Advances for Taxes and Insurance.* It is agreed that Seller, at its discretion, may make additional advances with respect to loans for taxes and insurance premiums and have participated pro-rata in the advance and shall promptly pay its pro-rata participation share. The Loan Participation Certificate and Summary shall be deemed to have been amended to include the additional advance amount. Seller shall seek immediate reimbursement of the advance from a Borrower for the benefit of the Participants. Amounts so reimbursed to Seller shall be promptly credited to Participant in accordance with this Agreement and to the extent of said Participant's payment thereof.
- (b) *Recording of Advances.* In the case of every advance, a notation shall be made in the books and records required under this Agreement identifying and describing each advance and each Participant's payment or lack of payment therein. A copy thereof promptly shall be furnished to the Participants.

3.9 **Seller's Fees.**

- (a) *Ordinary Fees.* Seller shall be paid the fee amount, if any, separately set forth in the Loan Participation Certificate and Summary which shall be deducted from the monthly remittance to Participant(s).

- (b) *Extraordinary Expenses.* It is agreed that any necessary extraordinary services which may be proper under this Agreement, such as the foreclosure of mortgages, property maintenance and improvement, property management, the sale of any foreclosed real estate, repossession of collateral, court actions and similar extraordinary expenses, shall be contracted or done by Seller at its customary cost for such services, provided such cost is reasonable, and that Seller will be responsible for the prompt billing, of each Participant hereunder for its pro-rata share of such expense, and each such Participant shall be required to pay promptly its pro-rata share of such extraordinary expenses incurred and billed under this Agreement. To the extent that Seller is able to recover its costs for such extraordinary expenses, the costs shall be reimbursed in the same proportion as contributed by the Participants. For purposes of this Agreement, it shall be presumed that the order of recovery is (i) costs of collection, (ii) advances made pursuant to Section 3.8 (a), (iii) late fees, (iv) interest, and (v) principal.

3.10 **Assumption Fees.** If under the terms of the Loan Documents and in accordance with this Agreement, Seller permits an assumption of the loan(s) by a third party, Participants shall promptly receive its pro rata participation in the amount of any assumption fee collected by Seller on such loans.

3.11 **Notification Requirements.** Seller shall have a duty to use due diligence to ascertain and promptly notify the Participants in writing of any material failure of any Borrower to perform any obligation under the applicable Loan Documents, and also of any of the following which might come to the attention of Seller:

- (a) The vacating of, or any material change in, the occupancy of any real property securing a loan sold under this Agreement;
- (b) The sale or transfer of any security;
- (c) The death, bankruptcy, insolvency, or other disability of any Borrower which might impair ability to repay the loan;
- (d) Any loss or damage to any security, in which event, in addition to notifying the other Participants, Seller shall ensure that any insurance companies concerned are promptly notified;
- (e) Any disrepair or any other deterioration or waste suffered or committed in respect to the security in excess of Twenty-Five Thousand Dollars (\$25,000.00);
- (f) Any change in the financial condition of a Borrower, or of any co-maker, guarantor or endorser under any loan, which may have a material adverse affect upon continuation of payments under a loan or the loan's ultimate collectability;
- (g) Any material change in the value of collateral securing the loan;
- (h) Any change in the lien status as affecting the secured collateral;
- (i) Any material request by the Borrower, or by any co-maker, guarantor or endorser under the loan, that may be construed as a change in the financial status of the Borrower, for any change in the terms and conditions of the loan, or in the terms of any note or notes evidencing the loan, or in any security agreement or instrument securing the loan;

- (j) Any request by a Borrower, or by any co-maker, guarantor or surety under the loan, that may be construed as a change in the financial status of the Borrower, for the release, substitution or exchange of any collateral securing the loan differing from any release provisions of the Loan Documents;
- (k) Any request of a Borrower, or by any co-maker, guarantor or endorser under any loan, that may be construed as a change in the financial status of the Borrower, for the release of any personal obligations of any such party under any loan;
- (l) Any failure to timely provide documents post-closing that are required by the Loan Documents; and
- (m) The occurrence of any other event, which with the passage of time and/or failure to cure, would constitute an event of default under the loan(s), or under any note or notes evidencing the loan, or under any security agreement or instrument securing the loan.

It is understood, however, that no notice need be given to the other Participants of any facts other than those of which Seller shall have actual notice or would, except for its gross negligence, have had notice.

3.12 Default by Borrower. In the event of a default in the payment of principal or interest by a Borrower on any loan sold hereunder, then as to such loan, remittances of principal or interest to Participants hereunder shall not be required until collected from the Borrower or for the account of the Borrower. In the event of a default of a loan in excess of thirty (30) days which remains uncured and unless otherwise agreed to by all Participants, Seller shall undertake collection efforts in accordance with the Seller's collection policy and procedures for commercial loans.

3.13 Other Authorized Acts. If, from time to time, any of the loans covered under this Agreement are endorsed, assumed, guaranteed or insured, or the obligations thereunder are secured by other collateral, then it is agreed that Seller shall, and Seller is authorized to, act for the Participants with respect to such matters, as their interests may appear; provided that in the event any of said loans are secured by a mortgage and are insured or guaranteed by a governmental agency, Seller shall be the mortgagee of record in relation to the contract of insurance or guaranty, and the insurer or guarantor shall have no obligation to recognize or deal with any other Party except the approved mortgagee of record with respect to the rights, benefits, and obligations of the mortgagee under the contract of insurance or guaranty. Seller is authorized to waive or collect special fees or charges, and in the case of permitted loan assumptions or similar third-party undertakings, to agree to an increased rate of interest.

3.14 Substitution of Servicer.

- (a) Seller, or Seller's designee, may be removed as servicer of the Loan(s) for a material breach of its obligations set forth hereunder and a new servicer substituted at any time by the Participant(s) holding the majority of Participation Interests.
- (b) The substituted Servicer must be a Party to this Agreement and may be an appointing Participant.

- (c) The original Servicer and all other Parties shall cooperate with the substituted Servicer in the transfer of the servicing duties, including the execution of any documents related to the role and actions of the substituted Servicer.

ARTICLE IV

Seller's Insolvency and Breach of Contract

- 4.1 **Seller's Insolvency.** In the event of any of the following occur and are not cured within sixty (60) days: (i) the insolvency or liquidation of Seller, (ii) the filing by or against Seller of a petition under any provision of bankruptcy law, or of an assignment for the benefit of creditors, (iii) the appointment by any public or supervisory authority of any person or firm in charge of Seller or its assets, (iv) a material breach by Seller of any covenant or agreement herein or in any Loan Participation Certificate and Summary, (v) the involuntary sale of any loans or advances covered by this Agreement, or (vi) the issuance by an appropriate public monitoring or supervisory authority of a cease and desist order, or its equivalent, against Seller or its directors and officers involving the safety, soundness, or financial viability of Seller, it is agreed that the Party having the greatest Participation Interest in the loans as reflected on Seller's books and records shall automatically succeed to all rights, titles, status and responsibilities which Seller may have regarding the holding and servicing of said loans and advances. Such person or firm shall exercise all of the powers hereinabove granted to Seller, as such may appear.
- 4.2 **Default.** In the event any Participant fails promptly to provide funds for the payment of insurance, taxes, maintenance, improvements, advances or any expenses in connection with their respective Participation Interest, then any other Participant is authorized to supply the same, and it shall be reimbursed from the first funds available for the account of such defaulting Participant. If a Participant defaults on a material non-monetary obligation herein and fails to cure the default within thirty (30) days of written notice by the non-defaulting Participant, the non-defaulting Participant may elect to perform the duties of the defaulting Participant. The defaulting Participant is liable to the non-defaulting Participants for all costs and expenses arising from any default and shall pay any sums advanced by the non-defaulting Participant to correct or cure the default, plus interest at the maximum rate permitted to be charged by the National Credit Union Administration for member business loans. Voting rights of the defaulting Participant as to the loans in question shall be suspended until the default is cured. These remedies herein are cumulative to any remedies the Parties may have at law and equity.

ARTICLE V

Miscellaneous Provisions

5.1 Sale of Participation Interest

- (a) Subject to the right of first refusal set forth in this Section, it is agreed that a Participant may sell, transfer, encumber, or assign all or any part of its Participation Interest in any of the loans and may pledge, hypothecate, or transfer its respective Participation Interests in such loans to any third party assignee (a "Third Party

Assignee") through an assumption and assignment agreement, where such third party purchaser shall have no rights under this agreement and shall only assume the monetary rights and obligations of the selling Participant. In such event the Participant shall disclose the identity of a Third Party Assignee and the amount of the Participation Interest to be assigned. This provision has no effect upon the right and authority granted to Seller under this Agreement to satisfy the whole of such loan, or to execute releases under appropriate circumstances. Except for the right to receive payments, the obligation to fund advances and the risk of loss associated with the Participation Interest, a Third Party Assignee shall have no rights under this Agreement and shall not be considered a Participant under this Agreement.

- (b) Subject to the right of first refusal set forth in this Section, it is agreed that a Participant may sell, transfer, encumber, or assign all or any part of its Participation Interest in any of the loans subject to the terms of this Agreement and advances on such loans pursuant to Section 3.8 and may pledge, hypothecate, or transfer its respective Participation Interests in such loans to any credit union service organization, any federal agency or its subsidiaries, or any federally insured institution (except federally insured credit unions) ("Qualified Secondary Buyer") through a participation agreement. In such event the Participant shall disclose the identity of the Qualified Secondary Buyer of the Participation Interest and the percentage of the Participation Interest to be sold, pledged, or transferred. This provision has no effect upon the right and authority granted to Seller under this Agreement to satisfy the whole of such loan, or to execute releases under appropriate circumstances, and, if required, all Participants shall join therein. A Qualified Secondary Buyer shall be considered a Participant under this Agreement and as such shall sign a counterpart to this Agreement and be bound thereby.
- (b) Prior to selling or assigning all or a portion of its Participation Interest to a Qualified Secondary Buyer or a Third Party Assignee, the selling Participant shall provide written notice to the other Participant(s) of its intent to sell or assign all or a portion of its Participation Interest with a detailed description of the specific terms. The non-selling Participant(s) shall have a right of first refusal to purchase the selling Participant's Participation Interest upon the same terms set forth in the notice in proportion to the ownership among the Participants desiring to purchase the Participation Interest. The Participants that purchase the selling Participant's Participation Interest shall take ownership in that portion of the loan as a Participant and shall have the same rights and obligations as a Participant under this Agreement. If the non-selling Participants do not exercise their respective right of first refusal to buy all of the Participation Interest selling Participant desires to sell within ten (10) business days after the selling Participant's written notice, by tendering the stated consideration, the selling Participant may sell or assign the Participation Interest as set forth herein within sixty (60) days of the written notice of intent to sell upon the same terms set forth in the written notice of intent to sell.
- (c) After each sale or assignment of a Participation Interest pursuant to this Agreement, the Participation Interest of Seller and any other Participation Interest in the same

loan will be ratably concurrent, and none will have any priority over the other. A Qualified Secondary Buyer shall succeed to all of the rights of the selling Participant for the portion purchased, and such resale shall be evidenced by a new Loan Participation Certificate and Summary or Certificates which the substitute shall set forth the percentage of the underlying loans being resold. The selling Participant shall promptly provide to Seller a copy of the Loan Participation Certificates and Summary representing such resold Participation Interest. A Third Party Assignee shall succeed only to the rights of repayment, the obligations of funding advances and the risk of loss, and such assignment shall be evidenced by an assignment and assumption agreement setting forth these terms and the portion of the Participation Interest being assigned. Upon receipt of the copy of the Loan Participation Certificate and Summary or the assignment and assumption agreement, Seller, as trustee, will be responsible for segregating and for causing notations to be made in the books and records to reflect the ownership rights in the loan resulting from such resale or assignment and, thereafter, for segregating and causing monthly remittances and reports to be made to the respective owners in a manner consistent with the provisions of this Agreement.

- 5.2 **Seller's Right to Repurchase for Cause.** The Seller shall have the right (but not the obligation), at its sole and exclusive option, to repurchase the Buyer's Percentage Participation Interest in a Loan in accordance with the terms and provisions set forth hereafter, upon the occurrence of any of the following events: (i) upon the insolvency or liquidation of Buyer or an assignment of the Buyer's assets for the benefit of creditors; (ii) Buyer's material breach under this Agreement, including, without limitation, the Buyer's failure to make a monetary payment when the same is due or demanded, provided Seller has first given Buyer written notice specifying the nature of Buyer's breach, and Buyer fails to cure such breach within ten (10) days of its receipt of the written notice; (iii) the appointment of a receiver or trustee for all or substantially all of the assets of the Buyer which is not then stayed or released within ninety (90) days of such appointment; (iv) upon the issuance of a cease and desist order by a regulatory authority, either state or federal, with jurisdiction, which order has the effect of terminating the operations of the Buyer or its ability to perform its obligations under this Agreement, but only after the Buyer's right of appeal of any such order and the subsequent final adjudication thereof after all appeals, including, without limitation, an appeal to a court with jurisdiction; or (v) Buyer's material breach of any representation or warranty set forth in this Agreement. In the event that Seller exercises its repurchase option for cause, the repurchase price shall be at par which is that amount of the principal balance due under the Loan ratably attributable to the Buyer's Participation Interest but minus any costs or fees incurred by the Seller or its designee in connection with the Buyer's default as well as any other fees and costs which may be properly assessed hereunder. Furthermore, in making such a repurchase for cause, Seller shall not be obligated to pay any interest which might otherwise be due on account of the Participation Interest after the date of the occurrence of the original breach or default, and under no circumstances shall the Seller be obligated to pay any interest on account of the Participation Interest after an event of breach or default hereunder by the Buyer. If the Loan is also then in default for any reason or otherwise delinquent, the repurchase price shall be equitably adjusted accounting for funds actually received by the Seller or its designee, and

such funds which may be subject to deferral, may include, without limitation, proceeds received upon sale of Collateral, security proceeds upon foreclosure or other disposition of the Collateral security, funds received on account of enforcement of the Loan Documents or a Guaranty or any other settlement of the Loan whereby funds are recovered after an event of default under the Loan and the repurchase of the Participation Interest for cause. Nothing under this Section shall be construed as obligating the Seller to repurchase the Buyer's Participation Interest in a Loan, and nothing hereunder shall be construed as granting the Buyer the right to demand that the Seller repurchase such Participation Interest.

- 5.3 **Seller's Right to Repurchase for Convenience.** When and if the outstanding principal balance of a Loan falls below five percent (5%) of its original principal amount, for Loan clean-up purposes, the Seller shall have the right (but not the obligation) at its sole and exclusive option, to repurchase the Buyer's Participation Interest in such Loan at par (as previously defined in Section 5.2 above) whereupon the Seller or its designee shall pay to the Buyer the remaining principal balance ratably attributable to its Participation Interest and all interest accruing on account of that Participation Interest as of the date of the repurchase, but minus any fees and costs actually due as determined in accordance with the terms of this Agreement. If for any reason, including, without limitation, a liquidity problem, the Buyer desires that the Seller repurchase the Buyer's Percentage Participation Interest, the Seller may at its election consider such repurchase, but shall not be obligated to do so, and such repurchase of the Buyer's Percentage Participation Interest shall be upon such a repurchase price (and not necessarily at par) and upon such other terms and conditions as the parties shall then agree in writing. It is understood and agreed that for various reasons, the transfer and sale of Participation Interest is not necessarily in the interest of the various credit union participants given applicable rules and regulations applying to credit union "eligibility" requirements, and accordingly, this Agreement and its terms shall be construed accounting for this regulatory consideration. Nothing in this Section shall be construed as obligating the Seller to repurchase the Buyer's Participation Interest in the Loan, and nothing hereunder shall be construed as granting the Buyer the right to demand that the Seller repurchase the Participation Interest.
- 5.4 **Limited Agreement to Repurchase Participation Interests.** Seller agrees, upon Buyer's request, to repurchase any Participation Interest sold under this Agreement within eighteen (18) months after the date of Buyer's remittance of the purchase price therefor if any misstatement of material fact, intentional or otherwise, is disclosed by actual inspection of Buyer or its representative, or otherwise and if the matter cannot be resolved within thirty (30) days written notice to Seller by Buyer. The repurchase price shall be an amount equal to such Participation Interest's then outstanding principal, plus accrued and unpaid interest, less costs owed by Buyer.
- 5.5 **Prepayment Penalties.** In the event that any loans have prepayment premiums, the Parties agree that federal credit unions and other Participants that are not permitted to receive prepayment penalties under applicable law shall not receive the prepayment penalties. The Participants that are permitted to receive prepayment penalties agree to limit the prepayment penalties they receive to the pro rata portion of their Participation Interest. For

example, if a prepayment penalty that is due from a Borrower is \$1,000 under the terms of the Loan Documents, and there are two equal Participants in the loan and only one of which may receive prepayment penalties, \$500 is paid to the Participant that is permitted to receive the prepayment penalty and the balance is not collected from the Borrower.

- 5.6 **Warranty and Hold Harmless.** The Parties warrant and covenant that each will act in accordance with the law applicable to their respective powers to buy and sell Participation Interests. Each Party shall indemnify and hold harmless the other Parties for any direct (but not consequential) damages or losses sustained (including reasonable costs and attorneys' fees) as a direct and proximate result of that Party's intentional or negligent failure to comply with the applicable laws and regulations, discharge its duties, or honor its representations and warranties in this Agreement.
- 5.7 **Controlling Law.** This Agreement shall be interpreted under the laws of the State of New York without giving effect to choice of law provisions, except on those issues exclusively controlled by Federal Law.
- 5.8 **Dispute Resolution.** In the event the Parties have a dispute under this Agreement that cannot be amicably resolved, the Parties agree to submit the dispute upon the written demand of another Party, to the American Arbitration Association in its office closest to Seller's main office for resolution in accordance with their procedures. The costs of arbitration and all reasonable counsel fees will be borne by the Party determined by the arbitrator to be the non-prevailing Party. If the arbitrator does not make a finding as to whether a Party is to be considered a prevailing Party, the costs of arbitration shall be shared equally by the Parties and each Party shall bear its own counsel fees. The Parties agree to be bound by the decision of the arbitrator.
- 5.9 **Clearing Accounts.** The parties shall cooperate to establish and use clearing accounts to facilitate the movement of funds for the purposes herein.
- 5.10 **Document Contains Entire Agreement.** This document, which includes the Credit Union Master Loan Participation Agreement, and all Addenda attached hereto, contains the entire agreement between the Parties and cannot be modified in any respect except by an agreement in writing signed by all Parties.
- 5.11 **Notices.** All notices and other communications under this Agreement shall be in writing and shall be hand delivered or sent: (i) overnight through Federal Express, or a similar carrier and deemed delivered upon confirmation of such deliver, or (ii) by certified and regular mail and deemed to have been delivered when received by the respective Party at the address set herein above in the header to this Agreement, or at such other addresses as that Party may specify to the other by written notice. All other communication shall be made at the discretion of each of the parties commensurate with the gravity/importance of the communication and may be sent by electronic communication or facsimile.
- 5.12 **Facsimiles and Electronic Images.** The Parties agree to accept signed facsimile or electronic image documents as original documents.

- 5.13 **Accounting Treatment.** Each Party confirms that it has consulted with an accounting firm as to the accounting treatment of this transaction, including whether the transaction can be treated as a sale, and that no Party relied upon another Party for such advice. Should either party receive contradictory advice the parties will work in good faith to modify this Agreement to ensure that this transaction shall be treated as a true sale.