Tenancy in Common (TIC) General Requirements

- Fractional financing – no blanket encumbrances
- Borrower must have exclusive use of their unit
- Project cannot be in the process of condo conversion
- 4 units or less – projects with more than 4 units require documentation of DRE approval
- TIC Agreement will be reviewed by legal during loan process (allow 48 hours) – cost of legal review is $600
- Broker to agree to payment of $600 legal review of TIC Agreement even if loan does not close
- TIC Agreement legal review fee of $600 will be disclosed at intake
- TIC Agreement legal review will confirm adherence to attached TIC Underwriting Requirements
- If taxes and insurance are paid by the TIC, escrows will be waived which will affect the pricing/rate
- Max LTV of 85% if project is warrantable
- Max LTV of 80% if project is not warrantable (see attributes below):
    - If there is commercial space greater than 35% (allowed up to 50% as NW)
    - If project is new or newly converted, and all units are not sold or under contract (presale/under contract at 50% is allowed as NW)
    - If single entity ownership is greater than 20% (allowed up to 30% as NW)
    - If there is litigation (subject to review)
    - If investor concentration is greater than 50% (allowed up to 100% as NW)

5th STREET CAPITAL
TIC UNDERWRITING REQUIREMENTS

This document presents the organizational and documentation requirements that must be satisfied for 5th Street Capital ("5SC") to consider originating a loan secured by an undivided fractional interest in real property (the "Property") coupled with a non-recorded, contract-based exclusive right to occupy a particular area of the Property. 5SC will require independent review of the proposed documents prior to agreeing to extend credit, and reserves the right, in its sole discretion, to determine (i) whether the requirements described below are adequately satisfied, and (ii) whether it wishes to impose additional or different requirements.

PART 1—REGULATORY

5SC requires full compliance with the California Subdivided Lands Act (the "SLA", codified as California B & P Code Sections 11000 et seq.). When SLA applies to the sale of an undivided interest in connection with which a loan from FSC is requested, FSC will require proof of compliance in the form of a then-currently-valid Final Subdivision Public Report issued by the California Department of Real Estate. In general, SLA applies to a sale when both of the following conditions are satisfied:

- The Property consists of five or more units, of which at least one is residential (regardless of the number of undivided interests being created, marketed or sold); and
- An undivided interest is being marketed or sold by a person that owns or previously owned the entire property.

PART 2—TIC AGREEMENT

The requirements described in this Part relate to the agreement (referred to here as the "TIC Agreement") among the owners (referred to here as the "Cotenants") of undivided fractional interests (referred to here as the "Cotenancy Shares")
in the Property.

1. Legend

1.1 Legend imprinted on the first page of the TIC Agreement stating that the TIC Agreement should not be recorded, and that recording the TIC Agreement may create an illegal subdivision under local and/or state law.
MAY CREATE ILLEGAL SUBDIVISION INTERESTS UNDER STATE OR LOCAL LAW".

2. Definitions

2.1 The TIC Agreement must contain provisions defining "Cotenant" or an alternative term to mean the owner or owners (collectively) of a particular Cotenancy Share.

2.2 The TIC Agreement must contain provisions defining "Cotenancy Share" or an alternative term to mean a discreet percentage ownership interest in the property with a particular set of rights and duties which cannot be further fragmented or divided. The TIC Agreement must specifically provide that if a Cotenancy Share is owned by more than one individual, (i) each person within the group shall be jointly and severally liable for all obligations and responsibilities associated with the Cotenancy Share, and (ii) any act or omission by one of the persons within the group shall be deemed the act or omission of all persons within the group.

2.3 The TIC Agreement must contain provisions defining "TIC" or an alternative term to mean all co-owners of the property collectively and any subgroup of co-owners or other entity acting on behalf of all the co-owners collectively.

2.5 The TIC Agreement must contain provisions defining "Unit" or an alternative term to mean the dwellings or commercial units for which exclusive possessory rights are being assigned, together with a clear definition of the boundary of each Unit and the physical and mechanical elements which are part of the Unit.

2.6 The TIC Agreement must contain provisions defining "Common Area" or an alternative term to mean the portion of the property which is not within the definition of Unit.

3. Possessory Rights and Restrictions

3.1 The TIC Agreement must contain provisions describing the portions of the property to which each Cotenant has an exclusive right of occupancy, clearly creating such exclusivity, and further providing that such occupancy right will automatically transfer to any successor including an individual or entity who acquires an interest through foreclosure or a deed in lieu of foreclosure.

3.2 The TIC Agreement must contain provisions explicitly authorizing a Cotenant to rent out (except as prohibited by law) the portion of the property to which exclusive possessory rights are assigned to him/her, and to retain all rent collected, subject only to reasonable restrictions on tenant selection and a requirement that all rental occupants execute a rental agreement under which each is bound to adhere to the habitation rules, and the maintenance, repair and alteration requirements, of the TIC Agreement (except to the extent that such requirements are superseded by consistent but more restrictive provisions in the rental agreement).

3.3 The TIC Agreement must contain a prohibition of any use of the property that (i) creates a nuisance, (ii) unreasonably interferes with the quiet enjoyment of an occupant, (iii) adversely affects insurance coverage on the property, or (iv) is in violation of a governmental regulation.

4. Maintenance and Alteration

4.1 The TIC Agreement must contain provisions allocating responsibility for maintenance, repair and replacement of all elements of the property among the co-owners, imposing reasonable standards for the condition of all such elements, and creating restrictions on the rights of co-owners to alter the property, in a manner reasonably calculated to maintain the value and desirability of the property.

5. Expenses and Management

5.1 The TIC Agreement must contain provisions (i) allocating all costs among the Cotenancy Shares, (ii) requiring the annual creation of a budget for all reasonably expected operating expenses, (iii) requiring the imposition and collection of monthly assessments from each Cotenant in an amount sufficient to fund all operating expense as shown on the budget, and (iv) creating a procedure for imposing and collecting additional assessments for unexpected or under-funded expenses.

5.2 The TIC Agreement must contain provisions assigning responsibility for financial management (including collection of assessments, payment of expenses and reasonable periodic reporting), and physical management (including periodic inspection of elements of the property which the TIC is obligated to maintain, hiring and supervision of contractors, and periodic cleaning of all common areas), to particular co-owners and/or outside managers.

5.3 The TIC Agreement must contain provisions creating a reasonable likelihood that the TIC and each Cotenant will be able to successfully enforce the TIC Agreement reasonably quickly within the limitations imposed by law.

6. Governance and Enforcement

6.1 The TIC Agreement must contain provisions creating a reasonable system of governance and decision making for the TIC including an allocation of voting rights, a method for calling and conducting meetings, and a requirement that written minutes of all meetings be created and maintained.

7. Transferees and Successors

7.1 The TIC Agreement must not contain any right of first refusal or pre-emptive purchase right under which the transferor of a Cotenancy Share must offer to sell the share to any person(s) or to the owner group before transferring it to the person of the transferor's choice.

7.2 The TIC Agreement must not contain any provision under which the sale price of a Cotenancy Share is proscribed in any form, including a provision where the price must be related to any sort of valuation process or approved by any person or group.

7.3 The TIC Agreement must not contain any provision under which the seller of a Cotenancy Share is required to provide to the other owners any portion of the sale proceeds.

7.4 The TIC Agreement must not contain any provision under which the sale or other transfer of a Cotenancy Share is prohibited prior to a certain date or event, or where the sale or other transfer requires the approval of any person or the owner group.

7.5 The TIC Agreement must not contain any provision under which the transferee of a Cotenancy Share must be approved by any person or the owner group.

7.6 The TIC Agreement must contain provisions under the transferor of a Cotenancy Share must obtain the signature of each transferee on a document under which the transferee agrees to be bound by the TIC Agreement, and acknowledges the usage rights to be assigned to him/her. Such provision should impose liability on a transferor who fails to obtain such signature and provide it to the other owners prior to completing the transfer.

7.7 The TIC Agreement must contain provisions under which the successor of any co-owner of the property shall be deemed to assume all obligations and liabilities of the party whose interest he/she obtained, regardless of whether he/she has executed a document agreeing to be bound by the TIC Agreement.

8. Mortgage Protection

8.1 The TIC Agreement must contain provisions enabling any Cotenant to create an encumbrance which is solely against his/her interest in the property provided the loan documents associated with the encumbrance explicitly state that the lender, or any individual or entity who acquires title through foreclosure (the "post-foreclosure owner"), takes title subject to all of the provisions of the TIC Agreement and shall be entitled to no greater rights than the Cotenant who created the foreclosed encumbrance.

8.2 The TIC Agreement must contain provisions under which any post-foreclosure owner (as defined above) (i) automatically acquires all of the rights assigned by the TIC Agreement to the person whose interest was foreclosed undiminished by any prior or subsequent act or omission of such person, and (ii) is automatically subject to all of the restrictions and requirements of the TIC Agreement except the obligation to pay assessments or other charges that became due and payable prior to the date the post-foreclosure owner acquired title. These provisions must explicitly provide that the TIC and each co-owner of the property waives any claims of subrogation that could be raised against any post-foreclosure owner for assessments or other charges that become due and payable prior to the date he/she/it acquired title.

8.3 The TIC Agreement must contain provisions under which no action taken by the TIC or by any co-owner of the property to enforce an obligation imposed by the TIC Agreement, including an attempt to terminate, limit or alter a Cotenant's usage or possessory rights, shall in any way diminish or otherwise affect the rights of any lender (i) to enforce any provision of his/her/its loan documents even where a loan document was recorded after the occurrence which provides the basis for the enforcement action, or (ii) to automatically acquire all of the rights assigned by the TIC Agreement to a Cotenant whose interest the lender acquires through foreclosure or deed in lieu of foreclosure (undiminished by any prior or subsequent act or omission of such Cotenant).

8.4 The TIC Agreement must contain provisions under which (i) each lender shall have priority over the rights of all owners of the interest encumbered by the lender's loan documents to distribution of insurance proceeds or condemnation awards for losses to or a taking of such owners' interest in the property, and (ii) all casualty insurance policies shall contain loss payable clauses naming all lender's as loss payees.

8.5 The TIC Agreement must contain provisions under which the prior written consent of each lender with an encumbrance against a Cotenancy Share is required prior to take any of the following actions, and further providing that any action taken without such consent is void and unenforceable against each such lender and its successors: (i) increase such Cotenancy Share's previous allocation of any expense; (ii) decrease such Cotenancy Share's previous allocation of proceeds from insurance or condemnation; and (iii) alter the boundaries or permissible uses of any area of the Property to which such Cotenancy Share had exclusive possessory rights.

8.6 The TIC Agreement must contain provisions under which the prior written consent of all lenders is required prior to take any of the following actions, and further providing that any action taken without such consent is void and unenforceable against every lender and its successors: (i) sell the entire Property; (ii) fail to maintain fire and extended coverage on all improvements located on the property in an amount not less than 100% of insurable value based on current replacement cost; or (iii) materially alter any provision of the TIC Agreement that is intended to benefit or protect a lender.

8.7 The TIC Agreement must contain a requirement that each lender be given written notice of any of the following: (i) any disciplinary or enforcement action, or warning of such action, against a Cotenant whose Cotenancy Share is encumbered by the lender's loan; (ii) any loss, casualty, condemnation, or eminent domain action which significantly affects the property; (iii) any legal proceeding against the TIC or any Cotenant; and (iv) the lapse or cancellation of any insurance policy required by the TIC Agreement.

8.9 The TIC Agreement must contain provisions under which any lender may appear at meetings of Cotenants or any associated board or committee, and may inspect and copy books of accounts, financial statements, and meeting minutes, for any purpose reasonably related to his/her/its interests as a lender.

8.10 The TIC Agreement must contain provisions requiring that the TIC timely pay all taxes, assessments and other charges that could have priority equal or superior to the interest of a lender, and requiring the TIC to notify each lender within 30 days of a failure to timely make any such payment.

8.11 The TIC Agreement must contain provisions under which all co-owners of the Property and their successors, and all lender and their successors, for a period of 75 years, unconditionally waive the right to partition the property and to terminate or modify the TIC Agreement under Code of Civil Procedure §872.010, <u>et.seq</u>., unless one of the following conditions is satisfied: (i) more than three years before the filing of the action for partition and/or termination, the property was damaged or destroyed, so that a material part was rendered unfit for its prior use, and the property has not been rebuilt or repaired substantially to its state prior to the damage or destruction, or (ii) three-fourths or more of the property is destroyed or substantially damaged and more than 50% of the Cotenants oppose repair or restoration. The TIC Agreement shall further provide that in the event of partition, all co-owners of the property and their successors, and all lenders and their successors, waive any right to claim that partition in any way prohibits, limits, diminishes or interferes with any lender's rights, and further waive any right to claim that partition in any way prohibits, limits, diminishes or interferes with any lender's right to pursue all rights and remedies under its loan documents, including the right to foreclose and the right to obtain timely and full payment of its loan prior to any party obtaining payment from partition.

PART 3—RECORDED MEMORANDUM OR DECLARATION

The requirements described in this Part relate to an additional document (referred to here as the "Recorded Document") that must be recorded against the Property and bind its original signers as well as all persons who later acquire any interest in the Property.

9. Constructive Notice

9.1 The Recorded Document must generally refer to and briefly described the TIC Agreement, <u>without mentioning the assignment of exclusive usage rights</u>.

9.2 The Recorded Document must express the intention that it provide constructive notice of the existence of the TIC Agreement, but not to affect or modify the provisions of the TIC Agreement

10. Partition Waiver

10.1 The Recorded Document must contain a provision under which the signers of the Recorded Document, on their own behalf and on behalf of the successive owners of the Property, including but not limited to creditors who become owners through enforcement of creditor rights including foreclosure, unconditionally waive the right of partition to the extent described in Subsection 8.11 above. This provision must state that waiver is made for the benefit of all successors in interest, and that it is intended to be a "covenant running with the land" as defined in California Civil Code Section 1468.

11. Lender Rights Acknowledgment

11.1 The Recorded Document must contain a provision under which the signers of the Recorded Document, on their own behalf and on behalf of the successive owners of the Property, give notice that present and/or future Property owners have undertaken obligations to lenders that limit the ability of owners, other lenders, creditors, bankruptcy trustees, and others, to take certain actions they might otherwise be entitled to take in the absence of such obligations, and that the Recorded Document is intended to prevent such parties from successfully claiming that they were ignorant of, or are not bound by, such obligations.

12. Additional Lender Protections

12.1 If the Recorded Document creates nonjudicial enforcement rights, then it must contain provisions reiterating the lender protections described in Subsections 8.3 and 8.4 above.