UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-Q

☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
For the quarterly period ended March 31, 2024
OR

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
For the transition period from _____ to _____

Commission File No. 001-35517

ARES COMMERCIAL REAL ESTATE CORPORATION

(Exact name of Registrant as specified in its charter)

Maryland	**45-3148087**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification Number)

245 Park Avenue, 42nd Floor, New York, NY 10167
(Address of principal executive offices) (Zip Code)

(212) 750-7300
(Registrant's telephone number, including area code)

N/A
(Former name, former address and former fiscal year, if changed since last report)

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	**Trading Symbol(s)**	**Name of each exchange on which registered**
Common stock, $0.01 par value per share	ACRE	New York Stock Exchange

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days: Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer	☐	Accelerated filer	☒
Non-accelerated filer	☐	Smaller reporting company	☐
Emerging growth company	☐		

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date.

Class	**Outstanding at May 7, 2024**
Common stock, $0.01 par value	54,506,811

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FORWARD-LOOKING STATEMENTS

Some of the statements contained in this quarterly report constitute forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995 and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and we intend such statements to be covered by the safe harbor provisions contained therein. The information contained in this section should be read in conjunction with our consolidated financial statements and notes thereto appearing elsewhere in this quarterly report on Form 10-Q. In addition, some of the statements in this quarterly report (including in the following discussion) constitute forward-looking statements, which relate to future events or the future performance or financial condition of Ares Commercial Real Estate Corporation ("ACRE" and, together with its consolidated subsidiaries, the "Company," "we," "us" and "our"). The forward-looking statements contained in this report involve a number of risks and uncertainties, including:

- global economic trends and economic conditions, including high inflation, slower growth or recession, changes to fiscal and monetary policy, higher interest rates and currency fluctuations, as well as geopolitical instability, including conflicts between Russia and Ukraine and between Israel and Hamas;
- changes in interest rates, credit spreads and the market value of our investments;
- our business and investment strategy;
- our projected operating results;
- the return or impact of current and future investments;
- management's current estimate of expected credit losses and current expected credit loss reserve;
- the collectability and timing of cash flows, if any, from our investments;
- estimates relating to our ability to make distributions to our stockholders in the future;
- defaults by borrowers in paying amounts due on outstanding indebtedness and our ability to collect all amounts due according to the contractual terms of our investments;
- our ability to obtain, maintain, repay or refinance financing arrangements, including securitizations;
- market conditions and our ability to access alternative debt markets and additional debt and equity capital;
- the amount of commercial mortgage loans requiring refinancing;
- the demand for commercial real estate loans;
- our expected investment capacity and available capital;
- financing and advance rates for our target investments;
- our expected leverage;
- rates of default or decreased recovery rates on our target investments;
- rates of prepayments on our mortgage loans and the effect on our business of such prepayments;
- the degree to which our hedging strategies may or may not protect us from interest rate volatility;
- availability of investment opportunities in mortgage-related and real estate-related investments and securities;
- the ability of Ares Commercial Real Estate Management LLC ("ACREM" or our "Manager") to locate suitable investments for us, monitor, service and administer our investments and execute our investment strategy;
- allocation of investment opportunities to us by our Manager;

- our ability to successfully identify, complete and integrate any acquisitions;
- our ability to maintain our qualification as a real estate investment trust ("REIT") for United States federal income tax purposes;
- our ability to maintain our exemption from registration under the Investment Company Act of 1940 (the "1940 Act");
- our understanding of our competition;
- health pandemics or epidemics like COVID-19;
- general volatility of the securities markets in which we may invest;
- adverse changes in the real estate, real estate capital and credit markets and the impact of a protracted decline in the liquidity of credit markets on our business;
- changes in governmental regulations, tax law and rates, and similar matters (including interpretation thereof);
- authoritative or policy changes from standard-setting bodies such as the Financial Accounting Standards Board, the Securities and Exchange Commission (the "SEC"), the Internal Revenue Service, the stock exchange where we list our common stock, and other authorities that we are subject to, as well as their counterparts in any foreign jurisdictions where we might do business;
- actions and initiatives of the United States government or governments outside of the United States, and changes to United States government policies; and
- market trends in our industry, real estate values or the debt securities markets.

We use words such as "anticipates," "believes," "expects," "intends," "project," "estimates," "will," "should," "could," "would," "may" and similar expressions to identify forward-looking statements, although not all forward-looking statements include these words. Our actual results and financial condition could differ materially from those implied or expressed in the forward-looking statements for any reason, including the risks, uncertainties and other factors set forth in Part I, Item 1A, "Risk Factors" in our annual report on Form 10-K for the fiscal year ended December 31, 2023 ("2023 Annual Report") and the other information included in our 2023 Annual Report and elsewhere in our subsequent quarterly reports on Form 10-Q.

We have based the forward-looking statements included in this quarterly report on information available to us on the date of this quarterly report, and we assume no obligation to update any such forward-looking statements. Although we undertake no obligation to revise or update any forward-looking statements, whether as a result of new information, future events or otherwise, you are advised to consult any additional disclosures that we may make directly to you or through reports that we have filed or in the future may file with the SEC, including annual reports on Form 10-K, registration statements on Form S-3, quarterly reports on Form 10-Q and current reports on Form 8-K.

PART I - FINANCIAL INFORMATION
Item 1: Consolidated Financial Statements

ARES COMMERCIAL REAL ESTATE CORPORATION AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEETS
(in thousands, except share and per share data)

	As of	
	March 31, 2024 (unaudited)	December 31, 2023
ASSETS		
Cash and cash equivalents	$ 99,518	$ 110,459
Loans held for investment ($773,904 and $892,166 related to consolidated VIEs, respectively)	2,014,500	2,126,524
Current expected credit loss reserve	(139,763)	(159,885)
Loans held for investment, net of current expected credit loss reserve	1,874,737	1,966,639
Loans held for sale, at fair value ($38,981 related to consolidated VIEs as of December 31, 2023)	—	38,981
Investment in available-for-sale debt securities, at fair value	28,148	28,060
Real estate owned, net	82,499	83,284
Other assets ($3,537 and $3,690 of interest receivable related to consolidated VIEs, respectively; $6,539 and $32,002 of other receivables related to consolidated VIEs, respectively)	25,795	52,354
Total assets	$ 2,110,697	$ 2,279,777
LIABILITIES AND STOCKHOLDERS' EQUITY		
LIABILITIES		
Secured funding agreements	$ 630,299	$ 639,817
Notes payable	104,714	104,662
Secured term loan	149,443	149,393
Collateralized loan obligation securitization debt (consolidated VIEs)	595,105	723,117
Due to affiliate	4,281	4,135
Dividends payable	13,802	18,220
Other liabilities ($1,918 and $2,263 of interest payable related to consolidated VIEs, respectively)	11,964	14,584
Total liabilities	1,509,608	1,653,928
Commitments and contingencies (Note 8)		
STOCKHOLDERS' EQUITY		
Common stock, par value $0.01 per share, 450,000,000 shares authorized at March 31, 2024 and December 31, 2023 and 54,422,613 and 54,149,225 shares issued and outstanding at March 31, 2024 and December 31, 2023, respectively	532	532
Additional paid-in capital	813,468	812,184
Accumulated other comprehensive income	234	153
Accumulated earnings (deficit)	(213,145)	(187,020)
Total stockholders' equity	601,089	625,849
Total liabilities and stockholders' equity	$ 2,110,697	$ 2,279,777

See accompanying notes to consolidated financial statements.

ARES COMMERCIAL REAL ESTATE CORPORATION AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF OPERATIONS
(in thousands, except share and per share data)
(unaudited)

	For the Three Months Ended March 31,	
	2024	2023
Revenue:		
Interest income	$ 44,033	$ 49,500
Interest expense	(28,819)	(22,999)
Net interest margin	15,214	26,501
Revenue from real estate owned	3,478	—
Total revenue	18,692	26,501
Expenses:		
Management and incentive fees to affiliate	2,768	3,010
Professional fees	533	771
General and administrative expenses	2,081	1,685
General and administrative expenses reimbursed to affiliate	1,132	732
Expenses from real estate owned	2,037	—
Total expenses	8,551	6,198
Provision for current expected credit losses	(22,269)	21,019
Realized losses on loans	45,726	5,613
Change in unrealized losses on loans held for sale	(995)	—
Income (loss) before income taxes	(12,321)	(6,329)
Income tax expense, including excise tax	2	110
Net income (loss) attributable to common stockholders	$ (12,323)	$ (6,439)
Earnings (loss) per common share:		
Basic earnings (loss) per common share	$ (0.23)	$ (0.12)
Diluted earnings (loss) per common share	$ (0.23)	$ (0.12)
Weighted average number of common shares outstanding:		
Basic weighted average shares of common stock outstanding	54,396,397	54,591,650
Diluted weighted average shares of common stock outstanding	54,396,397	54,591,650
Dividends declared per share of common stock	$ 0.25	$ 0.35

See accompanying notes to consolidated financial statements.

ARES COMMERCIAL REAL ESTATE CORPORATION AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)
(in thousands)
(unaudited)

	For the Three Months Ended March 31,	
	2024	2023
Net income (loss) attributable to common stockholders	$ (12,323)	$ (6,439)
Other comprehensive income (loss):		
Realized and unrealized gains (losses) on derivative financial instruments	—	(4,477)
Unrealized gains on available-for-sale debt securities	81	65
Comprehensive income (loss)	$ (12,242)	$ (10,851)

See accompanying notes to consolidated financial statements.

ARES COMMERCIAL REAL ESTATE CORPORATION AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(in thousands, except share and per share data)
(unaudited)

	Common Stock		Additional Paid-in Capital	Accumulated Other Comprehensive Income (Loss)	Accumulated Earnings (Deficit)	Total Stockholders' Equity
	Shares	Amount				
Balance at December 31, 2022	54,443,983	$ 537	$ 812,788	$ 7,541	$ (73,326)	$ 747,540
Stock-based compensation	162,843	—	960	—	—	960
Other comprehensive loss	—	—	—	(4,412)	—	(4,412)
Net loss	—	—	—	—	(6,439)	(6,439)
Dividends declared	—	—	—	—	(19,346)	(19,346)
Balance at March 31, 2023	54,606,826	$ 537	$ 813,748	$ 3,129	$ (99,111)	$ 718,303
Offering costs	—	—	4	—	—	4
Stock-based compensation	65,412	—	1,004	—	—	1,004
Repurchase and retirement of common stock	(535,965)	(5)	(4,595)	—	—	(4,600)
Other comprehensive loss	—	—	—	(2,142)	—	(2,142)
Net loss	—	—	—	—	(2,198)	(2,198)
Dividends declared	—	—	—	—	(19,180)	(19,180)
Balance at June 30, 2023	54,136,273	$ 532	$ 810,161	$ 987	$ (120,489)	$ 691,191
Stock-based compensation	—	—	986	—	—	986
Other comprehensive loss	—	—	—	(321)	—	(321)
Net income	—	—	—	—	9,184	9,184
Dividends declared	—	—	—	—	(18,082)	(18,082)
Balance at September 30, 2023	54,136,273	$ 532	$ 811,147	$ 666	$ (129,387)	$ 682,958
Offering costs	—	—	(4)	—	—	(4)
Stock-based compensation	12,952	—	1,041	—	—	1,041
Other comprehensive loss	—	—	—	(513)	—	(513)
Net loss	—	—	—	—	(39,414)	(39,414)
Dividends declared	—	—	—	—	(18,219)	(18,219)
Balance at December 31, 2023	54,149,225	$ 532	$ 812,184	$ 153	$ (187,020)	$ 625,849
Stock-based compensation	273,388	—	1,284	—	—	1,284
Other comprehensive income	—	—	—	81	—	81
Net loss	—	—	—	—	(12,323)	(12,323)
Dividends declared	—	—	—	—	(13,802)	(13,802)
Balance at March 31, 2024	54,422,613	$ 532	$ 813,468	$ 234	$ (213,145)	$ 601,089

See accompanying notes to consolidated financial statements.

ARES COMMERCIAL REAL ESTATE CORPORATION AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)
(unaudited)

	For the Three Months Ended March 31,	
	2024	2023
Operating activities:		
Net income (loss)	$ (12,323)	$ (6,439)
Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities:		
Amortization of deferred financing costs	1,118	979
Accretion of discounts, deferred loan origination fees and costs	(1,254)	(1,779)
Stock-based compensation	1,284	960
Depreciation and amortization of real estate owned	786	—
Provision for current expected credit losses	(22,269)	21,019
Realized losses on loans	45,726	5,613
Change in unrealized losses on loans held for sale	(995)	—
Amortization of derivative financial instruments	—	(456)
Changes in operating assets and liabilities:		
Other assets	(493)	(8,617)
Due to affiliate	146	(1,681)
Other liabilities	(348)	1,657
Net cash provided by (used in) operating activities	11,378	11,256
Investing activities:		
Issuance of and fundings on loans held for investment	(12,003)	(18,378)
Principal collections and cost-recovery proceeds on loans held for investment	106,806	78,198
Proceeds from sale of loans held for sale	38,981	9,825
Receipt of origination and other loan fees	232	413
Net cash provided by (used in) investing activities	134,016	70,058
Financing activities:		
Proceeds from secured funding agreements	12,781	12,662
Repayments of secured funding agreements	(22,299)	(19,740)
Payment of secured funding costs	(370)	(297)
Repayments of debt of consolidated VIEs	(128,226)	(42,106)
Dividends paid	(18,221)	(19,347)
Net cash provided by (used in) financing activities	(156,335)	(68,828)
Change in cash and cash equivalents	(10,941)	12,486
Cash and cash equivalents, beginning of period	110,459	141,278
Cash and cash equivalents, end of period	$ 99,518	$ 153,764
Supplemental disclosure of noncash investing and financing activities:		
Dividends declared, but not yet paid	$ 13,802	$ 19,346
Other receivables related to consolidated VIEs	$ 6,539	$ 128,334

See accompanying notes to consolidated financial statements.

ARES COMMERCIAL REAL ESTATE CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
As of March 31, 2024
(in thousands, except share and per share data, percentages and as otherwise indicated)
(unaudited)

1. ORGANIZATION

Ares Commercial Real Estate Corporation (together with its consolidated subsidiaries, the "Company" or "ACRE") is a specialty finance company primarily engaged in originating and investing in commercial real estate loans and related investments. Through Ares Commercial Real Estate Management LLC ("ACREM" or the Company's "Manager"), a Securities and Exchange Commission ("SEC") registered investment adviser and a subsidiary of Ares Management Corporation (NYSE: ARES) ("Ares Management" or "Ares"), a publicly traded, leading global alternative investment manager, it has investment professionals strategically located across the United States and Europe who directly source new loan opportunities for the Company with owners, operators and sponsors of commercial real estate ("CRE") properties. The Company was formed and commenced operations in late 2011. The Company is a Maryland corporation and completed its initial public offering (the "IPO") in May 2012. The Company is externally managed by its Manager, pursuant to the terms of a management agreement (the "Management Agreement").

The Company operates as one operating segment and is primarily focused on directly originating and managing a diversified portfolio of CRE debt-related investments for the Company's own account. The Company's target investments include senior mortgage loans, subordinated debt, preferred equity, mezzanine loans and other CRE investments, including commercial mortgage-backed securities. These investments are generally held for investment and are secured, directly or indirectly, by office, multifamily, retail, industrial, lodging, self storage, student housing, residential and other commercial real estate properties, or by ownership interests therein.

The Company has elected and qualified to be taxed as a real estate investment trust ("REIT") for United States federal income tax purposes under the Internal Revenue Code of 1986, as amended (the "Code"), commencing with its taxable year ended December 31, 2012. The Company generally will not be subject to United States federal income taxes on its REIT taxable income as long as it annually distributes all of its REIT taxable income prior to the deduction for dividends paid to stockholders and complies with various other requirements as a REIT.

2. SIGNIFICANT ACCOUNTING POLICIES

The accompanying unaudited consolidated interim financial statements should be read in conjunction with the audited consolidated financial statements and the related management's discussion and analysis of financial condition and results of operations included in the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2023 filed with the SEC.

Refer to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2023 for a description of the Company's recurring accounting policies. The Company has included disclosure below regarding basis of presentation and other accounting policies that (i) are required to be disclosed quarterly or (ii) the Company views as critical as of the date of this report.

Basis of Presentation

The accompanying unaudited consolidated interim financial statements have been prepared on the accrual basis of accounting in conformity with United States generally accepted accounting principles ("GAAP") and include the accounts of the Company, the consolidated variable interest entities ("VIEs") that the Company controls and of which the Company is the primary beneficiary, and the Company's wholly-owned subsidiaries. The unaudited consolidated interim financial statements reflect all adjustments and reclassifications that, in the opinion of management, are necessary for the fair presentation of the Company's results of operations and financial condition as of and for the periods presented. All intercompany balances and transactions have been eliminated.

The unaudited consolidated interim financial statements are prepared in accordance with GAAP and pursuant to the requirements for reporting on Form 10-Q and Article 10 of Regulation S-X. The current period's results of operations will not necessarily be indicative of results for any other interim period or that ultimately may be achieved for the year ending December 31, 2024.

Use of Estimates in the Preparation of Financial Statements

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect certain reported amounts and disclosures. Global macroeconomic conditions, including high inflation, changes to fiscal and monetary policy, high interest rates, potential market-wide liquidity problems, currency fluctuations, labor shortages and challenges in the supply chain, have the potential to negatively impact the Company and its borrowers. These current macroeconomic conditions may continue or aggravate and could cause the United States economy or other global economies to experience an economic slowdown or recession. We anticipate our business and operations could be materially adversely affected by a prolonged recession in the United States or other major global economy.

The Company believes the estimates and assumptions underlying its consolidated financial statements are reasonable and supportable based on the information available as of March 31, 2024, however, uncertainty over the global economy and the Company's business, makes any estimates and assumptions as of March 31, 2024 inherently less certain than they would be absent the current and potential impacts of current macroeconomic conditions. Actual results could differ from those estimates.

Variable Interest Entities

The Company evaluates all of its interests in VIEs for consolidation. When the Company's interests are determined to be variable interests, the Company assesses whether it is deemed to be the primary beneficiary of the VIE. The primary beneficiary of a VIE is required to consolidate the VIE. Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") Topic 810, *Consolidation*, defines the primary beneficiary as the party that has both (i) the power to direct the activities of the VIE that most significantly impact its economic performance, and (ii) the obligation to absorb losses and the right to receive benefits from the VIE which could be potentially significant. The Company considers its variable interests, as well as any variable interests of its related parties in making this determination. Where both of these factors are present, the Company is deemed to be the primary beneficiary and it consolidates the VIE. Where either one of these factors is not present, the Company is not the primary beneficiary and it does not consolidate the VIE.

To assess whether the Company has the power to direct the activities of a VIE that most significantly impact the VIE's economic performance, the Company considers all facts and circumstances, including its role in establishing the VIE and its ongoing rights and responsibilities. This assessment includes first, identifying the activities that most significantly impact the VIE's economic performance; and second, identifying which party, if any, has power over those activities. In general, the parties that make the most significant decisions affecting the VIE or have the right to unilaterally remove those decision makers are deemed to have the power to direct the activities of a VIE.

To assess whether the Company has the obligation to absorb losses of the VIE or the right to receive benefits from the VIE that could potentially be significant to the VIE, the Company considers all of its economic interests, including debt and equity investments, servicing fees, and other arrangements deemed to be variable interests in the VIE. This assessment requires that the Company applies judgment in determining whether these interests, in the aggregate, are considered potentially significant to the VIE. Factors considered in assessing significance include: the design of the VIE, including its capitalization structure; subordination of interests; payment priority; relative share of interests held across various classes within the VIE's capital structure; and the reasons why the interests are held by the Company.

For VIEs of which the Company is determined to be the primary beneficiary, all of the underlying assets, liabilities, equity, revenue and expenses of the structures are consolidated into the Company's consolidated financial statements.

The Company performs an ongoing reassessment of: (1) whether any entities previously evaluated under the majority voting interest framework have become VIEs, based on certain events, and therefore are subject to the VIE consolidation framework, and (2) whether changes in the facts and circumstances regarding its involvement with a VIE cause the Company's consolidation conclusion regarding the VIE to change. See Note 15 included in these consolidated financial statements for further discussion of the Company's VIEs.

Cash and Cash Equivalents

Cash and cash equivalents include funds on deposit with financial institutions, including demand deposits with financial institutions. Cash and short-term investments with an original maturity of three months or less when acquired are considered cash and cash equivalents for the purpose of the consolidated balance sheets and statements of cash flows.

Loans Held for Investment

The Company originates CRE debt and related instruments generally to be held for investment. Loans that are held for investment are carried at cost, net of unamortized purchase discounts, deferred loan fees and origination costs and cost-recovery proceeds (the "carrying value"). Loans are generally collateralized by real estate. The extent of any credit deterioration associated with the performance and/or value of the underlying collateral property and the financial and operating capability of the borrower could impact the expected amounts received. The Company monitors performance of its loans held for investment portfolio under the following methodology: (1) borrower review, which analyzes the borrower's ability to execute on its original business plan, reviews its financial condition, assesses pending litigation and considers its general level of responsiveness and cooperation; (2) economic review, which considers underlying collateral (i.e. leasing performance, unit sales and cash flow of the collateral and its ability to cover debt service, as well as the residual loan balance at maturity); (3) property review, which considers current environmental risks, changes in insurance costs or coverage, current site visibility, capital expenditures and market perception; and (4) market review, which analyzes the collateral from a supply and demand perspective of similar property types, as well as from a capital markets perspective. Such analyses are completed and reviewed by asset management and finance personnel who utilize various data sources, including periodic financial data such as property occupancy, tenant profile, rental rates, operating expenses, and the borrower's exit plan, among other factors.

Loans are generally placed on non-accrual status when principal or interest payments are past due 30 days or more or when there is reasonable doubt that principal or interest will be collected in full. Accrued and unpaid interest is generally reversed against interest income in the period the loan is placed on non-accrual status. Interest payments received on non-accrual loans may be recognized as income or applied to reduce loan carrying value depending upon management's judgment regarding the borrower's ability to make pending principal and interest payments. Non-accrual loans are restored to accrual status when past due principal and interest are paid and, in management's judgment, are likely to remain current. The Company may make exceptions to placing a loan on non-accrual status if the loan has sufficient collateral value and is in the process of collection.

Loan balances that are deemed to be uncollectible are written off as a realized loss and are deducted from the current expected credit loss reserve. The write-offs are recorded in the period in which the loan balance is deemed uncollectible based on management's judgment.

Current Expected Credit Losses

FASB ASC Topic 326, *Financial Instruments—Credit Losses* ("ASC 326"), requires the Company to reflect current expected credit losses ("CECL") on both the outstanding balances and unfunded commitments on loans held for investment and requires consideration of a broad range of historical experience adjusted for current conditions and reasonable and supportable forecast information to inform credit loss estimates (the "CECL Reserve" or "CECL Reserves"). Increases and decreases to expected credit losses impact earnings and are recorded within provision for current expected credit losses in the Company's consolidated statements of operations. The CECL Reserve related to outstanding balances on loans held for investment required under ASC 326 is a valuation account that is deducted from the amortized cost basis of the Company's loans held for investment in the Company's consolidated balance sheets. The CECL Reserve related to unfunded commitments on loans held for investment is recorded within other liabilities in the Company's consolidated balance sheets. See Note 4 included in these consolidated financial statements for CECL related disclosures.

Loans Held for Sale

Although the Company generally holds its target investments as long-term investments, the Company occasionally classifies some of its investments as held for sale. Investments held for sale are carried at fair value within loans held for sale, at fair value in the Company's consolidated balance sheets, with changes in fair value recorded through earnings.

Real Estate Owned

Real estate assets are carried at their estimated fair value at acquisition and are presented net of accumulated depreciation or amortization and impairment charges. The Company allocates the purchase price of acquired real estate assets based on the fair value of the acquired land, buildings and improvements, furniture, fixtures and equipment, intangible assets and intangible liabilities, as applicable.

Real estate assets are depreciated or amortized using the straight-line method over estimated useful lives of up to 40 years for buildings and improvements, up to 15 years for furniture, fixtures and equipment and over the lease terms for intangible assets and liabilities. Renovations and/or replacements that improve or extend the life of the real estate asset are capitalized and depreciated over their estimated useful lives. The cost of ordinary repairs and maintenance are expensed as incurred. Other than amortization related to intangible assets and liabilities for above-market or below-market leases, depreciation or amortization expense related to real estate assets is included within expenses from real estate owned in the Company's consolidated statements of operations. Amortization for above-market or below-market leases is recognized as an adjustment to rental revenue and is included within revenue from real estate owned in the Company's consolidated statements of operations.

Real estate assets are evaluated for indicators of impairment on a quarterly basis. Factors that the Company may consider in its impairment analysis include, among others: (1) significant underperformance relative to historical or anticipated operating results; (2) significant negative industry or economic trends; (3) costs necessary to extend the life or improve the real estate asset; (4) significant increase in competition; and (5) ability to hold and dispose of the real estate asset in the ordinary course of business. A real estate asset is considered impaired when the sum of estimated future undiscounted cash flows expected to be generated by the real estate asset over the estimated remaining holding period is less than the carrying amount of such real estate asset. Cash flows include operating cash flows and anticipated capital proceeds generated by the real estate asset. An impairment charge is recorded equal to the excess of the carrying value of the real estate asset over the fair value. When determining the fair value of a real estate asset, the Company makes certain assumptions including, but not limited to, consideration of projected operating cash flows, comparable selling prices and projected cash flows from the eventual disposition of the real estate asset based upon the Company's estimate of a capitalization rate and discount rate.

The Company reviews its real estate assets, from time to time, in order to determine whether to sell such assets. Real estate assets are classified as held for sale when the Company commits to a plan to sell the asset, when the asset is being actively marketed for sale at a reasonable price and the sale of the asset is probable and the transfer of the asset is expected to qualify for recognition as a completed sale within one year. Real estate assets that are held for sale are carried at the lower of the asset's carrying amount or its fair value less costs to sell.

Available-for-Sale Debt Securities

The Company acquires debt securities that are collateralized by mortgages on CRE properties primarily for short-term cash management and investment purposes. On the acquisition date, the Company designates investments in CRE debt securities as available-for-sale. Investments in CRE debt securities that are classified as available-for-sale are carried at fair value. Unrealized holding gains and losses for available-for-sale debt securities are recorded each period in other comprehensive income ("OCI"). The Company uses a specific identification method when determining the cost of a debt security sold and the amount of unrealized gain or loss reclassified from accumulated other comprehensive income (loss) into earnings.

Available-for-sale debt securities that are in an unrealized loss position are evaluated on a quarterly basis to determine whether declines in the fair value below the amortized cost basis qualify as other than temporary impairment ("OTTI"). The OTTI assessment is performed at the individual security level. In assessing whether the entire amortized cost basis of each security will be recovered, the Company will compare the present value of cash flows expected to be collected from the security with the amortized cost basis of the security. If the present value of cash flows expected to be collected is less than the amortized cost basis of the security, the entire amortized cost basis of the security will not be recovered and an OTTI shall be considered to have occurred.

Available-for-sale debt securities are generally placed on non-accrual status when principal or interest payments are past due 30 days or more or when there is reasonable doubt that principal or interest will be collected in full. Accrued and unpaid interest is generally reversed against interest income in the period the debt security is placed on non-accrual status. Interest payments received on non-accrual securities may be recognized as income or applied to reduce amortized cost basis depending upon management's judgment regarding collectability of the debt security. Non-accrual debt securities are restored to accrual status when past due principal and interest are paid and, in management's judgment, are likely to remain current.

Debt Issuance Costs

Debt issuance costs under the Company's indebtedness are capitalized and amortized over the term of the respective debt instrument. Unamortized debt issuance costs are expensed when the associated debt is repaid prior to maturity. Debt issuance costs related to debt securitizations are capitalized and amortized over the term of the underlying loans using the effective interest method. When an underlying loan is prepaid in a debt securitization and the outstanding principal balance of

the securitization debt is reduced, the related unamortized debt issuance costs are charged to expense based on a pro-rata share of the debt issuance costs being allocated to the specific loans that were prepaid. Amortization of debt issuance costs is included within interest expense, except as noted below, in the Company's consolidated statements of operations while the unamortized balance on the (i) Secured Funding Agreements (each individually defined in Note 6 included in these consolidated financial statements) is included within other assets and (ii) Notes Payable, the Secured Term Loan (each defined in Note 6 included in these consolidated financial statements) and debt securitizations are each included as a reduction to the carrying amount of the liability, in the Company's consolidated balance sheets.

Derivative Financial Instruments

Derivative financial instruments are classified as either other assets (gain positions) or other liabilities (loss positions) in the Company's consolidated balance sheets at fair value. These amounts may be offset to the extent that there is a legal right to offset and if elected by management.

On the date the Company enters into a derivative contract, the Company designates each contract as a hedge of a forecasted transaction or of the variability of cash flows to be received or paid related to a recognized asset or liability, or cash flow hedge, or as a derivative instrument not to be designated as a hedging derivative, or non-designated hedge. For all derivatives other than those designated as non-designated hedges, the Company formally documents the hedge relationships and designation at the contract's inception. This documentation includes the identification of the hedging instruments and the hedged items, its risk management objectives, strategy for undertaking the hedge transaction and an evaluation of the effectiveness of its hedged transaction.

The Company performs a formal assessment on a quarterly basis on whether the derivative designated in each hedging relationship is expected to be, and has been, highly effective in offsetting changes in the value or cash flows of the hedged items. Changes in the fair value of derivative contracts are recorded each period in either current earnings or OCI, depending on whether the derivative is designated as part of a hedge transaction and, if so, the type of hedge transaction. For derivatives that are designated as cash flow hedges, the effective portion of the unrealized gains or losses on these contracts is recorded in OCI. If it is determined that a derivative is not highly effective at hedging the designated exposure, hedge accounting is discontinued and the changes in fair value of the instrument are included in current earnings prospectively. The Company does not enter into derivatives for trading or speculative purposes.

Revenue Recognition

Interest income is accrued based on the outstanding principal amount and the contractual terms of each loan or debt security. For loans held for investment, the origination fees, contractual exit fees and direct origination costs are also recognized in interest income over the initial loan term as a yield adjustment using the effective interest method. For available-for-sale debt securities, premiums or discounts are amortized or accreted into interest income as a yield adjustment using the effective interest method.

Revenue from real estate owned represents revenue associated with the operations of a mixed-use property classified as real estate owned that was acquired in September 2023.

Revenue from the operation of the mixed-use property consists primarily of rental revenue from operating leases. For each operating lease with scheduled rent increases over the term of the lease, the Company recognizes rental revenue on a straight-line basis over the lease term when collectability of the lease payment is probable. Variable lease payments are recognized as rental revenue in the period when the changes in facts and circumstances on which the variable lease payments are based occur. Certain of the Company's mixed-use property leases also contain provisions for tenants to reimburse the Company for property operating expenses. Such reimbursements are included in rental revenue on a gross basis. Rental revenue also includes amortization of intangible assets and liabilities related to above and below-market leases.

Net Interest Margin and Interest Expense

Net interest margin in the Company's consolidated statements of operations serves to measure the performance of the Company's loans and debt securities as compared to its use of debt leverage. The Company includes interest income from its loans and debt securities and interest expense related to its Secured Funding Agreements, Notes Payable, securitization debt and the Secured Term Loan (each individually defined in Note 6 included in these consolidated financial statements) in net interest margin. For the three months ended March 31, 2024 and 2023, interest expense is comprised of the following ($ in thousands):

	For the Three Months Ended March 31,	
	2024	2023
Secured funding agreements	$ 12,877	$ 12,311
Notes payable	1,999	1,759
Securitization debt	12,187	11,606
Secured term loan	1,756	1,734
Other (1)	—	(4,411)
Interest expense	$ 28,819	$ 22,999

(1) Represents the net interest expense recognized from the Company's derivative financial instruments upon periodic settlement.

Comprehensive Income

Comprehensive income consists of net income (loss) and OCI that are excluded from net income (loss).

3. LOANS HELD FOR INVESTMENT

As of March 31, 2024, the Company's portfolio included 44 loans held for investment, excluding 170 loans that were repaid, sold or converted to real estate owned since inception. The aggregate originated commitment under these loans at closing was approximately $2.2 billion and outstanding principal was $2.0 billion as of March 31, 2024. During the three months ended March 31, 2024, the Company funded approximately $13.0 million of outstanding principal and received repayments of $78.4 million of outstanding principal. As of March 31, 2024, 70.0% of the Company's loans have Secured Overnight Financing Rate ("SOFR") floors, with a weighted average floor of 1.17%, calculated based on loans with SOFR floors. References to SOFR or "S" are to 30-day SOFR (unless otherwise specifically stated).

The Company's investments in loans held for investment are accounted for at amortized cost. The following tables summarize the Company's loans held for investment as of March 31, 2024 and December 31, 2023 ($ in thousands):

	As of March 31, 2024				
	Carrying Amount (1)	Outstanding Principal (1)	Weighted Average Unleveraged Effective Yield		Weighted Average Remaining Life (Years)
Senior mortgage loans	$ 1,970,558	$ 1,996,099	8.0 % (2)	9.2 % (3)	1.0
Subordinated debt and preferred equity investments	43,942	48,849	6.4 % (2)	15.3 % (3)	1.9
Total loans held for investment portfolio	$ 2,014,500	$ 2,044,948	7.9 % (2)	9.3 % (3)	1.0

	As of December 31, 2023				
	Carrying Amount (1)	Outstanding Principal (1)	Weighted Average Unleveraged Effective Yield		Weighted Average Remaining Life (Years)
Senior mortgage loans	$ 2,090,146	$ 2,118,947	7.5 % (2)	9.3 % (3)	1.1
Subordinated debt and preferred equity investments	36,378	39,098	8.1 % (2)	15.3 % (3)	1.8
Total loans held for investment portfolio	$ 2,126,524	$ 2,158,045	7.5 % (2)	9.4 % (3)	1.1

(1) The difference between the Carrying Amount and the Outstanding Principal amount of the loans held for investment consists of unamortized purchase discounts, deferred loan fees and origination costs and cost-recovery proceeds.

(2) Unleveraged Effective Yield is the compounded effective rate of return that would be earned over the life of the investment based on the contractual interest rate (adjusted for any deferred loan fees, costs, premiums or discounts) and assumes no dispositions, early prepayments or defaults. The total Weighted Average Unleveraged Effective Yield is calculated based on the average of Unleveraged Effective Yield of all loans held by the Company as of March 31, 2024 and December 31, 2023 as weighted by the total outstanding principal balance of each loan.

(3) Unleveraged Effective Yield is the compounded effective rate of return that would be earned over the life of the investment based on the contractual interest rate (adjusted for any deferred loan fees, costs, premiums or discounts) and assumes no dispositions, early prepayments or defaults. The total Weighted Average Unleveraged Effective Yield is calculated based on the average of Unleveraged Effective Yield of all interest accruing loans held by the Company as of March 31, 2024 and December 31, 2023 as weighted by the total outstanding principal balance of each interest accruing loan (excludes loans on non-accrual status as of March 31, 2024 and December 31, 2023).

A more detailed listing of the Company's loans held for investment portfolio based on information available as of March 31, 2024 is as follows ($ in millions):

Loan Type	Location	Outstanding Principal (1)	Carrying Amount (1)	Interest Rate		Unleveraged Effective Yield (2)		Maturity Date (3)		Payment Terms (4)	
Senior Mortgage Loans:											
Office	IL	$160.2	$154.0	(5)		7.6%	(5)	Mar 2025		I/O	
Multifamily	NY	132.2	131.5	S+3.90%		9.7%		Jun 2025		I/O	
Office	Diversified	109.0	108.8	S+3.75%		9.3%		Jan 2025		P/I	(6)
Industrial	IL	100.7	100.7	S+4.65%		10.4%		May 2024		I/O	
Multifamily	TX	97.5	97.1	S+3.00%	(7)	8.8%		Jul 2025		I/O	
Residential/Condo	NY	96.2	88.3	S+8.95%		—%	(8)	Dec 2025	(8)	I/O	
Mixed-use	NY	76.3	76.3	S+3.75%		9.4%		Jul 2024		I/O	
Residential/Condo	FL	75.0	75.0	S+5.35%		10.7%		Jul 2024		I/O	
Office	AZ	71.8	71.6	S+3.61%		9.4%		Oct 2024		I/O	
Office	NC	68.9	68.8	S+3.65%		9.4%		Aug 2024		I/O	
Office	NC	68.6	65.5	S+4.35%		—%	(9)	May 2024	(9)	P/I	(6)
Multifamily	TX	68.4	68.3	S+2.95%		8.7%		Dec 2024		I/O	
Multifamily/Office	SC	67.0	66.9	S+3.00%		8.6%		Nov 2024		I/O	
Office	NY	59.0	59.0	S+2.65%		8.0%	(10)	Jul 2027	(10)	I/O	
Multifamily	OH	57.0	56.5	S+3.05%		8.8%		Oct 2026		I/O	
Office	IL	56.0	55.8	S+4.25%		10.1%		Jan 2025		I/O	
Hotel	NY	52.9	52.6	S+4.40%		10.1%		Mar 2026		I/O	
Hotel	CA	50.9	50.7	S+4.20%		10.0%		Mar 2025		I/O	
Office	MA	50.1	49.7	S+3.75%		9.9%		Apr 2025		I/O	
Office	GA	48.4	48.3	S+3.15%		8.7%		Dec 2024		P/I	(6)
Industrial	MA	47.5	47.2	S+2.90%		8.4%		Jun 2028		I/O	
Mixed-use	TX	35.3	35.3	S+3.85%		9.4%		Sep 2024		I/O	
Office	CA	33.2	30.6	S+3.45%		—%	(11)	Dec 2023	(11)	I/O	
Multifamily	CA	31.7	31.6	S+3.00%		8.6%		Dec 2025		I/O	
Multifamily	PA	28.2	28.2	S+2.50%		7.8%		Dec 2025		I/O	
Industrial	NJ	27.8	27.8	S+3.85%		9.8%		May 2024		I/O	
Industrial	FL	25.5	25.4	S+3.00%		8.6%		Dec 2025		I/O	
Multifamily	WA	23.1	23.0	S+3.00%		8.5%		Nov 2025		I/O	
Multifamily	TX	23.0	23.0	S+2.60%		8.3%		Oct 2024		I/O	
Office	CA	20.4	20.3	S+3.50%		9.1%		Nov 2025		P/I	(6)
Industrial	CA	19.6	18.7	S+3.85%		—%	(12)	Sep 2024		I/O	
Student Housing	AL	19.5	19.4	S+3.95%		9.6%		May 2024		I/O	
Self Storage	PA	18.2	18.1	S+3.00%		8.6%		Dec 2025		I/O	
Self Storage	NJ	17.6	17.5	S+2.90%		9.0%		Apr 2025		I/O	
Self Storage	WA	11.5	11.4	S+2.90%		9.0%		Mar 2025		I/O	
Self Storage	IN	11.0	11.0	S+3.60%		9.0%		Jun 2026		I/O	
Industrial	TX	10.0	10.0	S+5.35%		11.1%		Dec 2024		I/O	
Self Storage	MA	7.7	7.7	S+3.00%		8.5%		Nov 2024		I/O	
Self Storage	MA	6.8	6.7	S+3.00%		8.5%		Oct 2024		I/O	
Industrial	TN	6.4	6.4	S+5.60%		11.3%		Nov 2024		I/O	
Self Storage	NJ	5.9	5.9	S+3.00%		8.8%		Jul 2024		I/O	
Subordinated Debt and Preferred Equity Investments:											
Multifamily	SC	20.6	20.5	S+9.53%		15.3%		Sep 2025		I/O	
Office	NJ	18.5	15.8	12.00%		—%	(13)	Jan 2026		I/O	
Office	NY	9.8	7.6	5.50%		—%	(10)	Jul 2027	(10)	I/O	
Total/Weighted Average		$2,044.9	$2,014.5			7.9%					

(1) The difference between the Carrying Amount and the Outstanding Principal amount of the loans held for investment consists of unamortized purchase discounts, deferred loan fees and origination costs and cost-recovery proceeds. For the loans held for investment that represent co-investments with other investment vehicles managed by Ares Management (see Note 13 included in these consolidated financial statements for additional information on co-investments), only the portion of Carrying Amount and Outstanding Principal held by the Company is reflected.

(2) Unleveraged Effective Yield is the compounded effective rate of return that would be earned over the life of the investment based on the contractual interest rate (adjusted for any deferred loan fees, costs, premiums or discounts)

and assumes no dispositions, early prepayments or defaults. Unleveraged Effective Yield for each loan is calculated based on SOFR as of March 31, 2024 or the SOFR floor, as applicable. The total Weighted Average Unleveraged Effective Yield is calculated based on the average of Unleveraged Effective Yield of all loans held by the Company as of March 31, 2024 as weighted by the outstanding principal balance of each loan.

(3) Reflects the initial loan maturity date excluding any contractual extension options. Certain loans are subject to contractual extension options that generally vary between one and two 12-month extensions and may be subject to performance based or other conditions as stipulated in the loan agreement. Actual maturities may differ from contractual maturities stated herein as certain borrowers may have the right to prepay with or without paying a prepayment penalty. The Company may also extend contractual maturities and amend other terms of the loans in connection with loan modifications.

(4) I/O = interest only, P/I = principal and interest.

(5) The Illinois loan is structured as both a senior and mezzanine loan with the Company holding both positions. The senior position has a per annum interest rate of S + 2.25% and the mezzanine position has a fixed per annum interest rate of 10.00%. The mezzanine position of this loan, which had an outstanding principal balance of $46.2 million as of March 31, 2024, was on non-accrual status as of March 31, 2024 and therefore, the Unleveraged Effective Yield presented is for the senior position only as the mezzanine position is non-interest accruing. As of March 31, 2024, the borrower is current on all contractual interest payments.

(6) In April 2022, amortization began on the senior North Carolina loan, which had an outstanding principal balance of $68.6 million as of March 31, 2024. In January 2023, amortization began on the senior Georgia loan, which had an outstanding principal balance of $48.4 million as of March 31, 2024. In February 2023, amortization began on the senior diversified loan, which had an outstanding principal balance of $109.0 million as of March 31, 2024. In December 2023, amortization began on the senior California loan, which had an outstanding principal balance of $20.4 million as of March 31, 2024. The remainder of the loans in the Company's portfolio are non-amortizing through their primary terms.

(7) In March 2024, the Company and the borrower entered into a modification agreement to, among other things, reduce the interest rate on the senior Texas loan from S+3.50% to S+3.00%.

(8) The New York loan is structured as both a senior and mezzanine loan with the Company holding both positions. The senior and mezzanine positions each have a per annum interest rate of S + 8.95%. The senior and mezzanine loans were both on non-accrual status as of March 31, 2024 and the Unleveraged Effective Yield is not applicable. In March 2024, the Company and the borrower entered into a modification and extension agreement to, among other things, extend the maturity date on the New York loan from April 2024 to December 2025.

(9) Loan was on non-accrual status as of March 31, 2024 and the Unleveraged Effective Yield is not applicable. In March 2024, the Company and the borrower entered into a modification and extension agreement to, among other things, extend the maturity date on the senior North Carolina loan from March 2024 to May 2024. For the three months ended March 31, 2024, the Company received $1.7 million of interest payments in cash on the senior North Carolina loan that was recognized as a reduction to the carrying value of the loan and the borrower is current on all contractual interest payments. See Note 16 included in these consolidated financial statements for a subsequent event related to the senior North Carolina loan.

(10) In March 2024, the Company and the borrower entered into a modification and extension agreement to, among other things, split the existing senior New York loan, which was on non-accrual status and had an outstanding principal balance of $73.8 million at the time of the modification, into a senior A-Note with an outstanding principal balance of $60.0 million and a subordinated B-Note with an outstanding principal balance of $13.8 million. In conjunction with the modification, the borrower repaid the outstanding principal of the senior A-Note down to $59.0 million and the subordinated B-Note down to $9.8 million. The subordinated B-Note is subordinate to new sponsor equity related to the loan paydown and additional capital contributions. In addition, the maturity date of the senior A-Note and the subordinated B-Note was extended from August 2025 to July 2027. The senior A-Note has a per annum interest rate of S + 2.65% and the subordinated B-Note has a fixed per annum interest rate of 5.50%. During the three months ended March 31, 2024, the senior A-Note, which had an outstanding principal balance of $59.0 million as of March 31, 2024, was restored to accrual status. As of March 31, 2024, the subordinated B-Note, which had an outstanding principal balance of $9.8 million, was on non-accrual status and therefore, the Unleveraged Effective Yield is not applicable. As of March 31, 2024, the borrower is current on all contractual interest payments for the senior A-Note and the subordinated B-Note.

(11) Loan was on non-accrual status as of March 31, 2024 and the Unleveraged Effective Yield is not applicable. As of March 31, 2024, the senior California loan, which is collateralized by an office property, is in maturity default due to the failure of the borrower to repay the outstanding principal balance of the loan by the December 2023 maturity date. The Company is in the process of a foreclosure of the property. Once legal title of the property is acquired, the Company will derecognize the senior California loan and recognize the office property as real estate owned.

(12) Loan was on non-accrual status as of March 31, 2024 and the Unleveraged Effective Yield is not applicable. For the three months ended March 31, 2024, the Company received $454 thousand of interest payments in cash on the senior California loan that was recognized as a reduction to the carrying value of the loan and the borrower is current on all contractual interest payments.

(13) Loan was on non-accrual status as of March 31, 2024 and the Unleveraged Effective Yield is not applicable. The mezzanine New Jersey loan is currently in default due to the borrower not making its contractual interest payments due subsequent to the December 2023 interest payment date. For the three months ended March 31, 2024, the Company received $37 thousand of interest payments in cash on the mezzanine New Jersey loan that was recognized as a reduction to the carrying value of the loan.

The Company has made, and may continue to make, modifications to loans, including loans that are in default. Loan terms that may be modified include interest rates, required prepayments, asset release prices, maturity dates, covenants, principal amounts and other loan terms. The terms and conditions of each modification vary based on individual circumstances and will be determined on a case by case basis. The Company's Manager monitors and evaluates each of the Company's loans held for investment and is maintaining regular communications with borrowers and sponsors regarding the potential impacts of current macroeconomic conditions on the Company's loans.

For the three months ended March 31, 2024, the activity in the Company's loan portfolio was as follows ($ in thousands):

Balance at December 31, 2023	$	2,126,524
Initial funding		—
Origination and other loan fees and discounts, net of costs		(232)
Additional funding		13,035
Amortizing payments		(3,389)
Loan payoffs (1)		(122,685)
Origination and other loan fees and discount accretion		1,247
Balance at March 31, 2024	$	2,014,500

(1) Amount includes the carrying value of certain loans where the carrying value exceeded the net proceeds received from the payoff of the loan. In February 2024, the Company received a discounted payoff on a senior mortgage loan with outstanding principal of $18.8 million, which was collateralized by a multifamily property located in Washington, in conjunction with a short sale of the multifamily property by the borrower to a third party. At the time of the discounted payoff, the senior mortgage loan was in default due to the failure of the borrower to repay the outstanding principal balance of the loan by the September 2023 maturity date. For the three months ended March 31, 2024, the Company recognized a realized loss of $1.7 million in the Company's consolidated statements of operations as the carrying value of the senior mortgage loan exceeded the net proceeds from the payoff of the loan. In addition, in March 2024, the Company received a discounted payoff on a senior mortgage loan with outstanding principal of $56.9 million, which was collateralized by an office property located in Illinois, in conjunction with a short sale of the office property by the borrower to a third party. At the time of the discounted payoff, the senior mortgage loan was in default due to the failure of the borrower to repay the outstanding principal balance of the loan by the February 2024 maturity date. For the three months ended March 31, 2024, the Company recognized a realized loss of $43.1 million in the Company's consolidated statements of operations as the carrying value of the senior mortgage loan exceeded the net proceeds from the payoff of the loan.

Except as described in the table above listing the Company's loans held for investment portfolio, as of March 31, 2024, all loans held for investment were paying in accordance with their contractual terms. As of March 31, 2024, the Company had seven loans held for investment on non-accrual status with a carrying value of $266.5 million. As of December 31, 2023, the Company had nine loans held for investment on non-accrual status with a carrying value of $399.3 million.

4. CURRENT EXPECTED CREDIT LOSSES

The Company estimates its CECL Reserve primarily using a probability-weighted model that considers the likelihood of default and expected loss given default for each individual loan. Calculation of the CECL Reserve requires loan-specific data, which includes capital senior to the Company when the Company is the subordinate lender, changes in net operating income, debt service coverage ratio, loan-to-value, occupancy, property type and geographic location. Estimating the CECL Reserve also requires significant judgment with respect to various factors, including (i) the appropriate historical loan loss reference data, (ii) the expected timing of loan repayments, (iii) calibration of the likelihood of default to reflect the risk characteristics of the Company's floating rate loan portfolio and (iv) the Company's current and future view of the macroeconomic environment. The Company may consider loan-specific qualitative factors on certain loans to estimate its CECL Reserve. In order to estimate the future expected loan losses relevant to the Company's portfolio, the Company utilizes historical market loan loss data licensed from a third party data service. The third party's loan database includes historical loss data for commercial mortgage-backed securities, or CMBS, issued dating back to 1998, which the Company believes is a reasonably comparable and available data set to its type of loans. The Company utilized macroeconomic data that reflects weak economic growth in the near term given current macroeconomic conditions; however, the actual financial impact on the Company of the current environment is highly uncertain. For periods beyond the reasonable and supportable forecast period, the Company reverts back to historical loss data. Management's current estimate of expected credit losses as of March 31, 2024 decreased compared to the current estimate of expected credit losses as of December 31, 2023 primarily due to realized losses on two risk rated "5" loans, shorter average remaining loan term and loan repayments during the three months ended March 31, 2024. These factors were partially offset by an increase in the CECL Reserves for risk rated "4" and "5" loans in the portfolio as a result of the impact of the current macroeconomic environment, including high inflation and interest rates, volatility and reduced liquidity in the office sector and other loan-specific factors during the three months ended March 31, 2024. The CECL Reserve also takes into consideration the assumed impact of macroeconomic conditions on CRE properties and is not specific to any loan losses or impairments on the Company's loans held for investment, unless the Company determines that a specifically identifiable reserve is warranted for a select asset.

In certain instances, the Company may identify specific loans to be collateral dependent. The Company considers loans to be collateral dependent if both of the following criteria are met: (i) loan is expected to be substantially repaid through the operation or sale of the underlying collateral, and (ii) the borrower is experiencing financial difficulty. The determination of whether these criteria are met for an individual loan requires the use of significant judgment and can be based on several factors subject to uncertainty.

For such loans that the Company determines that foreclosure of the collateral is probable, the Company estimates the CECL Reserve based on the difference between the fair value of the collateral (less costs to sell the asset if repayment is expected through the sale of the collateral) and the amortized cost basis of the loan as of the measurement date. For collateral dependent loans that the Company determines foreclosure is not probable, the Company applies a practical expedient to estimate the CECL Reserve using the difference between the collateral's fair value (less costs to sell the asset if repayment is expected through the sale of the collateral) and the amortized cost basis of the loan. To determine the fair value of the collateral, the Company may employ different approaches depending on the type of collateral, including methods such as the income approach, the market approach or the direct capitalization approach. These methods require the use of key unobservable inputs, which are inherently uncertain and subjective. Determining the appropriate valuation method and selecting the appropriate key unobservable inputs and assumptions requires significant judgment and consideration of factors specific to the underlying collateral being assessed. Additionally, the key unobservable inputs and assumptions used may vary depending on the information available and market conditions as of the valuation date. As such, the fair value that is used in calculating the CECL Reserve is subject to uncertainty and any actual losses, if incurred, could differ materially from the CECL Reserve.

As of March 31, 2024, the Company's CECL Reserve for its loans held for investment portfolio is $140.9 million or 658 basis points of the Company's total loans held for investment commitment balance of $2.1 billion and is bifurcated between the CECL Reserve (contra-asset) related to outstanding balances on loans held for investment of $139.8 million and a liability for unfunded commitments of $1.1 million. The liability was based on the unfunded portion of the loan commitment over the full contractual period over which the Company is exposed to credit risk through a current obligation to extend credit. Management considered the likelihood that funding will occur, and if funded, the expected credit loss on the funded portion.

As of March 31, 2024, the senior mortgage loan on an office property located in California with a principal balance of $33.2 million and the mezzanine loan on an office property located in New Jersey with a principal balance of $18.5 million both had a risk rating of "5." As of March 31, 2024, both of these loans were assessed individually and the Company elected to assign CECL Reserves of $14.7 million on the California office loan and $15.9 million on the New Jersey office loan. The CECL Reserves for both of these loans were based on the Company's estimate of proceeds available from the potential sale of the collateral property less the estimated costs to sell the property and such CECL Reserves are included in the Company's total CECL Reserve.

Current Expected Credit Loss Reserve for Funded Loan Commitments

Activity related to the CECL Reserve for outstanding balances on the Company's loans held for investment as of and for the three months ended March 31, 2024 was as follows ($ in thousands):

Balance at December 31, 2023 (1)	$	159,885
Provision for current expected credit losses		(20,122)
Write-offs		—
Recoveries		—
Balance at March 31, 2024 (1)	$	139,763

(1) The CECL Reserve related to outstanding balances on loans held for investment is recorded within current expected credit loss reserve in the Company's consolidated balance sheets.

Current Expected Credit Loss Reserve for Unfunded Loan Commitments

Activity related to the CECL Reserve for unfunded commitments on the Company's loans held for investment as of and for the three months ended March 31, 2024 was as follows ($ in thousands):

Balance at December 31, 2023 (1)	$	3,248
Provision for current expected credit losses		(2,147)
Write-offs		—
Recoveries		—
Balance at March 31, 2024 (1)	$	1,101

(1) The CECL Reserve related to unfunded commitments on loans held for investment is recorded within other liabilities in the Company's consolidated balance sheets.

The Company continuously evaluates the credit quality of each loan by assessing the risk factors of each loan and assigning a risk rating based on a variety of factors. Risk factors include property type, geographic and local market dynamics, physical condition, leasing and tenant profile, projected cash flow, loan structure and exit plan, loan-to-value ratio, debt service coverage ratio, project sponsorship, and other factors deemed necessary. Based on a 5-point scale, the Company's loans are rated "1" through "5," from less risk to greater risk, which ratings are defined as follows:

Ratings	Definition
1	Very Low Risk
2	Low Risk
3	Medium Risk
4	High Risk/Potential for Loss: Asset performance is trailing underwritten expectations. Loan at risk of impairment without material improvement to performance
5	Impaired/Loss Likely: A loan that has a significantly increased probability of default and principal loss

The risk ratings are primarily based on historical data as well as taking into account future economic conditions.

As of March 31, 2024, the carrying value, excluding the CECL Reserve, of the Company's loans held for investment within each risk rating by year of origination is as follows ($ in thousands):

	2024	2023	2022	2021	2020	Prior	Total
Risk rating:							
1	$ —	$ —	$ 37,800	$ —	$ —	$ —	$ 37,800
2	—	103,751	11,446	163,851	—	20,320	299,368
3	—	11,003	378,815	589,351	108,815	111,804	1,199,788
4	—	—	185,348	7,586	153,964	84,160	431,058
5	—	—	—	—	—	46,486	46,486
Total	$ —	$ 114,754	$ 613,409	$ 760,788	$ 262,779	$ 262,770	$ 2,014,500

Accrued Interest Receivable

The Company elected not to measure a CECL Reserve on accrued interest receivable due to the Company's policy of writing off uncollectible accrued interest receivable balances in a timely manner. As of March 31, 2024 and December 31, 2023, interest receivable of $12.6 million and $13.0 million, respectively, is included within other assets in the Company's consolidated balance sheets and is excluded from the carrying value of loans held for investment. If the Company were to have uncollectible accrued interest receivable, it generally would reverse accrued and unpaid interest against interest income and no longer accrue for these amounts.

5. REAL ESTATE OWNED

On September 8, 2023, the Company acquired legal title to a mixed-use property located in Florida through a consensual foreclosure. Prior to September 8, 2023, the mixed-use property collateralized an $82.9 million senior mortgage loan held by the Company that was in maturity default due to the failure of the borrower to repay the outstanding principal balance of the loan by the February 2023 maturity date. In conjunction with the consensual foreclosure, the Company derecognized the $82.9 million senior mortgage loan and recognized the mixed-use property as real estate owned. As the Company does not expect to complete a sale of the mixed-use property within the next twelve months, the mixed-use property is considered held for use, and is carried at its estimated fair value at acquisition and is presented net of accumulated depreciation or amortization and impairment charges. The Company did not recognize any gain or loss on the derecognition of the senior mortgage loan as the fair value of the mixed-use property of $84.3 million and the net deficit held at the mixed-use property of $1.4 million at acquisition approximated the $82.9 million carrying value of the senior mortgage loan. Certain operating assets and liabilities of the mixed-use property are included within other assets and other liabilities, respectively, in the Company's consolidated balance sheets and include items such as prepaid expenses, rent receivables, straight-line rent receivables and payables and trade payables.

The following table summarizes the Company's real estate owned as of March 31, 2024 and December 31, 2023 ($ in thousands):

	As of	
	March 31, 2024	December 31, 2023
Land	$ 21,337	$ 21,337
Buildings and improvements	52,224	52,224
In-place lease intangibles	21,276	21,276
Above-market lease intangibles	547	547
Below-market lease intangibles	(11,084)	(11,084)
Total real estate owned	84,300	84,300
Less: Accumulated depreciation and amortization	(1,801)	(1,016)
Real estate owned, net	$ 82,499	$ 83,284

As of March 31, 2024 and December 31, 2023, no impairment charges have been recognized for real estate owned.

For the three months ended March 31, 2024, the Company incurred net depreciation and amortization expense of $786 thousand. With the exception of amortization related to intangible assets and liabilities for above-market or below-market leases, depreciation and amortization expense is included within expenses from real estate owned in the Company's consolidated statements of operations. Amortization related to intangible assets and liabilities for above-market or below-market leases is recognized as an adjustment to rental revenue and is included within revenue from real estate owned in the Company's consolidated statements of operations.

Intangible Lease Assets and Liabilities

For the three months ended March 31, 2024, there were no property acquisitions. The weighted average amortization period for the intangible lease assets and liabilities acquired in connection with the Company's real estate owned during the year ended December 31, 2023 was 9.3 years as of the acquisition date.

The following table summarizes the Company's intangible lease assets and liabilities that are included within real estate owned as of March 31, 2024 and December 31, 2023 ($ in thousands):

	As of March 31, 2024			As of December 31, 2023		
	Gross	Accumulated Amortization	Net	Gross	Accumulated Amortization	Net
Assets:						
In-place lease intangibles	$ 21,276	$ (1,355)	$ 19,921	$ 21,276	$ (767)	$ 20,509
Above-market lease intangibles	547	(62)	485	547	(35)	512
Liabilities:						
Below-market lease intangibles	(11,084)	579	(10,505)	(11,084)	322	(10,762)

The following table summarizes the amortization of intangible lease assets and liabilities for the three months ended March 31, 2024 ($ in thousands):

	Consolidated Statement of Operations Location	Amount
Assets:		
In-place lease intangibles	Expenses from real estate owned	$ 588
Above-market lease intangibles	Revenue from real estate owned	(28)
Liabilities:		
Below-market lease intangibles	Revenue from real estate owned	257

The following table summarizes the estimated net amortization schedule for the Company's intangible lease assets and liabilities that are included within real estate owned as of March 31, 2024 ($ in thousands):

	In-Place Lease Intangibles	Above-Market Lease Intangibles	Below-Market Lease Intangibles
Remainder of 2024	$ 1,716	$ 84	$ (771)
2025	2,232	91	(1,027)
2026	1,821	76	(618)
2027	1,701	51	(571)
2028	1,603	41	(542)
Thereafter	10,848	142	(6,976)
Total	$ 19,921	$ 485	$ (10,505)

Future Minimum Lease Payments

The following table summarizes the future minimum contractual lease payments to be collected by the Company under non-cancelable operating leases, excluding tenant reimbursements of expenses and variable lease payments, as of March 31, 2024 ($ in thousands):

Remainder of 2024	$ 7,521
2025	10,106
2026	10,224
2027	9,989
2028	9,976
Thereafter	34,332
Total	$ 82,148

6. DEBT

Financing Agreements

The Company borrows funds, as applicable in a given period, under the Wells Fargo Facility, the Citibank Facility, the CNB Facility, the MetLife Facility and the Morgan Stanley Facility (individually defined below and collectively, the "Secured Funding Agreements"), Notes Payable (as defined below) and the Secured Term Loan (as defined below). The Company refers to the Secured Funding Agreements, Notes Payable and the Secured Term Loan as the "Financing Agreements." The outstanding balance of the Financing Agreements in the table below are presented gross of debt issuance costs. As of March 31, 2024 and December 31, 2023, the outstanding balances and total commitments under the Financing Agreements consisted of the following ($ in thousands):

	March 31, 2024		December 31, 2023	
	Outstanding Balance	Total Commitment	Outstanding Balance	Total Commitment
Secured Funding Agreements:				
Wells Fargo Facility	$ 216,522	$ 450,000 (1)	$ 208,540	$ 450,000 (1)
Citibank Facility	204,104	325,000	221,604	325,000
CNB Facility	—	75,000	—	75,000
MetLife Facility	—	180,000	—	180,000
Morgan Stanley Facility	209,673	250,000	209,673	250,000
Subtotal	$ 630,299	$ 1,280,000	$ 639,817	$ 1,280,000
Notes Payable	$ 105,000	$ 105,000	$ 105,000	$ 105,000
Secured Term Loan	$ 150,000	$ 150,000	$ 150,000	$ 150,000
Total	$ 885,299	$ 1,535,000	$ 894,817	$ 1,535,000

(1) The maximum commitment for the Wells Fargo Facility (as defined below) may be increased to up to $500.0 million at the Company's option, subject to the satisfaction of certain conditions, including payment of an upsize fee.

Some of the Company's Financing Agreements are collateralized by (i) assignments of specific loans, preferred equity or a pool of loans held for investment or loans held for sale owned by the Company, (ii) interests in the subordinated portion of the Company's securitization debt, or (iii) interests in wholly-owned entity subsidiaries that hold the Company's loans held for investment. The Company is the borrower or guarantor under each of the Financing Agreements. Generally, the Company partially offsets interest rate risk by matching the interest index of loans held for investment with the Secured Funding Agreements used to fund them. The Company's Financing Agreements contain various affirmative and negative covenants, including negative pledges, and provisions regarding events of default that are normal and customary for similar financing arrangements.

Wells Fargo Facility

The Company is party to a master repurchase funding facility with Wells Fargo Bank, National Association ("Wells Fargo") (the "Wells Fargo Facility"), which allows the Company to borrow up to $450.0 million. The maximum commitment may be increased to up to $500.0 million at the Company's option, subject to the satisfaction of certain conditions, including payment of an upsize fee. Under the Wells Fargo Facility, the Company is permitted to sell, and later repurchase, certain qualifying senior commercial mortgage loans, A-Notes, pari-passu participations in commercial mortgage loans and mezzanine loans under certain circumstances, subject to available collateral approved by Wells Fargo in its sole discretion. The funding period of the Wells Fargo Facility expires on December 15, 2025. The initial maturity date of the Wells Fargo Facility is December 15, 2025, subject to two 12-month extensions, each of which may be exercised at the Company's option, subject to the satisfaction of certain conditions, including payment of an extension fee, which, if both were exercised, would extend the maturity date of the Wells Fargo Facility to December 14, 2027. Advances under the Wells Fargo Facility accrue interest at a per annum rate equal to the sum of one-month SOFR plus a pricing margin range of 1.50% to 3.75%, subject to certain exceptions. See Note 16 included in these consolidated financial statements for a subsequent event related to the Wells Fargo Facility.

Citibank Facility

The Company is party to a $325.0 million master repurchase facility with Citibank, N.A. ("Citibank") (the "Citibank Facility"). Under the Citibank Facility, the Company is permitted to sell and later repurchase certain qualifying senior commercial mortgage loans and A-Notes approved by Citibank in its sole discretion. The initial maturity date of the Citibank Facility is January 13, 2025, subject to two 12-month extensions, each of which may be exercised at the Company's option assuming no existing defaults under the Citibank Facility and applicable extension fees being paid, which, if both were exercised, would extend the maturity date of the Citibank Facility to January 13, 2027. Advances under the Citibank Facility accrue interest at a per annum rate equal to the sum of one-month SOFR plus an indicative pricing margin range of 1.50% to 2.10%, subject to certain exceptions. The Company incurs a non-utilization fee of 25 basis points per annum on the average

daily positive difference between the maximum advances approved by Citibank and the actual advances outstanding on the Citibank Facility. For the three months ended March 31, 2024 and 2023, the Company did not incur a non-utilization fee. See Note 16 included in these consolidated financial statements for a subsequent event related to the Citibank Facility.

CNB Facility

The Company is party to a $75.0 million secured revolving funding facility with City National Bank (the "CNB Facility"). The Company is permitted to borrow funds under the CNB Facility to finance investments and for other working capital and general corporate needs. In January 2024, the Company amended the CNB Facility to, among other things: (1) extend the initial maturity date of the CNB Facility to March 10, 2025, subject to one 12-month extension, which may be exercised at the Company's option if certain conditions described in the CNB Facility are met, including applicable extension fees being paid, which, if exercised, would extend the maturity date to March 10, 2026 and (2) set the interest rate on advances under the CNB Facility to a per annum rate equal to the sum of, at the Company's option, either (a) a SOFR-based rate plus 3.25% or (b) a base rate plus 2.25%, in each case, subject to an interest rate floor. Unless at least 75% of the CNB Facility is used on average, unused commitments under the CNB Facility accrue non-utilization fees at the rate of 0.375% per annum. For the three months ended March 31, 2024 and 2023, the Company incurred a non-utilization fee of $71 thousand and $70 thousand, respectively. The non-utilization fee is included within interest expense in the Company's consolidated statements of operations. See Note 16 included in these consolidated financial statements for a subsequent event related to the CNB Facility.

MetLife Facility

The Company is party to a $180.0 million revolving master repurchase facility with Metropolitan Life Insurance Company ("MetLife") (the "MetLife Facility"), pursuant to which the Company may sell, and later repurchase, commercial mortgage loans meeting defined eligibility criteria which are approved by MetLife in its sole discretion. The maturity date of the MetLife Facility is August 13, 2024. Advances under the MetLife Facility accrue interest at a per annum rate equal to the sum of one-month SOFR plus a spread of 2.50%, subject to certain exceptions. Unless at least 65% of the MetLife Facility is utilized, unused commitments under the MetLife Facility accrue non-utilization fees at the rate of 0.25% per annum on the average daily available balance. For the three months ended March 31, 2024 and 2023, the Company incurred a non-utilization fee of $74 thousand and $73 thousand, respectively. The non-utilization fee is included within interest expense in the Company's consolidated statements of operations. See Note 16 included in these consolidated financial statements for a subsequent event related to the MetLife Facility.

Morgan Stanley Facility

The Company is party to a $250.0 million master repurchase and securities contract with Morgan Stanley Bank, N.A. ("Morgan Stanley") (the "Morgan Stanley Facility"). Under the Morgan Stanley Facility, the Company is permitted to sell, and later repurchase, certain qualifying commercial mortgage loans collateralized by retail, office, mixed-use, multifamily, industrial, hospitality, student housing or self storage properties. Morgan Stanley may approve the mortgage loans that are subject to the Morgan Stanley Facility in its sole discretion. The initial maturity date of the Morgan Stanley Facility is July 16, 2025, subject to one 12-month extension, which may be exercised at the Company's option, subject to the satisfaction of certain conditions, including payment of an extension fee, which, if exercised, would extend the maturity date of the Morgan Stanley Facility to July 16, 2026. Advances under the Morgan Stanley Facility generally accrue interest at a per annum rate equal to the sum of one-month SOFR plus a spread ranging from 1.75% to 2.25%, determined by Morgan Stanley, depending upon the mortgage loan sold to Morgan Stanley in the applicable transaction. See Note 16 included in these consolidated financial statements for a subsequent event related to the Morgan Stanley Facility.

Notes Payable

ACRC Lender CO LLC, a wholly owned subsidiary of the Company, is party to a Credit and Security Agreement with Capital One, National Association, as administrative agent and collateral agent, and the lender referred to therein. The Credit and Security Agreement provides for a $105.0 million recourse note (the "Notes Payable"). The $105.0 million note is secured by a $133.0 million senior mortgage loan held by the Company on a multifamily property located in New York and is fully and unconditionally guaranteed by the Company pursuant to a Guaranty of Recourse Obligation (the "CapOne Guaranty"). The initial maturity date of the $105.0 million note is July 28, 2025, subject to two 12-month extensions, each of which may be exercised at the Company's option, subject to the satisfaction of certain conditions, including payment of an extension fee, which, if both were exercised, would extend the maturity date to July 28, 2027. The $105.0 million note accrues interest at a per annum rate equal to the sum of one-month SOFR plus a spread of 2.00%. As of March 31, 2024, the total outstanding principal

balance of the note was $105.0 million. See Note 16 included in these consolidated financial statements for a subsequent event related to the Notes Payable.

Secured Term Loan

The Company and certain of its subsidiaries are party to a $150.0 million Credit and Guaranty Agreement with the lenders referred to therein and Cortland Capital Market Services LLC, as administrative agent and collateral agent for the lenders (the "Secured Term Loan"). The maturity date of the Secured Term Loan is November 12, 2026. Advances under the Secured Term Loan are subject to the following fixed rates: (i) 4.50% per annum until May 12, 2025, (ii) after May 12, 2025 through November 12, 2025, the interest rate increases 0.125% every three months and (iii) after November 12, 2025 through November 12, 2026, the interest rate increases 0.250% every three months. As of March 31, 2024, the total outstanding principal balance of the Secured Term Loan was $150.0 million.

The total original issue discount on the Secured Term Loan was equal to 0.50% of the commitment amount and represents a discount to the debt cost to be amortized into interest expense using the effective interest method over the term of the Secured Term Loan. For both the three months ended March 31, 2024 and 2023, the per annum effective interest rate of the Secured Term Loan, which is equal to the fixed interest rate plus the accretion of the original issue discount and associated costs, was 4.6%. See Note 16 included in these consolidated financial statements for a subsequent event related to the Secured Term Loan.

7. DERIVATIVE FINANCIAL INSTRUMENTS

The Company may use derivative financial instruments, which may include interest rate swaps and interest rate caps, on certain borrowing transactions to manage its net exposure to interest rate changes and to reduce its overall cost of borrowing. These derivatives may or may not qualify as cash flow hedges under the hedge accounting requirements of FASB ASC Topic 815, *Derivatives and Hedging* ("ASC 815"). Derivatives not designated as cash flow hedges are not speculative and are used to manage our exposure to interest rate movements. See Note 2 included in these consolidated financial statements for additional discussion of the accounting for designated and non-designated hedges.

The use of derivative financial instruments involves certain risks, including the risk that the counterparties to these contractual arrangements do not perform as agreed. To mitigate this risk, the Company only enters into derivative financial instruments with counterparties that have appropriate credit ratings and are major financial institutions with which the Company and its affiliates may also have other financial relationships.

As of March 31, 2024 and December 31, 2023, the Company did not have any outstanding interest rate derivatives that were designated as cash flow hedges of interest rate risk. In December 2023, the Company's interest rate swap derivative expired and its term was not extended. At the expiration date, the interest rate swap derivative had a notional amount of $30.0 million. Further, in March 2022, the Company re-calibrated its net exposure to interest rate changes by terminating its interest rate cap derivative, which had a notional amount of $170.0 million on the termination date and a strike rate of 0.50%. For the year ended December 31, 2022, the Company recognized a $2.0 million realized gain within OCI in conjunction with the termination of the interest rate cap. In accordance with ASC 815, the realized gain was recognized within current earnings over the remaining original term of the interest rate cap derivative as it was designated as an effective hedge. For the three months ended March 31, 2023, the Company recognized a realized gain of $456 thousand through a reduction in interest expense on the termination of the interest rate cap within current earnings.

8. COMMITMENTS AND CONTINGENCIES

As further discussed in Note 2 to our consolidated financial statements, the impact of the current macroeconomic conditions on the Company's business is uncertain. As of March 31, 2024, there were no contingencies recorded on the Company's consolidated balance sheets as a result of such conditions, however, if global market conditions worsen, it could adversely affect the Company's business, financial condition and results of operations.

As of March 31, 2024 and December 31, 2023, the Company had the following commitments to fund various senior mortgage loans, subordinated debt investments, as well as preferred equity investments accounted for as loans held for investment ($ in thousands):

	As of	
	March 31, 2024	December 31, 2023
Total commitments	$ 2,141,364	$ 2,274,584
Less: funded commitments	(2,044,948)	(2,158,045)
Total unfunded commitments	$ 96,416	$ 116,539

The Company from time to time may be a party to litigation relating to claims arising in the normal course of business. As of March 31, 2024, the Company is not aware of any legal claims that could materially impact its business, financial condition or results of operations.

9. STOCKHOLDERS' EQUITY

Stock Repurchase Program

On July 25, 2023, the Company's board of directors renewed its stock repurchase program of up to $50.0 million (the "Repurchase Program"), which is expected to be in effect until July 31, 2024, or until the approved dollar amount has been used to repurchase shares. Pursuant to the Repurchase Program, the Company may repurchase shares of its common stock in amounts, at prices and at such times as it deems appropriate, subject to market conditions and other considerations, including all applicable legal requirements. Repurchases may include purchases on the open market or privately negotiated transactions, under Rule 10b5-1 trading plans, under accelerated share repurchase programs, in tender offers and otherwise. The Repurchase Program does not obligate the Company to acquire any particular amount of shares of its common stock and may be modified or suspended at any time at its discretion. During the three months ended March 31, 2024 and 2023, the Company did not repurchase any shares through the Repurchase Program.

Common Stock

There were no shares of the Company's common stock issued in public or private offerings for the three months ended March 31, 2024 and 2023. See "Equity Incentive Plan" below for shares issued under the Equity Incentive Plan described below.

Equity Incentive Plan

On April 23, 2012, the Company adopted an equity incentive plan, which was amended and restated in June 2018 (as further amended, the "Amended and Restated 2012 Equity Incentive Plan"). In February 2022, the Company's board of directors authorized, and in May 2022, the Company's stockholders approved, the first amendment to the Amended and Restated 2012 Equity Incentive Plan, which among other things, increased the total number of shares of common stock the Company may grant thereunder to 2,490,000 shares. Pursuant to the Amended and Restated 2012 Equity Incentive Plan, as amended by the first amendment, the Company may grant awards consisting of restricted shares of the Company's common stock, restricted stock units ("RSUs") and/or other equity-based awards to the Company's outside directors, employees of the Manager, officers, ACREM and other eligible awardees under the plan. Any restricted shares of the Company's common stock and RSUs will be accounted for under FASB ASC Topic 718, *Compensation—Stock Compensation*, resulting in stock-based compensation expense equal to the grant date fair value of the underlying restricted shares of common stock or RSUs.

Restricted stock and RSU grants generally vest ratably over a one to three-year period from the vesting start date. The grantee receives additional compensation for each outstanding restricted stock or RSU grant, classified as dividends paid, equal to the per-share dividends received by the Company's common stockholders.

The following tables summarize the (i) non-vested shares of restricted stock and RSUs and (ii) vesting schedule of shares of restricted stock and RSUs for the Company's directors and officers and employees of the Manager as of March 31, 2024:

Schedule of Non-Vested Share and Share Equivalents

	Restricted Stock Grants—Directors	RSUs—Officers and Employees of the Manager	Total
Balance at December 31, 2023	34,215	1,063,366	1,097,581
Granted	—	—	—
Vested	(16,485)	(273,388)	(289,873)
Forfeited	—	(3,750)	(3,750)
Balance at March 31, 2024	17,730	786,228	803,958

Future Anticipated Vesting Schedule

	Restricted Stock Grants —Directors	RSUs—Officers and Employees of the Manager	Total
Remainder of 2024	17,313	5,431	22,744
2025	417	359,885	360,302
2026	—	278,278	278,278
2027	—	142,634	142,634
2028	—	—	—
Total	17,730	786,228	803,958

10. EARNINGS PER SHARE

The following information sets forth the computations of basic and diluted earnings per common share for the three months ended March 31, 2024 and 2023 ($ in thousands, except share and per share data):

	For the Three Months Ended March 31,	
	2024	2023
Net income (loss) attributable to common stockholders	$ (12,323)	$ (6,439)
Divided by:		
Basic weighted average shares of common stock outstanding:	54,396,397	54,591,650
Weighted average non-vested restricted stock and RSUs (1)	—	—
Diluted weighted average shares of common stock outstanding:	54,396,397	54,591,650
Basic earnings (loss) per common share	$ (0.23)	$ (0.12)
Diluted earnings (loss) per common share	$ (0.23)	$ (0.12)

(1) For the three months ended March 31, 2024 and 2023, the weighted average non-vested restricted stock and RSUs of 813,763 and 682,620 shares, respectively, were excluded from the computation of diluted earnings (loss) per common share as the impact of including those shares would be anti-dilutive.

11. INCOME TAX

The Company wholly owns ACRC Lender W TRS LLC, which is a taxable REIT subsidiary ("TRS") formed to issue and hold certain loans intended for sale. The Company also wholly owns ACRC 2017-FL3 TRS LLC, which is a TRS formed to hold a portion of the FL3 CLO Securitization and FL4 CLO Securitization (as defined below), including the portion that generates excess inclusion income. Additionally, the Company wholly owns ACRC WM Tenant LLC, which is a TRS formed to lease from an affiliate the hotel property classified as real estate owned acquired on March 8, 2019. ACRC WM Tenant LLC engaged a third-party hotel management company to operate the hotel under a management contract prior to the sale of the hotel on March 1, 2022.

The income tax provision for the Company and the TRSs consisted of the following for the three months ended March 31, 2024 and 2023 ($ in thousands):

	For the Three Months Ended March 31,	
	2024	2023
Current	$ —	$ 10
Deferred	2	—
Excise tax	—	100
Total income tax expense, including excise tax	$ 2	$ 110

For the three months ended March 31, 2024, the Company did not incur any expense for U.S. federal excise tax. For the three months ended March 31, 2023, the Company incurred an expense of $100 thousand for U.S. federal excise tax. Excise tax represents a 4% tax on the sum of a portion of the Company's ordinary income and net capital gains not distributed during the calendar year (including any distribution declared in the fourth quarter and paid following January) plus any prior year shortfall. If it is determined that an excise tax liability exists for the current tax year, the Company will accrue excise tax on estimated excess taxable income as such taxable income is earned. The quarterly expense is calculated in accordance with applicable tax regulations.

The TRSs recognize interest and penalties related to unrecognized tax benefits within income tax expense in the Company's consolidated statements of operations. Accrued interest and penalties, if any, are included within other liabilities in the Company's consolidated balance sheets.

As of March 31, 2024, tax years 2019 through 2024 remain subject to examination by taxing authorities. The Company does not have any unrecognized tax benefits and the Company does not expect that to change in the next 12 months.

12. FAIR VALUE

The Company follows FASB ASC Topic 820-10, *Fair Value Measurement* ("ASC 820-10"), which expands the application of fair value accounting. ASC 820-10 defines fair value, establishes a framework for measuring fair value in accordance with GAAP and expands disclosure requirements for fair value measurements. ASC 820-10 determines fair value to be the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants on the measurement date. ASC 820-10 specifies a hierarchy of valuation techniques based on the inputs used in measuring fair value.

In accordance with ASC 820-10, the inputs used to measure fair value are summarized in the three broad levels listed below:

- Level 1—Quoted prices in active markets for identical assets or liabilities.
- Level 2—Prices are determined using other significant observable inputs. Observable inputs are inputs that other market participants would use in pricing a security. These may include quoted prices for similar securities, interest rates, prepayment speeds, credit risk and others.
- Level 3—Prices are determined using significant unobservable inputs. In situations where quoted prices or observable inputs are unavailable (for example, when there is little or no market activity for an investment at the end of the period), unobservable inputs may be used.

GAAP requires disclosure of fair value information about financial and nonfinancial assets and liabilities, whether or not recognized in the financial statements, for which it is practical to estimate the value. In cases where quoted market prices are not available, fair values are based upon the application of discount rates to estimated future cash flows using market yields, or other valuation methodologies. Any changes to the valuation methodology will be reviewed by the Company's management to ensure the changes are appropriate. The methods used may produce a fair value calculation that is not indicative of net realizable value or reflective of future fair values. Furthermore, while the Company anticipates that the valuation methods are appropriate and consistent with other market participants, the use of different methodologies, or assumptions, to determine the fair value of certain financial and nonfinancial assets and liabilities could result in a different estimate of fair value at the reporting date. The Company uses inputs that are current as of the measurement date, which may fall within periods of market dislocation, during which price transparency may be reduced.

Recurring Fair Value Measurements

Loans Held for Sale

As of March 31, 2024, the Company did not have any loans held for sale. As of December 31, 2023, the Company had one loan held for sale. Loans held for sale are required to be recorded at fair value on a recurring basis in accordance with GAAP. The Company determined the fair value of the one loan held for sale as of December 31, 2023 based on the anticipated transaction price to be received from the third party that was expected to purchase the loan. In January 2024, the Company closed the sale of the loan at a price equal to the fair value as of December 31, 2023.

Available-for-Sale Debt Securities

The Company designates investments in CRE debt securities as available-for-sale on the acquisition date of such CRE debt securities. The Company is required to record investments in available-for-sale debt securities at fair value on a recurring basis in accordance with GAAP. During the year ended December 31, 2022, the Company acquired three CRE debt securities for an aggregate purchase price of $27.9 million, which consisted of floating rate, investment grade rated debt securities that had a weighted average coupon of SOFR plus 2.47%. The Company's available-for-sale debt securities have a contractual maturity greater than 10 years from the purchase date.

As of both March 31, 2024 and December 31, 2023, the Company had three CRE debt security investments designated as available-for-sale debt securities. The following tables summarize the Company's investments in available-for-sale debt securities as of March 31, 2024 and December 31, 2023 ($ in thousands):

	As of March 31, 2024			
	Face Amount	Amortized Cost	Unamortized Discount	Unrealized Gain (Loss), Net
Available-for-sale debt securities	$ 28,000	$ 27,913	$ 87	$ 235

	As of December 31, 2023			
	Face Amount	Amortized Cost	Unamortized Discount	Unrealized Gain (Loss), Net
Available-for-sale debt securities	$ 28,000	$ 27,906	$ 94	$ 154

The fair value of available-for-sale debt securities was estimated using third-party broker quotes, which provide valuation estimates based upon contractual cash flows, observable inputs comprising credit spreads and market liquidity.

The following tables summarize the financial assets measured at fair value on a recurring basis as of March 31, 2024 and December 31, 2023 ($ in thousands):

	As of March 31, 2024			
	Level 1	Level 2	Level 3	Total
Financial assets:				
Available-for-sale debt securities	$ —	$ 28,148	$ —	$ 28,148

	As of December 31, 2023			
	Level 1	Level 2	Level 3	Total
Financial assets:				
Loans held for sale	$ —	$ —	$ 38,981	$ 38,981
Available-for-sale debt securities	—	28,060	—	28,060

As of March 31, 2024 and December 31, 2023, the Company did not have any financial liabilities or nonfinancial assets or liabilities required to be recorded at fair value on a recurring basis.

Nonrecurring Fair Value Measurements

The Company is required to record real estate owned, a nonfinancial asset, at fair value on a nonrecurring basis in accordance with GAAP. Real estate owned consists of a mixed-use property that was acquired by the Company on September 8, 2023 through a consensual foreclosure. See Note 5 included in these consolidated financial statements for more information on real estate owned. Real estate owned is recorded at fair value at acquisition using Level 3 inputs and is evaluated for indicators of impairment on a quarterly basis. Real estate owned is considered impaired when the sum of estimated future undiscounted cash flows expected to be generated by the real estate owned over the estimated remaining holding period is less than the carrying amount of such real estate owned. Cash flows include operating cash flows and anticipated capital proceeds generated by the real estate owned. An impairment charge is recorded equal to the excess of the carrying value of the real estate owned over the fair value. The fair value of the mixed-use property at acquisition was estimated using a third-party appraisal, which utilized standard industry valuation techniques such as the income and market approach. When determining the fair value of the mixed-use property, certain assumptions are made including, but not limited to: (1) projected operating cash flows, including factors such as property operating expenses and re-leasing assumptions that take into account the number of months to re-lease, market rental revenue and required tenant improvements; and (2) projected cash flows from the eventual disposition of the mixed-use property based upon the Company's estimation of a capitalization rate, discount rates and comparable selling prices in the market. The fair value of the mixed-use property was estimated using significant unobservable inputs such as capitalization rates ranging from 6.4% to 8.3% and discount rates ranging from 8.0% to 9.5%.

As of March 31, 2024 and December 31, 2023, the Company did not have any financial assets or liabilities or nonfinancial liabilities required to be recorded at fair value on a nonrecurring basis.

Financial Assets and Liabilities Not Measured at Fair Value

As of March 31, 2024 and December 31, 2023, the carrying values and fair values of the Company's financial assets and liabilities recorded at cost are as follows ($ in thousands):

		As of			
		March 31, 2024		December 31, 2023	
	Level in Fair Value Hierarchy	Carrying Value	Fair Value	Carrying Value	Fair Value
Financial assets:					
Loans held for investment	3	$ 2,014,500	$ 1,870,433	$ 2,126,524	$ 1,944,718
Financial liabilities:					
Secured funding agreements	2	$ 630,299	$ 630,299	$ 639,817	$ 639,817
Notes payable	2	104,714	105,000	104,662	105,000
Secured term loan	3	149,443	135,372	149,393	134,024
Collateralized loan obligation securitization debt (consolidated VIEs)	2	595,105	586,195	723,117	705,033

The carrying values of cash and cash equivalents, restricted cash, interest receivable, due to affiliate liability and accrued expenses, which are all categorized as Level 2 within the fair value hierarchy, approximate their fair values due to their short-term nature.

Loans held for investment are recorded at cost, net of unamortized purchase discounts, deferred loan fees and origination costs and cost-recovery proceeds. To determine the fair value of the collateral, the Company may employ different approaches depending on the type of collateral. The Company determined the fair value of loans held for investment based on a discounted cash flow methodology (1) for risk rated "1", "2", or "3" loans, on a portfolio basis and (b) for risk rated "4" or "5" loans, on an asset-by-asset basis, in each case taking into consideration various factors including capitalization rates, discount rates, leasing, occupancy rates, availability and cost of financing, exit plan, sponsorship, actions of other lenders, and comparable selling prices in the market. The Secured Funding Agreements and Notes Payable are recorded at outstanding principal, which is the Company's best estimate of the fair value. The Company determined the fair value of the Secured Term Loan and collateralized loan obligation ("CLO") securitization debt based on a discounted cash flow methodology, taking into consideration various factors including discount rates, actions of other lenders and comparable market quotes and recent trades for similar products.

13. RELATED PARTY TRANSACTIONS

Management Agreement

The Company is party to an Amended and Restated Management Agreement under which ACREM, subject to the supervision and oversight of the Company's board of directors, is responsible for, among other duties, (a) performing all of the Company's day-to-day functions, (b) determining the Company's investment strategy and guidelines in conjunction with the Company's board of directors, (c) sourcing, analyzing and executing investments, asset sales and financing, and (d) performing portfolio management duties. In addition, ACREM has an Investment Committee that oversees compliance with the Company's investment strategy and guidelines, loans held for investment portfolio holdings and financing strategy.

In exchange for its services, ACREM is entitled to receive a base management fee, an incentive fee and expense reimbursements. In addition, ACREM and its personnel may receive grants of equity-based awards pursuant to the Company's Amended and Restated 2012 Equity Incentive Plan and a termination fee, if applicable.

The base management fee is equal to 1.5% of the Company's stockholders' equity per annum, which is calculated and payable quarterly in arrears in cash. For purposes of calculating the base management fee, stockholders' equity means: (a) the sum of (i) the net proceeds from all issuances of the Company's equity securities since inception (allocated on a pro-rata daily basis for such issuances during the fiscal quarter of any such issuance), plus (ii) the Company's retained earnings at the end of the most recently completed fiscal quarter determined in accordance with GAAP (without taking into account any non-cash equity compensation expense incurred in current or prior periods); less (b) (x) any amount that the Company has paid to repurchase the Company's common stock since inception, (y) any unrealized gains and losses and other non-cash items that have impacted stockholders' equity as reported in the Company's consolidated financial statements prepared in accordance with GAAP, and (z) one-time events pursuant to changes in GAAP, and certain non-cash items not otherwise described above, in each case after discussions between ACREM and the Company's independent directors and approval by a majority of the Company's independent directors. As a result, the Company's stockholders' equity, for purposes of calculating the management fee, could be greater or less than the amount of stockholders' equity shown in the Company's consolidated financial statements.

The incentive fee is an amount, not less than zero, equal to the difference between: (a) the product of (i) 20% and (ii) the difference between (A) the Company's Core Earnings (as defined below) for the previous 12-month period, and (B) the product of (1) the weighted average of the issue price per share of the Company's common stock of all of the Company's public offerings of common stock multiplied by the weighted average number of all shares of common stock outstanding including any restricted shares of the Company's common stock, RSUs, or any shares of the Company's common stock not yet issued, but underlying other awards granted under the Company's Amended and Restated 2012 Equity Incentive Plan (see Note 9 included in these consolidated financial statements) in the previous 12-month period, and (2) 8%; and (b) the sum of any incentive fees earned by ACREM with respect to the first three fiscal quarters of such previous 12-month period; provided, however, that no incentive fee is payable with respect to any fiscal quarter unless cumulative Core Earnings for the 12 most recently completed fiscal quarters is greater than zero. "Core Earnings" is defined in the Management Agreement as net income (loss) computed in accordance with GAAP, excluding non-cash equity compensation expense, the incentive fee, depreciation and amortization (to the extent that any of the Company's target investments are structured as debt and the Company forecloses on any properties underlying such debt), any unrealized gains, losses or other non-cash items recorded in net income (loss) for the period, regardless of whether such items are included in other comprehensive income or loss, or in net income (loss), and one-time events pursuant to changes in GAAP and certain non-cash charges after discussions between ACREM and the Company's independent directors and after approval by a majority of the Company's independent directors. Core Earnings is defined in the Management Agreement and is used to calculate the incentive fees the Company pays to ACREM. For the three months ended March 31, 2024 and 2023, the Company did not incur any incentive fees.

The Company reimburses ACREM at cost for operating expenses that ACREM incurs on the Company's behalf, including expenses relating to legal, financial, accounting, servicing, due diligence and other services, expenses in connection with the origination and financing of the Company's investments, communications with the Company's stockholders, information technology systems, software and data services used for the Company, travel, complying with legal and regulatory requirements, taxes, insurance maintained for the benefit of the Company as well as all other expenses actually incurred by ACREM that are reasonably necessary for the performance by ACREM of its duties and functions under the Management Agreement. Ares Management, from time to time, incurs fees, costs and expenses on behalf of more than one investment vehicle. To the extent such fees, costs and expenses are incurred for the account or benefit of more than one fund, each such investment vehicle, including the Company, will typically bear an allocable portion of any such fees, costs and expenses in proportion to the size of its investment in the activity or entity to which such expense relates (subject to the terms of each fund's governing documents) or in such other manner as Ares Management considers fair and equitable under the circumstances, such as the relative fund size or capital available to be invested by such investment vehicles. Where an investment vehicle's governing documents do not permit the payment of a particular expense, Ares Management will generally pay such investment vehicle's allocable portion of such expense. In addition, the Company is responsible for its proportionate share of certain fees and expenses, including due diligence costs, as determined by ACREM and Ares Management, including legal, accounting and financial advisor fees and related costs, incurred in connection with evaluating and consummating investment opportunities, regardless of whether such transactions are ultimately consummated by the parties thereto.

The Company will not reimburse ACREM for the salaries and other compensation of its personnel, except for the allocable share of the salaries and other compensation of the Company's (a) Chief Financial Officer, based on the percentage of his time spent on the Company's affairs and (b) other corporate finance, tax, accounting, internal audit, legal, risk management, operations, compliance and other non-investment professional personnel of ACREM or its affiliates who spend all or a portion of their time managing the Company's affairs based on the percentage of their time spent on the Company's affairs. The Company is also required to pay its pro-rata portion of rent, telephone, utilities, office furniture, equipment, machinery and other office, internal and overhead expenses of ACREM and its affiliates that are required for the Company's operations.

Certain of the Company's subsidiaries, along with the Company's lenders under certain of the Company's Secured Funding Agreements, as well as under the CLO transaction have entered into various servicing agreements with ACREM's subsidiary servicer, Ares Commercial Real Estate Servicer LLC ("ACRES"). The Company's Manager will specially service, as needed, certain of the Company's investments. Effective May 1, 2012, ACRES agreed that no servicing fees pursuant to these servicing agreements would be charged to the Company or its subsidiaries by ACRES or the Manager for so long as the Management Agreement remains in effect, but that ACRES will continue to receive reimbursement for overhead related to servicing and operational activities pursuant to the terms of the Management Agreement.

The term of the Management Agreement ends on April 25, 2025, with automatic one-year renewal terms thereafter. Except under limited circumstances, upon a termination of the Management Agreement, the Company will pay ACREM a termination fee equal to three times the average annual base management fee and incentive fee received by ACREM during the 24-month period immediately preceding the most recently completed fiscal quarter prior to the date of termination, each as described above.

The following table summarizes the related party costs incurred by the Company for the three months ended March 31, 2024 and 2023, and amounts payable to the Company's Manager as of March 31, 2024 and December 31, 2023 ($ in thousands):

	Incurred		Payable	
	For the Three Months Ended March 31,		As of	
	2024	2023	March 31, 2024	December 31, 2023
Affiliate Payments				
Management fees	$ 2,768	$ 3,010	$ 2,768	$ 2,946
Incentive fees	—	—	—	—
General and administrative expenses	1,132	732	1,458	1,154
Direct costs (1)	44	20	55	35
Total	$ 3,944	$ 3,762	$ 4,281	$ 4,135

(1) For the three months ended March 31, 2024 and 2023, direct costs incurred are included within general and administrative expenses in the Company's consolidated statements of operations.

Investments in Loans

From time to time, the Company may co-invest with other investment vehicles managed by Ares Management or its affiliates, including the Manager, and their portfolio companies, including by means of splitting investments, participating in investments or other means of syndication of investments. For such co-investments, the Company expects to act as the administrative agent for the holders of such investments provided that the Company maintains a majority of the aggregate investment. No fees will be received by the Company for performing such service. The Company will be responsible for its pro-rata share of costs and expenses for such co-investments, including due diligence costs for transactions which fail to close. The Company's investment in such co-investments are made on a pari-passu basis with the other Ares managed investment vehicles and the Company is not obligated to provide, nor has it provided, any financial support to the other Ares managed investment vehicles. As such, the Company's risk is limited to the carrying value of its investment and the Company recognizes only the carrying value of its investment in its consolidated balance sheets. As of March 31, 2024 and December 31, 2023, the total outstanding principal balance for co-investments held by the Company was $241.5 million and $236.7 million, respectively.

Loan Purchases From Affiliate

One or more affiliates of the Company's Manager may originate commercial real estate loans, which may be made available for purchase by other investment vehicles, including the Company and other Ares Management managed investment vehicles. From time to time, the Company may purchase such commercial real estate loans from affiliates of the Company's Manager. The Company's Manager will approve the purchase of such loans only on terms, including the consideration to be paid, that are determined by the Company's Manager in good faith to be appropriate for the Company and provided that the Company has sufficient liquidity. The Company is not obligated to purchase any loans originated by affiliates of the Company's Manager. In addition, from time to time, the Company may purchase loans, including participations in loans, from other Ares Management managed investment vehicles. Loans purchased by the Company from affiliates of the Company's Manager or other Ares Management managed investment vehicles are purchased at fair value as determined by an independent third-party valuation expert and are subject to approval by a majority of the Company's independent directors. No loans were purchased by the Company from affiliates of the Company's Manager or other Ares Management managed investment vehicles for the three months ended March 31, 2024 and 2023.

14. DIVIDENDS AND DISTRIBUTIONS

The following table summarizes the Company's dividends declared during the three months ended March 31, 2024 and 2023 ($ in thousands, except per share data):

Date Declared	Record Date	Payment Date	Per Share Amount	Total Amount
February 22, 2024	March 28, 2024	April 16, 2024	$ 0.25	$ 13,802
Total cash dividends declared for the three months ended March 31, 2024			$ 0.25	$ 13,802
February 15, 2023	March 31, 2023	April 18, 2023	$ 0.35 (1)	$ 19,345
Total cash dividends declared for the three months ended March 31, 2023			$ 0.35	$ 19,345

(1) Consists of a regular cash dividend of $0.33 and a supplemental cash dividend of $0.02.

15. VARIABLE INTEREST ENTITIES

Consolidated VIEs

As discussed in Note 2, the Company evaluates all of its investments and other interests in entities for consolidation, including its investments in the CLO Securitizations (as defined below), which are considered to be variable interests in VIEs.

CLO Securitizations

On January 11, 2019, ACRE Commercial Mortgage 2017-FL3 Ltd. (the "FL3 Issuer") and ACRE Commercial Mortgage 2017-FL3 LLC (the "FL3 Co-Issuer"), both wholly-owned indirect subsidiaries of the Company, entered into an Amended and Restated Indenture (the "FL3 Amended Indenture") with Wells Fargo Bank, National Association, as advancing agent and note administrator, and Wilmington Trust, National Association, as trustee, which governs the approximately $504.1 million principal balance of secured floating rate notes (the "FL3 Notes") issued by the FL3 Issuer and $52.9 million of preferred equity in the FL3 Issuer (the "FL3 CLO Securitization"). The FL3 Amended Indenture amends and restates, and replaces in its entirety, the indenture for the CLO securitization issued in March 2017, which governed the issuance of approximately $308.8 million principal balance of secured floating rate notes and $32.4 million of preferred equity in the FL3 Issuer.

As of March 31, 2024, the FL3 Notes were collateralized by interests in a pool of 15 mortgage assets having a total principal balance of $469.2 million (the "FL3 Mortgage Assets") that were closed by a wholly-owned subsidiary of the Company and $6.5 million of receivables related to repayments of outstanding principal on previous mortgage assets. As of December 31, 2023, the FL3 Notes were collateralized by interests in a pool of 16 mortgage assets having a total principal balance of $526.0 million that were closed by a wholly-owned subsidiary of the Company and $31.0 million of receivables related to repayments of outstanding principal on previous mortgage assets. On April 13, 2021, the FL3 Issuer and the FL3 Co-Issuer entered into a First Supplement to Amended and Restated Indenture (the "2021 Amended Indenture") with Wells Fargo Bank, National Association, as advancing agent and note administrator, and Wilmington Trust, National Association, as trustee, which governs the FL3 CLO Securitization. The purpose of the 2021 Amended Indenture was to, among other things, extend the reinvestment period to March 31, 2024. During the reinvestment period, the Company was able to direct the FL3 Issuer to acquire additional mortgage assets subject to certain conditions. The reinvestment period expired on March 31, 2024 and was not renewed.

The contribution of the FL3 Mortgage Assets to the FL3 Issuer is governed by a Mortgage Asset Purchase Agreement between ACRC Lender LLC, a wholly owned subsidiary of the Company (the "Seller") and the FL3 Issuer, and acknowledged by the Company solely for purposes of confirming its status as a REIT, in which the Seller made certain customary representations, warranties and covenants.

In connection with the securitization, the FL3 Issuer and FL3 Co-Issuer offered and issued the following classes of Notes: Class A, Class A-S, Class B, Class C and Class D Notes (collectively, the "FL3 Offered Notes") to a third party. The Company retained (through one of its wholly-owned subsidiaries) approximately $58.5 million of the FL3 Notes and all of the $52.9 million of preferred equity in the FL3 Issuer, which totaled $111.4 million. The Company, as the holder of the subordinated FL3 Notes and all of the preferred equity in the FL3 Issuer, has the obligation to absorb losses of the CLO, since the Company has a first loss position in the capital structure of the CLO. During the three months ended March 31, 2024, the Company paid down $31.2 million of the FL3 Offered Notes. During the three months ended March 31, 2023, the Company did not pay down any of the FL3 Offered Notes.

On January 28, 2021, ACRE Commercial Mortgage 2021-FL4 Ltd. (the "FL4 Issuer") and ACRE Commercial Mortgage 2021-FL4 LLC (the "FL4 Co-Issuer"), both wholly owned indirect subsidiaries of the Company, entered into an Indenture (the "FL4 Indenture") with the Seller, as advancing agent, Wells Fargo Bank, National Association, as note administrator, and Wilmington Trust, National Association, as trustee, which governs the issuance of approximately $603.0 million principal balance secured floating rate notes (the "FL4 Notes") and $64.3 million of preferred equity in the FL4 Issuer (the "FL4 CLO Securitization"). For U.S. federal income tax purposes, the FL4 Issuer and FL4 Co-Issuer are disregarded entities.

As of March 31, 2024, the FL4 Notes were collateralized by interests in a pool of six mortgage assets having a total principal balance of $304.7 million (the "FL4 Mortgage Assets") that were closed by a wholly-owned subsidiary of the Company. As of December 31, 2023, the FL4 Notes were collateralized by interests in a pool of nine mortgage assets having a total principal balance of $404.1 million that were closed by a wholly-owned subsidiary of the Company and $1.0 million of receivables related to repayments of outstanding principal on previous mortgage assets. During the period ending in April 2024

(the "Companion Participation Acquisition Period"), the FL4 Issuer may use certain principal proceeds from the FL4 Mortgage Assets to acquire additional funded pari-passu participations related to the FL4 Mortgage Assets that meet certain acquisition criteria.

The sale of the FL4 Mortgage Assets to the FL4 Issuer is governed by a FL4 Mortgage Asset Purchase Agreement between the Seller and the FL4 Issuer, and acknowledged by the Company solely for purposes of confirming its status as a REIT, in which the Seller made certain customary representations, warranties and covenants.

In connection with the FL4 CLO Securitization, the FL4 Issuer and FL4 Co-Issuer offered and issued the following classes of FL4 Notes to third party investors: Class A, Class A-S, Class B, Class C, Class D and Class E Notes (collectively, the "FL4 Offered Notes"). A wholly owned subsidiary of the Company retained approximately $62.5 million of the FL4 Notes and all of the $64.3 million of preferred equity in the FL4 Issuer, which totaled $126.8 million. The Company, as the holder of the subordinated FL4 Notes and all of the preferred equity in the FL4 Issuer, has the obligation to absorb losses of the FL4 CLO Securitization, since the Company has a first loss position in the capital structure of the FL4 CLO Securitization. During the three months ended March 31, 2024 and 2023, the Company paid down $97.1 million and $42.1 million of the FL4 Offered Notes, respectively.

The FL3 CLO Securitization and the FL4 CLO Securitization are collectively referred to as the "CLO Securitizations." As the directing holder of the CLO Securitizations, the Company has the ability to direct activities that could significantly impact the CLO Securitizations' economic performance. ACRES is designated as special servicer of the CLO Securitizations and has the power to direct activities during the loan workout process on defaulted and delinquent loans, which is the activity that most significantly impacts the CLO Securitizations' economic performance. ACRES did not waive the special servicing fee, and the Company pays its overhead costs. If an unrelated third party had the right to unilaterally remove the special servicer, then the Company would not have the power to direct activities that most significantly impact the CLO Securitizations' economic performance. In addition, there were no substantive kick-out rights of any unrelated third party to remove the special servicer without cause. The Company's subsidiaries, as directing holders, have the ability to remove the special servicer without cause. Based on these factors, the Company is determined to be the primary beneficiary of each of the CLO Securitizations; thus, the CLO Securitizations are consolidated into the Company's consolidated financial statements.

The CLO Securitizations are consolidated in accordance with FASB ASC Topic 810 and are structured as pass through entities that receive principal and interest on the underlying collateral and distributes those payments to the note holders, as applicable. The assets and other instruments held by the CLO Securitizations are restricted and can only be used to fulfill the obligations of the respective CLO Securitizations. Additionally, the obligations of the CLO Securitizations do not have any recourse to the general credit of any other consolidated entities, nor to the Company as the primary beneficiary.

The inclusion of the assets and liabilities of the CLO Securitizations of which the Company is deemed the primary beneficiary has no economic effect on the Company. The Company's exposure to the obligations of the CLO Securitizations are generally limited to its investment in the entity. The Company is not obligated to provide, nor has it provided, any financial support for the consolidated structures. As such, the risk associated with the Company's involvement in the CLO Securitizations are limited to the carrying value of its investment in each of the entities. As of March 31, 2024, the Company's maximum risk of loss was $184.8 million, which represents the carrying value of its investments in the CLO Securitizations.

Non-consolidated VIEs

The Company evaluated its senior mortgage loan investment that is collateralized by a residential condominium property located in New York, and it was determined to be an interest in a VIE. However, the Company was not deemed to be the primary beneficiary. The Company's exposure to the obligations of the VIE is generally limited to its investment and the Company is not obligated to provide, nor has it provided, any financial support to the VIE. As such, the risk associated with the Company's involvement in the VIE is limited to the carrying value of its investment. As of March 31, 2024, the Company's maximum risk of loss was $88.3 million, which represents the carrying value of its investment in the VIE.

16. SUBSEQUENT EVENTS

The Company's management has evaluated subsequent events through the date of issuance of the consolidated financial statements included herein. There have been no subsequent events that occurred during such period that would require disclosure in this quarterly report on Form 10-Q or would be required to be recognized in the consolidated financial statements as of and for the three months ended March 31, 2024, except as disclosed below.

The Company's board of directors declared a regular cash dividend of $0.25 per common share for the second quarter of 2024. The second quarter 2024 dividend will be payable on July 16, 2024 to common stockholders of record as of June 28, 2024.

On April 19, 2024, April 23, 2024, April 26, 2024 and May 6, 2024, the Company entered into amendments to each of the Wells Fargo Facility, the Citibank Facility, the CNB Facility and Morgan Stanley Facility, respectively, to, among other things, clarify the calculation of tangible net worth of the Company.

In May 2024, the senior mortgage loan held by the Company on an office property located in North Carolina was not repaid upon its contractual maturity, which triggered an event of default under the loan agreement. As of May 7, 2024, the outstanding principal balance of the senior North Carolina loan is $68.6 million.

On May 6, 2024, the Company entered into an amendment to the CapOne Guaranty. The purpose of the amendment was to, among other things, clarify the calculation of tangible net worth of the Company and limit the amount of CECL Reserves permitted to be added to stockholders' equity for purposes of calculating the tangible net worth of the Company.

On May 8, 2024, the Company, as borrower, and ACRC Holdings LLC, ACRC Mezz Holdings LLC and ACRC Warehouse Holdings LLC, wholly-owned subsidiaries of the Company, as guarantors, entered into an amendment to the Secured Term Loan. The purpose of the amendment was to, among other things, (i) change the schedule of interest rate increases, (ii) add contingent interest rate increases based on the outstanding principal amount of the Secured Term Loan on specific dates and the tangible net worth of the Company, and (iii) make changes to financial covenants, including reducing the minimum tangible net worth requirement and linking future determinations thereof to the outstanding principal amount of the Secured Term Loan, increasing the minimum unencumbered asset ratio requirement, reducing the maximum total net leverage ratio and increasing the senior loan concentration threshold. In connection with the amendment and concurrently therewith, the Company paid a modification fee and paid down $10 million of principal of the Secured Term Loan which reduced the outstanding principal balance of the loan from $150 million to $140 million.

On May 8, 2024, the Company elected to terminate the MetLife Facility prior to its scheduled maturity on August 13, 2024 as the facility had no outstanding balance.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

Overview

We are a specialty finance company primarily engaged in originating and investing in commercial real estate ("CRE") loans and related investments. We are externally managed by ACREM, a subsidiary of Ares Management Corporation (NYSE: ARES) ("Ares Management"), a publicly traded, leading global alternative asset manager, pursuant to the terms of the amended and restated management agreement dated July 26, 2022, between us and our Manager (the "Management Agreement"). From the commencement of our operations in late 2011, we have been primarily focused on directly originating and managing a diversified portfolio of CRE debt-related investments for our own account.

We were formed and commenced operations in late 2011. We are a Maryland corporation and completed our initial public offering in May 2012. We have elected and qualified to be taxed as a REIT for United States federal income tax purposes under the Internal Revenue Code of 1986, as amended (the "Code"), commencing with our taxable year ended December 31, 2012. We generally will not be subject to United States federal income taxes on our REIT taxable income as long as we annually distribute to stockholders an amount at least equal to our REIT taxable income prior to the deduction for dividends paid and comply with various other requirements as a REIT. We also operate our business in a manner that is intended to permit us to maintain our exemption from registration under the 1940 Act.

Developments During the First Quarter of 2024:

- We closed the sale of a senior mortgage loan with outstanding principal of $37.9 million, which was collateralized by a mixed-use property located in California that was in maturity default due to the failure of the borrower to repay the outstanding principal balance of the loan by the March 2023 maturity date. As of December 31, 2023, this loan was classified as held for sale and was carried at fair value with an unrealized loss of $995 thousand as the carrying value exceeded the estimated net proceeds from the expected sale price of the loan. In January 2024, we closed the sale of the senior mortgage loan at a price equal to the fair value of the loan as of December 31, 2023 and the $995 thousand unrealized loss was realized.

- We received a discounted payoff of a senior mortgage loan with outstanding principal of $18.8 million, which was collateralized by a multifamily property located in Washington in conjunction with a short sale of the multifamily property by the borrower to a third party. At the time of the discounted payoff, the senior mortgage loan was in default due to the failure of the borrower to repay the outstanding principal balance of the loan by the September 2023 maturity date. We recognized a realized loss of $1.7 million as the carrying value, not including the CECL Reserve, exceeded the net proceeds from the payoff of the loan.

- We received a discounted payoff of a senior mortgage loan with outstanding principal of $56.9 million, which was collateralized by an office property located in Illinois in conjunction with a short sale of the office property by the borrower to a third party. At the time of the discounted payoff, the senior mortgage loan was in default due to the failure of the borrower to repay the outstanding principal balance of the loan by the February 2024 maturity date. We recognized a realized loss of $43.1 million as the carrying value, not including the CECL Reserve, exceeded the net proceeds from the payoff of the loan.

- We amended the CNB Facility to, among other things: (1) extend the initial maturity date of the CNB Facility to March 10, 2025, subject to one 12-month extension, which may be exercised at our option if certain conditions described in the CNB Facility are met, including applicable extension fees being paid, which, if exercised, would extend the maturity date to March 10, 2026 and (2) set the interest rate on advances under the CNB Facility to a per annum rate equal to the sum of, at our option, either (a) a SOFR-based rate plus 3.25% or (b) a base rate plus 2.25%, in each case, subject to an interest rate floor.

Trends Affecting Our Business

Macroeconomic performance during the first quarter of 2024 has shown continued inflationary pressures, higher revisions to future interest rate levels, greater regulatory uncertainty and geopolitical risks. The publicly traded equity and credit markets delivered positive returns for most asset classes, as the stability of the U.S. banking system and resilient fundamental macroeconomic performance drove improved investor demand and generally reduced risk premiums. Despite the overall improvement in the liquid capital markets, the commercial real estate markets continue to be impacted by certain property specific and macroeconomic factors. Most notably, the first quarter of 2024 was another period of higher revisions for future market rate expectations amidst generally restrictive credit conditions, especially from regulated lending institutions that are adjusting their business models to increase capital requirements for direct loans. Additionally, rising operating costs, such as property insurance, have further pressured cash flow performance across many asset classes. Collectively, these market dynamics pose challenges to commercial real estate values and transaction activity. Although the Federal Reserve has signaled for a potential decrease in interest rates in 2024, heightened inflation has indicated that interest rates may remain higher than previously expected. There is no certainty that there will be a decrease in interest rates in 2024 or the magnitude or pace of potential decreases or even if such decreases will occur, especially if inflation accelerates. Office properties, in particular, continue to experience headwinds driven by the increased prevalence of remote work and elevated costs to operate, improve or repurpose office properties. These factors have largely resulted in lower demand for office space and have driven elevated levels of vacancy and default rates.

Offsetting some of these headwinds is the material decline in new commercial real estate development that unfolded throughout 2023 and has continued into 2024. Ultimately, this lack of new future inventory may result in a shortage of contemporary, in demand properties in the years to come. Alongside this burgeoning trend there is a significant amount of unspent capital targeting commercial real estate properties that could support values and elevate transaction activities.

Factors Impacting Our Operating Results

The results of our operations are affected by a number of factors and primarily depend on, among other things, the level of our net interest income, the market value of our assets, including the real estate collateralizing our investments, and the supply of, and demand for, commercial mortgage loans, CRE debt and other financial assets in the marketplace. Our net interest income, which reflects the amortization of origination fees and direct costs, is recognized based on the contractual rate and the outstanding principal balance of the loans we originate. Interest rates vary according to the type of investment, conditions in the financial markets, creditworthiness of our borrowers, competition and other factors, none of which can be predicted with any certainty. Our operating results are also impacted by credit losses in excess of initial anticipations or unanticipated credit events experienced by borrowers.

Stock Repurchase Program

On July 25, 2023, our board of directors renewed the Repurchase Program of up to $50.0 million, which is expected to be in effect until July 31, 2024, or until the approved dollar amount has been used to repurchase shares. Pursuant to the Repurchase Program, we may repurchase shares of our common stock in amounts, at prices and at such times as we deem appropriate, subject to market conditions and other considerations, including all applicable legal requirements. Repurchases may include purchases on the open market or privately negotiated transactions, under Rule 10b5-1 trading plans, under accelerated share repurchase programs, in tender offers and otherwise. The Repurchase Program does not obligate us to acquire any particular amount of shares of our common stock and may be modified or suspended at any time at our discretion. During the three months ended March 31, 2024, we did not repurchase any shares through the Repurchase Program.

Loans Held for Investment Portfolio

As of March 31, 2024, our portfolio included 44 loans held for investment, excluding 170 loans that were repaid, sold or converted to real estate owned since inception. As of March 31, 2024, the aggregate originated commitment under these loans at closing was approximately $2.2 billion and outstanding principal was $2.0 billion. During the three months ended March 31, 2024, we funded approximately $13.0 million of outstanding principal and received repayments of $78.4 million of outstanding principal. As of March 31, 2024, 70.0% of our loans have SOFR floors, with a weighted average floor of 1.17%, calculated based on loans with SOFR floors. References to SOFR or “S” are to 30-day SOFR (unless otherwise specifically stated).

Other than as set forth in Note 3 to our consolidated financial statements included in this quarterly report on Form 10-Q, as of March 31, 2024, all loans held for investment were paying in accordance with their contractual terms.

Our loans held for investment are accounted for at amortized cost. The following table summarizes our loans held for investment as of March 31, 2024 ($ in thousands):

	As of March 31, 2024				
	Carrying Amount (1)	Outstanding Principal (1)	Weighted Average Unleveraged Effective Yield		Weighted Average Remaining Life (Years)
Senior mortgage loans	$ 1,970,558	$ 1,996,099	8.0 % (2)	9.2 % (3)	1.0
Subordinated debt and preferred equity investments	43,942	48,849	6.4 % (2)	15.3 % (3)	1.9
Total loans held for investment portfolio	$ 2,014,500	$ 2,044,948	7.9 % (2)	9.3 % (3)	1.0

(1) The difference between the Carrying Amount and the Outstanding Principal amount of the loans held for investment consists of unamortized purchase discounts, deferred loan fees and origination costs and cost-recovery proceeds.

(2) Unleveraged Effective Yield is the compounded effective rate of return that would be earned over the life of the investment based on the contractual interest rate (adjusted for any deferred loan fees, costs, premiums or discounts) and assumes no dispositions, early prepayments or defaults. The total Weighted Average Unleveraged Effective Yield is calculated based on the average of Unleveraged Effective Yield of all loans held by us as of March 31, 2024 as weighted by the outstanding principal balance of each loan.

(3) Unleveraged Effective Yield is the compounded effective rate of return that would be earned over the life of the investment based on the contractual interest rate (adjusted for any deferred loan fees, costs, premiums or discounts) and assumes no dispositions, early prepayments or defaults. The total Weighted Average Unleveraged Effective Yield is calculated based on the average of Unleveraged Effective Yield of all interest accruing loans held by us as of March 31, 2024 as weighted by the total outstanding principal balance of each interest accruing loan (excludes loans on non-accrual status as of March 31, 2024).

Critical Accounting Estimates

Our consolidated financial statements have been prepared in accordance with generally accepted accounting principles (“GAAP”), which require management to make estimates and assumptions that affect reported amounts. These estimates and assumptions are based on historical experience and other factors management believes to be reasonable. Actual results may differ from those estimates and assumptions. For a description of our critical accounting estimates, please see Part II, “Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations” in our 2023 Annual Report on Form 10-K.

RECENT DEVELOPMENTS

Our board of directors declared a regular cash dividend of $0.25 per common share for the second quarter of 2024. The second quarter 2024 dividend will be payable on July 16, 2024 to common stockholders of record as of June 28, 2024.

On April 19, 2024, April 23, 2024, April 26, 2024 and May 6, 2024, we entered into amendments to each of the Wells Fargo Facility, the Citibank Facility, the CNB Facility and Morgan Stanley Facility, respectively, to, among other things, clarify the calculation of our tangible net worth.

In May 2024, the senior mortgage loan held by us on an office property located in North Carolina was not repaid upon its contractual maturity, which triggered an event of default under the loan agreement. As of May 7, 2024, the outstanding principal balance of the senior North Carolina loan is $68.6 million.

On May 6, 2024, we entered into an amendment to the CapOne Guaranty. The purpose of the amendment was to, among other things, clarify the calculation of our tangible net worth and limit the amount of CECL Reserves permitted to be added to stockholders’ equity for purposes of calculating our tangible net worth.

On May 8, 2024, we, as borrower, and ACRC Holdings LLC, ACRC Mezz Holdings LLC and ACRC Warehouse Holdings LLC, our wholly-owned subsidiaries, as guarantors, entered into an amendment to the Secured Term Loan. The purpose of the amendment was to, among other things, (i) change the schedule of interest rate increases, (ii) add contingent interest rate increases based on the outstanding principal amount of the Secured Term Loan on specific dates and our tangible net worth, and (iii) make changes to financial covenants, including reducing the minimum tangible net worth requirement and linking future determinations thereof to the outstanding principal amount of the Secured Term Loan, increasing the minimum

unencumbered asset ratio requirement, reducing the maximum total net leverage ratio and increasing the senior loan concentration threshold. In connection with the amendment and concurrently therewith, we paid a modification fee and paid down $10 million of principal of the Secured Term Loan which reduced the outstanding principal balance of the loan from $150 million to $140 million.

On May 8, 2024, we elected to terminate the MetLife Facility prior to its scheduled maturity on August 13, 2024 as the facility had no outstanding balance.

RESULTS OF OPERATIONS

The following table sets forth a summary of our consolidated results of operations for the three months ended March 31, 2024 and 2023 ($ in thousands):

	For the Three Months Ended March 31,	
	2024	2023
Total revenue	$ 18,692	$ 26,501
Total expenses	8,551	6,198
Provision for current expected credit losses	(22,269)	21,019
Realized losses on loans	45,726	5,613
Change in unrealized losses on loans held for sale	(995)	—
Income (loss) before income taxes	(12,321)	(6,329)
Income tax expense, including excise tax	2	110
Net income (loss) attributable to common stockholders	$ (12,323)	$ (6,439)

The following tables set forth select details of our consolidated results of operations for the three months ended March 31, 2024 and 2023 ($ in thousands):

Net Interest Margin

	For the Three Months Ended March 31,	
	2024	2023
Interest income	$ 44,033	$ 49,500
Interest expense	(28,819)	(22,999)
Net interest margin	$ 15,214	$ 26,501

For the three months ended March 31, 2024 and 2023, net interest margin was approximately $15.2 million and $26.5 million, respectively. For the three months ended March 31, 2024 and 2023, interest income of $44.0 million and $49.5 million, respectively, was generated by weighted average earning assets of $2.2 billion and $2.3 billion, respectively, offset by $28.8 million and $23.0 million, respectively, of interest expense, unused fees and amortization of deferred loan costs. The weighted average borrowings under the Secured Funding Agreements, Notes Payable, the Secured Term Loan and securitization debt were $1.6 billion for the three months ended March 31, 2024 and $1.7 billion for the three months ended March 31, 2023. The decrease in net interest margin for the three months ended March 31, 2024 compared to the three months ended March 31, 2023 relates to a decrease in our weighted average earning assets and weighted average borrowings for the three months ended March 31, 2024 as compared to the three months ended March 31, 2023, no benefit received from our interest rate hedging derivative contracts for the three months ended March 31, 2024 due to the expiration of the contracts in December 2023 and an increase in the amount of loans held for investment on non-accrual status for the three months ended March 31, 2024 as compared to the three months ended March 31, 2023. This decrease was partially offset by the benefit received from the increase in SOFR rates on our loans held for investment for the three months ended March 31, 2024 as compared to the three months ended March 31, 2023.

Revenue From Real Estate Owned

On September 8, 2023, we acquired legal title to a mixed-use property located in Florida through a consensual foreclosure. Prior to September 8, 2023, the mixed-use property collateralized an $82.9 million senior mortgage loan that we held that was in maturity default due to the failure of the borrower to repay the outstanding principal balance of the loan by the February 2023 maturity date. In conjunction with the consensual foreclosure, we derecognized the $82.9 million senior mortgage loan and recognized the mixed-use property as real estate owned. For the three months ended March 31, 2024, revenue from real estate owned related to this property was $3.5 million. Revenues consist primarily of rental revenue from operating leases. For the three months ended March 31, 2023, we received no revenue from real estate owned.

Operating Expenses

	For the Three Months Ended March 31,	
	2024	2023
Management and incentive fees to affiliate	$ 2,768	$ 3,010
Professional fees	533	771
General and administrative expenses	2,081	1,685
General and administrative expenses reimbursed to affiliate	1,132	732
Expenses from real estate owned	2,037	—
Total expenses	$ 8,551	$ 6,198

See the Related Party Expenses, Other Expenses and Expenses from Real Estate Owned discussions below for the drivers of the increase in operating expenses for the three months ended March 31, 2024 compared to the three months ended March 31, 2023.

Related Party Expenses

For the three months ended March 31, 2024, related party expenses included $2.8 million in management fees due to our Manager pursuant to the Management Agreement. No incentive fees were incurred for the three months ended March 31, 2024. For the three months ended March 31, 2024, related party expenses also included $1.1 million for our share of allocable general and administrative expenses for which we were required to reimburse our Manager pursuant to the Management Agreement. For the three months ended March 31, 2023, related party expenses included $3.0 million in management fees due to our Manager pursuant to the Management Agreement. No incentive fees were incurred for the three months ended March 31, 2023. For the three months ended March 31, 2023, related party expenses also included $0.7 million for our share of allocable general and administrative expenses for which we were required to reimburse our Manager pursuant to the Management Agreement. The decrease in management fees for the three months ended March 31, 2024 compared to the three months ended March 31, 2023 primarily relates to a decrease in our weighted average stockholders' equity for the three months ended March 31, 2024 as a result of realized losses on loans. No incentive fees were incurred for the three months ended March 31, 2024 and 2023 due to our Core Earnings (defined below) for the three months ended March 31, 2024 and 2023 not exceeding the 8% minimum return. "Core Earnings" is defined in the Management Agreement as net income (loss) computed in accordance with GAAP, excluding non-cash equity compensation expense, the incentive fee, depreciation and amortization (to the extent that any of the Company's target investments are structured as debt and the Company forecloses on any properties underlying such debt), any unrealized gains, losses or other non-cash items recorded in net income (loss) for the period, regardless of whether such items are included in other comprehensive income or loss, or in net income (loss), and one-time events pursuant to changes in GAAP and certain non-cash charges after discussions between ACREM and the Company's independent directors and after approval by a majority of the Company's independent directors. The increase in allocable general and administrative expenses due to our Manager for the three months ended March 31, 2024 compared to the three months ended March 31, 2023 relates to an increase in the percentage of time allocated to us by employees of our Manager due to changes in transaction activity year over year.

Other Expenses

For the three months ended March 31, 2024 and 2023, professional fees were $0.5 million and $0.8 million, respectively. The decrease in professional fees for the three months ended March 31, 2024 compared to the three months ended March 31, 2023 relates to a decrease in our use of third-party professionals due to changes in transaction activity year over year. For the three months ended March 31, 2024 and 2023, general and administrative expenses were $2.1 million and $1.7 million, respectively. The increase in general and administrative expenses for the three months ended March 31, 2024 compared to the three months ended March 31, 2023 relates to an increase in stock-based compensation expense due to restricted stock and restricted stock unit awards granted after March 31, 2023.

Expenses From Real Estate Owned

For the three months ended March 31, 2024, expenses from real estate owned was comprised of the following ($ in thousands):

	For the Three Months Ended March 31, 2024
Mixed-use property operating expenses	$ 1,022
Depreciation and amortization expense	1,015
Expenses from real estate owned	$ 2,037

For the three months ended March 31, 2024, mixed-use property operating expenses were $1.0 million. For the three months ended March 31, 2023, there were no mixed-use property operating expenses incurred as we acquired legal title to the mixed-use property on September 8, 2023. Mixed-use property operating expenses consisted primarily of expenses incurred in the day-to-day operation of our mixed-use property, including common area maintenance costs, property taxes and insurance. Common area maintenance costs include items such as maintenance and repairs, utilities, janitorial services, security and property management fees.

For the three months ended March 31, 2024, depreciation and amortization expense was $1.0 million and relates primarily to our mixed-use property that was acquired on September 8, 2023. We had no depreciation and amortization expense for the three months ended March 31, 2023.

Provision for Current Expected Credit Losses

For the three months ended March 31, 2024 and 2023, the provision for current expected credit losses was $(22.3) million and $21.0 million, respectively. The decrease in the provision for current expected credit losses for the three months ended March 31, 2024 is primarily due to realized losses on two risk rated “5” loans, resulting in a reversal of CECL Reserves, shorter average remaining loan term and loan repayments during the three months ended March 31, 2024. These factors were partially offset by an increase in the CECL Reserves for risk rated “4” and “5” loans in the portfolio as a result of the impact of the current macroeconomic environment, including high inflation and interest rates, volatility and reduced liquidity in the office sector and other loan-specific factors during the three months ended March 31, 2024. The increase in the provision for current expected credit losses for the three months ended March 31, 2023 was primarily due to CECL Reserves that were related to two loans in the portfolio, changes to the loan portfolio and the impact of the current macroeconomic environment on certain assets, including high inflation and interest rates, partially offset by shorter average remaining loan term, loan sales and loan repayments during the three months ended March 31, 2023.

The CECL Reserve takes into consideration our estimates relating to the impact of macroeconomic conditions on CRE properties and is not specific to any loan losses or impairments on our loans held for investment, unless the Company determines that a specifically identifiable reserve is warranted for a select asset. Additionally, the CECL Reserve is not an indicator of what we expect our CECL Reserve would have been absent the current and potential future impacts of macroeconomic conditions.

Realized Losses on Loans

In December 2023, we entered into a sale agreement with a third party to sell a senior mortgage loan with outstanding principal of $37.9 million, which was collateralized by a mixed-use property located in California. As of December 31, 2023, the sale had not yet closed and the loan was reclassified from held for investment to held for sale and was carried at fair value in our consolidated balance sheets. We recognized an unrealized loss of $995 thousand in our consolidated statements of operations upon reclassifying the loan to held for sale as the carrying value of the senior mortgage loan exceeded fair value as determined by the agreed upon sale price of the loan and loan reserves. In January 2024, we closed the sale of the senior mortgage loan. At the time of the sale, the senior mortgage loan was in maturity default due to the failure of the borrower to repay the outstanding principal balance of the loan by the March 2023 maturity date. This $995 thousand unrealized loss was realized during the three months ended March 31, 2024.

In February 2024, we received a discounted payoff on a senior mortgage loan with outstanding principal of $18.8 million, which was collateralized by a multifamily property located in Washington. The discounted payoff was received in conjunction with a short sale of the multifamily property by the borrower to a third party. At the time of the discounted payoff, the senior mortgage loan was in default due to the failure of the borrower to repay the outstanding principal balance of the loan by the September 2023 maturity date. For the three months ended March 31, 2024, we recognized a realized loss of $1.7 million in our consolidated statements of operations upon the payoff of the senior mortgage loan as the carrying value exceeded the net proceeds from the payoff of the loan.

In March 2024, we received a discounted payoff on a senior mortgage loan with outstanding principal of $56.9 million, which was collateralized by an office property located in Illinois. The discounted payoff was received in conjunction with a short sale of the office property by the borrower to a third party. At the time of the discounted payoff, the senior mortgage loan was in default due to the failure of the borrower to repay the outstanding principal balance of the loan by the February 2024 maturity date. For the three months ended March 31, 2024, we recognized a realized loss of $43.1 million in our consolidated statements of operations upon the payoff of the senior mortgage loan as the carrying value exceeded the net proceeds from the payoff of the loan.

In January 2023, we closed the sale of a senior mortgage loan with outstanding principal of $14.3 million, which was collateralized by a residential property located in California, to a third party. At the time of the sale, the senior mortgage loan was in maturity default due to the failure of the borrower to repay the outstanding principal balance of the loan by the May 2021 maturity date. For the three months ended March 31, 2023, we recognized a realized loss of $5.6 million in our consolidated statements of operations upon the sale of the senior mortgage loan as the carrying value exceeded the sale price of the loan.

Change in Unrealized Losses on Loans Held for Sale

In January 2024, we closed the sale of the senior mortgage loan that was classified as held for sale as of December 31, 2023 and the $995 thousand unrealized loss related to this senior mortgage loan for the year ended December 31, 2023 was realized during the three months ended March 31, 2024.

LIQUIDITY AND CAPITAL RESOURCES

Liquidity is a measure of our ability to meet potential cash requirements, including ongoing commitments to repay borrowings, fund and maintain our assets and operations, make distributions to our stockholders, repurchase shares and other general business needs. We use significant cash to purchase our target investments, make principal and interest payments on our borrowings, make distributions to our stockholders and fund our operations.

Our primary sources of cash generally consist of unused borrowing capacity under our Secured Funding Agreements, payments of principal and interest we receive on our portfolio of assets, cash generated from our operating activities and the net proceeds of future equity offerings, if any. Principal repayments from mortgage loans in securitizations where we retain the subordinate securities are applied sequentially, first used to pay down the senior notes, and accordingly, we will not receive any proceeds from repayment of loans in the securitizations until all senior notes are repaid in full.

We expect our primary sources of cash to continue to be sufficient to fund our operating activities and cash commitments for investing and financing activities for at least the next 12 months and thereafter for the foreseeable future. As a result of the current macroeconomic environment, borrowers may be unable to make interest and principal payments timely, including at the maturity date of the borrower's loan. We have increased our CECL Reserve to reflect this risk. Our Secured Funding Agreements contain margin call provisions following the occurrence of certain mortgage loan credit events. If we are unable to make the required payment or if we fail to meet or satisfy any of the covenants in our Financing Agreements, we would be in default under these agreements, and our lenders could elect to declare outstanding amounts due and payable, terminate their commitments, require the posting of additional collateral, including cash to satisfy margin calls, and enforce their interests against existing collateral. For example, certain of our Financing Agreements contain (i) negative covenants that limit, among other things, our ability to repurchase our common stock, make distributions to our stockholders, employ leverage beyond certain amounts, sell assets, engage in mergers or consolidations, grant liens, and enter into transactions with affiliates (including amending the Management Agreement in a material respect) and (ii) operating and financial covenants, including those requiring us to maintain a certain tangible net worth, asset coverage ratio, total net leverage ratio and loan concentration. We are also subject to cross-default and acceleration rights with respect to our Financing Agreements. If we experience borrower default as a result of the current macroeconomic conditions, we may not be able to negotiate modifications to our borrowings with our lenders or receive financing from our Secured Funding Agreements with respect to our commitments to fund our loans held for investment in the future. See "Summary of Financing Agreements" below for a description of our Financing Agreements.

Subject to maintaining our qualification as a REIT and our exemption from registration under the 1940 Act, we expect that our primary sources of liquidity will be financing, to the extent available to us, through credit, secured funding and other lending facilities, other sources of private financing, including warehouse and repurchase facilities, and public or private offerings of our equity or debt securities. Macroeconomic conditions may impair our ability to access the financing and capital markets. Furthermore, we have sold, and may continue to sell certain of our mortgage loans, or interests therein, in order to

manage liquidity needs. Subject to maintaining our qualification as a REIT, we may also change our dividend practice, including by reducing the amount of, or temporarily suspending, our future dividends or making dividends that are payable in cash and shares of our common stock for some period of time. We may also continue or discontinue share repurchases under the Repurchase Program. In addition, our FL3 CLO Securitization and our FL4 CLO Securitization (together, our "CLO Securitizations") contain certain senior note overcollateralization ratio tests. To the extent we fail to meet these tests, amounts that would otherwise be used to make payments on the subordinate securities that we hold will be used to repay principal on the more senior securities to the extent necessary to satisfy any senior note overcollateralization ratio and we may incur significant losses. Our sources of liquidity may be impacted to the extent we do not receive cash payments that we would otherwise expect to receive from the CLO Securitizations if these tests were met.

Ares Management or one of its investment vehicles may originate mortgage loans. We have had and may continue to have the opportunity to purchase such loans that are determined by our Manager in good faith to be appropriate for us, depending on our available liquidity. Ares Management or one of its investment vehicles may also acquire mortgage loans from us.

We have commitments to fund various senior mortgage loans, as well as subordinated debt and preferred equity investments in our portfolio. Other than as set forth in this quarterly report on Form 10-Q, we do not have any relationships with unconsolidated entities or financial partnerships, such as entities often referred to as structured investment vehicles, special purpose entities or variable interest entities, established to facilitate off-balance sheet arrangements or other contractually narrow or limited purposes. Further, we have not guaranteed any obligations of unconsolidated entities or entered into any commitment or intend to provide additional funding to any such entities.

As of May 7, 2024, we had approximately $136 million in liquidity including $86 million of unrestricted cash and $50 million of availability under our Secured Funding Agreements.

Cash Flows

The following table sets forth changes in cash and cash equivalents for the three months ended March 31, 2024 and 2023 ($ in thousands):

	For the Three Months Ended March 31,	
	2024	2023
Net income (loss)	$ (12,323)	$ (6,439)
Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities	23,701	17,695
Net cash provided by (used in) operating activities	11,378	11,256
Net cash provided by (used in) investing activities	134,016	70,058
Net cash provided by (used in) financing activities	(156,335)	(68,828)
Change in cash and cash equivalents	$ (10,941)	$ 12,486

During the three months ended March 31, 2024 and 2023, cash and cash equivalents increased (decreased) by $(10.9) million and $12.5 million, respectively.

Operating Activities

For the three months ended March 31, 2024 and 2023, net cash provided by operating activities totaled $11.4 million and $11.3 million, respectively. For the three months ended March 31, 2024, adjustments to net loss related to operating activities included the provision for current expected credit losses of $22.3 million, accretion of discounts, deferred loan origination fees and costs of $1.3 million, amortization of deferred financing costs of $1.1 million, change in other assets of $0.5 million and realized losses on loans of $45.7 million. For the three months ended March 31, 2023, adjustments to net loss related to operating activities primarily included the provision for current expected credit losses of $21.0 million, accretion of

discounts, deferred loan origination fees and costs of $1.8 million, amortization of deferred financing costs of $1.0 million, change in other assets of $8.6 million and realized losses on loans of $5.6 million.

Investing Activities

For the three months ended March 31, 2024 and 2023, net cash provided by investing activities totaled $135.1 million and $70.1 million, respectively. This change in net cash provided by investing activities was a result of the cash received from principal collections and cost-recovery proceeds on loans held for investment and from the sale of loans held for sale exceeding the cash used for the origination and funding of loans held for investment for the three months ended March 31, 2024.

Financing Activities

For the three months ended March 31, 2024, net cash used in financing activities totaled $156.3 million and was related to repayments of our Secured Funding Agreements of $22.3 million, repayments of debt of consolidated VIEs of $128.2 million and dividends paid of $18.2 million, partially offset by proceeds from our Secured Funding Agreements of $12.8 million. For the three months ended March 31, 2023, net cash used in financing activities totaled $68.8 million and related to repayments of our Secured Funding Agreements of $19.7 million, repayments of debt of consolidated VIEs of $42.1 million and dividends paid of $19.3 million, partially offset by proceeds from our Secured Funding Agreements of $12.7 million.

Summary of Financing Agreements

The sources of financing, as applicable in a given period, under our Secured Funding Agreements, Notes Payable and the Secured Term Loan (collectively, the "Financing Agreements") are described in the following table ($ in thousands):

	As of									
	March 31, 2024					December 31, 2023				
	Total Commitment	Outstanding Balance	Interest Rate	Maturity Date		Total Commitment	Outstanding Balance	Interest Rate	Maturity Date	
Secured Funding Agreements:										
Wells Fargo Facility	$ 450,000	$ 216,522	SOFR+1.50 to 3.75%	December 15, 2025	(1)	$ 450,000	$ 208,540	SOFR+1.50 to 3.75%	December 15, 2025	(1)
Citibank Facility	325,000	204,104	SOFR+1.50 to 2.10%	January 13, 2025	(2)	325,000	221,604	SOFR+1.50 to 2.10%	January 13, 2025	(2)
CNB Facility	75,000	—	SOFR+3.25%	March 10, 2025	(3)	75,000	—	SOFR+2.65%	March 11, 2024	(3)
MetLife Facility	180,000	—	SOFR+2.50%	August 13, 2024		180,000	—	SOFR+2.50%	August 13, 2024	
Morgan Stanley Facility	250,000	209,673	SOFR+1.60 to 3.10%	July 16, 2025	(4)	250,000	209,673	SOFR+1.60 to 3.10%	July 16, 2025	(4)
Subtotal	$ 1,280,000	$ 630,299				$ 1,280,000	$ 639,817			
Notes Payable	$ 105,000	$ 105,000	SOFR+2.00%	July 28, 2025	(5)	$ 105,000	$ 105,000	SOFR+2.00%	July 28, 2025	(5)
Secured Term Loan	$ 150,000	$ 150,000	4.50%	November 12, 2026	(6)	$ 150,000	$ 150,000	4.50%	November 12, 2026	(6)
Total	$ 1,535,000	$ 885,299				$ 1,535,000	$ 894,817			

(1) The maturity date of the master repurchase funding facility with Wells Fargo Bank, National Association (the "Wells Fargo Facility") is subject to two 12-month extensions at our option, each of which may be exercised at our option provided that certain conditions are met and applicable extension fees are paid. The maximum commitment may be increased to up to $500.0 million at our option, subject to the satisfaction of certain conditions, including payment of an upsize fee.

(2) The maturity date of the master repurchase facility with Citibank, N.A. ("Citibank") (the "Citibank Facility") is subject to two 12-month extensions, each of which may be exercised at our option provided that certain conditions are met and applicable extension fees are paid.

(3) In January 2024, we amended the CNB Facility to, among other things: (1) extend the initial maturity date of the CNB Facility to March 10, 2025, subject to one 12-month extension, which may be exercised at our option if certain conditions described in the CNB Facility are met, including applicable extension fees being paid, which, if exercised, would extend the maturity date to March 10, 2026 and (2) set the interest rate on advances under the CNB Facility to a per annum rate equal to the sum of, at our option, either (a) a SOFR-based rate plus 3.25% or (b) a base rate plus 2.25%, in each case, subject to an interest rate floor.

(4) The master repurchase and securities contract with Morgan Stanley (the "Morgan Stanley Facility") is subject to one 12-month extension, which may be exercised at our option provided that certain conditions are met and applicable extension fees are paid.

(5) A wholly owned subsidiary of ours is party to a Credit and Security Agreement with the lender referred to therein, which provides for a $105.0 million note (the "Notes Payable"). The $105.0 million note is subject to two 12-month extensions, each of which may be exercised at our option provided that certain conditions are met and applicable extension fees are paid.

(6) The maturity date of the Credit and Guaranty Agreement with the lenders referred to therein and Cortland Capital Market Services LLC, as administrative agent and collateral agent for the lenders (the "Secured Term Loan") is November 12, 2026 and the interest rate on advances under the Secured Term Loan are the following fixed rates: (i) 4.50% per annum until May 12, 2025, (ii) after May 12, 2025 through November 12, 2025, the interest rate increases 0.125% every three months and (iii) after November 12, 2025 through November 12, 2026, the interest rate increases 0.250% every three months.

Our Financing Agreements contain various affirmative and negative covenants, including negative pledges, and provisions related to events of default that are normal and customary for similar financing agreements. As of March 31, 2024, we were in compliance with all financial covenants of each respective Financing Agreement. We may be required to fund commitments on our loans held for investment in the future and we may not receive funding from our Secured Funding Agreements with respect to these commitments. See Note 6 to our consolidated financial statements included in this quarterly report on Form 10-Q for more information on our Financing Agreements.

Securitizations

As of March 31, 2024, the carrying amount and outstanding principal of our CLO Securitizations was $595.1 million and $595.7 million, respectively. See Note 15 to our consolidated financial statements included in this quarterly report on Form 10-Q for additional terms and details of our CLO Securitizations.

Leverage Policies

We intend to use prudent amounts of leverage to increase potential returns to our stockholders. To that end, subject to maintaining our qualification as a REIT and our exemption from registration under the 1940 Act, we intend to continue to use borrowings to fund the origination or acquisition of our target investments. Given current macroeconomic conditions and our focus on first or senior mortgages, we currently expect that such leverage would not exceed, on a debt-to-equity basis, a 4.5-to-1 ratio. Our charter and bylaws do not restrict the amount of leverage that we may use. The amount of leverage we will deploy for particular investments in our target investments will depend upon our Manager's assessment of a variety of factors, which may include, among others, our liquidity position, the anticipated liquidity and price volatility of the assets in our loans held for investment portfolio, the potential for losses and extension risk in our portfolio, the gap between the duration of our assets and liabilities, including hedges, the availability and cost of financing the assets, our opinion of the creditworthiness of our financing counterparties, the impact of the macroeconomic environment on the United States economy generally or in specific geographic regions and commercial mortgage markets, our outlook for the level and volatility of interest rates, the slope of the yield curve, the credit quality of our assets, the collateral underlying our assets, and our outlook for asset spreads relative to the SOFR curve or another alternative interest index rate commonly used for floating rate loans.

Dividends

We elected to be taxed as a REIT for United States federal income tax purposes and, as such, anticipate annually distributing to our stockholders at least 90% of our REIT taxable income, prior to the deduction for dividends paid. If we distribute less than 100% of our REIT taxable income in any tax year (taking into account any distributions made in a subsequent tax year under Sections 857(b)(9) or 858 of the Code), we will pay tax at regular corporate rates on that undistributed portion. Furthermore, if we distribute less than the sum of 1) 85% of our ordinary income for the calendar year, 2) 95% of our capital gain net income for the calendar year and 3) any undistributed shortfall from our prior calendar year (the "Required Distribution") to our stockholders during any calendar year (including any distributions declared by the last day of the calendar year but paid in the subsequent year), then we are required to pay non-deductible excise tax equal to 4% of any shortfall between the Required Distribution and the amount that was actually distributed. Any of these taxes would decrease cash available for distribution to our stockholders. The 90% distribution requirement does not require the distribution of net capital gains. However, if we elect to retain any of our net capital gain for any tax year, we must notify our stockholders and pay tax at regular corporate rates on the retained net capital gain. The stockholders must include their proportionate share of the retained net capital gain in their taxable income for the tax year, receive a credit for their share of the tax paid by such REIT, and are deemed to have paid the REIT's tax on their proportionate share of the retained capital gain. Furthermore, such retained capital gain may be subject to the nondeductible 4% excise tax. If we determine that our estimated current year taxable income (including net capital gain) will be in excess of estimated dividend distributions (including capital gains dividends) for the current year from such income, we accrue excise tax on a portion of the estimated excess taxable income as such taxable income is earned.

Before we make any distributions, whether for United States federal income tax purposes or otherwise, we must first meet both our operating and debt service requirements under on our Financing Agreements and other debt payable. If our cash available for distribution is less than our REIT taxable income, we could be required to sell assets or borrow funds to make cash distributions or we may elect to make a portion of the Required Distribution in the form of a taxable stock distribution or distribution of debt securities.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

As part of our risk management strategy, our Manager closely monitors our portfolio and actively manages the credit, interest rate, market, prepayment, financing, real estate and inflation risks associated with holding a portfolio of our target investments. We manage our portfolio through an interactive process with our Manager and Ares Management. Our Manager has an Investment Committee that oversees compliance with our investment strategy and guidelines, loans held for investment portfolio holdings and financing strategy. We seek to manage our risks related to the credit quality of our assets, interest rates, liquidity, prepayment speeds and market value while, at the same time, seeking to provide an opportunity to stockholders to realize attractive risk-adjusted returns through ownership of our capital stock. While we do not seek to avoid risk completely, we believe the risks can be quantified from historical experience and seek to actively manage those risks, to earn sufficient compensation to justify taking those risks and to maintain capital levels consistent with the risks we undertake.

Credit Risk

We are subject to varying degrees of credit risk in connection with holding our target investments. We have exposure to credit risk on our CRE loans held for investment and available-for-sale debt securities. Our Manager seeks to manage credit risk by performing a due diligence process prior to origination or acquisition and through the use of non-recourse financing, when and where available and appropriate. Credit risk is also addressed through our Manager's ongoing review of our loans held for investment portfolio. In addition, with respect to any particular target investment, our Manager's investment team evaluates, among other things, relative valuation, comparable analysis, supply and demand trends, shape of yield curves, delinquency and default rates, recovery of various sectors and vintage of collateral.

In the current macroeconomic environment, prepayments may slow down, borrowers may not be able to repay principal upon the loan maturity or qualify for loan extensions. Additionally, if tenants are not able to pay rent to their landlords, property owners may not be able to make payments to their lenders. We have continued regular dialogue with our borrowers and our financing providers to assess this credit risk.

Interest Rate Risk

Interest rates are highly sensitive to many factors, including fiscal and monetary policies and domestic and international economic and political considerations, as well as other factors beyond our control. We are subject to interest rate risk in connection with our assets and our related financing obligations, including our borrowings under the Financing

Agreements. We primarily originate or acquire floating rate mortgage assets and finance those assets with index-matched floating rate liabilities. As a result, we significantly reduce our exposure to changes in portfolio value and cash flow variability related to changes in interest rates. However, we regularly measure our exposure to interest rate risk and assess interest rate risk and manage our interest rate exposure on an ongoing basis by comparing our interest rate sensitive assets to our interest rate sensitive liabilities. Based on that review, we determine whether or not we should enter into hedging transactions and derivative financial instruments, such as forward sale commitments and interest rate floors in order to mitigate our exposure to changes in interest rates.

While hedging activities may mitigate our exposure to adverse fluctuations in interest rates, certain hedging transactions that we have entered into or may enter into in the future, such as interest rate swap agreements, may also limit our ability to participate in the benefits of lower interest rates with respect to our investments. In addition, there can be no assurance that we will be able to effectively hedge our interest rate risk.

In addition to the risks discussed above, there is also the risk of non-performance on floating rate assets. In the case of a significant increase in interest rates, the additional debt service payments due from our borrowers may strain the operating cash flows of the real estate assets underlying our mortgages and, potentially, contribute to non-performance or, in severe cases, default, which may be mitigated by borrower purchased interest rate caps.

Interest Rate Effect on Net Income

Our interest income and expense will generally change directionally with index rates. The impact of declining interest rates may be mitigated by interest rate floors and the impact of rising or declining interest rates may be mitigated by certain hedging transactions that we have entered into or may enter into in the future. The following table estimates the hypothetical increases/(decreases) in net income for a twelve month period, assuming (1) an immediate increase or decrease in 30-day SOFR as of March 31, 2024 and (2) no change in the outstanding principal balance of our loans held for investment portfolio, available-for-sale debt securities and borrowings as of March 31, 2024 ($ in millions):

Change in 30-Day SOFR	Increase/(Decrease) in Net Income
Up 100 basis points	$4.5
Up 50 basis points	$2.2
SOFR at 0 basis points	$(10.5)

The severity of any such impact depends on our asset/liability composition at the time as well as the magnitude and duration of the interest rate increase and any applicable floors or hedging transactions. If any of these events happen, we could experience a decrease in net income or incur a net loss during these periods, which could adversely affect our liquidity and results of operations.

Interest Rate Floor Risk

We primarily originate or acquire floating rate mortgage and mortgage-related assets. Some of these mortgage assets may be subject to interest rate floors. Similarly, some of our borrowing costs may be subject to interest rate floors. In a period of decreasing interest rates, the interest rate yields on our floating rate mortgage assets could decrease, while the interest rate costs on certain of our borrowings could be fixed at a higher floor. These factors could lower our net interest income or cause a net loss during periods of decreasing interest rates, which would harm our financial condition, cash flows and results of operations.

Market Risk

The estimated fair values of our investments fluctuate primarily due to changes in index rates, changes in credit spreads and other factors. In general, in a rising interest rate environment, whether due to increases in index rates or credit spreads, the estimated fair value of our fixed-rate investments would generally be expected to decrease; conversely, in a decreasing interest rate environment, whether due to decreases in index rates or credit spreads, the estimated fair value of our fixed-rate investments would generally be expected to increase. Also, in general, in a widening credit spread environment, the estimated fair value of our floating rate investments would generally be expected to decrease. However, in a compressing credit spread environment, the estimated fair value of our floating rate investments may not increase, particularly if prepayment

restrictions are not in place and our floating rate investments are fully prepayable. As market volatility increases or liquidity decreases, the fair value of our investments and liabilities may be adversely impacted.

Prepayment and Securitizations Repayment Risk

Our net income (loss) and earnings may be affected by prepayment rates on our existing CRE loans. When we originate our CRE loans, we anticipate that we will generate an expected yield. When borrowers prepay their CRE loans faster than we expect, we may be unable to replace these CRE loans with new CRE loans that will generate yields which are as high as the prepaid CRE loans. If prepayment rates decrease in a rising interest rate environment, borrowers exercise extension options on CRE loans or we extend the term of CRE loans, the life of the loans could extend beyond the term of the Financing Agreements that we borrow on to fund our CRE loans. This could have a negative impact on our results of operations. In some situations, we may be forced to fund additional cash collateral in connection with the Financing Agreements or sell assets to maintain adequate liquidity, which could cause us to incur losses. Additionally, principal repayment proceeds from mortgage loans in the CLO Securitizations are applied sequentially, first used to pay down the senior notes in the CLO Securitizations. We will not receive any proceeds from the repayment of loans in the CLO Securitizations until all senior notes are repaid in full.

Financing Risk

We borrow funds under our Financing Agreements to finance our target assets. The financial markets have recently encountered volatility associated with concerns about the balance sheets of banks, especially small and regional banks. We may be subject to risk arising from a default by one of several large banking institutions that are dependent on one another to meet their liquidity or operational needs, so that a default by one institution may cause a series of defaults by the other institutions, and may impact the liquidity of our lenders and their willingness to provide us with borrowings to finance our target assets and other needs.

In addition, our Secured Funding Agreements contain margin call provisions following the occurrence of certain mortgage loan credit events. If we are unable to make the required payment or if we fail to meet or satisfy any of the covenants in our Financing Agreements, we would be in default under these agreements, and our lenders could elect to declare outstanding amounts due and payable, terminate their commitments, require the posting of additional collateral, including cash to satisfy margin calls, and enforce their interests against existing collateral. For example, certain of our Financing Agreements contain (i) negative covenants that limit, among other things, our ability to repurchase our common stock, make distributions to our stockholders, employ leverage beyond certain amounts, sell assets, engage in mergers or consolidations, grant liens, and enter into transactions with affiliates (including amending the Management Agreement in a material respect) and (ii) operating and financial covenants, including those requiring us to maintain a certain tangible net worth, asset coverage ratio, total net leverage ratio and loan concentration. We are also subject to cross-default and acceleration rights with respect to our Financing Agreements. In addition, our CLO Securitizations contain certain senior note overcollateralization ratio tests. To the extent we fail to meet these tests, amounts that would otherwise be used to make payments on the subordinate securities that we hold will be used to repay principal on the more senior securities to the extent necessary to satisfy any senior note overcollateralization ratio and we may incur significant losses. Our sources of liquidity may be impacted to the extent we do not receive cash payments that we would otherwise expect to receive from the CLO Securitizations if these tests were met. Additionally, in such a case, interest income may continue to accrue for the holders of subordinate securities within the CLO Securitizations notwithstanding the cash being used to repay principal on the more senior securities. This would cause us to recognize income but not have a corresponding amount of cash available for operations or for distribution to our stockholders.

Continued weakness or volatility in the financial markets, the commercial real estate and mortgage markets and the economy generally could adversely affect one or more of our lenders or potential lenders and could cause one or more of our lenders or potential lenders to be unwilling or unable to provide us with financing or to increase the costs of that financing. From time to time, capital markets may also experience periods of disruption and instability, which may adversely affect our ability to refinance our financing arrangements.

Real Estate Risk

Our real estate investments and the value of real estate owned are subject to volatility and may be affected adversely by a number of factors, including, but not limited to, national, regional and local economic conditions (which may be adversely affected by industry slowdowns and other factors); local real estate conditions; changes or continued weakness in specific industry segments; local markets with a significant exposure to the energy sector; construction quality, age and design; demographic factors; and retroactive changes to building or similar codes. High interest rates and persistent inflation have had, and continue to have, an adverse impact on industries whose properties serve as collateral for some of our portfolio investments. Similarly, increased demand for work-from-home arrangements and elevated costs to operate, improve or

repurpose office properties have impacted the operations of office properties and rising operating costs, such as property insurance, have further pressured cash flow performance of commercial real estate. Decreases in property values reduce the value of the collateral and the potential proceeds available to a borrower to repay the underlying loan or loans, as the case may be, and reduce the value of properties that we own as a result of default on the underlying loan, each of which could cause us to suffer losses. We seek to manage these risks through our underwriting and asset management processes.

Inflation Risk

Virtually all of our assets and liabilities are sensitive to interest rates. As a result, interest rates and other factors influence our performance far more so than does inflation. Changes in interest rates do not necessarily correlate with inflation rates or changes in inflation rates but adverse changes in inflation or changes in inflation expectations can lead to lower returns on our investments than originally anticipated. Current levels of inflation could exacerbate this possibility. In each case, in general, our activities and balance sheet are measured with reference to historical cost and/or fair market value without considering inflation.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

We maintain disclosure controls and procedures (as that term is defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) that are designed to ensure that information required to be disclosed in our reports under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate, to allow timely decisions regarding required disclosures. Any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives. Our management, with the participation of our principal executive officer and principal financial officer, has evaluated the effectiveness of the design and operation of our disclosure controls and procedures as of March 31, 2024. Based upon that evaluation and subject to the foregoing, our principal executive officer and principal financial officer concluded that, as of March 31, 2024, the design and operation of our disclosure controls and procedures were effective to accomplish their objectives at the reasonable assurance level.

Changes in Internal Control over Financial Reporting

There have been no changes in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) during the quarter ended March 31, 2024 that have materially affected, or that are reasonably likely to materially affect, our internal control over financial reporting.

PART II — OTHER INFORMATION

Item 1. Legal Proceedings

From time to time, we, our executive officers, directors and our Manager, and its affiliates and/or any of their respective principals and employees are subject to legal proceedings in the ordinary course of business, including those arising from our loans, and, as a result, incur significant costs and expenses in connection with such legal proceedings. Legal proceedings may increase to the extent we find it necessary to foreclose or otherwise enforce remedies with respect to loans that are in default, which borrowers may seek to resist by asserting counterclaims and defenses against us or our Manager. As of March 31, 2024, we were not subject to any material pending legal proceedings.

We and our Manager are also subject to extensive regulation, which, from time to time, results in requests for information from us or our Manager or regulatory proceedings or investigations against us or our Manager, respectively. We incur significant costs and expenses in connection with any such information requests, proceedings and investigations.

Item 1A. Risk Factors

You should carefully consider the risk factors discussed in Part I, "Item 1A. Risk Factors" in our 2023 Annual Report, which could materially affect our business, financial condition and/or operating results. The risks described in our 2023 Annual Report are not the only risks facing our Company. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial also may materially and adversely affect our business, financial condition and/or operating results.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

Purchases of Equity Securities by the Issuer and Affiliated Purchasers

Period	Total Number of Shares Purchased	Average Price Paid Per Share	Total Number of Shares Purchased as Part of Publicly Announced Program (1)	Maximum Approximate Dollar Value of Shares that May Yet Be Purchased Under the Program (1) ($ in thousands)
January 1, 2024 - January 31, 2024	$—	$—	$—	$50,000
February 1, 2024 - February 29, 2024	—	—	—	50,000
March 1, 2024 - March 31, 2024	—	—	—	50,000
Total	**$—**		**$—**	

(1) On July 25, 2023, our board of directors renewed the Repurchase Program of up to $50.0 million, which is expected to be in effect until July 31, 2024, or until the approved dollar amount has been used to repurchase shares. As of March 31, 2024, $50.0 million remained available for future purchases of our common stock under the Repurchase Program. The Repurchase Program does not obligate us to acquire any particular amount of shares of our common stock and may be modified or suspended at any time at our discretion.

Item 3. Defaults Upon Senior Securities

None.

Item 4. Mine Safety Disclosures

Not applicable.

Item 5. Other Information

Rule 10b5-1 Trading Plans

During the fiscal quarter ended March 31, 2024, none of our directors or executive officers adopted or terminated any contract, instruction or written plan for the purchase or sale of our securities to satisfy the affirmative defense conditions of Rule 10b5-1(c) or any "non-Rule 10b5-1 trading arrangement."

Updates to Financing Agreements

On April 19, 2024, April 23, 2024, April 26, 2024 and May 6, 2024, we entered into amendments to each of the Wells Fargo Facility, the Citibank Facility, the CNB Facility and Morgan Stanley Facility, respectively, to, among other things, clarify the calculation of our tangible net worth.

On May 6, 2024, we entered into an amendment to the CapOne Guaranty. The purpose of the amendment was to, among other things, clarify the calculation of our tangible net worth and limit the amount of CECL Reserves permitted to be added to stockholders' equity for purposes of calculating our tangible net worth. The foregoing description of the amendment to the CapOne Guaranty is only a summary of the material provisions of the amendment and is qualified in its entirety by reference to a copy of such amendment, which is filed herewith as Exhibit 10.5, and by this reference incorporated herein.

On May 8, 2024, we, as borrower, and ACRC Holdings LLC, ACRC Mezz Holdings LLC and ACRC Warehouse Holdings LLC, our wholly-owned subsidiaries, as guarantors, entered into an amendment to the Secured Term Loan. The purpose of the amendment was to, among other things, (i) change the schedule of interest rate increases, (ii) add contingent interest rate increases based on the outstanding principal amount of the Secured Term Loan on specific dates and our tangible net worth, and (iii) make changes to financial covenants, including reducing the minimum tangible net worth requirement and linking future determinations thereof to the outstanding principal amount of the Secured Term Loan, increasing the minimum unencumbered asset ratio requirement, reducing the maximum total net leverage ratio and increasing the senior loan concentration threshold. In connection with the amendment and concurrently therewith, we paid a modification fee and paid down $10 million of principal of the Secured Term Loan which reduced the outstanding principal balance of the loan from $150 million to $140 million. The foregoing description of the amendment to the Secured Term Loan is only a summary of the material provisions of the amendment and is qualified in its entirety by reference to a copy of such amendment, which is filed herewith as Exhibit 10.7, and by this reference incorporated herein.

On May 8, 2024, we elected to terminate the MetLife Facility prior to its scheduled maturity on August 13, 2024 as the facility had no outstanding balance.

Item 6. Exhibits

EXHIBIT INDEX

Exhibit Number	Exhibit Description
3.1*	Articles of Amendment and Restatement of Ares Commercial Real Estate Corporation. (1)
3.2*	Second Amended and Restated Bylaws of Ares Commercial Real Estate Corporation. (2)
10.1*	Amendment Number Nine to Credit Agreement, dated as of January 31, 2024, by and among, Ares Commercial Real Estate Corporation, as guarantor, ACRC Lender LLC, as borrower, City National Bank, a national banking association, as arranger and administrative agent, and the lenders party thereto. (3)
10.2	Amendment Number Two to Third Amended and Restated Master Repurchase and Securities Contract and Amendment No. 1 to Second Amended and Restated Guarantee Agreement, dated as of April 19, 2024, by and among ACRC Lender W LLC, as seller, ACRC Lender W TRS LLC, as seller, Ares Commercial Real Estate Corporation, as Guarantor, and Wells Fargo Bank, National Association, a national banking association, as buyer.
10.3	Third Amendment to Second Amended and Restated Substitute Guaranty Agreement, dated as of April 23, 2024 by and among Ares Commercial Real Estate Corporation, as guarantor, Citibank, N.A., a national banking association as buyer, and ACRC Lender C, LLC, as Seller.
10.4	Amendment Number Three to General Continuing Guaranty, dated as of April 26, 2024, by and among City National Bank, a national banking association, as administrative agent, Ares Commercial Real Estate Corporation as guarantor, and the lenders party thereto.
10.5	First Amendment to Guaranty of Recourse Obligations, dated as of May 6, 2024, by and between Ares Commercial Real Estate Corporation, as guarantor, and Capital One, National Association, a national banking association, as administrative agent for the benefit of the Lenders, and as Lender.
10.6	Fourth Amendment to Master Repurchase and Securities Contract and Second Amendment of Parent Guaranty and Indemnity, dated as of May 6, 2024, by and among Morgan Stanley Bank, N.A., a national banking association, as buyer, ACRC Lender MS LLC, as seller, and Ares Commercial Real Estate Corporation, as guarantor.
10.7	First Amendment to Amended and Restated Credit and Guaranty Agreement, dated as of May 8, 2024, by and among Cortland Capital Market Services LLC, as the administrative agent and the collateral agent for the lenders, and Ares Commercial Real Estate Corporation, as borrower, and ACRC Holdings LLC, ACRC Mezz Holdings LLC and ACRC Warehouse Holdings LLC, as guarantors.
31.1	Certification of Chief Executive Officer pursuant to Rule 13a-14(a) and Rule 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.2	Certification of Chief Financial Officer pursuant to Rule 13a-14(a) and Rule 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
32.1	Certification of Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
101.INS	XBRL Instance Document
101.SCH	XBRL Taxonomy Extension Schema Document
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document
101.LAB	XBRL Taxonomy Extension Label Linkbase Document
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document
104	Cover Page Interactive Data File (formatted in Inline XBRL and contained in Exhibit 101)

* Previously filed

(1) Incorporated by reference to Exhibit 3.1 to the Company's Form 10-K (File No. 001-35517), filed on March 1, 2016.

(2) Incorporated by reference to Exhibit 3.2 to the Company's Form 10-K (File No. 001-35517), filed on February 15, 2023.

(3) Incorporated by reference to Exhibit 10.1 to the Company's Form 8-K (File No. 001-35517), filed on February 6, 2024.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

ARES COMMERCIAL REAL ESTATE CORPORATION

Date: May 9, 2024

By: /s/ Bryan Donohoe

Bryan Donohoe

Chief Executive Officer
(Principal Executive Officer)

Date: May 9, 2024

By: /s/ Tae-Sik Yoon

Tae-Sik Yoon

Chief Financial Officer and Treasurer
(Principal Financial and Accounting Officer)

Exhibit 31.1

Certification of Chief Executive Officer
of Periodic Report Pursuant to Rule 13a-14(a) and Rule 15d-14(a)

I, Bryan Donohoe, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Ares Commercial Real Estate Corporation;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 9, 2024

/s/ Bryan Donohoe
Bryan Donohoe
Chief Executive Officer

Exhibit 31.2

Certification of Chief Financial Officer
of Periodic Report Pursuant to Rule 13a-14(a) and Rule 15d-14(a)

I, Tae-Sik Yoon, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Ares Commercial Real Estate Corporation;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 9, 2024

/s/ Tae-Sik Yoon
Tae-Sik Yoon
Chief Financial Officer and Treasurer

Exhibit 32.1

Certification of Chief Executive Officer and Chief Financial Officer
Pursuant to
18 U.S.C. Section 1350

In connection with the Quarterly Report on Form 10-Q of Ares Commercial Real Estate Corporation (the "Company") for the quarter ended March 31, 2024 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), Bryan Donohoe, as Chief Executive Officer of the Company, and Tae-Sik Yoon, as Chief Financial Officer of the Company, each hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of his knowledge:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: May 9, 2024

/s/ Bryan Donohoe
Bryan Donohoe
Chief Executive Officer

/s/ Tae-Sik Yoon
Tae-Sik Yoon
Chief Financial Officer and Treasurer

A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement required by Section 906, has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

Exhibit 10.2

Execution Version

AMENDMENT NO. 2 TO THIRD AMENDED AND RESTATED MASTER REPURCHASE AND SECURITIES CONTRACT

AND

AMENDMENT NO. 1 TO SECOND AMENDED AND RESTATED GUARANTEE AGREEMENT

This AMENDMENT NO. 2 TO THIRD AMENDED AND RESTATED MASTER REPURCHASE AND SECURITIES CONTRACT AND AMENDMENT NO. 1 TO SECOND AMENDED AND RESTATED GUARANTEE AGREEMENT, dated as of April 19, 2024 (this "Amendment") by and among ACRC LENDER W LLC, a Delaware limited liability company ("ACRC Seller"), ACRC LENDER W TRS LLC, a Delaware limited liability company ("TRS Seller" and together with ACRC Seller, individually and collectively as the context may require, "Seller"), **ARES COMMERCIAL REAL ESTATE CORPORATION** ("Guarantor"), and **WELLS FARGO BANK, NATIONAL ASSOCIATION**, a national banking association ("Buyer"). Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Guarantee (as defined below).

RECITALS

WHEREAS, Seller and Buyer are parties to that certain Third Amended and Restated Master Repurchase and Securities Contract, dated as of February 10, 2022, by and among Seller and Buyer (as amended by Amendment No. 1 to Third Amended and Restated Master Repurchase Agreement and Securities Contract, dated as of February 10, 2022, the "Existing Repurchase Agreement"; as amended hereby, and as further amended, restated, supplemented or otherwise modified and in effect from time to time, the "Repurchase Agreement"); and

WHEREAS, Guarantor and Buyer are parties to that certain Second Amended and Restated Guarantee Agreement, dated as of February 10, 2022, by and among Guarantor and Buyer (as in effect prior to this Amendment, the "Existing Guarantee"; as amended hereby, and as further amended, restated, supplemented or otherwise modified and in effect from time to time, the "Guarantee");

WHEREAS, Seller and Buyer have agreed, subject to the terms and conditions hereof, that the Repurchase Agreement shall be amended as set forth in this Amendment; and

WHEREAS, Guarantor and Buyer have agreed, subject to the terms and conditions hereof, that the Guarantee and the Repurchase Agreement shall be amended as set forth in this Amendment.

NOW THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor and Buyer hereby agree as follows:

SECTION 1. Definitions. Unless otherwise indicated, capitalized terms that are used but not defined herein shall have the meanings ascribed to them in the Existing Guarantee, and if not defined in the Existing Guarantee, the meanings ascribed to them in the Repurchase Agreement.

SECTION 2. Repurchase Agreement Amendment. The Repurchase Agreement is hereby amended to delete the red stricken text (indicated textually in the same manner as the following example: ~~**stricken text**~~), move the green stricken text from its current location to the location of the green underlined text (indicated textually in the same manner as the following example: ~~**stricken text**~~ to **underlined text**) and to add the blue underlined text (indicated textually in the same manner as the following example: **underlined text**) as attached hereto on Exhibit A.

SECTION 3. Guarantee Amendment. The Guarantee is hereby amended to delete the red stricken text (indicated textually in the same manner as the following example: ~~**stricken text**~~), move the green stricken text from its current location to the location of the green underlined text (indicated textually in the same manner as the following example: ~~**stricken text**~~ to **underlined text**) and to add the blue underlined text (indicated textually in the same manner as the following example: **underlined text**) as attached hereto on Exhibit B.

SECTION 4. Conditions Precedent. This Amendment and its provisions shall become effective on the first date on which (i) this Amendment is duly executed and delivered by each of Guarantor and Buyer and (ii) Buyer receives all other documentation it shall reasonably request in connection with this Amendment.

SECTION 5. Representations and Warranties. On and as of the date first above written, each of Seller and Guarantor hereby represents and warrants to Buyer that (a) it is in compliance with all the terms and provisions set forth in the Repurchase Agreement and the Guarantee on its part to be observed or performed, (b) after giving effect to this Amendment, no Default or Event of Default under the Repurchase Agreement or the Guarantee has occurred and is continuing and (c) after giving effect to this Amendment, the representations and warranties contained in the Repurchase Agreement and the Guarantee are true and correct in all respects as though made on such date (except for any such representation or warranty that by its terms refers to a specific date other than the date first above written, in which case it shall be true and correct in all respects as of such other date).

SECTION 6. Limited Effect. Except as expressly amended and modified by this Amendment, the Existing Guarantee, the Existing Repurchase Agreement and each of the other Repurchase Documents shall continue to be, and shall remain, in full force and effect in accordance with their respective terms; provided, however, that upon the date hereof (a) all references in the Repurchase Agreement to the "Repurchase Documents" shall be deemed to

include, in any event, this Amendment, (b) each reference to the "Repurchase Agreement" in any of the Repurchase Documents shall be deemed to be a reference to the Existing Repurchase Agreement, as amended hereby and (c) each reference to the "Guarantee" in any of the Repurchase Documents shall be deemed to be a reference to the Existing Guarantee, as amended hereby.

SECTION 7. No Novation, Effect of Agreement. The parties hereto have entered into this Amendment solely to amend the terms of the Existing Guarantee and do not intend this Amendment or the transactions contemplated hereby to be, and this Amendment and the transactions contemplated hereby shall not be construed to be, a novation of any of the obligations owing by Guarantor, the Seller or any of their affiliates (the "Repurchase Parties") under or in connection with the Existing Repurchase Agreement, the Existing Guarantee or any of the other Repurchase Documents.

SECTION 8. Counterparts. By signing or countersigning below, Buyer, Seller and Guarantor each acknowledge and agree to the terms of this Amendment. This Amendment may be executed in counterparts (including using any electronic signature covered by the United States ESIGN Act of 2000, Uniform Electronic Transactions Act, the Electronic Signatures and Records Act or other applicable law, e.g., www.docusign.com), and such counterparts may be delivered in electronic format, including by facsimile, email or other transmission method. Such delivery of counterparts shall be conclusive evidence of the intent to be bound hereby and each such counterpart, including those delivered in electronic format, and copies produced therefrom shall have the same effect as an originally signed counterpart. To the extent applicable, the foregoing constitutes the election of the parties to invoke any law authorizing electronic signatures. Minor variations in the form of the signature page, including footers from earlier versions of this Amendment, shall be disregarded in determining a party's intent or the effectiveness of such signature. No party shall raise the use the delivery of signatures to this Amendment in electronic format as a defense to the formation of a contract and each such party forever waives any such defense.

SECTION 9. Costs and Expenses. Seller shall pay Buyer's costs and expenses incurred in connection with the preparation, negotiation, execution and consummation of this Amendment in accordance with the Repurchase Agreement and the Guarantee.

SECTION 10. Waivers. (a) Seller acknowledges and agrees that it has no defenses, rights of setoff, claims, counterclaims or causes of action of any kind or description against Buyer arising under or in respect of the Repurchase Agreement or any other Repurchase Document and any such defenses, rights of setoff, claims, counterclaims or causes of action which may exist as of the date hereof are hereby irrevocably waived, and (b) in consideration of Buyer entering into this Amendment, Seller hereby waives, releases and discharges Buyer and Buyer's officers, employees, representatives, agents, counsel and directors from any and all actions, causes of action, claims, demands, damages and liabilities of whatever kind or nature, in law or in equity, now known or unknown, suspected or unsuspected to the extent that any of the foregoing arise out of or from or in any way relating to or in connection with the Repurchase

Agreement or the other Repurchase Documents, including, but not limited to, any action or failure to act under the Repurchase Agreement or the other Repurchase Documents on or prior to the date hereof, except, with respect to any such Person being released hereby, any actions, causes of action, claims, demands, damages and liabilities arising out of such Person's gross negligence or willful misconduct in connection with the Repurchase Agreement or the other Repurchase Documents.

SECTION 11. Submission to Jurisdiction. Each party hereto (each a "Party") irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the courts of the State of New York sitting in the Borough of Manhattan and of the United States District Court of the Southern District of New York, or in any court with jurisdiction that is located in Delaware, California or the state where the related underlying Mortgaged Property is located, and any appellate court from any thereof, in any action or proceeding arising out of or relating to the Repurchase Documents, or for recognition or enforcement of any judgment, and each Party irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such State court or, to the fullest extent permitted by applicable law, in such Federal court. Each Party agrees that a final judgment 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. Nothing in this Amendment or the other Repurchase Documents shall affect any right that Buyer may otherwise have to bring any action or proceeding arising out of or relating to the Repurchase Documents against any Seller or its properties in the courts of any jurisdiction. Each Party irrevocably and unconditionally waives, to the fullest extent permitted by Requirements of Law, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to the Repurchase Documents in any court referred to above, and the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court. Each Party irrevocably consents to service of process in the manner provided for notices in Section 18.12. Nothing in this Amendment will affect the right of any party hereto to serve process in any other manner permitted by applicable law.

SECTION 12.IMPORTANT WAIVERS. THE WAIVERS SET FORTH IN SECTION 18.03 OF THE REPURCHASE AGREEMENT ARE HEREBY INCORPORATED HEREIN, MUTATIS MUTANDIS, AS IF A PART HEREOF.

SECTION 13.GOVERNING LAW. THIS AMENDMENT AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS AMENDMENT, THE RELATIONSHIP OF THE PARTIES TO THIS AMENDMENT, AND/OR THE INTERPRETATION AND ENFORCEMENT OF THE RIGHTS AND DUTIES OF THE PARTIES TO THIS AMENDMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS AND DECISIONS OF THE STATE OF NEW YORK, WITHOUT REGARD TO THE CHOICE OF LAW RULES THEREOF OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW. THE PARTIES HERETO INTEND THAT THE PROVISIONS OF SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW SHALL APPLY TO THIS AMENDMENT.

SECTION 14. Ratification. Guarantor hereby ratifies and reaffirms all of the terms, covenants and conditions of the Guarantee and agrees that the Guarantee remains unmodified (except as expressly modified by the terms of this Amendment) and in full force and effect and enforceable in accordance with its terms.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and delivered as of the day and year first above written.

BUYER:

WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association

By:/s/ Allen Lewis
Name: Allen Lewis
Title: Managing Director

[Additional Signature Page Follows]

SELLER:

ACRC LENDER W LLC, a Delaware limited liability company

By:/s/ Keith Kooper
Name: Keith Kooper
Title: Vice President and Assistant Secretary

ACRC LENDER W TRS LLC, a Delaware limited liability company

By:/s/ Keith Kooper
Name: Keith Kooper
Title: Vice President and Assistant Secretary

GUARANTOR:

ARES COMMERCIAL REAL ESTATE CORPORATION, a Maryland corporation

By:/s/ Keith Kooper
Name: Keith Kooper
Title: Vice President and Assistant Secretary

EXHIBIT A

[Attached]

CONFORMED THROUGH AMENDMENT NO. 1 AND AMENDMENT NO. 2

THIRD AMENDED AND RESTATED
MASTER REPURCHASE AND SECURITIES CONTRACT

ACRC LENDER W LLC

and

ACRC LENDER W TRS LLC
as Sellers

WELLS FARGO BANK, NATIONAL ASSOCIATION

as Buyer

Dated as of February 10, 2022

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THIS THIRD AMENDED AND RESTATED MASTER REPURCHASE AND SECURITIES CONTRACT, dated as of February 10, 2022 (as the same has been and may be further amended, restated, supplemented or otherwise modified from time to time, this "Agreement"), is made by and among **ACRC LENDER W LLC**, a Delaware limited liability company ("ACRC Seller"), and **ACRC LENDER W TRS LLC**, a Delaware limited liability company ("TRS Seller", and together with the ACRC Seller, individually and collectively as the context may require, "Seller"), and **WELLS FARGO BANK, NATIONAL ASSOCIATION**, a national banking association (as more specifically defined below, "Buyer").

WHEREAS, Sellers and Buyer entered into that certain Second Amended and Restated Master Repurchase and Securities Contract, dated as of May 1, 2017 (as amended by (i) that certain Amendment No. 1 to Second Amended and Restated Master Repurchase and Securities Contract, dated as of December 14, 2018 and (ii) that certain Amendment No. 2 to Second Amended and Restated Master Repurchase and Securities Contract, dated as of December 11, 2020 and as further amended, restated, supplemented or otherwise modified prior to the date hereof, the "Existing Repurchase Agreement").

WHEREAS, Seller and Buyer acknowledge and agree that Buyer and Seller shall not enter into any new LIBOR contracts under the Repurchase Agreement after December 31, 2021.

WHEREAS, Sellers and Buyer desire to amend and restate the Existing Repurchase Agreement in the manner set forth herein.

NOW, THEREFORE, Sellers and Buyer (each a "Party") hereby agree as follows:

ARTICLE 1

APPLICABILITY

Section 1.1 Applicability. Subject to the terms and conditions of the Repurchase Documents, from time to time during the Funding Period and at the request of a Seller, the Parties may enter into transactions in which a Seller agrees to sell, transfer and assign to Buyer certain Assets and all related rights in and interests related to such Assets on a servicing released basis, against the transfer of funds by Buyer representing the Purchase Price for such Assets, with a simultaneous agreement by Buyer to transfer to the related Seller and such Seller to repurchase such Assets in a repurchase transaction at a date not later than the Facility Termination Date, against the transfer of funds by such Seller representing the Repurchase Price for such Assets.

ARTICLE 2

DEFINITIONS AND INTERPRETATION

"30-Day SOFR Average": Defined in the definition of "SOFR Average."

"Accelerated Repurchase Date": Defined in Section 10.02.

"Accepted Servicing Practices": With respect to any Purchased Asset, the commercial mortgage servicing practices of prudent financial or mortgage lending institutions that service assets of the same Class as such Purchased Asset in the jurisdiction where the related underlying Mortgaged Property is located.

"Account Control Agreement": A deposit account control agreement in favor of Buyer with respect to any bank account related to a Purchased Asset, in form and substance of the attached Exhibit G hereto.

"Actual Knowledge": With respect to any Person, the actual knowledge of such Person without further inquiry or investigation; provided, that for the avoidance of doubt, such actual knowledge shall include the knowledge of such Person and each of its employees, officers, directors and agents.

"Affiliate": With respect to any Person, any other Person directly or indirectly Controlling, Controlled by, or under common Control with, such Person.

"Affiliated Hedge Counterparty": Buyer, or an Affiliate of Buyer, in its capacity as a party to any Interest Rate Protection Agreement with either Seller.

"Agreement": The meaning set forth in the initial paragraph hereof.

"Aggregate Amount Outstanding": On each date of the determination thereof, the total amount due and payable to Buyer by Sellers in connection with all Transactions under this Agreement outstanding on such date.

"Anti-Corruption Law": The U.S. Foreign Corrupt Practices Act of 1977, as amended, or any other anti-bribery or anti-corruption laws, regulations or ordinances in any jurisdiction in which any Seller, Guarantor or any of their respective Subsidiaries is located or doing business.

"Anti-Money Laundering Laws": The applicable laws or regulations in any jurisdiction in which any Seller or Guarantor is located or doing business that relate to money laundering, any predicate crime to money laundering or any financial record keeping and reporting requirements related thereto.

"Applicable Percentage": Defined in the Fee Letter, which definition is incorporated herein by reference.

"Applicable SOFR": With respect to each SOFR Based Transaction, either the SOFR Average or Term SOFR, as applicable, as designated in the related Confirmation therefor, or if such Applicable SOFR is not specified in the related Confirmation for such SOFR Based Transaction, as specified with respect to such Transaction in the related notice of Rate Conversion delivered by Buyer in accordance with Section 12.01(d).

"Appraisal": An appraisal of the related Mortgaged Property conducted by an Independent Appraiser in accordance with the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended, and, in addition, certified by such Independent Appraiser as having been prepared in accordance with the requirements of the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation, addressed to (either directly or pursuant to a reliance letter in favor of Buyer or reliance language in such Appraisal running to the benefit of Buyer as a successor and/or assign) and reasonably satisfactory to Buyer.

"Approved Representation Exception": Any Representation Exception approved in writing by Buyer in its discretion prior to the related Purchase Date.

"Asset": Any Whole Loan, Senior Interest or Mezzanine Loan, the underlying Mortgaged Property for which is included in the categories for Types of Mortgaged Property, but excluding any real property acquired by the related Seller through foreclosure or deed in lieu of foreclosure, distressed debt or any Equity Interest issued by a special purpose entity organized to issue collateralized debt or loan obligations.

"Assignment and Acceptance": Defined in Section 18.08(b).

"Bailee": With respect to any Transaction involving a Wet Mortgage Asset, (i) a national title insurance company or nationally-recognized real estate counsel acceptable to Buyer or (ii) any other entity approved by Buyer, in its sole discretion, which may be a title company, escrow company or attorney in accordance with local law and practice in the appropriate jurisdiction of the related Wet Mortgage Asset.

"Bailee Agreement": Defined in the Custodial Agreement, which definition is incorporated herein by reference.

"Bankruptcy Code": Title 11 of the United States Code, as amended.

"Benchmark": (A) With respect to any LIBOR Based Transaction, subject to Section 12.01(a) hereof, USD LIBOR, (B) with respect to any SOFR Based Transaction for which the Applicable SOFR is initially the SOFR Average (including, without limitation, any such SOFR Based Transaction resulting from a Rate Conversion pursuant to Section 12.01(a) for which the Applicable SOFR designated in the related notice of Rate Conversion is the SOFR Average), initially, 30-Day SOFR Average; provided that if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to 30-Day SOFR Average or the then-current Benchmark in accordance with Section 12.01(b) for purposes of this clause (B), then, for purposes of this clause (B), "Benchmark" shall mean the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to clause (b) of Section 12.01, and (C) with respect to any SOFR Based Transaction for which the Applicable SOFR is initially Term SOFR (including, without limitation, any such SOFR Based Transaction resulting from a Rate Conversion pursuant to Section 12.01(a) for which the Applicable SOFR designated in the related notice of Rate Conversion is Term SOFR), initially, the Term SOFR Reference Rate for a tenor of one month; provided that if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to the

Term SOFR Reference Rate for such tenor or the then-current Benchmark in accordance with Section 12.01(b) for purposes of this clause (C), then, for purposes of this clause (C), "Benchmark" shall mean the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to clause (b) of Section 12.01.

"Benchmark Replacement": With respect to any Benchmark Transition Event, the first alternative set forth in the order below that can be determined by Buyer as a replacement of the applicable then-current Benchmark as of the Benchmark Replacement Date:

(1) (A) if such then-current Benchmark is the 30-Day SOFR Average, Term SOFR; or (B) if such then-current Benchmark is the Term SOFR Reference Rate, SOFR Average; or

(2) the sum of: (a) the alternate benchmark rate that has been selected by Buyer as the replacement for the then-current Benchmark and (b) the related Benchmark Replacement Adjustment;

provided that, in each case, if such Benchmark Replacement as so determined would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Repurchase Documents.

"Benchmark Replacement Adjustment": With respect to any replacement of the then-current Benchmark (as determined pursuant to clause (B) and/or clause (C) of such definition, as applicable) with an Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by Buyer.

"Benchmark Replacement Date": With respect to any Benchmark(as determined pursuant to clause (B) and/or clause (C) of such definition, as applicable), the earliest to occur of the following events with respect to such Benchmark:

(1) in the case of clause (1) or (2) of the definition of "Benchmark Transition Event," the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of such Benchmark permanently or indefinitely ceases to provide such Benchmark; or

(2) in the case of clause (3) of the definition of "Benchmark Transition Event," the first date on which such Benchmark has been determined and announced by the regulatory supervisor for the administrator of such Benchmark to be non-representative; provided, that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (3) even if such Benchmark continues to be provided on such date.

"Benchmark Transition Event": With respect to any Benchmark (as determined pursuant to clause (B) and/or clause (C) of such definition, as applicable), the occurrence of one or more of the following events with respect to such Benchmark:

(3) a public statement or publication of information by or on behalf of the administrator of such Benchmark announcing that such administrator has ceased or will cease to provide such Benchmark, permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide such Benchmark;

(4) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark, the Board of Governors of the Federal Reserve System, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark, a resolution authority with jurisdiction over the administrator for such Benchmark or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark, which states that the administrator of such Benchmark has ceased or will cease to provide such Benchmark permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide such Benchmark; or

(5) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark announcing that such Benchmark is not, or as of a specified future date will not be, representative.

"Beneficial Ownership Certification": A certification regarding beneficial ownership as required by the Beneficial Ownership Regulation in a form as agreed to by Buyer.

"Beneficial Ownership Regulation": 31 C.F.R. § 1010.230.

"BHC Act Affiliate": The meaning assigned to the term "affiliate" in, and interpreted in accordance with, 12 U.S.C. § 1841(k).

"Blank Assignment Documents": Defined in Section 6.02(j).

"Book Value": For each Purchased Asset, as of any date, an amount, as certified by the related Seller in the related Confirmation, equal to the lesser of (a) the outstanding principal amount or par value thereof as of such date (after giving effect to any additional advances to the related primary Underlying Obligor made by a Seller in connection with such Seller's future funding obligations pursuant to the Purchased Asset Documents on or prior to such date), and (b) the price that such Seller initially paid or advanced in respect thereof plus any additional amounts advanced by such Seller that were funded in connection with such Seller's future funding obligations under the related Purchased Asset Documents minus Principal Payments received by such Seller and as further reduced by losses realized and write downs taken by such Seller, together with all other reductions in the unpaid balance due in connection

with the related Whole Loan (including, with respect to any Senior Interest that is a participation, any reduction in the principal balance of the related Whole Loan).

"Business Day": Any day other than (a) a Saturday or a Sunday, (b) a day on which banks in the States of New York, Minnesota, California, Illinois or North Carolina are authorized or obligated by law or executive order to be closed, (c) any day on which the New York Stock Exchange, the Federal Reserve Bank of New York or Custodian is authorized or obligated by law or executive order to be closed, or (d) if the term "Business Day" is used in connection with the determination of LIBOR, a day dealings in Dollar deposits are not carried on in the London interbank market.

"Buyer": Wells Fargo Bank, National Association, in its capacity as Buyer under this Agreement and the other Repurchase Documents, and also in its capacity as counterparty to any Interest Rate Protection Agreement.

"Capital Lease Obligations": With respect to any Person, the amount of all obligations of such Person to pay rent or other amounts under a lease of property to the extent and in the amount that such obligations are required to be classified and accounted for as a capital lease on a balance sheet of such Person.

"Capital Stock": Any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent equity ownership interests in a Person which is not a corporation, including, without limitation, any and all member or other equivalent interests (certificated or uncertificated) in any limited liability company, and any and all partnership or other equivalent interests in any partnership or limited partnership, and any and all warrants or options to purchase any of the foregoing.

"Cause" means, with respect to an Independent Director or Independent Manager, (i) acts or omissions by such Independent Director or Independent Manager that constitute willful disregard of, or bad faith or gross negligence with respect to, such Independent Director or Independent Manager's duties under the applicable by-laws, limited partnership agreement or limited liability company agreement, (ii) that such Independent Director or Independent Manager has engaged in or has been charged with, or has been convicted of, fraud or other acts constituting a crime under any law applicable to such Independent Director or Independent Manager, (iii) that such Independent Director or Independent Manager is unable to perform his or her duties as Independent Director or Independent Manager due to death, disability or incapacity, or (iv) that such Independent Director or Independent Manager no longer meets the definition of Independent Director or Independent Manager.

"Change of Control": The occurrence of any of the following events: (a) any "person" or "group" (within the meaning of Section 13(d) or 14(d) of the Exchange Act) shall become, or obtain rights (whether by means of warrants, options or otherwise) to become, the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Exchange Act), directly or indirectly, of a percentage of the total voting power of all classes of Capital Stock of Guarantor entitled to vote generally in the election of directors, of thirty-five percent (35%) or more; (b) Guarantor shall cease to own and control, of record and beneficially, directly or indirectly one-

hundred percent (100%) of the outstanding Capital Stock of either Seller, or (c) Manager shall cease to be one-hundred percent (100%) owned and controlled, of record and beneficially, by Ares Management L.P. or one or more of its Affiliates.

"Class": With respect to an Asset, such Asset's classification as one of the following: Whole Loan, Senior Interest or Mezzanine Loan.

"Closing Certificate": A true and correct certificate in the form of Exhibit D, executed by a Responsible Officer of the applicable Seller.

"Closing Date": February 10, 2022.

"Closing Date Repurchase Documents": This Agreement, the Fee Letter and the Guarantee Agreement.

"Code": The Internal Revenue Code of 1986, and the regulations promulgated and rulings issued thereunder, in each case as amended, modified or replaced from time to time.

"Collection Account": Any account established by Interim Servicer in connection with the servicing of any Asset or Purchased Asset.

"Compliance Certificate": A true and correct certificate in the form of Exhibit E, executed by a Responsible Officer of the applicable Seller.

"Confirmation": A purchase confirmation or amended and restated confirmation in the form of Exhibit B-1 or Exhibit B-2, in each case duly completed, executed and delivered by the applicable Seller and Buyer in accordance with this Agreement.

"Conforming Changes": With respect to either the use or administration of an initial Benchmark or the use, administration, adoption or implementation of any Benchmark Replacement or Rate Conversion, any technical, administrative or operational changes (including changes to the definition of "Business Day", the definition of "Pricing Rate," the definition of "Pricing Period," the definition of "U.S. Government Securities Business Day," timing and frequency of determining rates and making payments of Price Differential, prepayment provisions, early repurchases, the applicability and length of lookback periods, the applicability of Section 12.04 and other technical, administrative or operational matters) that Buyer decides may be appropriate to reflect the adoption and implementation of any such rate or Rate Conversion or to permit the use and administration thereof by Buyer in a manner substantially consistent with market practice (or, if Buyer decides that adoption of any portion of such market practice is not administratively feasible or if Buyer determines that no market practice for the administration of any such rate or Rate Conversion exists, in such other manner of administration as Buyer decides is reasonably necessary in connection with the administration of this Agreement and the other Repurchase Documents).

"Connection Income Taxes": Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

"Contingent Liabilities": With respect to any Person as of any date of determination, all of the following as of such date: (a) liabilities and obligations (including any Guarantee Obligations) of such Person in respect of "off balance sheet arrangements" (as defined in the Off Balance Sheet Rules defined below in this definition), (b) obligations of such Person, including Guarantee Obligations, whether or not required to be disclosed in the footnotes to such Person's financial statements, guaranteeing in whole or in part any Non–Recourse Indebtedness, lease, dividend or other obligation, excluding, however (i) contractual indemnities (including, any indemnity or price–adjustment provision relating to the purchase or sale of securities or other assets) and (ii) guarantees of non–monetary obligations that have not yet been called on or quantified, of such Person or any other Person, and (c) forward commitments or obligations to fund or provide proceeds with respect to any loan or other financing that is obligatory and non– discretionary on the part of the lender. The amount of any Contingent Liabilities described in the preceding clause (b) shall be deemed to be (i) with respect to a guarantee of interest or interest and principal, or operating income guarantee, the sum of all payments required to be made thereunder (which, in the case of an operating income guarantee, shall be deemed to be equal to the debt service for the note secured thereby), through (x) in the case of an interest or interest and principal guarantee, the stated date of maturity of the obligation (and commencing on the date interest could first be payable thereunder), or (y) in the case of an operating income guarantee, the date through which such guarantee will remain in effect, and (ii) with respect to all guarantees not covered by the preceding clause (i), an amount equal to the stated or determinable amount of the primary obligation in respect of which such guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such Person is required to perform thereunder) as recorded on the balance sheet and in the footnotes to the most recent financial statements of such Person. "Off–Balance Sheet Rules" means the Disclosure in Management's Discussion and Analysis About Off–Balance Sheet Arrangements and Aggregate Contractual Obligations, Securities Act Release Nos. 33–8182; 34–47264; FR–67 International Series Release No. 1266 File No. S7–42–02, 68 Fed. Reg. 5982 (Feb. 5, 2003) (codified at 17 CFR Parts 228, 229 and 249).

"Contractual Obligation": With respect to any Person, any provision of any securities issued by such Person or any indenture, mortgage, deed of trust, deed to secure debt, contract, undertaking, agreement, instrument or other document to which such Person is a party or by which it or any of its property or assets are bound or are subject.

"Control": With respect to any Person, the direct or indirect possession of the power to direct or cause the direction of the management or policies of such Person, whether through the ability to exercise voting power, by contract or otherwise. "Controlling," "Controlled" and "under common Control" have correlative meanings.

"Controlled Account Agreement": An amended and restated control agreement with respect to the Waterfall Account, dated as of December 20, 2013, among each Seller, Buyer

and Waterfall Account Bank, as amended, modified, waived, supplemented, extended, restated or replaced from time to time.

"Credit Event": The determination by Buyer, in its commercially reasonable judgment, that any of the following events or any similar event, occurrence or condition has occurred: (i) an Insolvency Event with respect to any Underlying Obligor, (ii) any monetary or material non-monetary event of default under the terms of any Purchased Asset after giving effect to any applicable notice, grace or cure periods, (iii) failure of a Purchased Asset to qualify as an Eligible Asset, (iv) the deterioration in value of any Mortgaged Property relating to any Purchased Asset (other than due to fluctuations in current interest rates and spreads) such that the PPV Test with respect to any Purchased Asset is violated, (v) any drop in the net operating income or cash flow of any Purchased Asset or the Mortgaged Property related thereto such that a Margin Deficit with respect to any Purchased Asset exists in an amount greater than $500,000, (vi) the loss of any security interest (or the priority thereof) under this Agreement or any documents executed in connection with this Agreement, or any document executed in connection with any underlying Whole Loan, (vii) any Transaction fails to qualify for safe harbor treatment under the Bankruptcy Code, as described in Article 14 of this Agreement, (viii) any Seller fails to deliver the Mortgage Asset File to the Custodian within the applicable time periods provided in the Custodial Agreement, subject to any applicable cure periods set forth therein, (ix) any material breach of a representation or warranty with respect to any Purchased Asset occurs and is not cured within the applicable cure periods set forth in the documents executed in connection with the applicable underlying Mortgaged Property, (x) any statement, affirmation or certification made or information, document, agreement, report or notice delivered by either Seller to Buyer is untrue in any material respect, (xi) the Minimum Portfolio Debt Yield Test is violated, (xii) Buyer determines that a Material Adverse Effect has occurred or that such Purchased Asset is otherwise unlikely to be collectible on a timely basis and (xiii) to the extent Buyer and Seller agree to any performance thresholds with respect to such Purchased Asset, as set forth in the Confirmation for such asset, any breach or failure to satisfy such thresholds.

"Current Mark-to-Market Value": For any Purchased Asset as of any date, the market value for such Purchased Asset as of such date as determined by Buyer in its good faith judgment, taking into account such criteria as and to the extent that Buyer deems appropriate, including as appropriate, market conditions, credit quality, subordination, delinquency status and aging and any amounts owing to Buyer or a Hedge Counterparty under any related Interest Rate Protection Agreement, which market value, in each case, may be determined to be zero; provided that the Current Mark-to-Market Value of any Purchased Asset that ceases to be an Eligible Asset shall be deemed to be zero. For the avoidance of doubt, Buyer shall be permitted to mark Purchased Assets for internal purposes at any time.

"Custodial Agreement": The Amended and Restated Custodial Agreement, dated as of December 20, 2013 among Buyer, Sellers and Custodian, as the same may be amended, modified, waived, supplemented, extended, replaced or restated from time to time.

"Custodian": Wells Fargo Bank, National Association, or any successor permitted by the Custodial Agreement.

"Debt Yield": With respect to (a) any Purchased Asset for any relevant time period, the percentage equivalent of the quotient obtained by dividing (i) the annualized underwritten net operating income for such period, as determined by Buyer, from the mortgaged properties securing such Purchased Asset, by (ii) the Purchase Price of such Purchased Asset as of the last day of such time period and (b) all Purchased Assets for any relevant time period, the percentage equivalent of the quotient obtained by dividing (i) the annualized underwritten net operating income for such period, as determined by Buyer, from the mortgaged properties securing all Purchased Assets owned by Buyer at such time, by (ii) the Repurchase Price of all Purchased Assets owned by the Buyer at such time, as of the last day of such time period; provided, however, that Buyer shall calculate the Debt Yield with respect to Sellers in a manner consistent with other similar calculations with respect to counterparties that are also lenders and/or obligors under commercial real estate loans for which Buyer or its Affiliates is providing capital under agreements that are similar to this Agreement.

"Default": Any event that, with the giving of notice or the lapse of time, or both, would become an Event of Default.

"Default Rate": As of any date, the Pricing Rate in effect on such date plus three and one-half percent (3.50%).

"Default Right": The meaning assigned to that term in, and interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

"Defaulted Asset": Any Asset or Purchased Asset and, in the case of any Senior Interest or Mezzanine Loan, any related Whole Loan, as applicable, (a) that is thirty (30) or more days (or, in the case of payments due at maturity, one (1) day) delinquent in the payment of principal, interest, fees, distributions or any other amounts payable under the related Purchased Asset Documents, (b) for which there is a Representation Breach with respect to such Asset or Purchased Asset, other than an Approved Representation Exception, (c) for which there is a monetary default or a material non–monetary default under the related Purchased Asset Documents beyond any applicable notice or cure period, (d) as to which an Insolvency Event has occurred with respect to the related Underlying Obligor, or (e) for which any Seller or Interim Servicer has received notice of the foreclosure or proposed foreclosure of any Lien on the related underlying Mortgaged Property; provided that with respect to any Senior Interest or Mezzanine Loan, in addition to the foregoing, such Senior Interest or Mezzanine Loan will also be considered a Defaulted Asset to the extent that the related Whole Loan would be considered a Defaulted Asset as described in this definition.

"Delaware LLC Act": Chapter 18 of the Delaware Limited Liability Company Act, 6 Del. C. §§ 18-101 et seq., as amended.

"Derivatives Contract": Any rate swap transaction, basis swap, credit derivative transaction, forward rate transaction, commodity swap, commodity option, forward commodity contract, equity or equity index swap or option, bond or bond price or bond index swap or option or forward bond or forward bond price or forward bond index transaction, interest rate option, forward foreign exchange transaction, cap transaction, floor transaction, collar transaction,

currency swap transaction, cross–currency rate swap transaction, currency option, spot contract, or any other similar transaction or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, including any obligations or liabilities thereunder.

"Derivatives Termination Value": With respect to any one or more Derivatives Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Derivatives Contracts, (a) for any date on or after the date such Derivatives Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in the preceding clause (a), the amount(s) determined as the mark–to–market value(s) for such Derivatives Contracts, as determined based on one or more mid–market or other readily available quotations provided by any recognized dealer in such Derivatives Contracts (which may include Buyer).

"Dividing LLC": A Delaware limited liability company that is effecting a Division pursuant to and in accordance with Section 18-217 of the Delaware LLC Act.

"Division": The division of a Dividing LLC into two or more domestic limited liability companies pursuant to and in accordance with Section 18-217 of the Delaware LLC Act.

"Division LLC": A surviving company, if any, and each resulting company, in each case that is the result of a Division.

"Dollars" and "$": Lawful money of the United States of America.

"Early Opt-in Effective Date": With respect to any Early Opt-in Election, the sixth (6^{th}) Business Day after the date notice of such Early Opt-in Election is provided to the Sellers.

"Early Opt-in Election": The election by Buyer to trigger a fallback from the then-current Benchmark and the provision by Buyer of written notice of such election to Sellers.

"Early Repurchase Date": Defined in Section 3.04.

"EBITDA": With respect to any Person and for any Test Period, an amount equal to the sum of (a) Net Income (or loss) of such Person (prior to any impact from minority or non-controlling interests or joint venture net income and before deduction of any dividends on preferred stock of such Person), plus the following (but only to the extent actually included in determination of such Net Income (or loss)): (i) depreciation and amortization expense (other than those related to capital expenditures that have not been included in the calculation of Fixed Charges as defined in the Guarantee Agreement), (ii) Interest Expense, (iii) income tax expense, (iv) extraordinary or non-recurring gains, losses and expenses including but not limited to transaction expenses relating to business combinations, other acquisitions and unconsummated transactions, (v) unrealized loan loss reserves **(including but not limited to CECL Reserves, as defined in the Guarantee Agreement)**, impairments and other similar charges including but not limited to reserves for loss sharing arrangement associated with mortgage servicing rights, (vi)

realized losses on loans and loss sharing arrangements associated with mortgage servicing rights and (vii) unrealized gains, losses and expenses associated with (A) derivative liabilities including but not limited to convertible note issuances and (B) mortgage servicing rights (other than the initial revenue recognition of recording an asset), plus (b) such Person's proportionate share of Net Income (prior to any impact from minority or non-controlling interests or joint venture net income and before deduction of any dividends on preferred stock of such Person) of the joint venture investments and unconsolidated Affiliates of such Person, all with respect to such period.

"Eligible Asset": An Asset:

(a) that has been approved as a Purchased Asset by Buyer;

(b) with respect to which no Representation Breach exists unless each such breach is specifically set forth as a specific Approved Representation Exception in the related Confirmation that has been approved in advance by Buyer;

(c) that is not a Defaulted Asset;

(d) with respect to which there are no future funding obligations other than in respect of which the applicable Seller has agreed to fund solely or as specifically approved in advance by Buyer in the related Confirmation;

(e) that satisfies the applicable PPV Test;

(f) in the case of any Hotel Asset, (i) Buyer has received a copy of the franchise agreement and related documents for operation of the hotel under the national flag, all reports issued by the franchisor and a comfort letter from the franchisor running to the benefit of successors and assigns of the lender and (ii) the hotel is managed by a third party manager under a management agreement and subordination of management agreement, all of which are acceptable to Buyer;

(g) if the Class of such Asset is a Senior Interest that is a non-controlling participation interest, such Asset is an Eligible NCPPP;

(h) whose underlying Mortgaged Property is located in the United States, whose Underlying Obligors are domiciled in the United States, and all obligations thereunder and under the underlying Purchased Asset Documents are denominated and payable in Dollars;

(i) with respect to which all Underlying Obligors thereon (an any of their respective Affiliates) are not Sanctioned Targets;

(j) that does not involve an Equity Interest by either Seller, Guarantor or any Affiliate of either Seller or Guarantor that would result in (i) an actual or potential conflict of interest, (ii) an affiliation with an Underlying Obligor which results or could result in the loss or impairment of any material rights of the holder of the related Purchased Asset; provided, the applicable Seller shall disclose to Buyer before the Purchase Date each Equity Interest held or to

be held by any Seller, Guarantor or any Affiliate of any Seller or Guarantor with respect to such related Purchased Asset whether or not it satisfies either of the preceding clauses (i) or (ii);

(k) that is secured by a perfected, first priority (subject to Permitted Liens) security interest on a "stabilized" or "light transitional" office, retail, self-storage, student housing, industrial, other commercial or multi-family property or, in the case of a Mezzanine Loan, is secured by first priority pledges of all of the Equity Interests of Persons that directly or indirectly own any such property;

(l) that, if purchased by Buyer, would not cause either Seller to violate any Sub-Limit; and

(m) for which each of the conditions precedent set forth in Section 6.02 have been satisfied;

provided, that notwithstanding the failure of an Asset or Purchased Asset to conform to the requirements of this definition, Buyer may, subject to such terms, conditions and requirements and Applicable Percentage adjustments as Buyer may require, designate in writing any such non–conforming Asset or Purchased Asset as an Eligible Asset, which designation (1) may include a temporary or permanent asset-specific waiver of one or more Eligible Asset requirements, and (2) shall not be deemed a waiver of the requirement that all other Assets and Purchased Assets must be Eligible Assets (including any Assets that are similar or identical to the Asset or Purchased Asset subject to the waiver). For the avoidance of doubt, Buyer's agreement to accept an Asset with a future funding obligation shall be deemed to be a permanent waiver of clause (d) of the definition of Eligible Asset with respect to such Asset, provided, however that such waiver shall not be deemed a waiver of such requirement with respect to any other Asset or Purchased Asset.

"Eligible Assignee": Any of the following Persons designated by Buyer for purposes of Section 18.08: (a) a bank, financial institution, pension fund, insurance company or similar Person, an Affiliate of any of the foregoing, and an Affiliate of Buyer, and (b) any other Person to which the related Seller has consented; provided, that the consent of such Seller shall not be unreasonably withheld, delayed or conditioned, except, so long as no Event of Default has occurred and is continuing, in the case of competitors or potential competitors of a Seller listed on Exhibit I hereto, and shall not be required at any time when an Event of Default exists.

"Eligible NCPPP": A non-controlling participation interest that meets each of the following criteria at all times: (i) the related Whole Loan was subject to a Transaction immediately prior to the participation of such Whole Loan, (ii) the controlling interest in, and the ability to control and make all material decisions with respect to, such Whole Loan is held by a securitization trust (or trustee on its behalf) in connection with a capital markets transaction issued by an Affiliate of Seller and (iii) following the participation of the related Whole Loan, no Material Modification has been made with respect to such Whole Loan or the related participation agreement without first obtaining the prior written consent of Buyer.

"Environmental Laws": Any federal, state, foreign or local statute, law, rule, regulation, ordinance, code, guideline, written policy and rule of common law now or hereafter in effect, and any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree or judgment, relating to the environment, employee health and safety or hazardous materials, including CERCLA, RCRA, the Federal Water Pollution Control Act, the Toxic Substances Control Act, the Clean Air Act, the Safe Drinking Water Act, the Oil Pollution Act of 1990, the Emergency Planning and the Community Right-to-Know Act of 1986, the Hazardous Material Transportation Act, the Occupational Safety and Health Act, and any state and local or foreign counterparts or equivalents.

"Equity Interests": With respect to any Person, (a) any share, interest, participation and other equivalent (however denominated) of Capital Stock of (or other ownership, equity or profit interests in) such Person, (b) any warrant, option or other right for the purchase or other acquisition from such Person of any of the foregoing, (c) any security convertible into or exchangeable for any of the foregoing, and (d) any other ownership or profit interest in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such share, warrant, option, right or other interest is authorized, but unissued on any date.

"ERISA": The Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated thereunder. Section references to ERISA are to ERISA, as in effect at the date of this Agreement and, as of the relevant date, any subsequent provisions of ERISA, amendatory thereof, supplemental thereto or substituted therefor.

"Event of Default": Defined in Section 10.01.

"Exchange Act": The Securities Exchange Act of 1934, as amended.

"Excluded Taxes": Any of the following Taxes imposed on or with respect to Buyer or required to be withheld or deducted from a payment to Buyer: (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of Buyer being organized under the laws of, or having its principal office or the office from which it books the Transactions located in, the jurisdiction imposing such Taxes (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) U.S. federal withholding Taxes imposed on amounts payable to or for the account of Buyer with respect to an interest in the Repurchase Obligations pursuant to a law in effect on the date on which such Buyer (i) acquires such interest in the Repurchase Obligations or (ii) changes the office from which it books the Transactions, except in each case to the extent that, pursuant to Section 12.07, amounts with respect to such Taxes were payable either to such Buyer's assignor immediately before such Buyer became a Party hereto or to such Buyer immediately before it changed the office from which it books the Transactions, (c) Taxes attributable to Buyer's failure to comply with Section 12.07(e) and (d) any Taxes imposed under FATCA.

"Exempted Transactions": Defined in the Fee Letter, which definition is incorporated herein by reference.

"Exit Fee": Defined in the Fee Letter, which definition is incorporated herein by reference.

"Extension Condition": Defined in Section 3.06(a).

"Extension Fee": Defined in the Fee Letter, which definition is incorporated herein by reference.

"Extension Period": The First Extension Period or Second Extension Period, as applicable.

"Facility Termination Date": The earliest of (a) the Initial Facility Termination Date, as such date may be extended pursuant to Section 3.06(a), (b) any Accelerated Repurchase Date, and (c) any date on which the Facility Termination Date shall otherwise occur in accordance with the Repurchase Documents or Requirements of Law.

"FATCA": Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code (or any amended or successor version described above) and any intergovernmental agreements (and any related laws or official administrative guidance) implementing the foregoing.

"FDIA": Defined in Section 14.03.

"FDICIA": Defined in Section 14.04.

"Fee Letter": The Sixth Amended and Restated Fee and Pricing Letter, dated as of December 14, 2022, among Buyer and Sellers, as amended, modified, waived, supplemented, extended, restated or replaced from time to time.

"Fitch": Fitch, Inc. or, if Fitch, Inc. is no longer issuing ratings, another nationally recognized rating agency reasonably acceptable to Buyer.

"First Extended Facility Termination Date": December 14, 2026.

"First Extension Period": The period commencing on the day immediately following the Initial Facility Termination Date and ending on the First Extended Facility Termination Date.

"Floor": The greater of (a) zero (0) and (b) such higher amount as may be specified with respect to any Transaction in the related Confirmation (or amended and restated Confirmation, as applicable).

"Foreign Buyer": A Buyer that is not a U.S. Person.

"Funding Period": The period in existence as of the Closing Date to and including the Initial Facility Termination Date.

"Future Funding Amount": With respect to any Future Funding Transaction, the additional Purchase Price funded by Buyer to Seller in connection with such Future Funding Transaction.

"Future Funding Request Package": With respect to one or more Future Funding Transactions, the following: (a) the related request for a future funding advance, executed by the related Underlying Obligor (which shall include either therein or separately evidence of Sellers' approval of the related Future Funding Transaction), and any other documents that are required to be delivered to Sellers pursuant to the related Purchased Asset Documents in connection with such future funding advance (including, without limitation, an endorsement to the related title policy); (b) a certification by Sellers that all conditions precedent to such future funding advance under the related Purchased Asset Documents have been satisfied in all material respects; and (c) to the extent available and requested by Buyer, (i) updated financial statements, operating statements and rent rolls, (ii) engineering reports and updates to the engineering reports and (iii) an updated Underwriting Package for the related Purchased Asset.

"Future Funding Transaction": Any Transaction entered into by Buyer subject to, and in accordance with, the terms of Section 3.11.

"Future Funding Transaction Conditions": Defined in Section 3.11(a)(ii).

"GAAP": Generally accepted accounting principles as in effect from time to time in the United States, consistently applied.

"General Repo Account": The bank account of Buyer described on Schedule 2 hereto.

"Governing Documents": With respect to any Person, its articles or certificate of incorporation or formation, by-laws, partnership, limited liability company, memorandum and articles of association, operating or trust agreement and/or other organizational, charter or governing documents.

"Governmental Authority": Any (a) national or federal government, (b) state, regional or local or other political subdivision thereof, (c) central bank or similar monetary or regulatory authority, (d) Person, agency, authority, instrumentality, court, regulatory body, central bank or other body or entity exercising executive, legislative, judicial, taxing, quasi– judicial, quasi–legislative, regulatory or administrative functions or powers of or pertaining to government, (e) court or arbitrator having jurisdiction over such Person, its Affiliates or its assets or properties, (f) stock exchange on which shares of stock of such Person are listed or admitted for trading, (g) accounting board or authority that is responsible for the establishment or interpretation of national or international accounting principles, and (h) supra-national body such as the European Union or the European Central Bank.

"Ground Lease": A ground lease containing the following terms and conditions: (a) a remaining term (exclusive of any unexercised extension options) of twenty (20) years or more from the Purchase Date of the related Asset, (b) the right of the lessee to mortgage and encumber its interest in the leased property without the consent of the lessor or with such consent given, (c) the obligation of the lessor to give the holder of any mortgage lien on such leased property written notice of any defaults on the part of the lessee and agreement of such lessor that such lease will not be terminated until such holder has had a reasonable opportunity to cure or complete foreclosures, and fails to do so, (d) reasonable transferability of the lessee's interest under such lease, including ability to sublease, and (e) such other rights customarily required by mortgagees making a loan secured by the interest of the holder of the leasehold estate demised pursuant to a ground lease.

"Guarantee Agreement": The Second Amended and Restated Guarantee Agreement, dated as of February 10, 2022, made by Guarantor in favor of Buyer, as amended, modified, waived, supplemented, extended, restated or replaced from time to time.

"Guarantee Obligation": With respect to any Person (the "guaranteeing person"), any obligation of (a) the guaranteeing person or (b) another Person (including any bank under any letter of credit) to induce the creation of the obligations for which the guaranteeing person has issued a reimbursement, counterindemnity or similar obligation, in either case guaranteeing or in effect guaranteeing any Indebtedness, leases, dividends, Contractual Obligation, Derivatives Contract or other obligations or Indebtedness (the "primary obligations") of any other third Person (the "primary obligor") in any manner, whether directly or indirectly, including any obligation of the guaranteeing person, whether or not contingent, (i) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (ii) to advance or supply funds (1) for the purchase or payment of any such primary obligation, or (2) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation, or (iv) otherwise to assure or hold harmless the owner of any such primary obligation against loss in respect thereof; provided, however, that the term "Guarantee Obligation" shall not include endorsements of instruments for deposit or collection in the ordinary course of business. The amount of any Guarantee Obligation of any guaranteeing person shall be deemed to be the maximum stated amount of the primary obligation relating to such Guarantee Obligation (or, if less, the maximum stated liability set forth in the instrument embodying such Guarantee Obligation); and provided, further, that in the absence of any such stated amount or stated liability, the amount of such Guarantee Obligation shall be such guaranteeing person's maximum anticipated liability in respect thereof as reasonably determined by such Person.

"Guarantor": Ares Commercial Real Estate Corporation, a Maryland corporation.

"Hedge Counterparty": Either (a) an Affiliated Hedge Counterparty, or (b) or any other counterparty, approved by Buyer, to any Interest Rate Protection Agreement with a Seller,

in either case which agreement contains a consent satisfactory to Buyer to the collateral assignment to Buyer of the rights (but none of the obligations) of such Seller thereunder.

"Hedge Required Asset": A Purchased Asset that has a fixed rate of interest or return.

"Hotel Assets": All Assets that are secured by underlying Mortgaged Properties consisting primarily of hotel properties.

"Income": With respect to any Purchased Asset, all of the following (in each case with respect to the entire par amount of the Asset represented by such Purchased Asset and not just with respect to the portion of the par amount represented by the Purchase Price advanced against such Asset), without duplication: (a) all Principal Payments, (b) all Interest Payments, (c) all other income, distributions, receipts, payments, collections, prepayments, recoveries, proceeds (including insurance and condemnation proceeds) and other payments or amounts of any kind paid, received, collected, recovered or distributed on, in connection with or in respect of such Purchased Asset, including Principal Payments, Interest Payments, principal and interest payments, prepayment fees, extension fees, exit fees, defeasance fees, transfer fees, make whole fees, late charges, late fees and all other fees or charges of any kind or nature, premiums, yield maintenance charges, penalties, default interest, dividends, gains, receipts, allocations, rents, interests, profits, payments in kind, returns or repayment of contributions, net sale, foreclosure, liquidation, securitization or other disposition proceeds, insurance payments, settlements and proceeds, and (d) all payments received from Hedge Counterparties pursuant to Interest Rate Protection Agreements related to such Purchased Asset; provided, that any amounts that under the applicable Purchased Asset Documents are required to be deposited into and held in escrow or reserve to be used for a specific purpose, such as taxes and insurance, shall not be included in the term "Income" unless and until (i) an event of default exists under such Purchased Asset Documents, (ii) the holder of the related Purchased Asset has exercised or is entitled to exercise rights and remedies with respect to such amounts, (iii) such amounts are no longer required to be held for such purpose under such Purchased Asset Documents, or (iv) such amounts may be applied to all or a portion of the outstanding indebtedness under such Purchased Asset Documents.

"Indebtedness": With respect to any Person and any date, all of the following with respect to such Person as of such date, without duplication: (a) all then outstanding indebtedness of such Person for borrowed money (whether by loan or the issuance and sale of debt securities) or for the deferred purchase price of property or services (other than current trade liabilities incurred in the ordinary course of business and payable in accordance with customary practices), (b) obligations, whether or not for money borrowed, incurred in connection with the issuance of preferred equity or trust preferred securities, (c) any other then outstanding indebtedness of such Person which is evidenced by a note, bond, debenture or similar instrument, (d) all Capital Lease Obligations, (e) all then outstanding obligations of such Person in respect of letters of credit other than standby letters of credit, acceptances or similar instruments issued or created for the account of such Person, (f) all then outstanding liabilities secured by any Lien on any property owned by such Person, other than standby letters of credit, even though such Person has not

assumed or otherwise become liable for the payment thereof, (g) Off–Balance Sheet Obligations, (h) as applicable, all obligations of such Person (but not the obligation of others) in respect of any keep well arrangements, credit enhancements, contingent or future funding obligations under any Purchased Asset or any obligation senior to any Purchased Asset, unfunded interest reserve amount under any Purchased Asset or any obligation that is senior to any Purchased Asset, purchase obligation, repurchase obligation, sale/buy–back agreement, takeout commitment or forward equity commitment, in each case evidenced by a binding agreement (excluding any such obligation to the extent the obligation can be satisfied by the issuance of Equity Interests (other than mandatory redeemable stock)), (i) net obligations under any Derivatives Contract not entered into as a hedge against existing indebtedness, in an amount equal to the Derivatives Termination Value thereof, (j) all Non–Recourse Indebtedness, recourse indebtedness and all indebtedness of other Persons that such Person has guaranteed or is otherwise recourse to such Person, (k) all Contingent Liabilities, (l) obligations to fund capital commitments under any Governing Document, subscription agreement or otherwise, and (m) indebtedness of general partnerships of which such Person is liable as a general partner (whether secondarily or contingently liable or otherwise).

"Indemnified Amounts": Defined in Section 13.01(a).

"Indemnified Persons": Defined in Section 13.01(a).

"Indemnified Taxes": (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of Seller under any Repurchase Document and (b) to the extent not otherwise described in (a), Other Taxes.

"Independent Appraiser": An independent professional real estate appraiser who is a member in good standing of the American Appraisal Institute, and, if the state in which the subject underlying Mortgaged Property is located certifies or licenses appraisers, is certified or licensed in such state, and in each such case, who has a minimum of five years experience in the subject property type (unless otherwise approved in writing by Buyer).

"Independent Director" or "Independent Manager": An individual who has prior experience as an independent director, independent manager or independent member with at least three (3) years of employment experience and who is provided by CT Corporation, Corporation Service Company, MaplesFS, Global Securitization Services LLC, Puglisi & Associates, National Registered Agents, Inc., Wilmington Trust Company, Stewart Management Company, or Lord Securities Corporation or, if none of those companies is then providing professional Independent Directors or Independent Managers, another nationally recognized company approved by Buyer, in each case that is not an Affiliate of Seller and that provides professional independent directors, independent managers and/or other corporate services in the ordinary course of its business, and which individual is duly appointed as Independent Director or Independent Manager and is not, and will not while serving as Independent Director or Independent Manager be and may not have been at any time in the preceding five (5) years, any of the following:

(n) a member, partner, equity holder, manager, director, officer or employee of Seller, Pledgor, or any of their respective equity holders or Affiliates (other than as an Independent Director or Independent Manager of Seller or Pledgor or an Affiliate of Seller or Pledgor that does not own a direct or indirect ownership interest in Seller or Pledgor and that is required by a creditor to be a single purpose bankruptcy remote entity, provided, however, that such Independent Director or Independent Manager is employed by a company that routinely provides professional Independent Directors or Independent Managers);

(o) a creditor, supplier or service provider (including provider of professional services) to Seller, Pledgor or any of their respective equity holders or Affiliates (other than through a nationally recognized company that routinely provides professional Independent Directors, Independent Managers and/or other corporate services to Seller, Pledgor, or any of their respective equity holders or Affiliates in the ordinary course of business);

(p) a family member of any such member, partner, equity holder, manager, director, officer, employee, creditor, supplier or service provider; or

(q) a Person who controls (whether directly, indirectly or otherwise) any of the individuals described in the preceding clauses (a) or (b).

An individual who otherwise satisfies the preceding definition and satisfies subparagraph (a) by reason of being the Independent Director or Independent Manager of a "special purpose entity" affiliated with Seller or Pledgor that does not own a direct or indirect ownership interest in Seller or Pledgor shall be qualified to serve as an Independent Director or Independent Manager of Seller or Pledgor if the fees that such individual earns from serving as Independent Director or Independent Manager of Affiliates of Seller or Pledgor in any given year constitute in the aggregate less than five percent (5%) of such individual's annual income for that year. For purposes of this paragraph, a "special purpose entity" is an entity whose organizational documents contain restrictions on its activities and impose requirements intended to preserve such entity's separateness that are substantially similar to the provisions of Article 9 hereof.

"Independent Manager Provisions": With respect to a Person, provisions within the Governing Documents for such Person that such Person shall (1) not, without the prior unanimous written consent of all of its Independent Directors or Independent Managers, take any Insolvency Action, (2) (I) have at all times at least one (1) Independent Director or Independent Manager whose vote is required to take any Insolvency Action, and (II) provide Buyer with up to date contact information for each such Independent Director or Independent Manager and a copy of the agreement pursuant to which such Independent Director or Independent Manager consents to and serves as an "Independent Director" or "Independent Manager" for such Person; (3) have Governing Documents that provide that for so long as any Repurchase Obligations remain outstanding, it shall abide by the (I) the Independent Manager or Independent Director may be removed only for Cause, (II) that Buyer be given at least two (2) Business Days prior notice of the removal and/or replacement of any Independent Director or Independent Manager, together with the name and contact information of the replacement Independent Director or Independent

Manager and evidence of the replacement's satisfaction of the definition of Independent Director or Independent Manager, (III) that, to the fullest extent permitted by law, and notwithstanding any duty otherwise existing at law or in equity, any Independent Director or Independent Manager shall consider only the interests of each applicable Person, including its respective creditors, in acting or otherwise voting on the Insolvency Action, and (IV) that, except for duties to each applicable Person as set forth in the immediately preceding clause (including duties to the holders of the Equity Interests in such Person or such Person's respective creditors solely to the extent of their respective economic interests in each applicable Person, but excluding (A) all other interests of the holders of the Equity Interests in each applicable Person, (B) the interests of other Affiliates of each applicable Person, and (C) the interests of any group of Affiliates of which each applicable Person is a part), the Independent Directors or Independent Managers shall not have any fiduciary duties to the holders of the Equity Interests in each applicable Person, any officer or any other Person bound by the Governing Documents.

"Initial Facility Termination Date": December 15, 2025.

"Insolvency Action": With respect to any Person, the taking by such Person of any action resulting in an Insolvency Event, other than solely under clause (g) of the definition thereof.

"Insolvency Event": With respect to any Person, (a) the filing of a decree or order for relief by a court having jurisdiction in the premises with respect to such Person or any substantial part of its assets or property in an involuntary case under any applicable Insolvency Law now or hereafter in effect, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official for such Person or for any substantial part of its assets or property, or ordering the winding–up or liquidation of such Person's affairs, and such decree or order shall remain unstayed and in effect for a period of thirty (30) days, (b) the commencement by such Person of a voluntary case under any applicable Insolvency Law now or hereafter in effect, (c) the consent by such Person to the entry of an order for relief in an involuntary case under any Insolvency Law, (d) the consent by such Person to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official for such Person or for any substantial part of its assets or property, (e) the making by such Person of any general assignment for the benefit of creditors, (f) the admission in a legal proceeding of the inability of such Person to pay its debts generally as they become due, (g) the failure by such Person generally to pay its debts as they become due, or (h) the taking of action by such Person in furtherance of any of the foregoing; provided that, for purposes of this clause (h), the mere request or receipt of advice from advisors shall not constitute the taking of action in furtherance of any of the foregoing.

"Insolvency Laws": The Bankruptcy Code and all other applicable liquidation, conservatorship, bankruptcy, moratorium, rearrangement, receivership, insolvency, reorganization, suspension of payments and similar debtor relief laws from time to time in effect affecting the rights of creditors generally.

"Insolvency Proceeding": Any case, action or proceeding before any court or other Governmental Authority relating to any Insolvency Event.

"Interest Expense": With respect to any Person and for any Test Period, the amount of total interest expense incurred by such Person, including capitalized or accruing interest (but excluding interest funded under a construction loan, the amortization of financing costs, and the payment of origination fees), plus such Person's proportionate share of interest expense from the joint venture investments and unconsolidated Affiliates of such Person, all with respect to such period.

"Interest Payments": With respect to any Purchased Asset, all payments of interest, income, receipts, dividends, and any other collections and distributions received from time to time in connection with any such Purchased Asset.

"Interest Rate Protection Agreement": With respect to any or all Purchased Assets, any futures contract, options related contract, short sale of United States Treasury securities or any interest rate swap, cap, floor or collar agreement, total return swap or any other similar arrangement providing for protection against fluctuations in interest rates or the exchange of nominal interest obligations either generally or under specific contingencies, in each case with a Hedge Counterparty and that is acceptable to Buyer. For the avoidance of doubt, any Interest Rate Protection Agreement with respect to a Purchased Asset shall be included in the definitions of "Purchased Asset" and "Repurchase Document."

"Interim Servicer": NewPoint Real Estate Capital LLC, a Michigan limited liability company, or any other Interim Servicer mutually agreed upon by Buyer and Seller.

"Interim Servicer Event of Default": With respect to Interim Servicer, (a) any default or event of default (however defined) under the Servicing Agreement among Sellers, Interim Servicer and Buyer, or (b) any failure of Interim Servicer to be rated by a Rating Agency as an approved servicer of commercial mortgage loans

"Internal Control Event": Fraud that involves management or other employees who have a significant role in the internal controls of either Seller, Guarantor or any Specified Affiliate over financial reporting.

"Investment": With respect to any Person, any acquisition or investment (whether or not of a controlling interest) by such Person, whether by means of (a) the purchase or other acquisition of any Equity Interest in another Person, (b) a loan, advance or extension of credit to, capital contribution to, guaranty or credit enhancement of Indebtedness of, or purchase or other acquisition of any Indebtedness of, another Person, including any partnership or joint venture interest in such other Person, or (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person that constitute the business or a division or operating unit of another Person. Any binding commitment or option to make an Investment in any other Person, which commitment or opinion is able to be exercised prior to the current Facility Termination Date, shall constitute an Investment. Except as expressly provided otherwise, for purposes of determining compliance with any covenant contained in this Agreement, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

"Investment Company Act": The Investment Company Act of 1940, as amended, restated or modified from time to time, including all rules and regulations promulgated thereunder.

"Irrevocable Redirection Notice": A notice in the form of Exhibit H, sent by the related Seller or by Interim Servicer on such Seller's behalf directing the remittance of Income with respect to a Purchased Asset to the Collection Account or Waterfall Account, as applicable, and executed by the Interim Servicer with respect to such Purchased Asset.

"ISDA Definitions": The 2006 ISDA Definitions published by the International Swaps and Derivatives Association, Inc. or any successor thereto, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time by the International Swaps and Derivatives Association, Inc. or such successor thereto.

"Knowledge": With respect to any Person, means collectively (i) the Actual Knowledge of such Person, (ii) notice of any fact, event, condition or circumstance that would cause a reasonably prudent Person to conduct an inquiry that would give such Person Actual Knowledge, whether or not such Person actually undertook such an inquiry, and (iii) all knowledge that is imputed to a Person under any statute, rule, regulation, ordinance, or official decree or order.

"LIBOR": The rate of interest per annum determined by Buyer on the basis of the rate for deposits in Dollars for delivery on the first (1st) day of each Pricing Period, for a one-month period commencing on (and including) the first day of such Pricing Period and ending on (but excluding) the same corresponding date in the following month, as reported on Reuters Screen Libor01 Page (or any successor page) at approximately 11:00 a.m., London time, on the Pricing Rate Determination Date (or if not so reported, then as determined by Buyer from another recognized source or interbank quotation); provided, that in no event shall LIBOR be less than the Floor. Each calculation by Buyer of LIBOR shall be conclusive and binding for all purposes, absent manifest error.

"LIBOR Based Pricing Rate Determination Date": (a) In the case of the first Pricing Period for any Purchased Asset, the related Purchase Date for such Purchased Asset, and (b) in the case of each subsequent Pricing Period, the date that is two (2) Business Days prior to the Remittance Date on which such Pricing Period begins or on any other date as determined by Buyer and communicated to Sellers. The failure to communicate shall not impair Buyer's decision to reset the Pricing Rate on any date.

"LIBOR Based Transaction": Subject to Section 12.01(a), (A) for which the related Purchase Date occurred prior to the Closing Date (and with respect to which Buyer and Sellers have not entered into an amended and restated Confirmation following the Closing Date expressly designating such Transaction as a "SOFR Based Transaction") or (B) any Transaction that is expressly designated as a "LIBOR Based Transaction" in the related Confirmation therefor; provided that, for the avoidance of doubt, from and after the Rate Conversion Effective Date, all Transactions under this Agreement shall be SOFR Based Transactions for all purposes

of this Agreement and the Repurchase Documents, and no Transactions hereunder shall be LIBOR Based Transactions.

"Lien": Any mortgage, statutory or other lien, pledge, charge, right, claim, adverse claim, attachment, levy, hypothecation, assignment, deposit arrangement, security interest, UCC financing statement or encumbrance of any kind on or otherwise relating to any Person's assets or properties in favor of any other Person or any preference, priority or other security agreement or preferential arrangement of any kind.

"Manager": Ares Commercial Real Estate Management LLC.

"Margin Call": Defined in Section 4.01(a).

"Margin Deficit": Defined in Section 4.01(a).

"Margin Percentage": For any Purchased Asset as of any date, the percentage equivalent of the quotient obtained by dividing one (1) by the Applicable Percentage used to calculate the Purchase Price on the related Purchase Date.

"Market Value": For any Purchased Asset as of any date, the lower of the Current Mark-to-Market Value and the Book Value for such Purchased Asset as determined by Buyer in its commercially reasonable discretion; provided, that Buyer may set the Market Value to zero for any Purchased Asset with respect to which:

(r) the requirements of the definition of Eligible Asset are not satisfied, as determined by Buyer;

(s) a Representation Breach exists, as determined by Buyer;

(t) any Retained Interest, funding obligation or any other obligation of any kind has been transferred to Buyer;

(u) the related Seller fails to repurchase such Purchased Asset by the Repurchase Date therefor;

(v) an Insolvency Event has occurred with respect to any co-participant or other Person having an interest in such Purchased Asset;

(w) all Purchased Asset Documents have not been delivered to Custodian within the time periods required by this Agreement and the Custodial Agreement;

(x) any material Purchased Asset Document has been released from the possession of Custodian under the Custodial Agreement to a Seller for more than ten (10) days, except as contemplated by the Custodial Agreement;

(y) there is a violation of any applicable Sub-Limit;

(z) the applicable Seller fails to deliver any reports required hereunder within the applicable time periods after giving effect to any applicable grace or cure periods set forth herein, where such failure adversely affects the Market Value thereof or Buyer's ability to determine Market Value therefor; or

(aa) for each Purchased Asset originally acquired by the applicable Seller, from a Transferor, either (i) the original transfer to such Seller is or may be voidable or subject to avoidance under the Bankruptcy Code, or (ii) any of the material representations and warranties made by such Transferor to such Seller in the related Purchase Agreement are breached.

"Material Adverse Effect": A material adverse effect on or material adverse change in or to (a) the property, assets, business, operations, financial condition or credit quality of Guarantor or either Seller, (b) the ability of either Seller to pay and perform the Repurchase Obligations, (c) the validity, legality, binding effect or enforceability of any Repurchase Document, Purchased Asset Document with respect to any Purchased Asset, Purchased Asset or security interest granted hereunder or thereunder, (d) the rights and remedies of Buyer or any Indemnified Person under any Repurchase Document, Purchased Asset Document or Purchased Asset, (e) the Current Mark-to-Market Value, rating (if applicable), liquidity or other aspect of a material portion of the Purchased Assets, as determined by Buyer, or (f) the perfection or priority of any Lien granted under any Repurchase Document or Purchased Asset Document with respect to any Purchased Asset.

"Material Facility Default": Any monetary Default, any material non-monetary Default or any Event of Default.

"Material Modification": Any material extension, amendment, waiver, termination, rescission, cancellation, release or any other material modification to the terms of, or any collateral, guaranty or indemnity for, or any other action, direction or decision that could adversely affect the value or collectability of any amounts due with respect to the Purchased Assets, as determined by Buyer. Notwithstanding the foregoing, so long as no Material Facility Default or Event of Default has occurred, the applicable Seller (or Interim Servicer, on its behalf) shall have the right without the consent of Buyer in each instance to enter into any amendment, deferral, extension, modification, increase, decrease, renewal, replacement, consolidation, supplement or waiver of, or to exercise any rights of a holder under (collectively, a "Loan Modification"), the Purchased Asset Documents and such Loan Modification shall not constitute a Material Modification provided that the same does not:

(ab) decrease the interest rate or principal amount of any Purchased Asset (except in the case of either required future advances or permitted protective advances) or defer or forebear from collecting any principal or interest (other than with respect to either a required future advance or a permitted protective advance);

(ac) change in any other material respect any monetary obligations of any Underlying Obligor under the Purchased Asset Documents in any manner that could be adverse to the interests of Buyer;

(ad) extend the scheduled maturity date or extended maturity date (except to the extent extended in accordance with the terms and provisions of the Purchased Asset Documents) of the Purchased Asset (except that the applicable Seller may permit an Underlying Obligor to exercise any extension options in accordance with the terms and provisions of the Purchased Asset Documents);

(ae) convert or exchange a Purchased Asset into or for any other indebtedness or subordinate any of the Purchased Asset to any indebtedness of any Underlying Obligor;

(af) amend, modify or waive the provisions limiting transfers of interests in the Underlying Obligor or the underlying Mortgaged Property;

(ag) amend, modify or waive in any material respect the terms and provisions of any cash management agreement or other Purchased Asset Document with respect to the manner, timing and method of the application of payments under the Purchased Asset Documents;

(ah) cross default the Purchased Asset with any other indebtedness of any Underlying Obligor;

(ai) obtain any contingent interest, additional interest or so-called "kicker" measured on the basis of the cash flow or appreciation of the underlying Mortgaged Property (or other similar equity participation);

(aj) amend, modify or waive any default provision, including, the definition of "Default", "Event of Default" or similar defined term in the Purchased Asset Documents;

(ak) amend, modify or waive any notice or cure periods provided in the Purchased Asset Documents, provided, however, with respect to each Purchased Asset, such Seller (or Interim Servicer on its behalf) may waive (but not amend or modify) on a one-time basis during the related loan term (including any extensions thereof) for each Purchased Asset a nonmonetary notice and cure period provided that any applicable notice or cure period shall not be extended more than thirty (30) calendar days;

(al) materially amend, modify or waive any insurance requirements under the Purchased Asset Documents (including, without limitation, any deductibles, limits or qualifications of insurers) or any material casualty or condemnation provisions;

(am) change the flag on an existing hotel;

(an) unless the related manager is in default, remove the current manager of an existing hotel (provided that Buyer's consent to any replacement manager is required);

(ao) forgive any debt of any Underlying Obligor;

(ap) release or substitute any collateral except as provided in the Purchased Asset Documents;

(aq) consent to the placement of any Lien, encumbrance or easement on the underlying Mortgaged Property or any Lien or encumbrance on the Equity Interests in any Underlying Obligor (in each case, to the extent not expressly permitted by the Purchased Asset Documents);

(ar) amend, modify or waive provisions in the Purchased Asset Documents restricting the Underlying Obligor, any guarantor or any equity owners of any of the foregoing from incurring additional Indebtedness (in each case, to the extent not expressly permitted by the Purchased Asset Documents); or

(as) permit any loan assumption or release or substitute any Underlying Obligor, guarantor or indemnitor of the Purchased Asset Documents, except as provided in the Purchased Asset Documents; provided, however, nothing in the foregoing shall imply a right of consent by Buyer, prior to the existence of a Material Facility Default or Event of Default, with respect to waivers of any non-material, non-monetary default under any Purchased Asset Documents.

"Materials of Environmental Concern": Any hazardous, toxic or harmful substances, materials, wastes, pollutants or contaminants defined as such in or regulated under any Environmental Law.

"Maximum Amount": As of the Closing Date, $450,000,000 and thereafter, if Seller elects to exercise an Upsize Option, upon Buyer's agreement to grant the Upsize Option in accordance with all terms and conditions of Section 3.06(c), an amount up to $500,000,000, which Maximum Amount shall not be increased by any Future Funding Transaction or reduced upon the repurchase of any Purchased Assets prior to the earlier to occur of (x) the expiration of the Funding Period, or (y) the Facility Termination Date; provided, that on and after such date, the Maximum Amount on any date shall be the aggregate Purchase Price outstanding for all Transactions as of such date, as such amount declines over the term hereof as Purchased Assets are repurchased and Margin Deficits are satisfied, all in accordance with the applicable terms of this Agreement.

"Maximum Applicable Percentage": Defined in the Fee Letter, which definition is incorporated herein by reference.

"Mezzanine Borrower" The obligor on a Mezzanine Note, including any Person who has assumed or guaranteed the obligations of the obligor thereunder.

"Mezzanine Loan": A performing mezzanine loan secured by pledges of the Equity Interests of an Underlying Obligor or that portion of the Equity Interest that includes the general partnership, managing member or other controlling interest (including the right to take title to and sell the related underlying Mortgaged Property) that owns income producing commercial real estate which is a Type of Mortgaged Property and for which the combined DSCR is not less than that set forth in the related Confirmation, taking into account any senior or *pari passu* Indebtedness secured directly or indirectly by the related underlying Mortgaged

Property, including any preferred equity interest or mezzanine debt that is senior to or *pari passu* with the related Asset.

"Mezzanine Loan Documents": With respect to any Purchased Asset that is a Mezzanine Loan, the Mezzanine Note, those documents executed in connection with, evidencing or governing such Mezzanine Loan and the Mortgage Loan Documents for the related Whole Loan including, without limitation, those documents which are required to be delivered to Custodian under the Custodial Agreement (which documents so required to be delivered to Custodian shall only be required to include, for the avoidance of doubt, copies of the Mortgage Loan Documents for the related Whole Loan).

"Mezzanine Note": The original executed promissory note or other tangible evidence of Mezzanine Loan indebtedness.

"Mezzanine Related Mortgage Asset": An Eligible Asset or a Purchased Asset for which one or more related Mezzanine Loans exist and with respect to which the principal balance of such Mezzanine Loan(s) remains outstanding.

"Minimum Portfolio Debt Yield Test": Defined in the Fee Letter, which definition is incorporated herein by reference.

"Moody's": Moody's Investors Service, Inc. or, if Moody's Investors Service, Inc. is no longer issuing ratings, another nationally recognized rating agency reasonably acceptable to Buyer.

"Mortgage": Any mortgage, deed of trust, assignment of rents, security agreement and fixture filing, or other instruments creating and evidencing a lien on real property and other property or ground leasehold interest and rights incidental thereto.

"Mortgage Asset File": Defined in the Custodial Agreement, which definition is incorporated herein by reference.

"Mortgage Loan Documents": With respect to any Whole Loan, those documents executed in connection with and/or evidencing or governing such Whole Loan, including, without limitation those that are required to be delivered to Custodian under the Custodial Agreement.

"Mortgage Note": The original executed promissory note or other evidence of the indebtedness of a Mortgagor with respect to a commercial mortgage loan.

"Mortgaged Property" and "Underlying Mortgaged Property": (I) In the case of a Whole Loan or a Senior Interest, the real property (including all improvements, buildings, fixtures, building equipment and personal property thereon and all additions, alterations and replacements made at any time with respect to the foregoing) and all other collateral directly or indirectly securing repayment of the debt evidenced by (a) a Mortgage Note (in the case of a Whole Loan) or (b) the Mortgage Note of the Whole Loan to which such Senior Interest relates

(in the case of a Senior Interest), in each case securing such Whole Loan and (II) in the case of a Mezzanine Loan, the real property (including all improvements, buildings, fixtures, building equipment and personal property thereon and all additions, alterations and replacements made at any time with respect to the foregoing) and all other collateral owned by the Person whose Equity Interest is pledged as collateral security for such Mezzanine Loan.

"Mortgagee": The record holder of a Mortgage Note secured by a Mortgage.

"Mortgagor": The obligor on a Mortgage Note, including any Person who has assumed or guaranteed the obligations of the obligor thereunder.

"Multi-Family Asset": Any Purchased Asset for which the majority or all of the underlying Mortgaged Property consists of multiple separate housing units for residential (i.e. non-commercial) inhabitants, which may be contained either in one building or in several buildings within a single complex.

"Net Income": With respect to any Person for any period, the net income of such Person for such period as determined in accordance with GAAP.

"Non–Recourse Indebtedness": With respect to any Person and any date, indebtedness of such Person as of such date for borrowed money in respect of which recourse for payment (except for customary exceptions for fraud, misapplication of funds, environmental indemnities, Insolvency Events, non-approved transfers or other events) is contractually limited to specific assets of such Person encumbered by a Lien securing such Indebtedness.

"Off–Balance Sheet Obligations": With respect to any Person and any date, to the extent not included as a liability on the balance sheet of such Person, all of the following with respect to such Person as of such date: (a) monetary obligations under any financing lease or so– called "synthetic," tax retention or off–balance sheet lease transaction that, upon the application of any Insolvency Laws, would be characterized as indebtedness, (b) monetary obligations under any sale and leaseback transaction that does not create a liability on the balance sheet of such Person, or (c) any other monetary obligation arising with respect to any other transaction that (i) is characterized as indebtedness for tax purposes but not for accounting purposes, or (ii) is the functional equivalent of or takes the place of borrowing but that does not constitute a liability on the balance sheet of such Person (for purposes of this clause (c), any transaction structured to provide Tax deductibility as Interest Expense of any dividend, coupon or other periodic payment will be deemed to be the functional equivalent of a borrowing).

"Other Connection Taxes": With respect to Buyer, Taxes imposed as a result of a present or former connection between Buyer and the jurisdiction imposing such Taxes (other than a connection arising from Buyer having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Repurchase Document, or sold or assigned an interest in any Transaction or Repurchase Document).

"Other Taxes": Any and all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under any Repurchase Document or from the execution, delivery, performance, or enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Repurchase Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment.

"Partially Repaid Purchased Asset": Defined in Section 3.07.

"Partial Payment Amount": Defined in Section 3.07.

"Participant": Defined in Section 18.08(a).

"Participant Register": Defined in Section 18.08(f).

"Party": The meaning set forth in the preamble to this Agreement.

"PATRIOT Act": The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Title III of Pub. L. 107-56, signed into law October 2, 2001, as amended, modified or replaced from time to time, and the rules and regulations promulgated thereunder.

"Paying Seller": Defined in Section 18.22(b).

"Permitted Liens": Any of the following as to which no enforcement, collection, execution, levy or foreclosure proceeding has been commenced: (a) Liens for state, municipal, local or other local taxes not yet due and payable, (b) Liens imposed by Requirements of Law, such as materialmen's, mechanics', carriers', workmen's, repairmen's and similar Liens, arising in the ordinary course of business securing obligations that are not overdue for more than thirty (30) days or that are being contested in good faith and for which an adequate cash bond has been maintained, (c) Liens granted pursuant to or by the Repurchase Documents and (d) Liens against any Seller in an aggregate amount not to exceed $500,000.

"Person": An individual, corporation, limited liability company, business trust, partnership, trust, unincorporated organization, joint stock company, sole proprietorship, joint venture, Governmental Authority or any other form of entity.

"Pledge and Security Agreement": The Pledge and Security Agreement, dated as of October 14, 2015, between Buyer and Pledgor, as amended, modified, waived, supplemented, extended, restated or replaced from time to time.

"Pledged Collateral": Defined in the Pledge and Security Agreement, which definition is incorporated herein by reference.

"Pledgor": ACRC Warehouse Holdings LLC, a Delaware limited liability company, together with its successors and permitted assigns.

"PPV Ratio": For each Purchased Asset, the ratio of the Purchase Price to the market value (as determined by Buyer) of the underlying Mortgaged Property securing the related Purchased Asset, as determined by Buyer. In determining the PPV Ratio at (i) the time of an initial asset approval and funding and (ii) in connection with the determination at any time after the Purchase Date therefor, of whether Buyer will adjust the Recourse Percentage of such Purchased Asset pursuant to Section 3.01(i), Buyer will use the "as is" value from an Appraisal or a broker opinion of value if such broker opinion of value is acceptable to Buyer, in each case, as provided by Sellers at the sole cost of Sellers. All other determinations of the PPV Ratio hereunder shall be based upon Buyer's determination in its commercially reasonable discretion of the market value of the underlying Mortgaged Property; provided, however, that Buyer shall calculate the PPV Ratio with respect to Sellers in a manner consistent with other similar calculations with respect to counterparties that are also lenders and/or obligors under commercial real estate loans for which Buyer or its Affiliates is providing capital under agreements that are similar to this Agreement.

"PPV Test": Defined in the Fee Letter, which definition is incorporated herein by reference.

"Price Differential": For any Pricing Period or portion thereof and (a) for any Transaction outstanding, the sum of the products, for each day during such Pricing Period or portion thereof, of (i) 1/360th of the Pricing Rate in effect for each Purchased Asset subject to such Transaction during such Pricing Period, times (ii) the outstanding Purchase Price for such Purchased Asset on each such day, or (b) for all Transactions outstanding, the sum of the amounts calculated in accordance with the preceding clause (a) for all Transactions.

"Pricing Margin": Defined in the Fee Letter, which definition is incorporated herein by reference.

"Pricing Period": For any Purchased Asset, (a) in the case of the first Remittance Date for such Purchased Asset, the period from the Purchase Date for such Purchased Asset to but excluding such Remittance Date, and (b) in the case of any subsequent Remittance Date for each related Purchased Asset, the one-month period commencing on the fifteenth (15^{th}) calendar day of the month preceding the month of the applicable Remittance Date to and including the fourteenth (14^{th}) calendar day of the following month; provided, that no Pricing Period for a Purchased Asset shall end after the Repurchase Date for such Purchased Asset to the extent such Purchased Asset is actually repurchased on such Repurchase Date.

"Pricing Rate": For any Pricing Period and any Transaction, (a) in the case of any LIBOR Based Transaction, LIBOR and (b) in the case of any SOFR Based Transaction, the Applicable SOFR for such Transaction, in each case, for such Pricing Period plus the applicable Pricing Margin for such date; provided, that, in each case, while an Event of Default is continuing, the Pricing Rate shall be the Default Rate.

"Pricing Rate Determination Date": (A) With respect to any LIBOR Based Transaction, subject to Section 12.01(a), the LIBOR Based Pricing Rate Determination Date and

(B) with respect to any SOFR Based Transaction, the SOFR Based Pricing Rate Determination Date.

"Principal Payments": For any Purchased Asset, all payments and prepayments of principal received for such Purchased Asset, including insurance and condemnation proceeds and recoveries of principal from liquidation or foreclosure, in each case, which are permitted by the terms of the Purchased Asset Documents to be applied to principal and are applied as principal towards the Purchase Price.

"Purchase Agreement": Any purchase agreement between a Seller and any Transferor pursuant to which such Seller purchased or acquired an Asset which is subsequently sold to Buyer hereunder, which Purchase Agreement shall contain a grant of a security interest in favor of such Seller and authorize the filing of UCC financing statements against the Transferor with respect to such Asset.

"Purchase Date": For any Purchased Asset, the date on which such Purchased Asset is transferred by the related Seller to Buyer.

"Purchase Price": For any Purchased Asset, (a) as of the Purchase Date and, as initially set forth in the related Confirmation for such Purchased Asset, as such Confirmation may be updated by Buyer and the related Seller from time to time, an amount equal to the product of the Market Value of such Purchased Asset, times the Applicable Percentage for such Purchased Asset, and (b) as of any other date, the amount described in the preceding clause (a), (i) increased by any Future Funding Amounts disbursed by Buyer to the applicable Seller or the related borrower with respect to such Purchased Asset and, (ii) reduced by (x) any amount of Margin Deficit transferred by such Seller to Buyer pursuant to Section 4.01 and applied to the Purchase Price of such Purchased Asset, (y) any Principal Payments remitted to the Waterfall Account and which were applied to the Purchase Price of such Purchased Asset by Buyer pursuant to clause *fifth* of Section 5.02, and (z) any payments made by such Seller in reduction of the outstanding Purchase Price.

"Purchased Asset Documents": Individually or collectively, as the context may require, the related Mortgage Loan Documents, Mezzanine Loan Documents and/or the related Senior Interest Documents.

"Purchased Assets": (a) For any Transaction, each Asset sold by the related Seller to Buyer in such Transaction, and (b) for the Transactions in general, all Assets sold by the applicable Seller to Buyer, in each case including, to the extent relating to such Asset or Assets, all of such Seller's right, title and interest in and to (i) Purchased Asset Documents, (ii) Servicing Rights, (iii) Servicing Files, (iv) mortgage guaranties and insurance (issued by Governmental Authorities or otherwise) and claims, payments and proceeds thereunder, (v) insurance policies, certificates of insurance and claims, payments and proceeds thereunder, (vi) the principal balance of such Assets, not just the amount advanced, (vii) amounts and property from time to time on deposit or credited to the Waterfall Account and the Waterfall Account itself, (viii) collection, escrow, reserve, collateral or lock–box accounts and all amounts and property from time to time on deposit therein, to the extent of the related Seller's or the holder's interest therein, (ix) Income

paid or payable in connection with such Asset during the time such Asset is subject to a Transaction, until such Asset is repurchased by such Seller hereunder, (x) amounts and property from time to time on deposit in the Collection Accounts, together with the Collection Accounts themselves, (xi) security interests of such Seller in Derivatives Contracts entered into by Underlying Obligors, (xii) rights of such Seller under any letter of credit, guarantee, warranty, indemnity or other credit support or enhancement, (xiii) Interest Rate Protection Agreements relating to such Assets, (xiv) all supporting obligations of any kind, and (xv) all proceeds related to the sale, securitization or other disposition thereof; provided, that (A) Purchased Assets shall not include any obligations of any Seller or any Retained Interests, and (B) for purposes of the grant of security interest by any Seller to Buyer set forth in Section 11.01, together with the other provisions of Article 11, Purchased Assets shall include all of the following: general intangibles, accounts, chattel paper, deposit accounts, securities accounts, instruments, securities, financial assets, uncertificated securities, security entitlements and investment property (as such terms are defined in the UCC) and replacements, substitutions, conversions, distributions or proceeds relating to or constituting any of the items described in the preceding clauses (i) through (xv).

"Rate Conversion": Defined in Section 12.01(a).

"Rate Conversion Effective Date": Defined in Section 12.01(a).

"Rating Agency": Each of Fitch, Moody's and S&P.

"Recourse Percentage": Defined in the Fee Letter, which definition is incorporated herein by reference.

"Register": Defined in Section 18.08(e).

"REIT": A Person qualifying as a real estate investment trust, as defined in Section 856(a) of the Code.

"Release": Any generation, treatment, use, storage, transportation, manufacture, refinement, handling, production, removal, remediation, disposal, presence or migration of Materials of Environmental Concern on, about, under or within all or any portion of any property or Mortgaged Property, except Materials of Environmental Concern used and managed in ordinary commercial activities in compliance with applicable laws and best practices, such as copier ink and dry cleaning chemicals, where such usage and management does not result in harm to the environment or human health and does not result in liability for investigation or other remediation pursuant to applicable law.

"Relevant Governmental Body": The Board of Governors of the Federal Reserve System and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System and/or the Federal Reserve Bank of New York, or any successor thereto.

"Remedial Work": Any investigation, inspection, site monitoring, containment, clean–up, removal, response, corrective action, mitigation, restoration or other remedial work of

any kind or nature because of, or in connection with, the current or future presence, suspected presence, Release or threatened Release in or about the air, soil, ground water, surface water or soil vapor at, on, about, under or within all or any portion of any property or Mortgaged Property of any Materials of Environmental Concern, including any action to comply with any applicable Environmental Laws or directives of any Governmental Authority with regard to any Environmental Laws.

"Remittance Date": The 18th day of each month (or if such day is not a Business Day, the next following Business Day, or if such following Business Day would fall in the following month, the next preceding Business Day), or such other day as is mutually agreed to by each Seller and Buyer.

"Representation Breach": Any representation, warranty, certification, statement or affirmation made or deemed made by any Seller, Pledgor or Guarantor in any Repurchase Document (including in Schedule 1) or in any certificate, notice, report or other document delivered pursuant to any Repurchase Document proves to be incorrect, false or misleading in any material respect when made or deemed made, without regard to any Knowledge or lack of Knowledge thereof by such Person; provided that no representation or warranty (or portion thereof) with respect to a Purchased Asset which constitutes an Approved Representation Exception shall constitute a Representation Breach.

"Representation Exceptions": With respect to each Purchased Asset, a written list prepared by the related Seller and delivered to Buyer prior to the Purchase Date of such Purchased Asset specifying, in reasonable detail, the representations and warranties (or portions thereof) set forth in this Agreement (including in Schedule 1) that are not satisfied with respect to an Asset or Purchased Asset.

"Repurchase Date": For any Purchased Asset, the earliest to occur of (a) the Facility Termination Date, without giving effect to any unexercised extensions thereof, (b) any Early Repurchase Date therefor, (c) the Business Day on which the related Seller is to repurchase such Purchased Asset as specified by such Seller and agreed to by Buyer in the related Confirmation, and (d) the date that is two (2) Business Days prior to the maturity date (under the related Purchased Asset Documents with respect to such Purchased Asset including, with respect to each Senior Interest that is a participation, the related Whole Loan) for such Purchased Asset after giving effect to any extension of such maturity date, whether by modification, waiver, forbearance or otherwise which does not require consent of the lender(s) with respect to such Purchased Asset Documents or, if consent of the lender(s) is required with respect to such Purchased Asset Documents, such extension is permitted hereunder or is otherwise approved by Buyer in writing in its sole discretion; provided that, solely with respect to this clause (d), the settlement date with respect to such Repurchase Date and Purchased Asset may occur two (2) Business Days thereafter as provided in Section 3.05).

"Repurchase Documents": Collectively, this Agreement, the Custodial Agreement, the Fee Letter, the Account Control Agreement, all Interest Rate Protection Agreements, the Pledge and Security Agreement, the Guarantee Agreement, the Servicing Agreement and any related sub-servicing agreements, all Confirmations, all UCC financing

statements, amendments and continuation statements filed pursuant to any other Repurchase Document, and all additional documents, certificates, agreements or instruments, the execution of which is required, necessary or incidental to or desirable for performing or carrying out any other Repurchase Document.

"Repurchase Obligations": All obligations of each Seller to pay the Repurchase Price on the Repurchase Date and all other obligations and liabilities of each Seller to Buyer arising under or in connection with the Repurchase Documents (for the avoidance of doubt, including all Interest Rate Protection Agreements with Affiliated Hedge Counterparties), whether now existing or hereafter arising, and, without duplication, all interest and fees that accrue after the commencement by or against any Seller or Guarantor of any Insolvency Proceeding naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding (in each case, whether due or accrued).

"Repurchase Price": For any Purchased Asset as of any date, an amount equal to the sum of (a) the outstanding Purchase Price as of such date (as increased by any Future Funding Amounts and any other additional funds advanced in connection with such Purchased Asset), (b) the accrued and unpaid Price Differential for such Purchased Asset as of such date, (c) all other amounts that are due and payable as of such date by any Seller to Buyer under this Agreement or any Repurchase Document, (d) any accrued and unpaid fees and expenses and accrued and unpaid indemnity amounts, late fees, default interest, breakage costs and any other amounts owed by any Seller or Guarantor to Buyer or any of its Affiliates under this Agreement or any Repurchase Document and (e) the Exit Fee, if any, applicable to such Purchased Asset on any Early Repurchase Date.

"Requirements of Law": With respect to any Person or property or assets of such Person and as of any date, all of the following applicable thereto as of such date: all Governing Documents and existing and future laws, statutes, rules, regulations, treaties, codes, ordinances, permits, certificates, orders and licenses of and interpretations by any Governmental Authority (including, without limitation, Environmental Laws, ERISA, Anti-Money Laundering Laws, Anti-Corruption Laws, Sanctions, regulations of the Board of Governors of the Federal Reserve System, and laws, rules and regulations relating to usury, licensing, truth in lending, fair credit billing, fair credit reporting, equal credit opportunity, fair debt collection practices and privacy), judgments, decrees, injunctions, writs, awards or orders of any court, arbitrator or other Governmental Authority.

"Responsible Officer": With respect to any Person, the chief executive officer, the chief financial officer, the chief accounting officer, the treasurer or the chief operating officer of such Person or such other officer designated as an authorized signatory pursuant to such Person's Governing Documents.

"Retained Interest": (a) With respect to any Purchased Asset, (i) all duties, obligations and liabilities of the related Seller thereunder, including payment and indemnity obligations, (ii) all obligations of agents, trustees, servicers, administrators or other Persons under the documentation evidencing such Purchased Asset, and (iii) if any portion of the Indebtedness related to such Purchased Asset is owned by another lender or is being retained by

a Seller, the interests, rights and obligations under such documentation to the extent they relate to such portion, and (b) with respect to any Purchased Asset with an unfunded commitment on the part of a Seller, all obligations to provide additional funding, contributions, payments or credits, except to the extent otherwise specified in the related Confirmation.

"S&P": Standard and Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc. or, if Standard & Poor's Ratings Services is no longer issuing ratings, another nationally recognized rating agency reasonably acceptable to Buyer.

"Sanction" or "Sanctions": Individually and collectively, any and all economic or financial sanctions, trade embargoes and anti-terrorism laws imposed, administered or enforced from time to time by: (a) the United States of America, including those administered by the U.S. Treasury Department's Office of Foreign Assets Control (OFAC), the U.S. State Department, the U.S. Department of Commerce, or through any existing or future Executive Order; (b) the United Nations Security Council; (c) the European Union; (d) the United Kingdom; or (e) any other Governmental Authorities with jurisdiction over Seller, Guarantor or any of their Affiliates.

"Sanctioned Target": Any individual, entity, group, sector, territory or country that is a target of any Sanctions, including any legal entity that is deemed to be an individual, entity, group, sector, territory or country that is a target of any Sanctions, based upon the direct or indirect ownership or control of such entity by any other Sanctioned Target(s).

"Second Extended Facility Termination Date": December 14, 2027.

"Second Extension Period": The period commencing on the day immediately following the First Extended Facility Termination Date and ending on the Second Extended Facility Termination Date.

"Seller" or "Sellers": Individually and collectively, as the context may require, ACRC Lender W LLC, a Delaware limited liability company, and ACRC Lender W TRS LLC, a Delaware limited liability company.

"Senior Interest": (a) A senior or *pari passu* participation interest in a Whole Loan (i) that is evidenced by a Senior Interest Note, (ii) that represents an undivided participation interest in part of the underlying Whole Loan and its proceeds, (iii) that represents a pass through of a portion of the payments made on the underlying Whole Loan which lasts for the same length of time as such Whole Loan, (iv) as to which there is no guaranty of payments to the holder of the Senior Interest Note or other form of credit support for such payments, and (v) either (x) represents the controlling interest in such Whole Loan and vests the holder thereof with control or consent rights with respect to all material decisions regarding such Whole Loan or (y) is an Eligible NCPPP, or (b) an "A" note in an "A/B", "A-1/A-2" or similar structure in a Whole Loan, in each case for which (I) the Mortgaged Property has fully stabilized, as determined by Buyer, and (II) the Sellers have provided evidence acceptable to Buyer that the Sellers have delivered written notice to the other participation holders or noteholders, as applicable, under the related participation agreement or co-lender agreement that such participation interest or "A" note has been sold in a Transaction.

"Senior Interest Documents": For any Senior Interest, the Senior Interest Note, together with any co-lender agreements, participation agreements and/or other intercreditor agreements or other documents governing or otherwise relating to such Senior Interest, and the Mortgage Loan Documents for the related Whole Loan, and including, without limitation, those documents which are required to be delivered to Custodian under the Custodial Agreement (which documents so required to be delivered to Custodian shall only be required to include, for the avoidance of doubt, copies of the Mortgage Loan Documents for the related Whole Loan).

"Senior Interest Note": (a) The original executed promissory note, participation or other certificate or other tangible evidence of a Senior Interest, (b) the related original Mortgage Note (or, if the applicable Seller cannot obtain the original, then a certified copy thereof), and (c) the related original participation and/or intercreditor agreement, as applicable (or, if the applicable Seller cannot obtain the original, then a certified copy thereof with a lost note affidavit signed by a senior officer of such Seller in such form as is acceptable to Buyer in its discretion).

"Servicing Agreement": An agreement entered into by Buyer (if applicable), Sellers and Interim Servicer for the servicing of the Purchased Assets, acceptable to Buyer.

"Servicing File": With respect to any Purchased Asset, the file retained and maintained by the applicable Seller or Interim Servicer, including the originals or copies of all the applicable Purchased Asset Documents and other documents and agreements (i) relating to such Purchased Asset and/or the related Whole Loan, (ii) relating to the origination and/or servicing and administration of such Purchased Asset and/or the related Whole Loan, or (iii) that are otherwise reasonably necessary for the ongoing administration and/or servicing of such Purchased Asset and/or the related Whole Loan or for evidencing or enforcing any of the rights of the holder of such Purchased Asset or holders of interests therein, including, to the extent applicable, all servicing agreements, files, documents, records, databases, computer tapes, insurance policies and certificates, appraisals, other closing documentation, payment history and other records relating to or evidencing the servicing of such Purchased Asset, which file shall be held by such Seller and/or the Interim Servicer for and on behalf of Buyer.

"Servicing Rights": With respect to any Purchased Asset, all right, title and interest of each Seller, Pledgor, Guarantor or any Affiliate of Seller, Pledgor or Guarantor, or any other Person, in and to any and all of the following: (a) rights to service and/or sub-service, and collect and make all decisions with respect to, the Purchased Assets and/or any related Whole Loans, (b) amounts received by each Seller, Pledgor, Guarantor or any Affiliate of any Seller, Pledgor or Guarantor, or any other Person, for servicing and/or sub-servicing the Purchased Assets and/or any related Whole Loans, (c) late fees, penalties or similar payments as compensation with respect to the Purchased Assets and/or any related Whole Loans, (d) agreements and documents creating or evidencing any such rights to service and/or sub-service (including, without limitation, all Servicing Agreements), together with all documents, files and records relating to the servicing and/or sub-servicing of the Purchased Assets and/or any related Whole Loans, and rights of any Seller, Pledgor, Guarantor or any Affiliate of any Seller, Pledgor or Guarantor, or any other Person thereunder, (e) escrow, reserve and similar amounts with respect to the Purchased Assets and/or any related Whole Loans, (f) rights to appoint, designate

and retain any other servicers, sub-servicers, special servicers, agents, custodians, trustees and liquidators with respect to the Purchased Assets and/or any related Whole Loans, and (g) accounts and other rights to payment related to the Purchased Assets and/or any related Whole Loans.

"SOFR": A rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

"SOFR Administrator": The Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

"SOFR Administrator's Website": The website of the Federal Reserve Bank of New York, currently at http://www.newyorkfed.org, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

"SOFR Adjustment": 0.11448% per annum.

"SOFR Average": For any Pricing Period, the rate per annum determined by Buyer as the compounded average of SOFR over a rolling calendar day period of thirty (30) days ("30-Day SOFR Average") for the applicable Pricing Rate Determination Date as such rate is published on the SOFR Administrator's Website; provided, however, that (i) if as of 5:00 p.m. (New York City time) on any Pricing Rate Determination Date, such 30-Day SOFR Average has not been published on the SOFR Administrator's Website and a Benchmark Replacement Date with respect to SOFR Average has not occurred, then SOFR Average will be the 30-Day SOFR Average as published on the SOFR Administrator's Website for the first preceding U.S. Government Securities Business Day for which such 30-Day SOFR Average was published on the SOFR Administrator's Website so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Pricing Rate Determination Date and (ii) if the calculation of SOFR Average as determined as provided above (including pursuant to clause (i) of this proviso) results in a SOFR Average rate of less than the Floor, SOFR Average shall be deemed to be the Floor for all purposes of this Agreement and the other Repurchase Documents. Each calculation by Buyer of SOFR Average shall be conclusive and binding for all purposes, absent manifest error.

"SOFR Based Pricing Rate Determination Date": (a) In the case of the first Pricing Period for any Purchased Asset, the related Purchase Date for such Purchased Asset, and (b) in the case of each subsequent Pricing Period, the date that is two (2) U.S. Government Securities Business Days prior to the Remittance Date on which such Pricing Period begins or on any other date as determined by Buyer and communicated to Seller. The failure to communicate shall not impair Buyer's decision to reset the Pricing Rate on any date.

"SOFR Based Transaction": Any Transaction that is not a LIBOR Based Transaction.

"Solvent": With respect to any Person at any time, having a state of affairs such that all of the following conditions are met at such time: (a) the fair value of the assets and

property of such Person is greater than the amount of such Person's liabilities (including disputed, contingent and unliquidated liabilities) as such value is established and liabilities evaluated for purposes of Section 101(32) of the Bankruptcy Code, (b) the present fair salable value of the assets and property of such Person in an orderly liquidation of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person is able to realize upon its assets and property and pay its debts and other liabilities (including disputed, contingent and unliquidated liabilities) as they mature in the normal course of business, (d) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay as such debts and liabilities mature, and (e) such Person is not engaged in a business or a transaction, and is not about to engage in a business or a transaction, for which such Person's assets and property would constitute unreasonably small capital.

"Specified Affiliate": ACRC Holdings LLC, ACRC Lender LLC and Pledgor; provided, however, that if any Seller or its Affiliates dissolve or liquidate ACRC Holdings LLC at any time, then ACRC Holdings LLC shall thereupon cease to be a Specified Affiliate.

"SPV Conversion Date": With respect to each Seller, the date upon which the Governing Documents with respect to such Seller were amended, restated, amended and restated, supplemented or otherwise modified to, among other things, implement the Independent Manager Provisions.

"Structuring Fee": Defined in the Fee Letter, which definition is incorporated herein by reference.

"Sub-Limit": The composition of Purchased Assets subject to this Agreement at all times meet the following sub-limits, and no Market Value shall be ascribed to any Purchased Asset to the extent that it violates any of the following sub-limits as of each related date of the determination thereof:

(at) to the extent that the Market Value ascribed to Eligible NCPPPs would exceed twenty percent (20%) of the Maximum Amount;

(au) to the extent that the Market Value ascribed to any one Purchased Asset would exceed twenty-five percent (25%) of the Maximum Amount; and

(av) to the extent that the Market Value ascribed to Purchased Assets that are secured by underlying Mortgaged Properties consisting primarily of hotel properties (as determined by Buyer), would exceed fifteen percent (15%) of the Maximum Amount.

"Subsidiary": With respect to any Person, any corporation, partnership, limited liability company or other entity (heretofore, now or hereafter established) of which at least a majority of the securities or other ownership interests having by the terms thereof ordinary voting power to elect a majority of the board of directors or other persons performing similar functions of such corporation, partnership, limited liability company or other entity (without regard to the occurrence of any contingency) is at the time directly or indirectly owned or

controlled by such Person or one or more Subsidiaries of such Person or by such Person and one or more Subsidiaries of such Person, and shall include all Persons the accounts of which are consolidated with those of such Person pursuant to GAAP.

"Taxes": All present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"Term SOFR": For any calculation with respect to a SOFR Based Transaction for which Term SOFR is the Applicable SOFR, the Term SOFR Reference Rate for a tenor of one month on the applicable Pricing Rate Determination Date, as such rate is published by the Term SOFR Administrator; provided, however, that (i) if as of 5:00 p.m. (New York City time) on any Pricing Rate Determination Date the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Pricing Rate Determination Date and (ii) if the calculation of Term SOFR as determined as provided above (including pursuant to clause (i) of this proviso) results in a Term SOFR rate of less than the Floor, Term SOFR shall be deemed to be the Floor for all purposes of this Agreement and the other Repurchase Documents.

"Term SOFR Administrator": CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by Buyer in its reasonable discretion).

"Term SOFR Reference Rate": The forward-looking term rate based on SOFR.

"Test Period": The meaning specified in the Guarantee Agreement.

"Transaction": With respect to any Asset, the sale and transfer of such Asset from the related Seller to Buyer pursuant to the Repurchase Documents against the transfer of funds from Buyer to such Seller representing the Purchase Price or any additional Purchase Price for such Asset.

"Transaction Request": Defined in Section 3.01(a).

"Transferor": The applicable seller of an Asset under a Purchase Agreement.

"Type": With respect to a Mortgaged Property underlying any Purchased Asset, such Mortgaged Property's classification as one of the following: multifamily, retail, office, industrial, student housing, self-storage and hotels.

"UCC": The Uniform Commercial Code as in effect in the State of New York; provided, that, if, by reason of a Requirement of Law, the perfection, effect on perfection or non perfection or priority of the security interest in any Purchased Asset is governed by the Uniform Commercial Code as in effect in a jurisdiction other than New York, then "UCC" shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection or priority.

"Unadjusted Benchmark Replacement": The applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

"Underlying Obligor": Individually and collectively, as the context may require, (a) in the case of a Purchased Asset that is a Whole Loan, the Mortgagor and each obligor and guarantor under such Purchased Asset, including (i) any Person who has not signed the related Mortgage Note but owns an interest in the related Mortgaged Property, which interest has been encumbered to secure such Purchased Asset, and (ii) any other Person who has assumed or guaranteed the obligations of such Mortgagor under the Purchased Asset Documents relating to such Purchased Asset, (b) in the case of a Purchased Asset that is a Senior Interest, the Mortgagor and each obligor and any other Person who has assumed or guaranteed the related Whole Loan, and (c) in the case of any Purchased Asset that is a Mezzanine Loan, (i) all underlying obligors with respect to the related Whole Loan and the owner of the related Mortgaged Property, (ii) the borrower under the related Mezzanine Loan, and (iii) any other Person who has assumed or guaranteed the obligation of such Mezzanine Loan borrower.

"Underwriting Package": With respect to one or more Assets, the internal document or credit committee memorandum (redacted to protect confidential information) setting forth all material information relating to an Asset which is known by the applicable Seller, prepared by such Seller for its evaluation of such Asset, to include at a minimum all the information required to be set forth in the relevant Confirmation or, in the alternative, materials of a like kind that would typically be provided by a loan originator to a nationally recognized statistical rating organization in connection with a collateral debt obligation or commercial mortgage-backed securities offering acceptable in Buyer's discretion. In addition, the Underwriting Package shall include all of the following, to the extent applicable and available:

(aw) copies of all Purchased Asset Documents (provided that in the case of a Wet Mortgage Asset, the Underwriting Package delivered in connection with a Transaction Request under Section 3.01(a) shall provide .pdf copies of all such Purchased Asset Documents to the extent available at such time, including substantially final drafts of any documents that will constitute Purchased Asset Documents upon their execution, together with a pledge by the related Seller to forward final, signed Purchased Asset Documents within five (5) Business Days after the related Purchase Date); and

(ax) all Purchased Asset Documents required to be delivered to Custodian under Section 2.01 of the Custodial Agreement, (b) an Appraisal, (c) the current occupancy report, tenant stack and rent roll, (d) if and to the extent available after the exercise of reasonable effort by the related Seller, at least two (2) years of property-level financial statements, (e) the current financial statement of the Underlying Obligor, (f) the mortgage asset file described in the

Custodial Agreement, (g) third-party reports and agreed-upon procedures, letters and reports (whether drafts or final forms), site inspection reports, market studies and other due diligence materials prepared by or on behalf of or delivered to the applicable Seller, (h) if and to the extent available after the exercise of reasonable effort by such Seller, aging of accounts receivable and accounts payable, (i) copies of Purchased Asset Documents, (j) such further documents or information as Buyer may request, (k) any and all agreements, documents, reports, or other information concerning the Purchased Assets (including, without limitation, all of the related Purchased Asset Documents) received or obtained in connection with the origination of the Purchased Assets, (l) any other material documents or reports concerning the Purchased Assets prepared or executed by the applicable Seller or Guarantor, and (m) all documents, instruments and agreement received in respect of the closing of the acquisition transaction under the Purchase Agreement.

"Upsize Fee": Defined in the Fee Letter, which definition is incorporated herein by reference.

"Upsize Option": Defined in Section 3.06(c).

"USD LIBOR": The London interbank offered rate for U.S. dollars with a tenor of one month.

"USD LIBOR Transition Date": Means the earlier of (a) the date that USD LIBOR has either (i) permanently or indefinitely ceased to be provided by the administrator of USD LIBOR; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide an USD LIBOR or (ii) been announced by the regulatory supervisor of the administrator of USD LIBOR pursuant to public statement or publication of information to be no longer representative, (b) the Early Opt-in Effective Date and (c) such other date as Buyer and Sellers may mutually agree.

"U.S. Governmental Securities Business Day": Any day except for (i) a Saturday, (ii) a Sunday or (iii) a day on which the Securities Industry and Financial Markets Association, or any successor thereto, recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

"U.S. Person": Any Person that is a "United States person" as defined in Section 7701(a)(30) of the Code.

"U.S. Special Resolution Regime": Each of (i) the Federal Deposit Insurance Act and the regulations promulgated thereunder and (ii) Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the regulations promulgated thereunder.

"U.S. Tax Compliance Certificate": Defined in Section 12.07(e).

"Waterfall Account": A segregated non-interest bearing account established at Waterfall Account Bank, in the name of the Sellers, pledged to Buyer and subject to a Controlled Account Agreement.

"Waterfall Account Bank": Wells Fargo Bank, National Association, or any other bank approved by Buyer.

"Wet Mortgage Asset": An Eligible Asset for which (i) the scheduled origination date of the related Whole Loan is the proposed Purchase Date set forth in the Transaction Request and (ii) a complete Mortgage Asset File has not been delivered to Custodian prior to the related Purchase Date.

"Whole Loan": A performing commercial real estate whole loan made to the related Underlying Obligor and secured primarily by a perfected, first priority Lien in the related underlying Mortgaged Property, including, without limitation (A) with respect to any Senior Interest, the whole loan in which the applicable Seller owns a Senior Interest, and (B) with respect to any Mezzanine Loan, the whole loan made to the Mortgagor or Affiliate of such Mortgagor whose Equity Interests, directly or indirectly, secure such Mezzanine Loan.

Section 2.1 Rules of Interpretation. Headings are for convenience only and do not affect interpretation. The following rules of this Section 2.01 apply unless the context requires otherwise. The singular includes the plural and conversely. A gender includes all genders. Where a word or phrase is defined, its other grammatical forms have a corresponding meaning. A reference to an Article, Section, Subsection, Paragraph, Subparagraph, Clause, Annex, Schedule, Appendix, Attachment, Rider or Exhibit is, unless otherwise specified, a reference to an Article, Section, Subsection, Paragraph, Subparagraph or Clause of, or Annex, Schedule, Appendix, Attachment, Rider or Exhibit to, this Agreement, all of which are hereby incorporated herein by this reference and made a part hereof. A reference to a party to this Agreement or another agreement or document includes the party's successors, substitutes or assigns in each case, permitted by the Repurchase Documents. A reference to an agreement or document is to the agreement or document as amended, restated, modified, novated, supplemented or replaced, except to the extent prohibited by any Repurchase Document. A reference to legislation or to a provision of legislation includes a modification, codification, replacement, amendment or reenactment of it, a legislative provision substituted for it and a rule, regulation or statutory instrument issued under it. A reference to writing includes a facsimile or electronic transmission and any means of reproducing words in a tangible and permanently visible form. A reference to conduct includes an omission, statement or undertaking, whether or not in writing. A Default or Event of Default exists until it has been cured or waived in writing by Buyer. The words "hereof," "herein," "hereunder" and similar words refer to this Agreement as a whole and not to any particular provision of this Agreement, unless the context clearly requires or the language provides otherwise. The word "including" is not limiting and means "including without limitation." The word "any" is not limiting and means "any and all" unless the context clearly requires or the language provides otherwise. In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including," the words "to" and "until" each mean "to but excluding," and the word "through" means "to and including." The words "will" and "shall" have the same meaning and effect. A reference to day or days without further qualification means calendar days. A reference to any time means New York time. This Agreement may use several different limitations, tests or measurements to regulate the same or similar matters. All such limitations, tests and measurements are

cumulative and shall each be performed in accordance with their respective terms. Unless the context otherwise clearly requires, all accounting terms not expressly defined herein shall be construed in accordance with GAAP, and all accounting determinations, financial computations and financial statements required hereunder shall be made in accordance with GAAP, without duplication of amounts, and on a consolidated basis with all Subsidiaries. All terms used in Articles 8 and 9 of the UCC, and used but not specifically defined herein, are used herein as defined in such Articles 8 and 9. A reference to "fiscal year" and "fiscal quarter" means the fiscal periods of the applicable Person referenced therein. A reference to an agreement includes a security interest, guarantee, agreement or legally enforceable arrangement whether or not in writing. A reference to a document includes an agreement (as so defined) in writing or a certificate, notice, instrument or document, or any information recorded in computer disk form. Whenever a Person is required to provide any document to Buyer under the Repurchase Documents, the relevant document shall be provided in writing or printed form unless Buyer requests otherwise. At the request of Buyer, the document shall be provided electronically or both printed and electronically. The Repurchase Documents are the result of negotiations between the Parties, have been reviewed by counsel to Buyer and counsel to each Seller, and are the product of both Parties. No rule of construction shall apply to disadvantage one Party on the ground that such Party proposed or was involved in the preparation of any particular provision of the Repurchase Documents or the Repurchase Documents themselves. Except where otherwise expressly stated, Buyer may give or withhold, or give conditionally, approvals and consents, and may form opinions and make determinations, in its sole and absolute discretion subject in all cases to the implied covenant of good faith and fair dealing. Reference herein or in any other Repurchase Document to Buyer's discretion, shall mean, unless otherwise expressly stated herein or therein, Buyer's sole and absolute discretion, and the exercise of such discretion shall be final and conclusive. In addition, whenever Buyer has a decision or right of determination, opinion or request, exercises any right given to it to agree, disagree, accept, consent, grant waivers, take action or no action or to approve or disapprove (or any similar language or terms), or any arrangement or term is to be satisfactory or acceptable to or approved by Buyer (or any similar language or terms), the decision of Buyer with respect thereto, except where otherwise expressly stated, shall be in the sole and absolute discretion of Buyer, and such decision shall be final and conclusive subject in all cases to the implied covenant of good faith and fair dealing.

Section 2.2 Rates. Price Differential on Transactions denominated in Dollars or any other currency permitted hereunder (if any) may be determined by reference to a benchmark rate that is, or may in the future become, the subject of regulatory reform or cessation. Regulators have signaled the need to use alternative reference rates for some of these benchmark rates and, as a result, such benchmark rates may cease to comply with applicable laws and regulations, may be permanently discontinued or the basis on which they are calculated may change. Buyer does not warrant or accept any responsibility for, and shall not have any liability with respect to, (i) the continuation of, administration of, submission of, calculation of or any other matter related to the London interbank offered rate, any other any offered rate, the rates in any Benchmark, any component definition thereof or rates referred to in the definition thereof or with respect to any alternative, successor or replacement rate thereto (including any then-current Benchmark or any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark

Replacement), as it may or may not be adjusted pursuant to Section 12.01, will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, such Benchmark or any other Benchmark prior to its discontinuance or unavailability, or (ii) the effect, implementation or composition of any Conforming Changes. Buyer and its affiliates or other related entities may engage in transactions that affect the calculation of a Benchmark, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto, in each case, in a manner that may be adverse to Seller. Buyer may select information sources or services in its reasonable discretion to ascertain any Benchmark, any component definition thereof or rates referred to in the definition thereof, in each case pursuant to the terms of this Agreement, and shall have no liability to Seller or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

ARTICLE 3
THE TRANSACTIONS

Section 3.1 Procedures.

(a) From time to time during the Funding Period, a Seller may request Buyer to enter into a proposed Transaction by sending notice to Buyer (a "Transaction Request") (i) describing the Transaction and each proposed Asset and any related underlying Mortgaged Property and other security therefor in reasonable detail, (ii) transmitting a complete Underwriting Package for each proposed Asset, and (iii) specifying which (if any) of the representations and warranties of such Seller set forth in this Agreement (including in Schedule 1 applicable to the Class of such Asset) such Seller will be unable to make with respect to such Asset. Such Seller shall promptly deliver to Buyer any supplemental materials requested at any time by Buyer. Buyer shall conduct such review of the Underwriting Package and each such Asset as Buyer determines appropriate. Buyer shall determine whether or not it is willing to purchase any or all of the proposed Assets, and if so, on what terms and conditions. It is expressly agreed and acknowledged that Buyer is entering into the Transactions on the basis of all such representations and warranties and on the completeness and accuracy of the information contained in the applicable Underwriting Package, and any incompleteness or inaccuracies in the related Underwriting Package will only be acceptable to Buyer if disclosed in writing to Buyer by such Seller in advance of the related Purchase Date, and then only if Buyer opts to purchase the related Purchased Asset from such Seller notwithstanding such incompleteness and inaccuracies. In the event of a Representation Breach, the applicable Seller shall within three (3) Business Days after notice repurchase the related Asset or Assets in accordance with Section 3.05.

(b) Buyer shall give the related Seller notice of the date when Buyer has received a complete Underwriting Package and supplemental materials. Buyer shall approve or disapprove in writing any proposed Asset, within ten (10) Business Days after such date. If Buyer has not communicated such decision to such Seller by such date, Buyer shall

automatically and without further action be deemed to have determined not to purchase any such Asset.

(c) If Buyer communicates to the related Seller a final non-binding determination that it is willing to purchase any or all of such Assets, such Seller shall deliver to Buyer an executed preliminary Confirmation for such Transaction, describing each such Asset and its proposed Purchase Date, Market Value, Applicable Percentage, Purchase Price, Applicable SOFR and such other terms and conditions as Buyer may require. If Buyer requires changes to the preliminary Confirmation, the related Seller shall make such changes and re-execute the preliminary Confirmation. If Buyer determines to enter into the Transaction on the terms described in the preliminary Confirmation, Buyer shall execute and return the same to such Seller at the time that Buyer pays the related Purchase Price to applicable Seller, which shall thereupon become effective as the Confirmation of the Transaction. Buyer's approval of the purchase of an Asset on such terms and conditions as Buyer may require shall be evidenced only by its execution and delivery of the related Confirmation. For the avoidance of doubt, Buyer shall not (i) be bound by any preliminary or final non-binding determination referred to above, or (ii) be obligated to purchase an Asset notwithstanding a Confirmation executed by the Parties unless and until all applicable conditions precedent in Article 6 have been satisfied or waived by Buyer.

(d) Each Confirmation, together with this Agreement, shall be conclusive evidence of the terms of the Transaction covered thereby, and shall be construed to be cumulative to the extent possible. If terms in a Confirmation are inconsistent with terms in this Agreement with respect to a particular Transaction, the Confirmation shall prevail. Whenever the Applicable Percentage or any other term of a Transaction (other than the Pricing Rate, Market Value and outstanding Purchase Price) with respect to an Asset is revised or adjusted in accordance with this Agreement, an amended and restated Confirmation reflecting such revision or adjustment and that is otherwise acceptable to the Parties shall be prepared by the related Seller and executed by the Parties.

(e) The fact that Buyer has conducted or has failed to conduct any partial or complete examination or any other due diligence review of any Asset or Purchased Asset shall in no way affect any rights Buyer may have under the Repurchase Documents or otherwise with respect to any representations or warranties or other rights or remedies thereunder or otherwise, including the right to determine at any time that such Asset or Purchased Asset is not an Eligible Asset.

(f) No Transaction shall be entered into if (i) any Margin Deficit, Default or Event of Default exists or would exist as a result of such Transaction, (ii) the Repurchase Date for the Purchased Assets subject to such Transaction would be later than the Facility Termination Date, or (iii) after giving effect to such Transaction, the Aggregate Amount Outstanding would exceed the Maximum Amount.

(g) [Reserved].

(h) Notwithstanding any of the foregoing provisions of this Section 3.01 or any contrary provisions set forth in the Custodial Agreement, solely with respect to any Wet Mortgage Asset:

(i) by 12:00 noon (New York City time) on the Purchase Date, the related Seller or Bailee shall deliver signed .pdf copies of the Purchased Asset Documents to Custodian via electronic mail, and such Seller shall deliver the appropriate written third-party wire transfer instructions to Buyer;

(ii) not later than 12:00 noon (New York City time) on the related Purchase Date, (A) Bailee shall deliver an executed .pdf copy of the Bailee Agreement to related Seller, Buyer and Custodian by electronic mail and (B) if Buyer has previously received the trust receipt in accordance with Section 3.01(b) of the Custodial Agreement, determined that all other applicable conditions in this Agreement, including without limitation those set forth in Section 6.02 hereof have been satisfied, and otherwise has agreed to purchase the related Wet Mortgage Asset, Buyer shall (I) execute and deliver a .pdf copy of the related Confirmation to the related Seller and Bailee via electronic mail and (II) wire funds in the amount of the related Purchase Price for the related Wet Mortgage Asset in accordance with the wire transfer instructions that were previously delivered to Buyer by such Seller; and

(iii) within five (5) Business Days after the applicable Purchase Date with respect to any Wet Mortgage Asset, the related Seller shall deliver, or cause to be delivered (A) to Custodian, the complete original Mortgage Asset File with respect to such Wet Mortgage Asset, pursuant to and in accordance with the terms of the Custodial Agreement, and (B) to Buyer, the complete original Underwriting Package with respect to the related Wet Mortgage Assets purchased by Buyer; provided, that, if Buyer's diligence review of the related Mortgage Asset File requires the delivery of a mortgage file, document or instrument or the equivalent that such Seller cannot deliver, or cause to be delivered, to Custodian at the time they are required to be delivered, solely because of a delay caused by the public recording office where such document or instrument has been delivered for recordation, the delivery requirements set forth in this Agreement and the Custodial Agreement shall be deemed to have been satisfied as to such non-delivered Mortgage Asset File, document or instrument if a copy thereof (certified by such Seller to be a true and complete copy of the original thereof submitted for recording) is delivered to Custodian on or before the date on which such original is required to be delivered, and either the original of such non-delivered document or instrument, or a photocopy thereof, with evidence of recording thereon, is delivered to Custodian within ninety (90) days of the related Purchase Date, and, provided, further, that Buyer may, but is not obligated to, consent to a later date for delivery of any part of the Mortgage Asset File in its sole discretion.

(i) Purchased Assets with an initial Recourse Percentage of greater than twenty-five percent (25%) that have been sufficiently modified or otherwise rehabilitated may be re-submitted by Seller for an adjustment to such Recourse Percentage, with such request

including all supporting documentation and information as requested by Buyer. Buyer shall determine, in its sole discretion, whether or not to approve or deny each such adjustment request and, if so, on what terms and conditions. Any such adjustment that is approved by Buyer and for which Seller satisfies all other conditions for a Transaction set forth in the Repurchase Documents shall be subject to an amended and restated Confirmation executed by Seller and Buyer and the Recourse Percentage with respect to such Purchased Asset will thereafter be as set forth in such amended and restated Confirmation for all purposes under the Repurchase Documents; provided that the Pricing Margin and Applicable Percentage for any such Purchased Asset shall not be changed or modified unless otherwise agreed by Buyer in its sole discretion in the amended and restated Confirmation.

(j) In addition to the foregoing provisions of this Section 3.01, solely with respect to any Mezzanine Related Mortgage Asset owned by a Seller that is being purchased by Buyer hereunder, such Seller shall (i) as part of the Underwriting Package, provide Buyer with such information regarding the related Mezzanine Loans as Buyer may request including, without limitation, any related intercreditor, co-lender or similar agreements, and (ii) in connection with the purchase thereof by Buyer, convey, transfer and assign to Buyer, for no additional consideration from Buyer, each Mezzanine Loan relating to such Mezzanine Related Mortgage Asset owned by such Seller, Guarantor or any of their respective Affiliates to Buyer, in form and substance satisfactory to Buyer, together with all other documents necessary or desirable to effect such collateral assignment, in each case as determined by Buyer and its counsel in their discretion

(k) Notwithstanding anything to the contrary herein, in no event shall any LIBOR Based Transaction be entered into on or after January 1, 2022, unless otherwise agreed by Buyer in its sole discretion.

Section 3.2 Transfer of Purchased Assets; Servicing Rights. On the Purchase Date for each Purchased Asset, and subject to the satisfaction of all applicable conditions precedent in Article 6, (a) ownership of and title to such Purchased Asset shall be transferred to and vest in Buyer or its designee against the simultaneous transfer of the Purchase Price to the account of the related Seller specified in Annex 1 (or if not specified therein, in the related Confirmation or as directed by such Seller), and (b) such Seller hereby sells, transfers, conveys and assigns to Buyer on a servicing-released basis all of such Seller's right, title and interest (except with respect to any Retained Interests) in and to such Purchased Asset, together with all related Servicing Rights. Subject to this Agreement, during the Funding Period a Seller may sell to Buyer, repurchase from Buyer and re-sell Eligible Assets to Buyer, but Sellers may not substitute other Eligible Assets for Purchased Assets. Buyer has the right to designate each servicer of the Purchased Assets. The Servicing Rights and other servicing provisions under this Agreement are not severable from or to be separated from the Purchased Assets under this Agreement; and, such Servicing Rights and other servicing provisions of this Agreement constitute (a) "related terms" under this Agreement within the meaning of Section 101(47)(A)(i) of the Bankruptcy Code and/or (b) a security agreement or other arrangement or other credit enhancement related to the Repurchase Documents. To the extent any additional limited liability company is formed by a Division of Seller (and without prejudice to Sections 8.01 and 9.01

hereof), Seller shall cause each such Division LLC to sell, transfer, convey and assign to Buyer on a servicing released basis and for no additional consideration all of each such Division LLC's right, title and interest in and to each Purchased Asset, together with all related Servicing Rights in the same manner and to the same extent as the sale, transfer, conveyance and assignment by Seller on each related Purchase Date of all of Seller's right, title and interest in and to each Purchased Asset, together with all related Servicing Rights.

Section 3.3 Maximum Amount. The aggregate outstanding Purchase Price for all Purchased Assets as of any date of determination shall not exceed the Maximum Amount. If the aggregate outstanding Purchase Price for all Purchased Assets as of any date of determination exceeds the Maximum Amount, Sellers shall immediately pay to Buyer an amount necessary to reduce such aggregate outstanding Purchase Price to an amount equal to or less than the Maximum Amount. Once per calendar year, so long as no Default or Event of Default has occurred and is continuing, Sellers shall have the option to reduce the Maximum Amount at their discretion without premium or penalty to an amount no less than the then-outstanding aggregate Purchase Price upon three (3) Business Days advance notice to Buyer. In addition, the Maximum Amount shall be automatically reduced to the outstanding aggregate Purchase Price plus the amount of any remaining unfunded Buyer commitments set forth on all outstanding Confirmations as of the expiration of the Funding Period.

Section 3.4 Early Repurchase Date; Mandatory Repurchases.

(a) The applicable Seller may terminate any Transaction with respect to any or all Purchased Assets sold by such Seller and repurchase such Purchased Assets on any date prior to the Repurchase Date (an "Early Repurchase Date"); provided, that (a) such Seller irrevocably notifies Buyer at least three (3) Business Days before the proposed Early Repurchase Date identifying the Purchased Asset(s) to be repurchased and the Repurchase Price thereof, (b) such Seller delivers a certificate from a Responsible Officer of such Seller in form and substance satisfactory to Buyer certifying that no Margin Deficit, Default or Event of Default exists or would exist as a result of such repurchase and there are no other Liens on the Purchased Assets or Pledged Collateral other than Buyer's Lien, unless all such Liens are satisfied in full on or before the related Early Repurchase Date (c) if the Early Repurchase Date is not a Remittance Date, such Seller pays to Buyer any amount due under Section 12.04 and pays all amounts due to any Affiliated Hedge Counterparty under the related Interest Rate Protection Agreement, (d) such Seller pays to Buyer the related (if any) Exit Fee due and payable, but no such Exit Fee shall be due and payable if the related repurchase occurs in connection with an Exempted Transaction, and (e) such Seller thereafter complies with Section 3.05. Such early terminations and repurchases shall be limited to three (3) occurrences in any calendar week.

(b) In addition to other rights and remedies of Buyer under any Repurchase Document, the applicable Seller shall, within two (2) Business Days of receipt of written notice from Buyer, repurchase any Purchased Asset that no longer qualifies as an Eligible Asset.

(c) In addition to the foregoing, in connection with each repurchase made pursuant to Section 3.04(a), if such repurchase occurs at any time during (i) the First Extension Period, then the applicable Seller shall pay an amount equal to 110% of the applicable

Repurchase Price otherwise payable for such date, and (ii) the Second Extension Period, then the applicable Seller shall pay an amount equal to 125% of the applicable Repurchase Price otherwise payable for such date; provided, however, if (x) at the time of any repurchase during the time period described in clause (i) above, there are at least seven (7) remaining Purchased Assets and the Debt Yield for all of the remaining Purchased Assets, calculated on an aggregate basis, equals or exceeds nine percent (9.0%), or (y) if at the time of any repurchase during the time period described in clause (ii) above, (i) the Debt Yield for all of the remaining Purchased Assets, calculated on an aggregate basis, equals or exceeds twelve and one-half percent (12.5%), and (ii) the PPV Ratio for all of the remaining Purchased Assets, calculated on an aggregate basis, is less than or equal to forty-five percent (45%), then the amount payable pursuant to the applicable clause shall be solely the applicable Repurchase Price for such date. The proceeds of any payment made pursuant to this Section 3.04(c) in excess of the applicable Repurchase Price that otherwise would have been payable shall be applied by Buyer first to repay any outstanding Margin Deficits, and second to reduce the unpaid Repurchase Prices of all remaining Purchased Assets on a pro rata basis, unless such Seller and Buyer otherwise agree to apply any such amounts differently.

(d) In addition, at any time during the existence of an uncured Event of Default or an unsatisfied Margin Deficit, if a Seller elects to repurchase a Purchased Asset due to the prepayment in whole (but not in part) of the underlying Whole Loan, such Seller shall pay to Buyer one-hundred percent (100%) of the net proceeds due in connection with the payoff of the underlying Purchased Asset in question, up to the amount of funds necessary to both cure the Event of Default and/or unsatisfied Margin Deficit (and pay in full the Repurchase Price for such Purchased Asset). All such net proceeds in excess of the outstanding Repurchase Price of the related Purchased Asset shall be applied first to any other Purchased Asset to the extent of any Margin Deficit, and then pro-rata to the Repurchase Prices of all other Purchased Assets, unless such Seller and Buyer otherwise agree to apply such amount differently, and if such application has served to fully cure all outstanding Defaults or Events of Default and pay to Buyer any other amounts due and payable under the Repurchase Documents, then any remaining amounts to such Seller.

Section 3.5 Repurchase. On the Repurchase Date for each Purchased Asset, the applicable Seller shall transfer to Buyer the Repurchase Price for such Purchased Asset as of the Repurchase Date, and pay all amounts due to any Affiliated Hedge Counterparty under the related Interest Rate Protection Agreement and, so long as no Event of Default has occurred and is continuing, Buyer shall transfer to such Seller such Purchased Asset, along with all rights validly transferred to Buyer by such Seller on the Purchase Date thereof, whereupon such Transaction with respect to such Purchased Asset shall terminate; provided, however, that, with respect to any Repurchase Date that occurs on the second Business Day prior to the maturity date (as defined under the related Purchased Asset Documents with respect to such Purchased Asset) for such Purchased Asset by reason of clause (d) of the definition of "Repurchase Date", settlement of the payment of the Repurchase Price and such amounts may occur up to the second Business Day after such Repurchase Date; provided, further, that Buyer shall have no obligation to transfer to such Seller, or release any interest in, such Purchased Asset until Buyer's receipt of payment in full of the Repurchase Price therefor. So long as no Event of Default has occurred and is continuing, Buyer shall be deemed to have simultaneously released its security interest in

such Purchased Asset, shall authorize Custodian to promptly release to the applicable Seller the Mortgage Asset File for such Purchased Asset, and Buyer shall execute, acknowledge and deliver to the related Seller, at such Seller's sole expense, any and all documents, instruments and agreements necessary to release all security interests in such Purchased Asset, including, to the extent any UCC financing statement filed against such Seller specifically identifies such Purchased Asset, an amendment thereto or termination thereof evidencing the release of such Purchased Asset from Buyer's security interest therein; provided, however, that whether or not an Event of Default has occurred and is continuing hereunder, Buyer shall be required to release the Mortgage Asset File relating to a Purchased Asset and execute, acknowledge and deliver to the related Seller, at such Seller's sole expense, all necessary release documents if (a) the Underlying Obligor has paid the entire principal amount of the underlying Whole Loan and all other amounts due to Seller under the related Purchased Asset Documents and (b) such Seller makes the required prepayment of the underlying Whole Loan in respect of such Purchased Asset hereunder in accordance with Section 5.02. Any such transfer or release shall be without recourse to Buyer and without representation or warranty by Buyer, except that Buyer shall represent to the related Seller, to the extent that good title was transferred and assigned by such Seller to Buyer hereunder on the related Purchase Date, that Buyer is the sole owner of such Purchased Asset, free and clear of any other interests or Liens caused by Buyer's actions or inactions. Any Income with respect to such Purchased Asset received by Buyer or Waterfall Account Bank after payment of the Repurchase Price therefor shall be remitted to the applicable Seller. Notwithstanding the foregoing, on or before the Facility Termination Date, the applicable Seller shall repurchase all Purchased Assets by paying to Buyer the outstanding Repurchase Price therefor and all other outstanding Repurchase Obligations. Notwithstanding any provision to the contrary contained elsewhere in any Repurchase Document, at any time during the existence of an uncured Default or Event of Default, the related Seller cannot repurchase a Purchased Asset in connection with a full payoff of the underlying Whole Loan by the Underlying Obligor, unless one hundred percent (100%) of the net proceeds due in connection with the relevant payoff shall be paid directly to Buyer. The portion of all such net proceeds in excess of the then-current Repurchase Price of the related Purchased Asset shall be applied by Buyer to reduce any other amounts due and payable to Buyer under this Agreement.

Section 3.6 Extension of the Facility Termination Date.

(a) Facility Termination Date Extension Options. At the request of Sellers delivered to Buyer no earlier than ninety (90) days or later than thirty (30) days before the then-applicable Facility Termination Date, Buyer shall grant up to two (2) extensions of the Facility Termination Date for a period of one (1) year each by giving notice approving such extension to Sellers prior to the then-current Facility Termination Date. The failure of Buyer to so deliver such notice approving the extension shall be deemed to be Buyer's determination not to extend the Facility Termination Date unless Buyer thereafter gives notice to the contrary. Any extension of the Facility Termination Date shall be subject to the following conditions (the "Extension Conditions"): (i) no Default or Event of Default exists on the date of the request to extend and as of the current Facility Termination Date, (ii) no Margin Deficit shall be outstanding on the date of the request to extend and as of the current Facility Termination Date, (iii) each Seller has made a timely request for the extension in question, (iv) the Purchased Assets shall be in compliance with the requirements of the Minimum Portfolio Debt Yield Test that are applicable

to the next ensuing Extension Period on the date of the request to extend and as of the current Facility Termination Date, which compliance shall be determined by Buyer in its sole discretion, (v) all Purchased Assets must qualify as Eligible Assets on the date of the request to extend and as of the current Facility Termination Date and (vi) the payment by Sellers to Buyer of the Extension Fee has been effected on or before the current Facility Termination Date; provided that (A) if any Default, Event of Default or outstanding Margin Deficit exists or the Purchased Assets are not in compliance with the Minimum Portfolio Debt Yield Test, Buyer shall grant Sellers a temporary extension not to exceed the time permitted to cure/satisfy such Default, Event of Default, Margin Deficit or Minimum Portfolio Debt Yield Test set forth in the Repurchase Documents, and (B) if any Seller is not in compliance with any of the foregoing Extension Conditions on the date of the related extension request, such request may be submitted by Sellers, setting forth any conditions to extension of the Facility Termination Date that are not in compliance and the reasons for such non-compliance, and such request shall be granted by Buyer if, as of the Facility Termination Date for which such request is submitted, each Seller certifies to Buyer's satisfaction that it is in compliance with each of the conditions set forth in this Section 3.06(a). No additional Transactions shall be entered into after the expiration of the Funding Period.

In connection with each extension of the Facility Termination Date to a date beyond the expiration of the Funding Period, if any unfunded commitments in respect of any Purchased Asset remain outstanding on the Facility Termination Date so extended, the applicable Seller may request funding of such unfunded commitments subject to all terms and conditions of funding set forth in this Agreement, including review and approval by Buyer of such funding based on an updated Underwriting Package, in an aggregate amount not to exceed, for any such Purchased Asset, the product of (x) the Applicable Percentage attributable to such Purchased Asset and (y) the amount of unfunded commitments remaining available in respect of such Purchased Asset at such time; provided that in no event shall any amounts so funded by Buyer cause the aggregate amounts funded hereunder to exceed the Maximum Amount.

(b) Reserved.

(c) Maximum Amount Upsize Option. At any time during the Funding Period, but in no event more than three (3) times, Sellers may request an increase of the Maximum Amount (the "Upsize Option") by delivery of written notice to Buyer of such request not less than thirty (30) days prior to the requested effective date of the corresponding increase in the Maximum Amount. Each Upsize Option shall be in an amount not less than $50,000,000. Each Upsize Option in an amount greater than $50,000,000 shall be in increments of $50,000,000. Seller's request(s) to exercise an Upsize Option may be approved or denied by Buyer in Buyer's sole discretion; provided, that a request by Seller to exercise an Upsize Option will be deemed to be denied if, on the date of the related request or on the proposed effective date of such request, any of the Extension Conditions set forth in Section 3.06(a) are not satisfied. In addition, no exercise of an Upsize Option shall be effective until Seller has paid to Buyer the Upsize Fee applicable for the related Upsize Option.

Section 3.7 Partial Prepayment. On any Business Day, on three (3) Business Days' prior written notice from the applicable Seller to Buyer, such Seller may partially pay the Repurchase Price of any Purchased Asset, which shall include any related amounts then due and owing to an Affiliated Hedge Counterparty (any such asset, a "Partially Repaid Purchased Asset" and the amount so repaid, the "Partial Payment Amount"). With respect to such payment that is not occasioned by a repayment of principal with respect to the Purchased Asset, such Seller shall give Buyer at least three (3) Business Days prior notice of payment and shall not partially pay in an amount whereby the remaining Purchase Price of any such Purchased Asset, after giving effect to any such partial payment, is less than $500,000. In respect of any Partially Repaid Purchased Asset, the applicable Seller may request, on no less than one (1) Business Day's prior written notice to Buyer, that Buyer pay to such Seller the Partial Payment Amount in respect of such Partially Repaid Purchased Asset. If any such request is delivered to Buyer less than ninety (90) days after Buyer's initial approval to purchase such Purchased Asset from such Seller, Buyer shall pay to such Seller the Partial Payment Amount in respect of such Partially Repaid Purchased Asset. If any such request is delivered to Buyer ninety (90) or more days after Buyer's initial approval to purchase such Purchased Asset from such Seller, Buyer may, in its discretion either decline such request in its entirety, or accept such request in whole or in part and pay to such Seller none, all or part of the Partial Payment Amount in respect of such Partially Repaid Purchased Asset, subject to any terms or conditions Buyer may, in its discretion, require. Any prepayment made under this Section shall be deposited directly into the General Repo Account and, notwithstanding any provision in Section 5.02 to the contrary, applied by Buyer to reduce the unpaid Repurchase Price of the related Purchased Asset within one (1) Business Day after deposit therein, and not, for the avoidance of doubt, on the next Remittance Date.

Section 3.8 Payment of Price Differential and Fees.

(a) Notwithstanding that Buyer and each Seller intend that each Transaction hereunder constitute a sale to Buyer of the Purchased Assets subject thereto, each Seller shall pay to Buyer the accrued value of the Price Differential for each Purchased Asset on each Remittance Date. Buyer shall give the applicable Seller notice of the Price Differential and any fees and other amounts due under the Repurchase Documents on or prior to the second (2nd) Business Day preceding each Remittance Date; provided, that Buyer's failure to deliver such notice shall not affect such Seller's obligation to pay such amounts. If the Price Differential includes any estimated Price Differential, Buyer shall recalculate such Price Differential after the Remittance Date and, if necessary, make adjustments to the Price Differential amount due on the following Remittance Date.

(b) Sellers shall pay to Buyer all fees and other amounts as and when due as set forth in this Agreement including, without limitation, the Structuring Fee, the Extension Fee and the Upsize Fee, each of which shall be paid pursuant to the terms of the Fee Letter.

Section 3.9 Payment, Transfer and Custody.

(a) Unless otherwise expressly provided herein, all amounts required to be paid or deposited by any Seller, Guarantor or any other Person under the Repurchase Documents shall be paid or deposited in accordance with the terms hereof no later than 3:00 p.m. on the

Business Day when due, in immediately available Dollars and without deduction, setoff or counterclaim, and if not received before such time shall be deemed to be received on the next Business Day. Whenever any payment under the Repurchase Documents shall be stated to be due on a day other than a Business Day, such payment shall be made on the next following Business Day, and such extension of time shall in such case be included in the computation of such payment. Each Seller, Guarantor and Pledgor shall, to the extent permitted by Requirements of Law, pay to Buyer interest in connection with any amounts not paid when due under the Repurchase Documents, which interest shall be calculated at the Default Rate, until all such amounts are received in full by Buyer. Amounts payable to Buyer and not otherwise required to be deposited into the Waterfall Account shall be deposited into the General Repo Account. Sellers shall have no rights in, rights of withdrawal from, or rights to give notices or instructions regarding Buyer's account or the Waterfall Account or any Collection Account; provided that the Sellers may withdraw funds from the Waterfall Account or any Collection Account with the prior written consent of Buyer in accordance with the terms of the related Controlled Account Agreement. Amounts in the Waterfall Account and/or any Collection Account may be invested at the direction of Buyer in cash equivalents before they are distributed in accordance with Article 5.

(b) Any Purchased Asset Documents not delivered to Buyer or Custodian on the relevant Purchase Date and subsequently received or held by or on behalf of a Seller are and shall be held in trust by the applicable Seller or its agent for the benefit of Buyer as the owner thereof until so delivered to Buyer or Custodian. The related Seller or its agent shall maintain a copy of such Purchased Asset Documents and the originals of the Purchased Asset Documents not delivered to Buyer or Custodian. The possession of Purchased Asset Documents by the applicable Seller or its agent is in a custodial capacity only at the will of Buyer for the sole purpose of assisting Interim Servicer with its duties under the Servicing Agreement. Each Purchased Asset Document retained or held by or on behalf of a Seller or its agent shall be segregated on such Seller's books and records from the other assets of such Seller or its agent, and the books and records of such Seller or its agent shall be marked to reflect clearly the sale of the related Purchased Asset to Buyer on a servicing released basis. Each Seller or its agent shall release its custody of the Purchased Asset Documents only in accordance with written instructions from Buyer, unless such release is required as incidental to the servicing of the Purchased Assets by Interim Servicer or is in connection with a repurchase of any Purchased Asset by a Seller, in each case in accordance with the Custodial Agreement.

Section 3.10 Repurchase Obligations Absolute. All amounts payable by Sellers under the Repurchase Documents shall be paid without notice, demand, counterclaim, setoff, deduction or defense (as to any Person and for any reason whatsoever) and without abatement, suspension, deferment, diminution or reduction (as to any Person and for any reason whatsoever), and the Repurchase Obligations shall not be released, discharged or otherwise affected, except upon indefeasible payment in full or as otherwise expressly provided herein, by reason of: (a) any damage to, destruction of, taking of, restriction or prevention of the use of, interference with the use of, title defect in, encumbrance on or eviction from, any Purchased Asset or related Mortgaged Property, (b) any Insolvency Proceeding relating to any Seller, any Underlying Obligor or any other loan participant under a Senior Interest, or any action taken with respect to any Repurchase Document, Purchased Asset Document by any trustee or receiver of

Seller, any Underlying Obligor or any other loan participant under a Senior Interest, or by any court in any such proceeding, (c) any claim that Seller has or might have against Buyer under any Repurchase Document or otherwise (unless such claim relates to the indefeasible payment in full of the Repurchase Obligations), (d) any default or failure on the part of Buyer to perform or comply with any Repurchase Document or other agreement with a Seller, (e) the invalidity or unenforceability of any Purchased Asset, Repurchase Document or Purchased Asset Document, or (f) any other occurrence whatsoever, whether or not similar to any of the foregoing, and whether or not any Seller has notice or Knowledge of any of the foregoing. The Repurchase Obligations shall be full recourse to each Seller. This Section 3.10 shall survive the termination of the Repurchase Documents and the payment in full of the Repurchase Obligations.

Section 3.11 Future Funding Transactions.

(a) Each Future Funding Transaction shall be subject to the following terms and conditions:

(i) The applicable Seller shall give Buyer written notice of each proposed Future Funding Transaction, together with a draft of the amended and restated Confirmation signed by a Responsible Officer of Seller. Each amended and restated Confirmation shall identify the related Whole Loan and/or Senior Interest, shall identify Buyer and the applicable Seller, shall set forth the requested Future Funding Amount and shall be executed by both Buyer and such Seller; provided, however, that Buyer shall not be liable to Seller if it inadvertently acts on an amended and restated Confirmation that has not been signed by a Responsible Officer of Seller. Each amended and restated Confirmation, together with this Agreement, shall be conclusive evidence of the terms of the Future Funding Transaction covered thereby, and shall be construed to be cumulative to the extent possible. If terms in an amended and restated Confirmation are inconsistent with terms in this Agreement with respect to a particular Future Funding Transaction, such amended and restated Confirmation shall prevail.

(ii) For each proposed Future Funding Transaction, the applicable Seller shall deliver to Buyer a Future Funding Request Package no less than seven (7) Business Days prior to the proposed date of such Future Funding Transaction. Buyer shall have the right to conduct an additional due diligence investigation of the Future Funding Request Package and/or the related Purchased Asset as Buyer determines. Any Future Funding Transaction shall be subject to the following conditions as determined by Buyer in its sole discretion: (A) all of the applicable conditions precedent for a Transaction, as described in Section 6.02(b), (e), (f) and (h) have been met by such Seller; (B) the consummation of the related Future Funding Transaction would not cause such Seller to breach the Minimum Portfolio Debt Yield Test; (C) if Buyer has not purchased from such Seller a complete ownership interest in the entire related Whole Loan, all of the terms and conditions relating to the splitting of such Whole Loan into multiple interests are satisfactory to Buyer in all respects; (D) all related conditions precedent set forth in the related Purchased Asset Documents have been satisfied; and (E) prior to or simultaneously with Buyer's funding of the Future Funding Transaction, Seller has

funded or caused to be funded to the Underlying Obligor (or to an escrow agent or as otherwise directed by the Underlying Obligor) its pro rata portion of the related future advance to the Underlying Obligor (collectively, the "Future Funding Transaction Conditions"). Upon Buyer's determination in its sole and absolute discretion that the Future Funding Transaction Conditions have been satisfied, Buyer shall advance the requested Future Funding Amount in accordance with clause (iii) below. If Buyer determines that the Future Funding Transaction Conditions have not been satisfied and does not advance the requested Future Funding Amount with respect to any such Future Funding Transaction, Seller shall promptly satisfy all future funding obligations with respect thereto as and when required pursuant to the related Purchased Asset Documents, together with the terms of this Agreement.

(iii) Upon the entry by Buyer into a particular Future Funding Transaction, Buyer shall deliver to Seller a signed copy of the related amended and restated Confirmation described in clause (i) above. On the date of such Future Funding Transaction, which shall occur no later than three (3) Business Days after the final approval of such Future Funding Transaction by Buyer in accordance with clause (ii) above, (a) if an escrow agreement has been established in connection with such Future Funding Transaction, Buyer shall remit the related Future Funding Amount to the related escrow account, (b) if the terms of the Purchased Asset Documents provide for a reserve account in connection with future advances, Buyer shall remit the related Future Funding Amount to the applicable reserve account, (c) upon evidence satisfactory to Buyer that Seller has paid (or cause to be paid) to or as directed by the related Underlying Obligor the entire future funding obligation required by the related Purchased Asset Documents, Buyer shall remit the related Future Funding Amount to Seller, and (d) otherwise, Buyer shall remit the related Future Funding Amount directly to the related Underlying Obligor.

(b) Notwithstanding anything to the contrary herein, in no event shall any Future Funding Transaction with respect to any LIBOR Based Transaction be entered into on or after January 1, 2022, unless otherwise agreed by Buyer in its sole discretion.

ARTICLE 4

MARGIN MAINTENANCE

Section 4.1 Margin Deficit.

(a) (i) If on any date the Market Value of a Purchased Asset is less than the product of (A) the Margin Percentage times (B) the outstanding Repurchase Price for such Purchased Asset as of such date (the excess, if any, a "Margin Deficit"), and provided that (I) a Credit Event relating to such Purchased Asset has occurred, and (II) each Margin Deficit shall exclude any portion thereof that resulted from any interest rate changes and/or credit spread movements, then the related Seller shall, within five (5) Business Days after the receipt of written notice from Buyer (which notice may be by electronic mail) (a "Margin Call") (i) transfer cash to Buyer, (ii) repurchase Purchased Assets at the Repurchase Price thereof, or (iii) choose any combination of the foregoing, so that, after giving effect to such transfers, repurchases and

payments, the aggregate Purchase Price for all Purchased Assets does not exceed an aggregate amount equal to the products of the Market Value for each Purchased Asset, times the Applicable Percentage. Buyer shall apply the funds received in satisfaction of a Margin Deficit with respect to a Purchased Asset to the Repurchase Obligations owing with respect to such Purchased Asset.

(i) In lieu of a Margin Call pursuant to Section 4.01(a)(i), Buyer may, in its discretion upon written request of the related Seller, reallocate previous partial prepayments made pursuant to Section 3.07 in order to eliminate the related Margin Deficit by increasing the Purchase Price of certain Purchased Assets and decreasing the Purchase Price of other Purchased Assets. Any such request for reallocation shall include a certification by such Seller that no Default or Event of Default has occurred and is continuing (except as would be cured by such reallocation), and shall set forth the following, with such back-up calculations as Buyer may require: (i) the amount of prior partial prepayments and Purchased Assets so prepaid pursuant to Section 3.07 that such Seller requests be re-allocated, (ii) the Purchased Asset to which such Seller is requesting such prior partial prepayment be applied, the new Purchase Price of such Purchased Asset and the new Purchase Price of the previously prepaid Purchased Asset, in each case, after giving pro forma effect to such allocation, (iii) the amount of the Margin Deficit on each applicable Purchased Asset both immediately prior to and immediately after giving pro forma effect to such allocation and (iv) the PPV Test will be satisfied and the Applicable Percentage of such Purchased Asset will not exceed the Maximum Applicable Percentage, in each case after giving pro forma effect to such allocation. Upon Buyer's independent confirmation, in its commercially reasonable judgment, that the conclusions and calculations set forth in the related Seller's written request comply with the requirements set forth above, Buyer may, in its discretion, reallocate previous prepayments to those Purchased Assets for which Margin Deficits would otherwise exist, in a manner acceptable to Buyer in its commercially reasonable judgment and such Seller shall submit new Confirmations acceptable to Buyer reflecting the new Purchase Price of all affected Purchased Assets. Notwithstanding anything to the contrary herein, in no event shall Buyer make a reallocation in respect of any LIBOR Based Transaction *(i.e.*, in such a way that the Purchase Price of any such LIBOR Based Transaction would be increased) at any time to cure in whole or in part a Margin Deficit relating to (x) any SOFR Based Transaction or (y) any LIBOR Based Transaction where such reallocation would result in an increase to the Purchase Price of any LIBOR Based Transaction with a Repurchase Date that is later than the Repurchase Date of the LIBOR Based Transaction in respect of which such Margin Deficit exists.

(b) Notwithstanding the foregoing, in the event the Margin Call arises solely as a result of Buyer's determination of an adverse change in the value of the related Mortgaged Property as described in item (iv) of the definition of the term Credit Event, and if the related Seller disputes in good faith such determination by Buyer, such Seller shall have the right by, within the five (5) Business Day period specified in Section 4.01(a)(i), giving Buyer written notice of such dispute and depositing with Buyer (in an account within Buyer's sole dominion and control) the full amount of the Margin Deficit and, the parties will proceed to attempt to

resolve such dispute within the next forty-five (45) days in accordance with the appraisal procedure set forth in Schedule 3 hereto, provided that, for the avoidance of doubt, any such dispute period shall not limit any other rights or privileges of Buyer.

(c) Buyer's election not to deliver, or to forbear from delivering, a margin deficit notice at any time there is a Margin Deficit shall not waive or be deemed to waive the Margin Deficit or in any way limit, stop or impair Buyer's right to deliver a margin deficit notice at any time when the same or any other Margin Deficit exists. Buyer's rights relating to Margin Deficits under this Section 4.01 are cumulative and in addition to and not in lieu of any other rights of Buyer under the Repurchase Documents or Requirements of Law.

(d) All cash transferred to Buyer pursuant to this Section 4.01 with respect to a Purchased Asset shall be deposited into the General Repo Account and notwithstanding any provision in Section 5.02 to the contrary, shall be applied to reduce the Purchase Price of such Purchased Asset within one (1) Business Day after deposit and not, for the avoidance of doubt, on the next Remittance Date.

(e) If the applicable Seller believes in good faith that the Credit Event or underlying circumstances that resulted in the most recent determination of Current Mark-to-Market Value of a Purchased Asset is no longer applicable or that the Market Value resulting from such Credit Event has otherwise materially increased, it may request that Buyer consider reassessing the Market Value of the subject Purchased Asset, and Buyer agrees to do so. If, as a result of such reassessment, Buyer determines, in its discretion, that the Market Value for such Purchased Asset has increased, and has received all required internal credit approvals necessary to do so, the Current Mark-to-Market Value shall be revised accordingly, subject to further adjustment as otherwise provided in this Agreement. Such Seller's requests for Buyer to reassess the Market Value of Purchased Assets shall be limited to one (1) request per Purchased Asset per calendar quarter. Nothing in this Section 4.01(e) shall be interpreted to in any way reduce or mitigate Buyer's sole power and discretion to determine Market Value or Credit Event.

(f) If on any date within ninety (90) days following the Purchase Date of a particular Purchased Asset (and provided no Default or Event of Default has occurred and is then continuing and no Margin Deficit remains unpaid), either (i) the outstanding Purchase Price of such Purchased Asset has previously been reduced by one or more previous partial prepayments made by a Seller in accordance with Section 3.07, or (ii) on such Purchase Date, the Purchase Price of such Purchased Asset was, at such Seller's request, less than the maximum Purchase Price approved by Buyer, as indicated on the related Confirmation, such Seller may deliver a written request to Buyer that Buyer pay to such Seller an amount equal to the amount of either (A) part or all of the partial prepayments described in clause (i) above, and/or (B) part or all of the difference described in clause (ii) above, and Buyer shall pay to such Seller the amount so requested within three (3) Business Days of the date of the related request, so long as, both immediately before and, on a pro forma basis, immediately after the date of each such payment, both the Minimum Portfolio Debt Yield Test and the PPV Test have not been breached. Prior to any such payment, such Seller shall prepare, and the Parties shall execute an amended and restated Confirmation that is otherwise acceptable to the Parties, reflecting such increased Purchase Price.

ARTICLE 5

APPLICATION OF INCOME

Section 5.1 Waterfall Account; Collection Accounts. The Waterfall Account and all Collection Accounts shall be established at Waterfall Account Bank. Buyer shall have sole dominion and control (including, without limitation, "control" within the meaning of Section 9-104(a)(2) of the UCC) over the Waterfall Account. None of any Seller, Interim Servicer or any Person claiming through or under any Seller or Interim Servicer shall have any claim to or interest in the Waterfall Account and all Collection Accounts; provided that the Sellers (or Interim Servicer, at the direction of a Seller) may withdraw funds from the Waterfall Account or any Collection Account with the prior written consent of Buyer in accordance with the terms of the related Controlled Account Agreement. Subject to the final sentence of this Section 5.01, all Underlying Obligors and servicers shall be directed to pay all Income directly into the Collection Account, and any Income received by a Seller, Interim Servicer, Buyer or Waterfall Account Bank in respect of the Purchased Assets shall be deposited directly into the Waterfall Account, within two (2) Business Days of receipt, except to the extent expressly set forth in Section 3.07, and except, prior to an Event of Default, for all amounts due and payable to Interim Servicer under the Interim Servicing Agreement, which shall be paid directly to Interim Servicer as and when due, shall be applied to and remitted by Waterfall Account Bank in accordance with this Article 5. Notwithstanding the foregoing, each Seller shall, promptly after receiving notice of an Underlying Obligor's intent to make an unscheduled Principal Payment (A) instruct and cause the related Underlying Obligor to directly deposit such unscheduled Principal Payment into the General Repo Account (and in the event that such unscheduled Principal Payment is nonetheless received by the applicable Seller or Interim Servicer, shall forward such funds into the General Repo Account on the Business Day of receipt, unless such payment was received after 1 PM (Central time), in which case the recipient shall use its best efforts to make such transfer on the same Business Day and shall, in all cases, make such transfer on the next Business Day); and within one (1) Business Day of the receipt thereof, Buyer shall apply the each such Principal Payment in accordance with Sections 5.02 and 5.03 below, and (B) provide Buyer with prior notice of the intended receipt thereof from an Underlying Obligor, together with a copy of the related remittance instructions that were previously delivered to the related Underlying Obligor.

Section 5.2 Before an Event of Default. If no Event of Default exists and remains uncured, all Income described in Section 5.01 and deposited into the Waterfall Account during each Pricing Period shall be applied by Waterfall Account Bank, Buyer or a Person designated by Buyer pursuant to the related Controlled Account Agreement by no later than the next following Remittance Date in the following order of priority:

first, to the extent not withheld by Interim Servicer in accordance with Sections 5.01 and 8.06, to pay to Interim Servicer an amount equal to any accrued and unpaid Servicing Fees (as defined in the Interim Servicing Agreement) in accordance with the terms of the Interim Servicing Agreement;

second, to pay to Buyer an amount equal to the Price Differential accrued with respect to all Purchased Assets as of such Remittance Date;

third, to pay to Buyer an amount equal to all default interest, late fees, fees, expenses and Indemnified Amounts then due and payable from any Seller and other applicable Persons to Buyer under the Repurchase Documents;

fourth, to pay to Buyer an amount sufficient to eliminate any outstanding Margin Deficit (without limiting any Seller's obligation to satisfy a Margin Deficit in a timely manner as required by Section 4.01);

fifth, to pay any custodial fees and expenses due and payable under the Custodial Agreement;

sixth, to pay to Buyer, the Applicable Percentage of any scheduled Principal Payments (to the extent actually deposited into the Waterfall Account), but only to the extent that such remittance would not result in the creation of a Margin Deficit, to be applied to reduce the outstanding Purchase Price of the applicable Purchased Assets or as otherwise agreed in writing by Buyer and the applicable Seller;

seventh, to pay to Buyer any other amounts then due and payable from any Seller and other applicable Persons to Buyer under the Repurchase Documents; and

eighth, to pay to the applicable Seller any remainder for its own account, subject, however, to the covenants and other requirements of the Repurchase Documents; provided that, if any Material Facility Default has occurred and is continuing on such Remittance Date, all amounts otherwise payable to such Seller hereunder shall be retained in the Waterfall Account until the earlier of (x) the day on which Buyer provides written notice to the Waterfall Account Bank that such Material Facility Default has been cured to satisfaction of Buyer in its sole discretion, at which time the Waterfall Account Bank shall apply all such amounts pursuant to this priority *eighth*; and (y) the day that is ten (10) Business Days after the occurrence of the applicable Material Facility Default, at which time the Waterfall Account Bank shall apply all such amounts pursuant to priorities *sixth* and *seventh* of Section 5.03.

Section 5.3 After an Event of Default. If an Event of Default exists and remains uncured, all Income deposited into the Waterfall Account in respect of the Purchased Assets shall be applied by Waterfall Account Bank, Buyer or a Person designated by Buyer pursuant to the related Controlled Account Agreement on the second Business Day following the date on which each amount of Income is so deposited, in the following order of priority:

first, to pay to Buyer an amount equal to the Price Differential accrued with respect to all Purchased Assets as of such date;

second, to pay to Buyer an amount equal to all default interest, late fees, fees, expenses and Indemnified Amounts then due and payable from any Seller and other applicable Persons to Buyer under the Repurchase Documents;

third, to pay any custodial fees and expenses due and payable under the Custodial Agreement;

fourth, to pay to Buyer an amount equal to the aggregate Repurchase Price of all Purchased Assets (to be applied in such order and in such amounts as determined by Buyer, until the aggregate Repurchase Price of all Purchased Assets has been reduced to zero);

fifth, to pay to Interim Servicer, amounts due and payable under the Servicing Agreement;

sixth, to pay to Buyer all other Repurchase Obligations due to Buyer; and

seventh, if all of the Repurchase Obligations have been fully repaid, to pay to the applicable Seller any remainder for its own account, subject, however, to the covenants and other requirements of the Repurchase Documents.

Section 5.4 Sellers to Remain Liable. If the amounts remitted to Buyer as provided in Sections 5.02 and 5.03 are insufficient to pay all amounts due and payable from each Seller to Buyer under this Agreement or any Repurchase Document on a Remittance Date, a Repurchase Date, upon the occurrence of an Event of Default or otherwise, each Seller shall nevertheless remain liable for and shall pay to Buyer when due all such amounts.

ARTICLE 6

CONDITIONS PRECEDENT

Section 6.1 Conditions Precedent to Closing. The effectiveness of the Existing Repurchase Agreement, including Buyer's obligation to enter into any Transaction and/or purchase any Asset thereunder, was subject to the satisfaction or waiver by Buyer, of the conditions precedent set forth in Section 6.01 of the Existing Repurchase Agreement.

(a) Conditions Precedent to Closing of this Third Amended and Restated Repurchase Agreement. The effectiveness of this Agreement, including the amendment and restatement of the Existing Repurchase Agreement and Buyer's obligation to enter into any Transaction and/or purchase any Asset hereunder, is subject to the satisfaction or waiver by Buyer, of the following conditions precedent, on and as of the Closing Date and the initial Purchase Date:

(i) Buyer has received the following documents, each dated the Closing Date or as of the Closing Date unless otherwise specified: (A) the Closing Date Repurchase Documents duly executed and delivered by the parties thereto, (B) an official good standing certificate dated a recent date with respect to each Seller, (C) certificates of the

secretary or an assistant secretary of each Seller with respect to attached copies of the Governing Documents and applicable resolutions of each Seller, and the incumbencies and signatures of officers of each Seller executing the Repurchase Documents to which it is a party, evidencing the authority of each Seller with respect to the execution, delivery and performance thereof, (D) a Closing Certificate and (E) such opinions from counsel to each Seller as Buyer may reasonably require, including with respect to corporate matters, enforceability, non-contravention, no consents or approvals required other than those that have been obtained, first priority perfected security interests in the Purchased Assets and any other collateral pledged pursuant to the Repurchase Agreement, Investment Company Act matters, and the applicability of Bankruptcy Code safe harbors (or reaffirmations bringing down all legal opinions delivered to Buyer on May 17, 2017), and all other documents, certificates, information, financial statements and reports as requested in writing by Buyer prior to the Closing Date.

(ii) (A) UCC financing statements have been filed against each Seller and Pledgor in all filing offices required by Buyer, (B) Buyer has received such searches of UCC filings, tax liens, judgments, pending litigation and other matters relating to any Seller and the Purchased Assets as Buyer may require, and (C) the results of such searches are satisfactory to Buyer;

(iii) Buyer has received payment from Sellers of all fees and expenses then payable under the Fee Letter and the other Repurchase Documents, as contemplated by Section 13.02;

(iv) Buyer has completed to its satisfaction such due diligence (including, Buyer's "Know Your Customer", Anti-Corruption Laws, Sanctions and Anti-Money Laundering Laws diligence) and modeling as Buyer may require; and

(v) Buyer has received approval from its internal credit committee and all other necessary approvals required for Buyer, to enter into this Agreement and consummate Transactions hereunder.

Section 6.2 Conditions Precedent to All Transactions. Buyer shall not be obligated to enter into any Transaction, purchase any Asset, or be obligated to take, fulfill or perform any other action hereunder relating to the prospective purchase of any Asset or to fund any future fundings relating to any existing Purchased Asset, until the following additional conditions have been satisfied or waived by Buyer, with respect to each Asset on and as of the Purchase Date therefor:

(a) Buyer has received the following documents: (i) a Transaction Request, (ii) an Underwriting Package, (iii) a Confirmation, (iv) a trust receipt and other items required to be delivered under the Custodial Agreement, (v) with respect to any Wet Mortgage Asset, a Bailee Agreement, (vi) all other documents, certificates, information, financial statements, reports, approvals and opinions of counsel as Buyer may require and (vii) evidence that each Seller is in good standing in the jurisdiction where the underlying Mortgaged Property is located, to the extent that such Seller is then-currently required to do so under an applicable Requirement of Law (provided, however, that with respect to any Wet Mortgage Asset, delivery

of the foregoing items in accordance with the provisions of Section 3.01(g) and (h) shall be deemed to satisfy the conditions of Section 6.02(a) (unless otherwise determined in the discretion of Buyer));

(b) immediately before such Transaction and after giving effect thereto and to the intended use thereof, no Representation Breach (including with respect to any Purchased Asset), Default, Event of Default, Margin Deficit, or Material Adverse Effect related to any Seller or Guarantor;

(c) Buyer has completed its due diligence review of the Underwriting Package, Purchased Asset Documents and such other documents, records and information as Buyer deems appropriate, and the results of such reviews are satisfactory to Buyer;

(d) Buyer has (i) determined that such Asset is an Eligible Asset, (ii) approved the purchase of such Asset, (iii) obtained all necessary internal credit and other approvals for such Transaction and (iv) executed the Confirmation;

(e) immediately after giving effect to such Transaction, the Aggregate Amount Outstanding does not exceed the Maximum Amount;

(f) the Repurchase Date specified in the Confirmation is not later than the Facility Termination Date;

(g) Each Seller, Pledgor and Custodian have satisfied all requirements and conditions and have performed all covenants, duties, obligations and agreements contained in the Repurchase Documents to be performed by such Person on or before the Purchase Date;

(h) to the extent the related Purchased Asset Documents contain notice, cure and other provisions in favor of a pledgee under a repurchase or warehouse facility, and without prejudice to the sale treatment of such Asset to Buyer, Buyer has received evidence that each Seller has given notice to the applicable Persons of Buyer's interest in such Asset and otherwise satisfied any other applicable requirements under such pledgee provisions so that Buyer is entitled to the rights and benefits of a pledgee under such pledgee provisions;

(i) if requested by Buyer, such opinions from counsel to Sellers, Pledgor and Guarantor as Buyer may require, including, without limitation, with respect to the perfected security interest in the Purchased Assets, the Pledged Collateral and any other collateral pledged pursuant to the Repurchase Document;

(j) Custodian (or a bailee) shall have received executed blank assignments of all Purchased Asset Documents in appropriate form for recording, to the extent such documents are required to be recorded, in the jurisdiction in which the underlying real estate is located, together with executed blank assignments of all other Purchased Asset Documents (the "Blank Assignment Documents"); and

(k) (i) Buyer has received a copy of any Interest Rate Protection Agreement and related documents entered into with respect to such Asset, (ii) each Seller has assigned to

Buyer all of such Seller's rights (but none of its obligations) under such Interest Rate Protection Agreement and related documents, and (iii) no termination event, default or event of default (however defined) exists thereunder.

Each Confirmation delivered by a Seller shall constitute a certification by such Seller that all of the conditions precedent in this Article 6 have been satisfied other than those set forth in Sections 6.01(a)(vi), (d) and (e) and Section 6.02(a)(vii), (c) and (d).

The failure of a Seller to satisfy any of the conditions precedent in this Article 6 with respect to any Transaction or Purchased Asset shall, unless such failure was set forth in an exceptions schedule to the relevant Confirmation or otherwise waived in writing by Buyer on or before the related Purchase Date, give rise to the right of Buyer at any time to rescind the related Transaction, whereupon the related Seller shall immediately pay to Buyer the Repurchase Price of such Purchased Asset.

ARTICLE 7

REPRESENTATIONS AND WARRANTIES OF SELLERS

Each Seller represents and warrants, on and as of the date of this Agreement, each Purchase Date, and at all times when any Repurchase Document or Transaction is in full force and effect, as follows:

Section 7.1 Sellers. Each Seller has been duly organized and validly exists in good standing as a limited liability company under the laws of the jurisdiction of its incorporation, organization or formation. Each Seller (a) has all requisite power, authority, legal right, licenses and franchises, (b) is duly qualified to do business in all jurisdictions necessary, and (c) has been duly authorized by all necessary action, to (w) own, lease and operate its properties and assets, (x) conduct its business as presently conducted, (y) execute, deliver and perform its obligations under the Repurchase Documents to which it is a party, and (z) acquire, own, sell, assign, pledge and repurchase the Purchased Assets, except where the lack of such licenses, authorizations, consents and approvals would not be reasonably likely to have a Material Adverse Effect. Each Seller's exact legal name is set forth in the preamble and signature pages of this Agreement. Each Seller's location (within the meaning of Article 9 of the UCC), and the office where each Seller keeps all records (within the meaning of Article 9 of the UCC) relating to the Purchased Assets is at the address of Sellers referred to in Annex 1. Each Seller has not changed its name within the past twelve (12) months. Each Seller has changed its location to the location shown in Section 7.16 within the past twelve (12) months. ACRC Seller's organizational identification number is 5044236 and its tax identification number is 45-3561907. TRS Seller's organizational identification number is 5447261 and its tax identification number is 80-0966058. Each Seller has no subsidiaries. Each Seller is a wholly-owned Subsidiary of Pledgor. The fiscal year of each Seller is the calendar year. Each Seller has no Indebtedness, Contractual Obligations or Investments other than (a) ordinary trade payables, (b) in connection with Assets acquired or originated for the Transactions, (c) the Repurchase Documents, and (d) ordinary and necessary expenses incurred in connection with any of the activities permitted under Section 9.01(q) or (s). Each Seller has no Guarantee Obligations.

Section 7.2 Repurchase Documents. Each Repurchase Document to which a Seller is a party has been duly executed and delivered by such Seller and constitutes the legal, valid and binding obligation of such Seller enforceable against such Seller in accordance with its terms, except as such enforceability may be limited by Insolvency Laws and general principles of equity. The execution, delivery and performance by each Seller of each Repurchase Document to which it is a party do not and will not (a) conflict with, result in a breach of, or constitute (with or without notice or lapse of time or both) a default under, any (i) Governing Document, Indebtedness, Guarantee Obligation or Contractual Obligation applicable to such Seller or any of its properties or assets, (ii) Requirements of Law, or (iii) approval, consent, judgment, decree, order or demand of any Governmental Authority (except where such conflict, breach or default could not reasonably be expected to have a Material Adverse Effect), or (b) result in the creation of any Lien (other than, except with respect to any Purchased Asset, any Liens granted pursuant to the Repurchase Documents) on any of the properties or assets of such Seller. All approvals, authorizations, consents, orders, filings, notices or other actions of any Person or Governmental Authority required for the execution, delivery and performance by each Seller of the Repurchase Documents to which it is a party and the sale of and grant of a security interest in each Purchased Asset to Buyer, have been obtained, effected, waived or given and are in full force and effect. The execution, delivery and performance of the Repurchase Documents do not require compliance by any Seller with any "bulk sales" or similar law. There is no material litigation, proceeding or investigation pending or, to the Knowledge of any Seller threatened, against any Seller, Guarantor or any Specified Affiliate before any Governmental Authority (a) asserting the invalidity of any Repurchase Document, (b) seeking to prevent the consummation of any Transaction, or (c) seeking any determination or ruling that could reasonably be expected to have a Material Adverse Effect.

Section 7.3 Solvency. None of the Sellers, Guarantor or any Specified Affiliate is or has ever been the subject of an Insolvency Proceeding. Each Seller, Guarantor and each Specified Affiliate is Solvent and the Transactions do not and will not render such Seller, Guarantor or any Specified Affiliate not Solvent. Neither Seller is entering into the Repurchase Documents or any Transaction with the intent to hinder, delay or defraud any creditor of a Seller, Guarantor or any Specified Affiliate. Each Seller has received or will receive reasonably equivalent value for the Repurchase Documents and each Transaction. Each Seller has adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations. Each Seller is generally able to pay, and as of the date hereof is paying, its debts as they come due.

Section 7.4 Taxes. Each Seller, Guarantor and each Specified Affiliate have each timely filed all required federal tax returns and all other material tax returns, domestic and foreign, required to be filed by them and have (for all prior fiscal years and for the current fiscal year to date) timely paid all federal and other material taxes (including mortgage recording taxes), assessments, fees, and other governmental charges (whether imposed with respect to their income or any of their properties or assets) which have become due and payable, other than any such taxes, assessments, fees, or other governmental charges that are being contested in good faith by appropriate proceedings diligently conducted and for which appropriate reserves have been established in accordance with GAAP. Each Seller, Guarantor and each Specified Affiliate

have paid, or have provided adequate reserves for the payment of, all such taxes for all prior fiscal years and for the current fiscal year to date. There is no material action, suit, proceeding, investigation, audit or claim relating to any such taxes now pending or, to the Knowledge of Seller, threatened by any Governmental Authority which is not being contested in good faith as provided above. None of the Sellers, Guarantor or any Specified Affiliate have entered into any agreement or waiver or been requested to enter into any agreement or waiver extending any statute of limitations relating to the payment or collection of taxes, or is aware of any circumstances that would cause the taxable years or other taxable periods of any Seller, Guarantor or any Specified Affiliate not to be subject to the normally applicable statute of limitations. No tax liens have been filed against any assets of any Seller, Guarantor or any Specified Affiliate. Each Seller does not intend to treat any Transaction as being a "reportable transaction" as defined in Treasury Regulation Section 1.6011–4. If either Seller determines to take any action inconsistent with such intention, it will promptly notify Buyer, in which case Buyer may treat each Transaction as subject to Treasury Regulation Section 301.6112–1 and will maintain the lists and other records required thereunder.

Section 7.5 True and Complete Disclosure. The information, reports, certificates, documents, financial statements, operating statements, forecasts, books, records, files, exhibits and schedules furnished by or on behalf of either Seller to Buyer in connection with the Repurchase Documents and the Transactions, when taken as a whole, do not contain any untrue statement of material fact or omit to state any material fact necessary to make the statements herein or therein, in light of the circumstances under which they were made, not misleading. All written information furnished after the date hereof by or on behalf of any Seller to Buyer in connection with the Repurchase Documents and the Transactions will be true, correct and complete in all material respects or in the case of projections will be based on reasonable estimates prepared and presented in good faith, in each case, on the date as of which such information is stated or certified, except that this representation will be made to the best Knowledge of the applicable Seller for all such written information obtained from Persons who are not Affiliates of Seller.

Section 7.6 Compliance with Laws. Each Seller has complied in all respects with all Requirements of Law, and no Purchased Asset contravenes any Requirements of Law, except in each case where such matters would not be reasonably likely to have a Material Adverse Effect. None of Sellers, Guarantor or, to the best knowledge of Sellers or Guarantor, after due inquiry, any Affiliate of any Seller or Guarantor is in violation of any Sanctions. None of Sellers, Guarantor or any Affiliate of Sellers or Guarantor is a Sanctioned Target. The proceeds of any Transaction have not been and will not be used, directly or indirectly, to fund any operations in, finance any investments or activities in or make any payments to a Sanctioned Target or otherwise in violation of Sanctions, Anti-Corruption Laws or Anti-Money Laundering Laws. Each Seller is a "qualified purchaser" as defined in the Investment Company Act. Neither Seller, Guarantor nor any Specified Affiliate (a) is, nor immediately after the application by any Seller of the proceeds of any sale of a Purchased Asset will they be, required to be registered as an "investment company" as defined in the Investment Company Act, (b) is a "broker" or "dealer" as defined in, or could be subject to a liquidation proceeding under, the Securities Investor Protection Act of 1970, or (c) is subject to regulation by any Governmental Authority limiting its ability to incur the Repurchase Obligations. Each Seller, Guarantor and all Subsidiaries of each Seller and Guarantor are in compliance with the Foreign Corrupt Practices

Act of 1977, as amended and any foreign counterpart thereto. None of Seller, Guarantor nor any Subsidiary of any Seller or Guarantor, has made, offered, promised or authorized a payment of money or anything else of value (a) in order to assist in obtaining or retaining business for or with, or directing business to, any foreign official, foreign political party, party official or candidate for foreign political office, (b) to any foreign official, foreign political party, party official or candidate for foreign political office, or (c) with the intent to induce the recipient to misuse his or her official position to direct business wrongfully to any Seller, any Affiliate of a Seller or any other Person, in violation of the Foreign Corrupt Practices Act of 1977, as amended.

Section 7.7 Compliance with ERISA. None of Sellers, Pledgor or Guarantor has any employees as of the date of this Agreement.

Section 7.8 No Default or Material Adverse Effect. No Default or Event of Default exists. No Internal Control Event has occurred. Each Seller has delivered to Buyer all underlying servicing agreements (or provided Buyer with access to a service, internet website or other system where Buyer can successfully access such agreements) with respect to the Purchased Assets, and to the related Seller's Knowledge no material default or event of default (however defined) exists thereunder. Each Seller has delivered to Buyer copies of all credit facilities, repurchase facilities and substantially similar facilities of such Seller that are presently in effect, and no default or event of default (however defined) on the part of any Seller exists thereunder.

Section 7.9 Purchased Assets. Each Purchased Asset is an Eligible Asset. Each representation and warranty of either Seller set forth in the Repurchase Documents (including in Schedule 1 applicable to the Class of such Purchased Asset) and the Purchased Asset Documents with respect to each Purchased Asset is true and correct. The review and inquiries made on behalf of each Seller in connection with the next preceding sentence have been made by Persons having the requisite expertise, knowledge and background to verify such representations and warranties. Each Seller has complied with all material requirements of the Custodial Agreement with respect to each Purchased Asset, including delivery to Custodian of all required Purchased Asset Documents. As of the Purchase Date for each Purchased Asset, each Seller has no Knowledge of any fact that could reasonably lead it, in its reasonable business judgment, to expect that any Purchased Asset will not be paid in full.

Section 7.10 Purchased Assets Acquired from Transferors. With respect to each Purchased Asset purchased by a Seller or an Affiliate of a Seller from a Transferor, (a) such Purchased Asset was acquired and transferred pursuant to a Purchase Agreement, (b) such Transferor received reasonably equivalent value in consideration for the transfer of such Purchased Asset, (c) no such transfer was made for or on account of an antecedent debt owed by such Transferor to such Seller or an Affiliate of such Seller, and (d) if such Seller acquired the Purchased Asset from an Affiliate other than Pledgor, then, if requested by Buyer, such Seller has delivered to Buyer an opinion of counsel regarding the true sale of the purchase of such Asset by such Seller and, if such Asset was acquired by an Affiliate of such Seller other than Pledgor from another Affiliate, the true sale of the purchase of such Asset by the Affiliate of such Seller from the Transferor Affiliate, which opinions shall be in form and substance

satisfactory to Buyer. Each Seller or such Affiliate of such Seller has been granted a back-up security interest in each such Purchased Asset, filed one or more UCC financing statements against the Transferor to perfect such security interest, and assigned such financing statements in blank and delivered such assignments to Buyer or Custodian.

Section 7.11 Transfer and Security Interest. The Repurchase Documents constitute a valid and effective transfer to Buyer of all right, title and interest of each Seller in, to and under all Purchased Assets (together with all related Servicing Rights) sold to Buyer by such Seller, free and clear of any Liens. With respect to the protective security interest granted by each Seller in Section 11.01, upon the delivery of the Confirmations and the Purchased Asset Documents to Custodian, the execution and delivery of the Controlled Account Agreement and the filing of the UCC financing statements as provided herein, such security interest shall be a valid first priority perfected security interest to the extent such security interest can be perfected by possession, filing or control under the UCC. Upon receipt by Custodian of each Purchased Asset Documents required to be endorsed in blank by the applicable Seller and payment by Buyer of the Purchase Price for the related Purchased Asset, Buyer shall either own such Purchased Asset and the related Purchased Asset Documents or have a valid first priority perfected security interest in such Purchased Asset Document. The Purchased Assets constitute the following, as defined in the UCC: a general intangible, instrument, investment property, security, deposit account, financial asset, uncertificated security, securities account, or security entitlement. Neither Seller has sold, assigned, pledged, granted a security interest in, encumbered or otherwise conveyed any of the Purchased Assets to any Person other than pursuant to the Repurchase Documents. Neither Seller has authorized the filing of, and is not aware of, any UCC financing statements filed against any Seller as debtor that include the Purchased Assets, other than any financing statement that has been terminated or filed pursuant to this Agreement.

Section 7.12 No Broker. Except in connection with the origination of any or all of the Purchased Assets, neither Seller nor any Affiliate of any Seller has dealt with any broker, investment banker, agent or other Person, except for Buyer or an Affiliate of Buyer, who may be entitled to any commission or compensation in connection with any Transaction.

Section 7.13 Interest Rate Protection Agreements. (a) Each Seller has entered into all Interest Rate Protection Agreements required under Section 8.09, (b) each such Interest Rate Protection Agreement is in full force and effect, (c) no termination event, default or event of default (however defined) exists thereunder, and (d) each Seller has effectively assigned to Buyer all such Seller's rights (but none of its obligations) under such Interest Rate Protection Agreement.

Section 7.14 Separateness. Each Seller is in compliance with the requirements of Article 9.

Section 7.15 Location of Books and Records. The location where each Seller keeps its books and records, including all computer tapes and records relating to the Purchased Assets is its chief executive office.

Section 7.16 Chief Executive Office; Jurisdiction of Organization. On the Effective Date, each Seller's chief executive office, is, and has been, located at 245 Park Avenue, 42nd Floor, New York New York 10167. On the Effective Date, each Seller's jurisdiction of organization is Delaware. Each Seller shall provide Buyer with thirty (30) days advance notice of any change in such Seller's principal office or place of business or jurisdiction. Neither Seller has any trade name. During the preceding five (5) years, neither Seller has been known by or done business under any other name, corporate or fictitious, and has not filed or had filed against it any bankruptcy receivership or similar petitions nor has it made any assignments for the benefit of creditors.

Section 7.17 Entity Classification. ACRC Seller is either a domestic partnership or a disregarded entity of a domestic corporation, in each case for U.S. federal income tax purposes.

Section 7.18 Anti-Money Laundering Laws and Anti-Corruption Laws. The operations of each of Sellers and Guarantor are, and have been, conducted at all times in compliance with applicable Anti-Money Laundering Laws and Anti-Corruption Laws. No litigation, regulatory or administrative proceedings of or before any court, tribunal or agency with respect to any Anti-Money Laundering Laws or Anti-Corruption Laws have been started or (to the best of its knowledge and belief) threatened against each of Sellers and Guarantor or any of their respective Subsidiaries.

Section 7.19 Sanctions. None of Sellers, Guarantor or any Affiliates of Sellers or Guarantor (a) is a Sanctioned Target, or (b) is controlled by or is acting on behalf of a Sanctioned Target. To the best knowledge of Sellers or Guarantor after due inquiry, none of Sellers or Guarantor are aware of any investigation for an alleged breach of Sanctions by a Governmental Authority that enforces Sanctions.

Section 7.20 Investment Company Act. Each Seller is exempt under the Investment Company Act pursuant to an exemption other than the exemption set forth in Section 3(c)(1) or 3(c)(7) of the Investment Company Act.

Section 7.21 Beneficial Ownership Certification. The information included in each Beneficial Ownership Certification is true and correct in all respects.

ARTICLE 8
COVENANTS OF SELLERS

Until the Repurchase Obligations are indefeasibly paid in full (other than contingent indemnification obligations) and the Repurchase Documents are terminated, each Seller shall perform and observe the following covenants, which shall be given independent effect (so that unless otherwise specifically provided, if a particular action or condition is prohibited by any covenant, the fact that it would be permitted by an exception to or be otherwise within the limitations of another covenant shall not avoid the occurrence of a Default or an Event of Default if such action is taken or condition exists):

Section 8.1 Existence; Governing Documents; Conduct of Business. Each Seller shall (a) preserve and maintain its legal existence, (b) qualify and remain qualified in good standing in each jurisdiction where the failure to be so qualified would have a Material Adverse Effect, (c) comply with its Governing Documents, including all special purpose entity provisions, (d) not modify, amend or terminate its Governing Documents and (e) qualify to do business in any jurisdiction where an underlying Mortgaged Property is located, to the extent required to do so in accordance with applicable Requirements of Law (i) presently, in order to hold the interest of a lender under the related Purchased Asset Documents and receive the payments contemplated thereunder, and (ii) at or before the time of enforcement of any rights or remedies under the related Purchased Asset Documents, to the extent necessary to enforce such rights and remedies or hold title to the underlying Mortgaged Property. Each Seller shall (a) continue to engage in the same (and no other) general lines of business as presently conducted by it or as permitted hereby, (b) maintain and preserve all of its material rights, privileges, licenses and franchises necessary for the operation of its business except in each case where any failure to do so would not be reasonably likely to have a Material Adverse Effect, and (c) maintain such Seller's status as a qualified transferee, qualified institutional lender or qualified lender (however defined), if applicable, under the Purchased Asset Documents. Each Seller shall not (A) change its name, organizational number, tax identification number, fiscal year, method of accounting, identity, structure or jurisdiction of organization (or have more than one such jurisdiction), move the location of its principal place of business and chief executive office (as defined in the UCC) from the location referred to in Section 7.01, or (B) move, or consent to Custodian moving, the Purchased Asset Documents from the location thereof on the applicable Purchase Date for each related Purchased Assets, unless in each case such Seller has given at least thirty (30) days prior notice to Buyer and has taken all actions required under the UCC to continue the first priority perfected security interest of Buyer in the Purchased Assets. Each Seller shall enter into each Transaction as principal, unless Buyer agrees before a Transaction that such Seller may enter into such Transaction as agent for a principal and under terms and conditions disclosed to Buyer.

Section 8.2 Compliance with Laws, Contractual Obligations and Repurchase Documents. Each Seller shall comply in all material respects with each and every Requirement of Laws, including those relating to any Purchased Asset and to the reporting and payment of taxes except in each case where the failure to do so would not be reasonably likely to have a Material Adverse Effect. No part of the proceeds of any Transaction shall be used for any purpose that violates Regulation T, U or X of the Board of Governors of the Federal Reserve System. Each Seller shall conduct or cause to be conducted the requisite due diligence in connection with the origination or acquisition of each Purchased Asset for purposes of complying with the Anti–Terrorism Laws, including with respect to the legitimacy of the applicable Underlying Obligor and the origin of the assets used by such Person to purchase the underlying Mortgaged Property, and will maintain sufficient information to identify such Person for purposes of the Anti–Terrorism Laws. Each Seller shall maintain the Custodial Agreement and Controlled Account Agreement in full force and effect.

Section 8.3 Protection of Buyer's Interest in Purchased Assets. With respect to each Purchased Asset, the related Seller shall take all action necessary or required by the Repurchase Documents, Purchased Asset Documents and each and every Requirement of Law, or reasonably requested by Buyer, to perfect, protect and more fully evidence the security

interest granted in the Purchase Agreements and Buyer's ownership of and first priority perfected security interest in such Purchased Asset and related Purchased Asset Documents, including executing or causing to be executed (a) such other instruments or notices as may be necessary or appropriate and filing and maintaining effective UCC financing statements, continuation statements and assignments and amendments thereto, and (b) all documents necessary to both collaterally and absolutely and unconditionally assign all post-acquisition rights, if any, (but none of the obligations) of each Seller under each Purchase Agreement, in each case as additional collateral security for the payment and performance of each of the Repurchase Obligations. Each Seller shall (a) not assign, sell, transfer, pledge, hypothecate, grant, create, incur, assume or suffer or permit to exist any security interest in or Lien (other than, except with respect to any Purchased Asset, any Liens granted pursuant to the Repurchase Documents) on any Purchased Asset to or in favor of any Person other than Buyer, (b) defend such Purchased Asset against, and take such action as is necessary to remove, any such Lien, and (c) defend the right, title and interest of Buyer in and to all Purchased Assets against the claims and demands of all Persons whomsoever. Notwithstanding the foregoing, (i) if any Seller grants a Lien on any Purchased Asset in violation of this Section 8.03 or any other Repurchase Document, such Seller shall be deemed to have simultaneously granted an equal and ratable Lien on such Purchased Asset in favor of Buyer to the extent such Lien has not already been granted to Buyer; provided, that such equal and ratable Lien shall not cure any resulting Event of Default and (ii) to the extent any additional limited liability company is formed by a Division of Seller (and without prejudice to Sections 8.01 and 9.01 hereof), Seller shall cause any such Division LLC to assign, pledge and grant to Buyer, for no additional consideration, all of its assets, and shall cause any owner of each such Division LLC to pledge all of the Equity Interests and any rights in connection therewith of each such Division LLC to Buyer, for no additional consideration, in support of all Repurchase Obligations in the same manner and to the same extent as the assignment, pledge and grant by Seller of all of Seller's assets hereunder, and in the same manner and to the same extent as the pledge by Pledgor of all of Pledgor's right, title and interest in all of the Equity Interests of Seller and any rights in connection therewith, in each case pursuant to the Pledge and Security Agreement. Each Seller shall not materially amend, modify, waive or terminate any provision of any Purchase Agreement or the Servicing Agreement. Each Seller shall not, or permit Interim Servicer to, make any Material Modification to any Purchased Asset or Purchased Asset Document. Each Seller shall mark its computer records and tapes to evidence the interests granted to Buyer hereunder. Each Seller shall not take any action to cause any Purchased Asset that is not evidenced by an instrument or chattel paper (as defined in the UCC) to be so evidenced. If a Purchased Asset becomes evidenced by an instrument or chattel paper, the same shall be immediately delivered to Custodian on behalf of Buyer, together with endorsements required by Buyer.

Section 8.4 Distributions and Dividends. Each Seller shall not declare or make any payment on account of, or set apart assets for, a sinking or similar fund for the purchase, redemption, defeasance, retirement or other acquisition of any Equity Interest of such Seller, Guarantor or any Affiliate of such Seller or Guarantor, whether now or hereafter outstanding, or make any other distribution in respect thereof, either directly or indirectly, whether in cash or property or in obligations of such Seller, Guarantor or any Affiliate of such Seller or Guarantor except that, at all times (a) prior to a Default or Event of Default, such Seller may declare and

pay cash dividends or distributions to Pledgor or Guarantor, and (b) Guarantor may declare and pay cash dividends or distributions to its equityholders so long as Guarantor is then-currently in compliance with all of the covenants, terms and conditions set forth in the Guarantee Agreement; provided that Guarantor can declare and pay such dividend whether or not a Default or an Event of Default has occurred, but in no event shall the aggregate amount of cash permitted to be distributed in each calendar quarter by Guarantor to its shareholders in respect of their stock in Guarantor exceed the minimum amount necessary for Guarantor to continue to qualify as a REIT and avoid the payment of income and excise Taxes. For the avoidance of doubt, nothing in this Agreement or any of the other Repurchase Documents shall preclude Guarantor from declaring consent dividends in accordance with Section 565 of the Code.

Section 8.5 Financial Covenants. Neither Seller shall permit the ratio of its EBITDA to its Interest Expense to be less than 1.50 to 1.00 at any time.

Section 8.6 Delivery of Income. Each Seller shall, and pursuant to Irrevocable Redirection Notices shall cause Interim Servicer and all other applicable Persons to, deposit all Income in respect of the Purchased Assets (other than Income paid directly to Interim Servicer in accordance with Section 5.01) into either the General Repo Account or the Waterfall Account in accordance with Sections 3.07, 4.01 and 5.01 hereof within the time periods specified therein. Seller and Interim Servicer (a) shall comply with and enforce each Irrevocable Redirection Notice, (b) shall not amend, modify, waive, terminate or revoke any Irrevocable Redirection Notice without Buyer's consent, and (c) shall take all reasonable steps to enforce each Irrevocable Redirection Notice. In connection with each Principal Payment, each Seller shall provide or cause to be provided to Buyer and Custodian sufficient detail to enable Buyer and Custodian to identify the Purchased Asset to which such Principal Payment applies. If any Seller receives any rights, whether in addition to, in substitution of, as a conversion of, or in exchange for any Purchased Assets, or otherwise in respect thereof, such Seller shall accept the same as Buyer's agent, hold the same in trust for Buyer and promptly deliver the same to Buyer or its designee in the exact form received, together with duly executed instruments of transfer, stock powers or assignment in blank and such other documentation as Buyer shall reasonably request. If any Income is received by a Seller, Guarantor or any Affiliate of a Seller or Guarantor, such Seller shall pay or deliver such Income to Buyer or Custodian on behalf of Buyer within two (2) Business Days after receipt, and, until so paid or delivered, hold such Income in trust for Buyer, segregated from other funds of such Seller.

Section 8.7 Delivery of Financial Statements and Other Information. Each Seller shall deliver the following to Buyer, as soon as available and in any event within the time periods specified:

(a) within sixty (60) days after the end of each of the first three (3) fiscal quarters of each fiscal year of Guarantor, (i) the unaudited consolidated balance sheets of Guarantor and its Subsidiaries as at the end of each such period, (ii) the related unaudited consolidated statements of income, retained earnings and cash flows for such period and the portion of the fiscal year through the end of such period, setting forth in each case in comparative form the figures for the previous year, and (iii) a Compliance Certificate;

(b) within one-hundred and twenty (120) days after the end of each fiscal year of Guarantor, (i) the consolidated balance sheets of Guarantor and its Subsidiaries as at the end of such fiscal year, (ii) the related consolidated statements of income, retained earnings and cash flows for such year, audited by a firm of accountants that is then approved by the Public Company Accounting Oversight Board, setting forth in each case in comparative form the figures for the previous year, (iii) an opinion thereon of independent certified public accountants of recognized national standing, which opinion shall not be qualified as to scope of audit or going concern and shall state that said financial statements fairly present the financial condition and results of operations of Guarantor and its Subsidiaries as at the end of and for such fiscal year in accordance with GAAP, and (iv) a Compliance Certificate;

(c) with respect to each Purchased Asset and related underlying Mortgaged Property serviced by any Seller or an Affiliate of any Seller: (i) within thirty (30) days after the end of each fiscal quarter of such Seller, a quarterly report of the following: delinquency, loss experience, internal risk rating, surveillance, rent roll, occupancy and other property-level information, and (ii) within ten (10) days after receipt or preparation thereof by such Seller or Interim Servicer, remittance, servicing, securitization, exception and other reports, operating and financial statements of Underlying Obligors, and modifications or updates to the items contained in the Underwriting Package;

(d) any other material agreements, correspondence, documents or other information not included in an Underwriting Package which is related to such Seller or the Purchased Assets, as soon as possible after the discovery thereof by such Seller, Guarantor or any Affiliate of such Seller or Guarantor; and

(e) such other information regarding the financial condition, operations or business of such Seller, Guarantor or any Underlying Obligor as Buyer may reasonably request.

Section 8.8 Delivery of Notices. Each Seller shall promptly notify Buyer of the occurrence of any of the following of which such Seller has Knowledge, together with a certificate of a Responsible Officer of such Seller setting forth details of such occurrence and any action such Seller has taken or proposes to take with respect thereto:

(a) a Representation Breach;

(b) any of the following: (i) with respect to any Purchased Asset or related underlying Mortgaged Property: material change in Market Value, material loss or damage, material licensing or permit issues, material violation of Requirements of Law, discharge of or damage from Materials of Environmental Concern, any other actual or expected event or change in circumstances that could reasonably be expected to result in a default or material decline in value or cash flow or if any Purchased Asset becomes a Defaulted Asset, and (ii) with respect to any Seller: violation of Requirements of Law, material decline in the value of a Seller's assets or properties, an Internal Control Event or other event or circumstance that could reasonably be expected to have a Material Adverse Effect;

(c) the existence of any Default, Event of Default or material default under or related to a Purchased Asset, any Purchased Asset Document, Indebtedness, Guarantee Obligation or Contractual Obligation of any Seller;

(d) the resignation or termination of Interim Servicer under the Servicing Agreement;

(e) the establishment of a rating by any Rating Agency applicable to any Seller, Guarantor or any Specified Affiliate and any downgrade in or withdrawal of such rating once established;

(f) the commencement of, settlement of or material judgment in any litigation, action, suit, arbitration, investigation or other legal or arbitrable proceedings before any Governmental Authority that (i) affects any Seller, Guarantor or any Specified Affiliate, Purchased Asset, Pledged Collateral or underlying Mortgaged Property, (ii) questions or challenges the validity or enforceability of any Repurchase Document, Transaction, Purchased Asset or any Purchased Asset Document, or (iii) individually or in the aggregate, if adversely determined, could reasonably be likely to have a Material Adverse Effect;

(g) any change in ACRC Seller's status as either a domestic partnership or a disregarded entity of a domestic corporation, in each case for U.S. federal income tax purposes; or

(h) any change in Guarantor's status as a REIT.

Section 8.9 Hedging. With respect to each Purchased Asset that is a Hedge Required Asset, the applicable Seller shall enter into one or more one-hundred percent (100%) cash-collateralized Interest Rate Protection Agreement(s) at the direction of and in a form acceptable to Buyer with a Hedge Counterparty. Each Seller shall take such actions as Buyer deems necessary to perfect the security interest granted in each Interest Rate Protection Agreement pursuant to Section 11.01, and shall assign or pledge to Buyer, which assignment or pledge shall be consented to in writing by each Hedge Counterparty, all of such Seller's rights (but none of the obligations) in, to and under each Interest Rate Protection Agreement. Each Interest Rate Protection Agreement shall contain provisions acceptable to Buyer for additional credit support in the event the rating of any Rating Agency assigned to the Hedge Counterparty (other than an Affiliated Hedge Counterparty) is downgraded or withdrawn, in which event such Seller shall ensure that such additional credit support is provided or promptly, subject to the approval of Buyer, enter into new Interest Rate Protection Agreements with respect to the related Purchased Assets with a replacement Hedge Counterparty.

Section 8.10 Escrow Imbalance. Each Seller shall, no later than five (5) Business Days after learning of any material overdraw, deficit or imbalance in any escrow or reserve account relating to a Purchased Asset, correct and eliminate the same by requesting the Underlying Obligor to correct and eliminate the same, including by depositing its own funds into such account.

Section 8.11 Pledge and Security Agreement. Each Seller shall not take any direct or indirect action inconsistent with the Pledge and Security Agreement or the security interest granted thereunder to Buyer in the Pledged Collateral. Each Seller shall not permit any additional Persons to acquire Equity Interests in such Seller other than the Equity Interests owned by Pledgor and pledged to Buyer on or prior to the Closing Date, and such Seller shall not permit any sales, assignments, pledges or transfers of the Equity Interests in such Seller other than to Buyer.

Section 8.12 Entity Classification.

(a) ACRC Seller will be either a domestic partnership or a disregarded entity of a domestic corporation, in each case for U.S. federal income tax purposes.

(b) Guarantor will continue to qualify as a REIT.

Section 8.13 Anti-Corruption Laws, Anti-Money Laundering Laws and Sanctions.

(a) The proceeds of any Transaction shall not be used, directly or indirectly, for any purpose which would breach any applicable Anti-Corruption Laws, Anti-Money Laundering Laws or Sanctions.

(b) Sellers and Guarantor shall each (i) conduct its business in compliance with applicable Anti-Corruption Laws, Anti-Money Laundering Laws and Sanctions; and (ii) maintain policies and procedures designed to promote and achieve compliance with applicable Anti-Corruption Laws, Anti-Money Laundering Laws and Sanctions.

(c) The repurchase of any Purchased Asset or any other payment due to Buyer under this Agreement or any other Repurchase Document shall not be funded, directly or indirectly, with proceeds derived from a transaction that would be prohibited by Anti-Corruption Laws, Anti-Money Laundering Laws or Sanctions, or in any manner that would cause any Seller, Guarantor or any Affiliates of any Seller or Guarantor to be in breach of any Anti-Corruption Laws, Anti-Money Laundering Laws or Sanctions.

(d) Sellers shall conduct or cause to be conducted the requisite due diligence in connection with the origination or acquisition of each Purchased Asset for purposes of complying with all applicable Anti-Money Laundering Laws, including with respect to the legitimacy of the applicable Underlying Obligor and the origin of the assets used by such Person to purchase the underlying Mortgaged Property, and will maintain sufficient information to identify such Person for purposes of such Anti-Money Laundering Laws.

Section 8.14 Compliance with Sanctions. The proceeds of any Transaction hereunder will not, directly or indirectly, be used to lend, contribute, or otherwise be made available to any Sanctioned Target or any Person (i) to fund any activities or business of or with a Sanctioned Target, or (ii) be used in any manner that would be prohibited by Sanctions or would otherwise cause Buyer to be in breach of any Sanctions. Sellers and Guarantor shall

comply with all applicable Sanctions, and shall maintain policies and procedures reasonably designed to ensure compliance with Sanctions. Sellers or Guarantor shall notify the Buyer in writing not more than three (3) Business Days after becoming aware of any breach of Section 7.19 or this Section 8.14.

Section 8.15 Beneficial Ownership. To the extent that any Seller is a "legal entity customer" under the Beneficial Ownership Regulation, such Seller shall promptly give notice to Buyer of any change in the information provided in any Beneficial Ownership Certification that would result in a change to the list of beneficial owners identified therein and shall promptly deliver an updated Beneficial Ownership Certification to Buyer.

ARTICLE 9

SINGLE-PURPOSE ENTITY

Section 9.1 Covenants Applicable to Seller. Each Seller shall (a) own no assets, and shall not engage in any business, other than the assets and transactions specifically contemplated by this Agreement and any other Repurchase Document; (b) not incur any Indebtedness or other obligation, secured or unsecured, direct or indirect, absolute or contingent (including guaranteeing any obligation), other than (I) with respect to the Purchased Asset Documents and the Retained Interests, (II) commitments to make loans which may become Eligible Assets, and (III) as otherwise permitted under this Agreement; (c) not make any loans or advances to any Affiliate or any other Person and shall not acquire obligations or securities of its Affiliates, in each case other than in connection with the origination or acquisition of Assets for purchase under the Repurchase Documents; (d) pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) only from its own assets; (e) comply with the provisions of its Governing Documents; (f) do all things necessary to observe organizational formalities and to preserve its existence, and shall not amend, modify, waive provisions of or otherwise change its Governing Documents with respect to the matters set forth in this Article 9; (g) maintain all of its books, records and bank accounts separate from those of any other Person; (h) maintain separate financial statements, showing its assets and liabilities separate and apart from those of any other Person and not have its assets listed on any financial statement of any other Person; provided, however, that each Seller's assets may be included in a consolidated financial statement of its Affiliate provided that (I) appropriate notation shall be made on such consolidated financial statements to indicate the separateness of such Seller from such Affiliate and to indicate that Seller's assets and credit are not available to satisfy the debts and other obligations of such Affiliate or any other Person and (II) such assets shall also be listed on such Seller's own separate balance sheet; (i) file its own tax returns separate from those of any other Person, except to the extent that each Seller is not required to file tax returns under Requirements of Law; (j) be, and at all times shall hold itself out to the public as, a legal entity separate and distinct from any other entity (including any Affiliate), shall correct any known misunderstanding regarding its status as a separate entity, shall conduct business in its own name, and shall not identify itself or any of its Affiliates as a division of the other; (k) maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations; (l) to the fullest extent permitted

by law, not adopt, file or effect a Division or engage in or suffer any Change of Control, dissolution, winding up, liquidation, consolidation or merger in whole or in part or convey or transfer all or substantially all of its properties and assets to any Person (except as contemplated herein); (m) not commingle its funds or other assets with those of any Affiliate or any other Person; (n) maintain its properties, assets and accounts separate from those of any Affiliate or any other Person, (o) not guarantee any obligation of any Person, including any Affiliate, become obligated for the debts of any other Person, or hold out its credit or assets as being available pay the obligations of any other Person, (p) from and after the SPV Conversion Date for such Seller, abide by the Independent Manager Provisions; (q) except for capital contributions or capital distributions permitted under the terms and conditions of its Governing Documents and properly reflected on the books and records of each applicable Seller, not enter into any transaction with an Affiliate of Seller except on commercially reasonable terms no less favorable than those available to unaffiliated parties in an arm's length transaction; (r) maintain a sufficient number of employees in light of contemplated business operations and pay the salaries of its own employees, if any, only from its own funds; (s) use separate stationary, invoices and checks bearing its own name; (t) allocate fairly and reasonably any overhead expenses that are shared with an Affiliate, including for shared office space and for services performed by an employee of an Affiliate; (u) not pledge its assets to secure the obligations of any other Person; and (v) not form, acquire or hold any Subsidiary or own any Equity Interest in any other entity.

Section 9.2 Additional Covenants Applicable to Sellers. Each Seller (i) shall be a Delaware limited liability company, (ii) shall not take any Insolvency Action and shall not cause or permit the members or managers of such entity to take any Insolvency Action, with respect to itself, unless all of its Independent Director(s) or Independent Manager(s) then serving as managers of the company shall have consented in writing to such action (directly or indirectly), and (iii) shall have either (A) a member which owns no economic interest in the company, has signed the company's limited liability company agreement and has no obligation to make capital contributions to the company, or (B) two natural persons or one entity that is not a member of the company, that has signed its limited liability company agreement and that, under the terms of such limited liability company agreement becomes a member of the company immediately prior to the resignation or dissolution of the last remaining member of the company. Each Seller shall have no direct parent other than Pledgor.

ARTICLE 10
EVENTS OF DEFAULT AND REMEDIES

Section 10.1 Events of Default. Each of the following events shall be an "Event of Default":

(a) either Seller fails to make a payment of (i) Margin Deficit or Repurchase Price (other than Price Differential) when due, whether by acceleration or otherwise (including, if applicable, any Future Funding Amounts related to a Future Funding Transaction), (ii) Price Differential within one (1) Business Day of when due, or (iii) any fee or other amount within two (2) Business Days of when due unless such Seller did not have knowledge of such required

payment, in which case within two (2) Business Days after receipt of notice that such payment is due and owing, in each case under the Repurchase Documents;

(b) either Seller fails to observe or perform in any material respect any other Repurchase Obligation of such Seller under the Repurchase Documents or the Purchased Asset Documents to which such Seller is a party (other than the reporting requirements set forth in Section 8.07(d)), and (except in the case of a failure to perform or observe the Repurchase Obligations of such Seller under Sections 8.03 and 18.06(a)) such failure continues unremedied for ten (10) Business Days after the earlier of receipt of notice thereof from Buyer or the discovery of such failure by any Seller provided, however, that in the event such matters are not reasonably susceptible to cure in such period, so long as (i) such Seller is diligently attempting to cure the same and (ii) such matters could not be reasonably expected to materially adversely affect the value of any Purchased Asset or collectability of any amounts due with respect to any Purchased Asset, such period shall be extended by the time reasonably necessary to cure such matter, which shall not, in any event, exceed an additional thirty (30) days;

(c) any Representation Breach exists and continues unremedied for five (5) Business Days after the earlier of receipt of notice thereof from Buyer or the discovery of such failure by either Seller; provided that, the representations and warranties set forth in Section 7.09 and Schedule 1 shall be considered solely to the extent that, either Seller shall have made any such representation and warranty with Knowledge that it was incorrect or untrue;

(d) either (i) the commencement of any enforcement action by an obligee against any Seller or Guarantor with respect to any Indebtedness, Guarantee Obligation or Contractual Obligation, provided that the aggregate amount of the Indebtedness, Guarantee Obligations and/or Contractual Obligations in respect of which such enforcement action is commenced (either individually or in the aggregate) is in excess of $500,000 with respect to such Seller, or $5,000,000 with respect to Guarantor, or (ii) if any Seller or Guarantor defaults in making any payment required to be made under one or more agreements for borrowed money to which it is a party in an aggregate amount in excess of $500,000 with respect to such Seller, or $15,000,000 with respect to Guarantor, and any such failure in not cured within applicable cure period, if any, provided for under the related agreement;

(e) any Seller, Guarantor or any Specified Affiliate defaults beyond any applicable grace period in paying any amount or performing any obligation due to Buyer or any Affiliate of Buyer under any other financing, hedging, security or other agreement (other than under this Agreement) between a Seller, Guarantor or any Specified Affiliate and Buyer or any Affiliate of Buyer, including, without limitation, Guarantor's obligations under the Guarantee Agreement;

(f) an Insolvency Event occurs with respect to a Seller, Guarantor or any Specified Affiliate;

(g) a Change of Control occurs with respect to a Seller, Guarantor or any Specified Affiliate other than Pledgor;

(h) a final judgment or judgments for the payment of money in excess of $500,000 with respect to any Seller, or $5,000,000 with respect to Guarantor in the aggregate is entered against any Seller or Guarantor by one or more Governmental Authorities and the same is not satisfied, discharged (or provision has not been made for such discharge) or bonded, or a stay of execution thereof has not been procured, within ten (10) Business Days from the date of entry thereof;

(i) a Governmental Authority takes any action to (i) condemn, seize or appropriate, or assume custody or control of, all or any substantial part of the property of either Seller, (ii) displace the management of either Seller or curtail its authority in the conduct of the business of either Seller, (iii) terminate the activities of either Seller as contemplated by the Repurchase Documents, or (iv) remove, limit or restrict the approval of either Seller of the foregoing as an issuer, buyer or a seller of securities, and in each case such action is not discontinued or stayed within thirty (30) days;

(j) any Seller, Guarantor or any Specified Affiliate admits that it is not Solvent or is generally not able or not willing to perform any of its Repurchase Obligations, Contractual Obligations, Guarantee Obligations, Capital Lease Obligations or Off-Balance Sheet Obligations;

(k) any material provision of the Repurchase Documents, any material right or remedy of Buyer or obligation, covenant, agreement or duty of either Seller thereunder, or any Lien, security interest or control granted under or in connection with the Repurchase Documents, Pledged Collateral or Purchased Assets terminates, is declared null and void, ceases to be valid and effective, ceases to be the legal, valid, binding and enforceable obligation of Sellers or any other Person, or the validity, effectiveness, binding nature or enforceability thereof is contested, challenged, denied or repudiated by either Seller or any other Person, in each case directly, indirectly, in whole or in part;

(l) Buyer ceases for any reason to have a valid and perfected first priority security interest in any Purchased Asset or any Pledged Collateral;

(m) Guarantor, either Seller or any Specified Affiliate is required to register as an "investment company" (as defined in the Investment Company Act);

(n) either Seller engages in any conduct or action where Buyer's prior consent is required by any Repurchase Document and Seller fails to obtain such consent;

(o) Interim Servicer, either Seller or any other Affiliate of a Seller fails to deposit to the Waterfall Account all Income and other amounts as required by Section 5.01 and other provisions of this Agreement within two (2) Business Days of when due;

(p) Guarantor's audited annual financial statements or the notes thereto or other opinions or conclusions stated therein are qualified or limited by reference to the status of Guarantor as a "going concern" or a reference of similar import, other than a qualification or limitation expressly related to Buyer's rights in the Purchased Assets;

(q) any termination event or event of default (however defined) shall have occurred with respect to either Seller under any Interest Rate Protection Agreement or Guarantor breaches any of the obligations, terms or conditions set forth in the Guarantee Agreement;

(r) any Material Modification is made to any Purchased Asset or any Purchased Asset Document without the prior written consent of Buyer, which consent shall not be unreasonably withheld or delayed; or

(s) Seller adopts, files, or effects a Division.

Section 10.2 Remedies of Buyer as Owner of the Purchased Assets. If an Event of Default exists, at the option of Buyer, exercised by notice to either Seller (which option shall be deemed to be exercised, even if no notice is given, automatically and immediately upon the occurrence of an Event of Default under Section 10.01(f)), the Repurchase Date for all Purchased Assets shall be deemed automatically and immediately to occur (the date on which such option is exercised or deemed to be exercised, the "Accelerated Repurchase Date"). If Buyer exercises or is deemed to have exercised the foregoing option:

(a) All Repurchase Obligations shall become immediately due and payable on and as of the Accelerated Repurchase Date.

(b) All amounts in the Waterfall Account and all Income paid after the Accelerated Repurchase Date shall be retained by Buyer and applied in accordance with Article 5.

(c) Buyer may complete any assignments, allonges, endorsements, powers or other documents or instruments executed in blank and otherwise obtain physical possession of all Purchased Asset Documents and all other instruments, certificates and documents then held by or on behalf of Custodian under the Custodial Agreement. Buyer may obtain physical possession of all Servicing Files, Servicing Agreements and other files and records of Sellers or Interim Servicer. Sellers shall deliver to Buyer such assignments and other documents with respect thereto as Buyer shall request.

(d) Buyer may immediately, at any time, and from time to time, exercise either of the following remedies with respect to any or all of the Purchased Assets: (i) sell such Purchased Assets on a servicing-released basis and/or without providing any representations and warranties on an "as-is where is" basis, in a recognized market and by means of a public or private sale at such price or prices as Buyer accepts, and apply the net proceeds thereof in accordance with Article 5, or (ii) retain such Purchased Assets and give Sellers credit against the Repurchase Price for such Purchased Assets (or if the amount of such credit exceeds the Repurchase Price for such Purchased Assets, to credit against Repurchase Obligations due and any other amounts (without duplication) then owing to Buyer by any other Person pursuant to any Repurchase Document, in such order and in such amounts as determined by Buyer), in an amount equal to the Current Mark-to-Market Value of such Purchased Assets. Until such time as Buyer exercises either such remedy with respect to a Purchased Asset, Buyer may hold such Purchased Asset for its own account and retain all Income with respect thereto.

(e) The Parties agree that the Purchased Assets are of such a nature that they may decline rapidly in value, and may not have a ready or liquid market. Accordingly, Buyer shall not be required to sell more than one (1) Purchased Asset on a particular Business Day, to the same purchaser or in the same manner. Buyer may determine whether, when and in what manner a Purchased Asset shall be sold, it being agreed that both a good faith public and a good faith private sale shall be deemed to be commercially reasonable. Buyer shall give to Seller no less than ten (10) Business Days notice in advance of such a sale. Buyer shall not be required to give notice to Seller or any other Person prior to exercising any remedy in respect of an Event of Default. If no prior notice is given, Buyer shall give notice to Sellers of the remedies exercised by Buyer promptly thereafter.

(f) Sellers shall be liable to Buyer for (i) any amount by which the Repurchase Obligations due to Buyer exceed the aggregate of the net proceeds and credits referred to in the preceding clause (d), (ii) the amount of all actual out-of-pocket expenses, including reasonable legal fees and expenses, actually incurred by Buyer in connection with or as a consequence of an Event of Default, (iii) any costs and losses payable under Section 12.04, and (iv) any other actual loss, damage, cost or expense resulting from the occurrence of an Event of Default, but specifically excluding any punitive damages.

(g) Buyer shall be entitled to an injunction, an order of specific performance or other equitable relief to compel each Seller to fulfill any of its obligations as set forth in the Repurchase Documents, including this Article 10, if either Seller fails or refuses to perform its obligations as set forth herein or therein.

(h) Each Seller hereby appoints Buyer as attorney-in-fact of such Seller, effective only during the continuance of an Event of Default, for purposes of carrying out the Repurchase Documents, including executing, endorsing and recording any instruments or documents and taking any other actions that Buyer deems necessary or advisable to accomplish such purposes, which appointment is coupled with an interest and is irrevocable.

(i) Subject to any notice and grace periods expressly set forth herein, Buyer may, without prior notice to either Seller, exercise any or all of its set-off rights including those set forth in Section 18.17. This Section 10.02(i) shall be without prejudice and in addition to any right of set-off, combination of accounts, Lien or other rights to which any Party is at any time otherwise entitled.

(j) All rights and remedies of Buyer under the Repurchase Documents, including those set forth in Section 18.17, are cumulative and not exclusive of any other rights or remedies that Buyer may have and may be exercised at any time when an Event of Default exists. Such rights and remedies may be enforced without prior judicial process or hearing. Each Seller agrees that nonjudicial remedies are consistent with the usages of the trade, are responsive to commercial necessity and are the result of a bargain at arm's-length. Each Seller hereby expressly waives any defenses such Seller might have to require Buyer to enforce its rights by judicial process or otherwise arising from the use of nonjudicial process, disposition of any or all of the Purchased Assets, or any other election of remedies.

ARTICLE 11

SECURITY INTEREST

Section 11.1 Grant. Buyer and each Seller intend that all Transactions shall be sales to Buyer of the Purchased Assets and not loans from Buyer to Sellers secured by the Purchased Assets. However, to preserve and protect Buyer's rights with respect to the Purchased Assets and under the Repurchase Documents if any Governmental Authority recharacterizes any Transaction with respect to a Purchased Asset as other than a sale, and as security for each Seller's performance of the Repurchase Obligations, each Seller hereby grants to Buyer a present Lien on and security interest in all of the right, title and interest of each Seller in, to and under (i) the Purchased Assets (which for this purpose shall be deemed to include the items described in the proviso in the definition thereof), (ii) each Interest Rate Protection Agreement with each Hedge Counterparty relating to each Purchased Asset, (iii) all of the "Pledged Collateral", as such term is defined in the Pledge and Security Agreement, (iv) the Waterfall Account, all amounts at any time on deposit therein and all Proceeds (as defined in the UCC) thereof and (v) each Mezzanine Loan assigned to Buyer pursuant to Section 3.01(j), and the transfers of the Purchased Assets to Buyer shall be deemed to constitute and confirm such grant, to secure the payment and performance of the Repurchase Obligations (including the obligation of each Seller to pay the Repurchase Price, or if the Transactions are recharacterized as loans, to repay such loans for the Repurchase Price).

Section 11.2 Effect of Grant. If any circumstance described in Section 11.01 occurs, (a) this Agreement shall also be deemed to be a security agreement as defined in the UCC, (b) Buyer shall have all of the rights and remedies provided to a secured party by Requirements of Law (including the rights and remedies of a secured party under the UCC and the right to set off any mutual debt and claim) and under any other agreement between Buyer and either Seller or between any Affiliated Hedge Counterparty and either Seller, (c) without limiting the generality of the foregoing, Buyer shall be entitled to set off the proceeds of the liquidation of the Purchased Assets against all of the Repurchase Obligations, without prejudice to Buyer's right to recover any deficiency, (d) the possession by Buyer or any of its agents, including Custodian, of the Purchased Asset Documents, the Purchased Assets and such other items of property as constitute instruments, money, negotiable documents, securities or chattel paper shall be deemed to be possession by the secured party for purposes of perfecting such security interest under the UCC and Requirements of Law, and (e) notifications to Persons (other than Buyer) holding such property, and acknowledgments, receipts or confirmations from Persons (other than Buyer) holding such property, shall be deemed notifications to, or acknowledgments, receipts or confirmations from, securities intermediaries, bailees or agents (as applicable) of the secured party for the purpose of perfecting such security interest under the UCC and Requirements of Law. The security interest of Buyer granted herein shall be, and each Seller hereby represents and warrants to Buyer and all other Affiliated Hedge Counterparties that it is, a first priority perfected security interest. For the avoidance of doubt, (i) each Purchased Asset and each Interest Rate Protection Agreement relating to a Purchased Asset secures the Repurchase Obligations of each Seller with respect to all other Transactions and all other Purchased Assets, including any Purchased Assets that are junior in priority to the Purchased Asset in question, and (ii) if an Event of Default exists, no Purchased Asset or Interest Rate Protection Agreement

relating to a Purchased Asset will be released from Buyer's Lien or transferred to any Seller until the Repurchase Obligations (other than contingent indemnification obligations) are indefeasibly paid in full. Notwithstanding the foregoing, the Repurchase Obligations shall be full recourse to each Seller.

Section 11.3 Sellers to Remain Liable. Buyer and each Seller agree that the grant of a security interest under this Article 11 shall not constitute or result in the creation or assumption by Buyer of any Retained Interest or other obligation of either Seller or any other Person in connection with any Purchased Asset, or any Interest Rate Protection Agreement whether or not Buyer exercises any right with respect thereto. Other than with respect to any Purchased Asset as to which Buyer has (i) actually assumed servicing, (ii) has terminated the related Seller's rights as Servicer and no replacement Servicer has been appointed and commenced servicing pursuant to a Servicing Agreement, or (iii) otherwise taken and/or sold or liquidated in conjunction with the exercise of remedies pursuant to Section 10.02(d), each Seller shall remain liable under the Purchased Assets, each Interest Rate Protection Agreement and Purchased Asset Documents to perform all of each of the Seller's duties and obligations thereunder to the same extent as if the Repurchase Documents had not been executed.

Section 11.4 Waiver of Certain Laws. Each Seller agrees, to the extent permitted by Requirements of Law, that neither it nor anyone claiming through or under it will set up, claim or seek to take advantage of any appraisement, valuation, stay, extension or redemption law now or hereafter in force in any locality where any Purchased Assets may be situated in order to prevent, hinder or delay the enforcement or foreclosure of this Agreement, or the absolute sale of any of the Purchased Assets or Interest Rate Protection Agreement relating to a Purchased Asset or any part thereof, or the final and absolute putting into possession thereof, immediately after such sale, of the purchasers thereof, and each Seller, for itself and all who may at any time claim through or under it, hereby waives, to the full extent that it may be lawful so to do, the benefit of all such laws and any and all right to have any of the properties or assets constituting the Purchased Assets or Interest Rate Protection Agreement relating to a Purchased Asset marshaled upon any such sale, and agrees that Buyer or any court having jurisdiction to foreclose the security interests granted in this Agreement may sell the Purchased Assets and each Interest Rate Protection Agreement relating to a Purchased Asset as an entirety or in such parcels as Buyer or such court may determine.

ARTICLE 12

INCREASED COSTS; CAPITAL ADEQUACY

Section 12.1 Benchmark Replacement; Market Disruption.

(a) Benchmark Replacement for LIBOR Based Transactions. Notwithstanding anything to the contrary herein or in any other Repurchase Document, with respect to any LIBOR Based Transaction, if the USD LIBOR Transition Date has occurred prior to any setting of USD LIBOR for any Pricing Period of such LIBOR Based Transaction, then such LIBOR Based Transaction shall be permanently converted to being a SOFR Based Transaction as of the first day of such Pricing Period (such conversion, a "Rate Conversion") without any amendment

to, or further action or consent of any other party to, this Agreement or any other Repurchase Document (such date on which the LIBOR Based Transactions are converted to SOFR Based Transactions, the "Rate Conversion Effective Date"); provided, that except as otherwise expressly specified in any Confirmation (or amended and restated Confirmation) entered into by Buyer and Sellers following the Closing Date, from and after the Rate Conversion Effective Date, the Pricing Margin (as in effect immediately prior to the effectiveness of such Rate Conversion) for each such converted Transaction shall be increased by an amount equal to the SOFR Adjustment without any amendment to, or further action or consent of any other party to, this Agreement or any other Repurchase Document.

(b) Benchmark Replacement for SOFR Based Transactions. Notwithstanding anything to the contrary herein or in any other Repurchase Document, with respect to any SOFR Based Transaction, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior to any setting of the applicable then-current Benchmark (as determined pursuant to clause (B) and/or clause (C) of such definition, as applicable), then the Benchmark Replacement will replace such Benchmark (as determined pursuant to clause (B) and/or clause (C) of such definition, applicable) with respect to each affected SOFR Based Transaction for all purposes hereunder or under any Repurchase Document in respect of such Benchmark setting and subsequent Benchmark settings, without any amendment to, or further action or consent of any other party to, this Agreement or any other Repurchase Document.

(c) Conforming Changes. In connection with the use, administration, adoption or implementation of a Benchmark Replacement or any Rate Conversion, Buyer will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Repurchase Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of Seller or any other party to this Agreement or any other Repurchase Document.

(d) Notices; Standards for Decisions and Determinations. Buyer will notify Seller of (i) the implementation of any Benchmark Replacement or Rate Conversion, as applicable, and (ii) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement or Rate Conversion. Any determination, decision or election that may be made by Buyer pursuant to this Section 12.01, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its sole discretion and without consent from Seller or any other party to this Agreement or any other Repurchase Document. Any notice of Rate Conversion delivered by Buyer as described in the preceding clause (i) shall specify the Applicable SOFR designated by Buyer with respect to each such converted Transaction, which designation shall be conclusive and binding on Seller for all purposes of this Agreement.

(e) Market Disruption. Notwithstanding the foregoing, if prior to any Pricing Period, Buyer determines that, by reason of circumstances affecting the relevant market (other than a Benchmark Transition Event), adequate and reasonable means do not exist for

ascertaining any applicable current Benchmark for such Pricing Period, Buyer shall give prompt notice thereof to Sellers, whereupon the Pricing Rate for such Pricing Period with respect to each Transaction based on such applicable Benchmark, and for all subsequent Pricing Periods for Transactions based on such Benchmark until such notice has been withdrawn by Buyer, shall be the sum of (i) an alternate benchmark rate that has been selected by Buyer, (ii) the spread adjustment, or method for calculating or determining such spread adjustment (which may be a positive or negative value or zero) that has been selected by Buyer and (iii) the applicable Pricing Margin.

Section 12.2 Initial Conforming Changes. In connection with the use or administration of any Benchmark (as determined pursuant to clause (B) and/or clause (C) of such definition, as applicable), Buyer will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Repurchase Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of Seller or any other party to this Agreement or any other Repurchase Document. Buyer will notify Seller of the effectiveness of any Conforming Changes in connection with the use or administration of any such Benchmark.

Section 12.3 Illegality. If the adoption of or any change in any Requirements of Law or in the interpretation or application thereof after the date hereof shall make it unlawful for Buyer to effect or continue Transactions as contemplated by the Repurchase Documents, (a) any commitment of Buyer hereunder to enter into new Transactions shall be terminated and the Facility Termination Date shall be deemed to have occurred, (b) if required by such adoption or change, the Pricing Rate shall be the sum of (i) an alternate benchmark rate that has been selected by Buyer, (ii) the spread adjustment, or method for calculating or determining such spread adjustment (which may be a positive or negative value or zero) that has been selected by Buyer and (iii) the applicable Pricing Margin, and (c) if required by such adoption or change, the Facility Termination Date shall be deemed to have occurred. In exercising the rights and remedies under this Section 12.03, Buyer shall treat Sellers in a manner that is substantially similar to the manner it treats other similarly situated sellers in facilities with substantially similar assets.

Section 12.4 Breakfunding. Upon demand of Buyer, Sellers shall indemnify Buyer and hold Buyer harmless from any actual loss, cost or expense (including reasonable legal fees and expenses, but excluding any anticipated profit) which Buyer may sustain or incur arising from (a) the failure by Sellers to terminate any Transaction after Sellers have given a notice of termination pursuant to Section 3.05, (b) any payment to Buyer on account of the outstanding Repurchase Price, including a payment made pursuant to Section 3.05 but excluding a payment made pursuant to Section 5.02, on any day other than a Remittance Date (based on the assumption that Buyer funded its commitment with respect to the Transaction in the London Interbank Eurodollar market and using any reasonable attribution or averaging methods that Buyer deems appropriate and practical), (c) any failure by Sellers to sell Eligible Assets to Buyer after Sellers have notified Buyer of a proposed Transaction and Buyer has agreed to purchase such Eligible Assets in accordance with this Agreement, or (d) any redetermination of the Pricing

Rate based on a Benchmark Replacement or Rate Conversion for any reason on a day that is not the last day of the then-current Pricing Period.

Section 12.5 Increased Costs. If the adoption of or any change in any Requirements of Law or in the interpretation or application thereof by any Governmental Authority or compliance by Buyer with any request or directive (whether or not having the force of law) from any central bank or other Governmental Authority having jurisdiction over Buyer made after the date of this Agreement shall: (a) subject Buyer to any Taxes (other than (i) Indemnified Taxes, (ii) Taxes described in clauses (b) through (d) of the definition of "Excluded Taxes" or (iii) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto, (b) impose, modify or hold applicable any reserve (including pursuant to regulations issued from time to time by the Board of Governors of the Federal Reserve System of the United States for determining the maximum reserve requirement (including any emergency, special, supplemental or other marginal reserve requirement) with respect to eurocurrency funding (currently referred to as "Eurocurrency liabilities" in Regulation D of the Board of Governors of the Federal Reserve System of the United States, as amended and in effect from time to time)), special deposit, compulsory loan or similar requirement against assets held by, deposits or other liabilities in or for the account of, advances, loans or other extensions of credit by, or any other acquisition of funds by, any office of Buyer, or (c) impose on Buyer (other than Taxes) any other condition; and the result of any of the preceding clauses (a), (b) and (c) is to increase the cost to Buyer, by an amount that Buyer deems to be material, of entering into, continuing or maintaining Transactions, or to reduce any amount receivable under the Repurchase Documents in respect thereof, then, in any such case, upon not less than thirty (30) days' prior written notice to Sellers, Sellers shall pay to Buyer such additional amount or amounts as reasonably necessary to fully compensate Buyer for such increased cost or reduced amount receivable; provided, however, that Buyer shall not treat Sellers differently than other similarly situated customers in requiring the payment of such amount or amounts.

Section 12.6 Capital Adequacy. If Buyer determines that any change in a Requirement of Law or internal policy regarding capital requirements has or would have the effect of reducing the rate of return on Buyer's capital as a consequence of this Agreement or its obligations under the Transactions hereunder to a level below that which Buyer could have achieved but for such change in a Requirement of Law or internal policy (taking into consideration Buyer's policies with respect to capital adequacy), then, in any such case, upon not less than thirty (30) days prior written notice to Sellers, Sellers will promptly upon demand pay to Buyer such additional amount or amounts as will compensate Buyer for any such reduction suffered; provided, however, that Buyer shall not treat Sellers differently than other similarly situated customers in requiring the payment of such amount or amounts.

Section 12.7 Taxes.

(a) Any and all payments by or on account of any obligation of Sellers under any Repurchase Document shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law requires the deduction or

withholding of any Tax from any such payment, then Sellers shall make (or cause to be made) such deduction or withholding and shall timely pay (or cause to be timely paid) the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by Sellers shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 12.07) Buyer receives an amount equal to the sum it would have received had no such deduction or withholding been made in respect of such Indemnified Taxes.

(b) In addition, each Seller shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) Each Seller shall indemnify Buyer, within ten (10) Business Days after written demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 12.07) payable or paid by Buyer or required to be withheld or deducted from a payment to Buyer, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to Sellers by Buyer shall be conclusive absent manifest error.

(d) As soon as practicable after any payment of Taxes by Sellers to a Governmental Authority pursuant to this Section 12.07, Sellers shall deliver to Buyer the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to Buyer.

(e) (i) If Buyer is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Repurchase Document, Buyer shall deliver to Sellers, at the time or times reasonably requested by Seller, such properly completed and executed documentation reasonably requested by Sellers as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, Buyer, if reasonably requested by Sellers, shall deliver such other documentation prescribed by applicable law or reasonably requested by Seller as will enable Seller to determine whether or not Buyer is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 12.07(e)(ii)(A), Section 12.07(e)(ii)(B) and Section 12.07(e)(ii)(D) below) shall not be required if in Buyer's reasonable judgment such completion, execution or submission would subject Buyer to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of Buyer.

(i) Without limiting the generality of the foregoing:

(A) if Buyer is a U.S. Person, it shall deliver to Sellers on or prior to the date on which Buyer becomes a Party under this Agreement (and from time to

time thereafter upon the reasonable request of Sellers), executed copies of IRS Form W-9 certifying that Buyer is exempt from U.S. federal backup withholding tax;

(B) if Buyer is a Foreign Buyer, it shall, to the extent it is legally entitled to do so, deliver to Sellers (in such number of copies as shall be requested by Sellers) on or prior to the date on which Buyer becomes a Party under this Agreement (and from time to time thereafter upon the reasonable request of Sellers), whichever of the following is applicable:

(I) in the case of a Foreign Buyer claiming the benefits of an income tax treaty to which the United States is a party, (x) with respect to payments of interest under any Repurchase Document, executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E (as applicable) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Repurchase Document, IRS Form W-8BEN or IRS Form W-8BEN-E (as applicable) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(II) executed copies of IRS Form W-8ECI;

(III) in the case of a Foreign Buyer claiming the benefits of the exemption for portfolio interest under section 881(c) of the Code, (x) a certificate to the effect that such Foreign Buyer is not a "bank" within the meaning of section 881(c)(3)(A) of the Code, a "10 percent shareholder" of any Seller within the meaning of section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" described in section 881(c)(3)(C) of the Code (a "U.S. Tax Compliance Certificate") and (y) executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E (as applicable); or

(IV) to the extent a Foreign Buyer is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN, IRS Form W-8BEN-E, a U.S. Tax Compliance Certificate or IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Buyer is a partnership and one or more direct or indirect partners of such Foreign Buyer are claiming the portfolio interest exemption, such Foreign Buyer may provide a U.S. Tax Compliance Certificate on behalf of each such direct and indirect partner;

(C) if Buyer is a Foreign Buyer, it shall, to the extent it is legally entitled to do so, deliver to Sellers (in such number of copies as shall be requested by Sellers) on or prior to the date on which Buyer becomes a Party under this Agreement (and from time to time thereafter upon the reasonable request of

Sellers), executed copies of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit Sellers to determine the withholding or deduction required to be made; and

(D) if a payment made to Buyer under any Repurchase Document would be subject to U.S. federal withholding Tax imposed by FATCA if Buyer were to fail to comply with the applicable reporting requirements of FATCA (including those contained in section 1471(b) or 1472(b) of the Code, as applicable), Buyer shall deliver to Sellers at the time or times prescribed by law and at such time or times reasonably requested by Sellers such documentation prescribed by applicable law (including as prescribed by section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by Sellers as may be necessary for Sellers to comply with their obligations under FATCA and to determine that Buyer has complied with Buyer's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include all amendments made to FATCA after the date of this Agreement.

Buyer agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify Sellers in writing of its legal inability to do so.

(f) If any Party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 12.07 (including by the payment of additional amounts pursuant to this Section 12.07), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 12.07 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this Section 12.07(f) (*plus* any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this Section 12.07(f), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this Section 12.07(f) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts giving rise to such refund had never been paid. This Section 12.07(f) shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(g) For the avoidance of doubt, for purposes of this Section 12.07, the term "applicable law" includes FATCA.

Section 12.8 Payment and Survival of Obligations. Buyer may at any time send Sellers a notice showing the calculation of any amounts payable pursuant to this Article 12, and each Seller shall pay such amounts to Buyer within ten (10) Business Days after such Seller receives such notice. Each Party's obligations under this Article 12 shall survive any assignment of rights by, or the replacement of the Buyer, the termination of the Transactions and the repayment, satisfaction or discharge of all obligations under any Repurchase Document.

Section 12.9 Early Repurchase Option. If any of the events described in Sections 12.05 or 12.06 result in Buyer's request for additional amounts, then Sellers shall have the option to notify Buyer in writing at any time of their intent to terminate all of the Transactions and repurchase all of the Purchased Assets no later than ten (10) Business Days after such notice is given to Buyer, and such repurchase by Sellers shall be conducted pursuant to and in accordance with Section 3.04. The election by Sellers to terminate the Transactions in accordance with this Section 12.09 shall not relieve Sellers for liability with respect to any additional amounts actually incurred by Buyer prior to the actual repurchase of the Purchased Assets, except that, notwithstanding anything to the contrary contained herein or in any other Repurchase Document, there shall be no Exit Fee, prepayment fee, premium or other similar payment due in connection therewith.

ARTICLE 13

INDEMNITY AND EXPENSES

Section 13.1 Indemnity.

(a) Each Seller shall release, defend, indemnify and hold harmless Buyer, Affiliates of Buyer and its and their respective officers, directors, shareholders, partners, members, owners, employees, agents, attorneys, Affiliates and advisors (each an "Indemnified Person" and collectively the "Indemnified Persons"), on a net after-tax basis, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, fees, reasonable costs, expenses (including reasonable legal fees, charges, and disbursements of any counsel for any such Indemnified Person and expenses), penalties or fines of any kind that may be imposed on, incurred by or asserted against any such Indemnified Person (collectively, the "Indemnified Amounts") in any way relating to, arising out of or resulting from or in connection with (i) the Repurchase Documents, the Purchased Asset Documents, the Purchased Assets, the Pledged Collateral, the Transactions, any Mortgaged Property or related property, or any action taken or omitted to be taken by any Indemnified Person in connection with or under any of the foregoing, or any transaction contemplated hereby or thereby, or any amendment, supplement or modification of, or any waiver or consent under or in respect of any Repurchase Document, any Transaction, any Purchased Asset, any Purchased Asset Document, or any Pledged Collateral, (ii) any claims, actions or damages by an Underlying Obligor or lessee with respect to a Purchased Asset, (iii) any violation or alleged violation of, non–compliance with or liability under any Requirements of Law, (iv) ownership of, Liens on, security interests in or the exercise of rights or remedies under any of the items referred to in the preceding clause (i), (v) any

accident, injury to or death of any person or loss of or damage to property occurring in, on or about any Mortgaged Property or on the adjoining sidewalks, curbs, parking areas, streets or ways, (vi) any use, nonuse or condition in, on or about, or possession, alteration, repair, operation, maintenance or management of, any Mortgaged Property or on the adjoining sidewalks, curbs, parking areas, streets or ways, (vii) any failure by Seller to perform or comply with any Repurchase Document, Purchased Asset Document or Purchased Asset, (viii) performance of any labor or services or the furnishing of any materials or other property in respect of any Mortgaged Property or Purchased Asset, (ix) any claim by brokers, finders or similar Persons claiming to be entitled to a commission in connection with any lease or other transaction involving any Repurchase Document, Purchased Asset or Mortgaged Property, (x) the execution, delivery, filing or recording of any Repurchase Document, Purchased Asset Document or any memorandum of any of the foregoing, (xi) any Lien or claim arising on or against any Purchased Asset or related Mortgaged Property under any Requirements of Law or any liability asserted against Buyer or any Indemnified Person with respect thereto, (xii) (1) a past, present or future violation or alleged violation of any Environmental Laws in connection with any Mortgaged Property by any Person or other source, whether related or unrelated to Seller or any Underlying Obligor, (2) any presence of any Materials of Environmental Concern in, on, within, above, under, near, affecting or emanating from any Mortgaged Property in violation of Environmental Law, (3) the failure to timely perform any Remedial Work required under the Purchased Asset Documents or pursuant to Environmental Law, (4) any past, present or future activity by any Person or other source, whether related or unrelated to any Seller or any Underlying Obligor in connection with any actual, proposed or threatened use, treatment, storage, holding, existence, disposition or other release, generation, production, manufacturing, processing, refining, control, management, abatement, removal, handling, transfer or transportation to or from any Mortgaged Property of any Materials of Environmental Concern at any time located in, under, on, above or affecting any Mortgaged Property, in each case, in violation of Environmental Law, (5) any past, present or future actual Release (whether intentional or unintentional, direct or indirect, foreseeable or unforeseeable) to, from, on, within, in, under, near or affecting any Mortgaged Property by any Person or other source, whether related or unrelated to any Seller or any Underlying Obligor, in each case, in violation of Environmental Law, (6) the imposition, recording or filing or the threatened imposition, recording or filing of any Lien on any Mortgaged Property with regard to, or as a result of, any Materials of Environmental Concern or pursuant to any Environmental Law, or (7) any misrepresentation or failure to perform any obligations pursuant to any Repurchase Document or Purchased Asset Document relating to environmental matters in any way, or (xiii) any Seller's conduct, activities, actions and/or inactions in connection with, relating to or arising out of any of the foregoing clauses of this Section 13.01, that, in each case, results from anything whatsoever other than any Indemnified Person's gross negligence or willful misconduct, as determined by a court of competent jurisdiction pursuant to a final, non-appealable judgment. Notwithstanding the foregoing, Sellers shall have no liability to any Indemnified Person under clauses (v), (vi), (viii) or (xii) of this Section 13.01 for any claims arising as a result of activities or events which occur at any time more than six (6) months after Buyer (or one of its Affiliates) takes title to the related Mortgaged Property. In any suit, proceeding or action brought by an Indemnified Person in connection with any Purchased Asset for any sum owing thereunder, or to enforce any provisions of any Purchased Asset, each Seller shall defend, indemnify and hold such Indemnified Person harmless from and against all expense, loss or damage suffered by reason of any defense, set-off, counterclaim, recoupment or reduction of liability whatsoever of the

account debtor or Underlying Obligor arising out of a breach by any Seller of any obligation thereunder or arising out of any other agreement, indebtedness or liability at any time owing to or in favor of such account debtor or Underlying Obligor from any Seller. In the case of an investigation, litigation or other proceeding to which the indemnity in this Section 13.01 applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by any Seller, an Indemnified Person or any other Person or any Indemnified Person is otherwise a party thereto and whether or not any Transaction is entered into. This Section 13.01(a) shall not apply with respect to Taxes other than any Taxes that represent losses, claims or damages arising from any non-Tax claim.

(b) If for any reason the indemnification provided in this Section 13.01 is unavailable to the Indemnified Person or is insufficient to hold an Indemnified Person harmless, even though such Indemnified Person is entitled to indemnification under the express terms thereof, then the applicable Seller shall contribute to the amount paid or payable by such Indemnified Person as a result of such loss, claim, damage or liability in such proportion as is appropriate to reflect the relative benefits received by such Indemnified Person on the one hand and such Seller on the other hand, the relative fault of such Indemnified Person, and any other relevant equitable considerations.

(c) An Indemnified Person may at any time send Sellers a notice showing the calculation of Indemnified Amounts, and Sellers shall pay such Indemnified Amounts to such Indemnified Person within ten (10) Business Days after Sellers receive such notice. The obligations of Sellers under this Section 13.01 shall apply (without duplication) to Eligible Assignees and Participants and survive the termination of this Agreement.

Section 13.2 Expenses. Each Seller shall promptly on demand pay to or as directed by Buyer all reasonable third-party out-of-pocket costs and expenses (including legal, accounting and advisory fees and expenses) incurred by Buyer in connection with (a) the development, evaluation, preparation, negotiation, execution, consummation, delivery and administration of, and any amendment, supplement or modification to, or extension, renewal or waiver of, the Repurchase Documents and the Transactions, (b) any Asset or Purchased Asset, including due diligence, inspection, testing, review, recording, registration, travel custody, care, insurance or preservation, (c) the enforcement of the Repurchase Documents or the payment or performance by any Seller of any Repurchase Obligations, (d) any actual or attempted sale, exchange, enforcement, collection, compromise or settlement relating to the Purchased Assets, and (e) the internally allocated costs of Buyer of any Appraisal ordered in connection with an Asset proposed for purchase under Section 3.01 but subsequently rejected by Buyer for any reason.

ARTICLE 14

INTENT

Section 14.1 Safe Harbor Treatment. The Parties intend (a) for each Transaction to qualify for the safe harbor treatment provided by the Bankruptcy Code and for Buyer to be entitled to all of the rights, benefits and protections afforded to Persons under the Bankruptcy Code with respect to a "repurchase agreement" as defined in Section 101(47) of the

Bankruptcy Code (to the extent that a Transaction has a maturity date of less than one (1) year) and a "securities contract" as defined in Section 741(7) of the Bankruptcy Code and that payments and transfers under this Agreement are deemed "margin payments" and "settlement payments" as defined in Section 101 of the Bankruptcy Code and constitute transfers made by, to or for the benefit of a financial institution, financial participant or repo participant within the meaning of Section 546(e) or 546(f) of the Bankruptcy Code, (b) for the grant of a security interest set forth in Article 11 to also be a "securities contract" as defined in Section 741(7)(A)(xi) of the Bankruptcy Code and a "repurchase agreement" as that term is defined in Section 101(47)(A)(v) of the Bankruptcy Code; (c) for each of the Guarantee Agreement and the Pledge and Security Agreement to constitute a security agreement or arrangement or other credit enhancement within the meaning of Section 101 of the Code related to a "securities contract" as defined in Section 741(7)(A)(xi) of the Bankruptcy Code and, to the extent that the Guarantee Agreement and the Pledge and Security Agreement relate to a Transaction that has a maturity date of less than one (1) year, a "repurchase agreement" as that term is defined in Section 101(47)(A)(v) of the Bankruptcy Code; and (d) that Buyer (for so long as Buyer is a "financial institution," "financial participant," "repo participant," "master netting participant" or other entity listed in Section 555, 559, 561, 362(b)(6), 362(b)(7) or 362(b)(27) of the Bankruptcy Code) shall be entitled to the "safe harbor" benefits and protections afforded under the Bankruptcy Code with respect to a "repurchase agreement," "securities contract" and a "master netting agreement," including (x) the rights, set forth in Article 10 and in Sections 555, 559 and 561 of the Bankruptcy Code, to liquidate the Purchased Assets and terminate this Agreement, and (y) the right to offset or net out as set forth in Article 10 and Section 18.17 and in Sections 362(b)(6), 362(b)(7), 362(b)(27), 362(o) and 546 of the Bankruptcy Code.

Section 14.2 Liquidation. The Parties intend that Buyer's right to liquidate Purchased Assets delivered to it in connection with Transactions hereunder or to exercise any setoff and netting rights under Section 18.17 or any other remedies pursuant to Articles 10 and 11 and as otherwise provided in the Repurchase Documents is a contractual right to liquidate such Transactions as described in Sections 555, 559 and 561 of the Bankruptcy Code.

Section 14.3 Qualified Financial Contract. The Parties intend that if a Party is an "insured depository institution," as such term is defined in the Federal Deposit Insurance Act, as amended ("FDIA"), then each Transaction hereunder is a "qualified financial contract," as that term is defined in FDIA and any rules, orders or policy statements thereunder (except insofar as the type of assets subject to such Transaction would render such definition inapplicable).

Section 14.4 Netting Contract. The Parties acknowledge and agree that this Agreement constitutes a "netting contract" as defined in and subject to Title IV of the Federal Deposit Insurance Corporation Improvement Act of 1991 ("FDICIA") and each payment entitlement and payment obligation under any Transaction shall constitute a "covered contractual payment entitlement" or "covered contractual payment obligation," respectively, as defined in and subject to FDICIA (except insofar as one or both of the parties is not a "financial institution" as that term is defined in FDICIA).

Section 14.5 Master Netting Agreement. The Parties intend that this Agreement, the Guarantee Agreement and the Pledge and Security Agreement constitutes a "master netting agreement" as defined in Section 101(38A) of the Bankruptcy Code.

ARTICLE 15

DISCLOSURE RELATING TO CERTAIN FEDERAL PROTECTIONS

The Parties acknowledge that they have been advised and understand that:

(a) if one of the Parties is a broker or dealer registered with the Securities and Exchange Commission under Section 14 of the Exchange Act, the Securities Investor Protection Corporation has taken the position that the provisions of the Securities Investor Protection Act of 1970 do not protect the other Party with respect to any Transaction;

(b) if one of the Parties is a government securities broker or a government securities dealer registered with the Securities and Exchange Commission under Section 14C of the Exchange Act, the Securities Investor Protection Act of 1970 will not provide protection to the other Party with respect to any Transaction;

(c) if one of the Parties is a financial institution, funds held by or on behalf of the financial institution pursuant to any Transaction are not a deposit and therefore are not insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund, as applicable; and

(d) if one of the Parties is an "insured depository institution" as that term is defined in Section 1813(c)(2) of Title 12 of the United States Code, funds held by or on behalf of the financial institution pursuant to any Transaction are not a deposit and therefore are not insured by the Federal Deposit Insurance Corporation, the Savings Association Insurance Fund or the Bank Insurance Fund, as applicable.

ARTICLE 16

NO RELIANCE

Each Party acknowledges, represents and warrants to the other Party that, in connection with the negotiation of, entering into, and performance under, the Repurchase Documents and each Transaction:

(a) It is not relying (for purposes of making any investment decision or otherwise) on any advice, counsel or representations (whether written or oral) of the other Party, other than the representations expressly set forth in the Repurchase Documents;

(b) It has consulted with its own legal, regulatory, tax, business, investment, financial and accounting advisors to the extent that it has deemed necessary, and it has made its own investment, hedging and trading decisions (including decisions regarding the suitability of

any Transaction) based on its own judgment and on any advice from such advisors as it has deemed necessary and not on any view expressed by the other Party;

(c) It is a sophisticated and informed Person that has a full understanding of all the terms, conditions and risks (economic and otherwise) of the Repurchase Documents and each Transaction and is capable of assuming and willing to assume (financially and otherwise) those risks;

(d) It is entering into the Repurchase Documents and each Transaction for the purposes of managing its borrowings or investments or hedging its underlying assets or liabilities and not for purposes of speculation;

(e) It is not acting as a fiduciary or financial, investment or commodity trading advisor for the other Party and has not given the other Party (directly or indirectly through any other Person) any assurance, guaranty or representation whatsoever as to the merits (either legal, regulatory, tax, business, investment, financial accounting or otherwise) of the Repurchase Documents or any Transaction; and

(f) No partnership or joint venture exists or will exist as a result of the Transactions or entering into and performing the Repurchase Documents.

ARTICLE 17

SERVICING

This Article 17 shall apply to all Purchased Assets.

Section 17.1 Servicing Rights. Buyer is the owner of all Servicing Rights. Without limiting the generality of the foregoing, Buyer shall have the right to hire or otherwise engage any Person to service or sub-service all or part of the Purchased Assets, provided, however, that if any other Person other than Buyer is to act as Interim Servicer at any time prior to a Default or Event of Default, Sellers may select a successor servicer to Buyer, so long as such successor servicer is reasonably acceptable to Buyer, and such Person shall have only such servicing obligations with respect to such Purchased Assets as are designated by Buyer. Notwithstanding the preceding sentence, Buyer agrees with Sellers as follows with respect to the servicing of the Purchased Assets:

(a) Interim Servicer shall service the Purchased Assets on behalf of Buyer in accordance with Accepted Servicing Practices. So long as Interim Servicer is an Affiliate of Sellers, Interim Servicer shall service using its customary servicing platform and procedures, subject to the terms of the Servicing Agreement and the related cash management agreement, each of which shall be mutually acceptable to Buyer, Sellers and Interim Servicer.

(b) Prior to or contemporaneously with the execution of the Repurchase Agreement on the Closing Date, Buyer will enter into, and cause Interim Servicer to enter into, the Servicing Agreement and Sellers will enter into, the Servicing Agreement. The Servicing

Agreement shall automatically terminate on the last day of the first full calendar month following the Closing Date, unless terminated sooner pursuant to Section 17.04. To the extent Buyer desires to renew the appointment of Interim Servicer, in connection with its delivery of a statement of Price Differential due on the following Remittance Date, Buyer shall deliver notice to Sellers and Interim Servicer of its intent to renew the appointment of Interim Servicer for an additional thirty-day period, provided, if Buyer fails to deliver such notice, Sellers shall have the right to request that Buyer deliver such notice on or before the Remittance Date. In the event Buyer fails to renew Interim Servicer's appointment as Interim Servicer, Buyer shall appoint a successor servicer (which successor servicer shall be Wells Fargo Bank, N.A. or such other successor to whom, so long as no default or Event of Default has occurred and is continuing, Sellers have provided their consent, such consent not to be unreasonably withheld, conditioned or delayed). Any such successor servicer shall be entitled to fees and other servicing compensation as agreed by such successor servicer, Buyer and, so long as no default or Event of Default has occurred and is continuing, Sellers. During such time as the appointment of Interim Servicer has expired and prior to the appointment of any successor servicer, Interim Servicer shall continue to service the Purchased Assets in accordance with the terms of the Servicing Agreement and shall cooperate with the transition of servicing to the successor servicer.

(c) Each Seller shall provide all information regarding Interim Servicer requested by Buyer and otherwise cooperate in connection with Buyer's due diligence regarding Interim Servicer, which due diligence with respect to information provided prior to the Closing Date shall be completed by Buyer on or before the Closing Date. Seller shall cause Interim Servicer to comply with all of Interim Servicer's obligations under the Servicing Agreement. Neither Seller nor Interim Servicer may assign its rights or obligations under the Servicing Agreement without the prior written consent of Buyer.

(d) The Servicing Agreement shall grant Sellers the right, so long as no Default or Event of Default has occurred and is continuing, to direct Interim Servicer with respect to modifications, waivers, consents and other actions related to the Purchased Assets; provided, however, that Sellers shall not and shall not direct Interim Servicer to (i) make any Material Modification without the prior written consent of Buyer (such consent to be given or withheld in Buyer's commercially reasonable discretion), or (ii) take any action which would result in a violation of the obligations of any Person under the Servicing Agreement, the Repurchase Agreement or any other Repurchase Document, or which would otherwise be inconsistent with the rights of Buyer under the Repurchase Documents. Buyer, as owner of the Purchased Assets, shall own all related servicing and voting rights and, as owner, shall act as Interim Servicer with respect to the Purchased Assets, subject to an interim revocable option from Buyer in favor of Sellers to direct Interim Servicer, so long as no Default or Event of Default has occurred and is continuing; provided, however, that Sellers cannot give any direction or take any action that could materially adversely affect the value or collectability of any amounts due with respect to the Purchased Assets without the consent of Buyer, such consent to be given or withheld by Buyers. Such revocable option is not evidence of any ownership or other interest or right of any Seller in any Purchased Asset.

(e) The servicing fee payable to Interim Servicer shall be payable as a servicing fee in accordance with the Repurchase Agreement and the Servicing Agreement,

including without limitation pursuant to priority first of Section 5.02 of the Repurchase Agreement or priority first of Section 5.03 of the Repurchase Agreement, as applicable. Each Seller shall be solely responsible for the payment, from such Seller's own funds, of all fees and expenses of the Interim Servicer, which shall not be payable as a servicing fee by Interim Servicer or otherwise under the Repurchase Agreement or the Servicing Agreement.

Section 17.2 Accounts Related to Purchased Assets. All accounts directly related to the Purchased Assets shall be maintained at Wells Fargo Bank, N.A. acceptable to Buyer, and each Seller shall cause the Underlying Obligor to enter into the contractual arrangements with Buyer and such Seller that are necessary in order to create a perfected security interest in favor of Buyer in all such accounts, including, without limitation, an Account Control Agreement in form and substance reasonably acceptable to Buyer.

Section 17.3 Servicing Reports. Each Seller shall deliver to deliver to Buyer and Custodian a monthly remittance report on or before the third Business Day immediately preceding each monthly Remittance Date containing servicing information, including those fields reasonably requested by Buyer from time to time, on an asset by asset basis and in the aggregate, with respect to the Purchased Assets for the month (or any portion thereof) before the date of such report.

Section 17.4 Event of Default. If an Event of Default or an Interim Servicer Event of Default exists, Buyer shall have the right at any time thereafter to terminate the Servicing Agreement and transfer the servicing of the Purchased Assets to Buyer or its designee, at no cost or expense to Buyer, it being agreed that each Seller will pay any fees and expenses required to terminate such Servicing Agreement and transfer servicing to Buyer or its designee in such event.

ARTICLE 18

MISCELLANEOUS

Section 18.1 Governing Law. THIS AGREEMENT AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS AGREEMENT, THE RELATIONSHIP OF THE PARTIES TO THIS AGREEMENT, AND/OR THE INTERPRETATION AND ENFORCEMENT OF THE RIGHTS AND DUTIES OF THE PARTIES TO THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS AND DECISIONS OF THE STATE OF NEW YORK, WITHOUT REGARD TO THE CHOICE OF LAW RULES THEREOF OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW. THE PARTIES HERETO INTEND THAT THE PROVISIONS OF SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW SHALL APPLY TO THIS AGREEMENT.

Section 18.2 Submission to Jurisdiction; Service of Process. Each Party irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the courts of the State of New York sitting in the Borough of Manhattan and of the United States District Court of the Southern District of New York, or in any court with jurisdiction that

is located in Delaware, California or the state where the related underlying Mortgaged Property is located, and any appellate court from any thereof, in any action or proceeding arising out of or relating to the Repurchase Documents, or for recognition or enforcement of any judgment, and each Party irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such State court or, to the fullest extent permitted by applicable law, in such Federal court. Each Party agrees that a final judgment 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. Nothing in this Agreement or the other Repurchase Documents shall affect any right that Buyer may otherwise have to bring any action or proceeding arising out of or relating to the Repurchase Documents against any Seller or its properties in the courts of any jurisdiction. Each Party irrevocably and unconditionally waives, to the fullest extent permitted by Requirements of Law, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to the Repurchase Documents in any court referred to above, and the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court. Each Party irrevocably consents to service of process in the manner provided for notices in Section 18.12. Nothing in this Agreement will affect the right of any party hereto to serve process in any other manner permitted by applicable law.

Section 18.3 IMPORTANT WAIVERS.

(a) EACH SELLER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT TO ASSERT A COUNTERCLAIM, OTHER THAN A COMPULSORY COUNTERCLAIM, IN ANY ACTION OR PROCEEDING BROUGHT AGAINST IT BY BUYER OR ANY INDEMNIFIED PERSON.

(b) TO THE EXTENT PERMITTED BY REQUIREMENTS OF LAW, EACH PARTY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE BETWEEN THEM, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, ARISING OUT OF, CONNECTED WITH OR RELATED TO THE REPURCHASE DOCUMENTS, THE PURCHASED ASSETS, THE PLEDGED COLLATERAL, THE TRANSACTIONS, ANY DEALINGS OR COURSE OF CONDUCT BETWEEN THEM, OR ANY STATEMENTS (WRITTEN OR ORAL) OR OTHER ACTIONS OF EITHER PARTY. NEITHER PARTY WILL SEEK TO CONSOLIDATE ANY SUCH ACTION WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. INSTEAD, ANY SUCH DISPUTE RESOLVED IN COURT WILL BE RESOLVED IN A BENCH TRIAL WITHOUT A JURY.

(c) TO THE EXTENT PERMITTED BY REQUIREMENTS OF LAW, EACH SELLER HEREBY WAIVES ANY RIGHT TO CLAIM OR RECOVER IN ANY LITIGATION WHATSOEVER INVOLVING ANY INDEMNIFIED PERSON, ANY SPECIAL, EXEMPLARY, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER OR ANY DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES, WHETHER SUCH WAIVED DAMAGES ARE BASED ON STATUTE, CONTRACT, TORT, COMMON LAW OR ANY OTHER LEGAL

THEORY, WHETHER THE LIKELIHOOD OF SUCH DAMAGES WAS KNOWN AND REGARDLESS OF THE FORM OF THE CLAIM OF ACTION AND BOTH SELLERS AND BUYER WAIVE ANY RIGHTS THEY MAY HAVE TO RECOVER PUNITIVE DAMAGES AGAINST THE OTHER IN ANY SUCH PROCEEDING. NO INDEMNIFIED PERSON SHALL BE LIABLE FOR ANY DAMAGES ARISING FROM THE USE BY UNINTENDED RECIPIENTS OF ANY INFORMATION OR OTHER MATERIALS DISTRIBUTED BY IT THROUGH TELECOMMUNICATIONS, ELECTRONIC OR OTHER INFORMATION TRANSMISSION SYSTEMS IN CONNECTION WITH ANY REPURCHASE DOCUMENT OR THE TRANSACTIONS.

(d) EACH PARTY CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE OTHER PARTY OR AN INDEMNIFIED PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE OTHER PARTY OR AN INDEMNIFIED PERSON WOULD NOT SEEK TO ENFORCE ANY OF THE WAIVERS IN THIS SECTION 18.03 IN THE EVENT OF LITIGATION OR OTHER CIRCUMSTANCES. THE SCOPE OF SUCH WAIVERS IS INTENDED TO BE ALL–ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THE REPURCHASE DOCUMENTS, REGARDLESS OF THEIR LEGAL THEORY.

(e) EACH PARTY ACKNOWLEDGES THAT THE WAIVERS IN THIS SECTION 18.03 ARE A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT SUCH PARTY HAS ALREADY RELIED ON SUCH WAIVERS IN ENTERING INTO THE REPURCHASE DOCUMENTS, AND THAT SUCH PARTY WILL CONTINUE TO RELY ON SUCH WAIVERS IN THEIR RELATED FUTURE DEALINGS UNDER THE REPURCHASE DOCUMENTS. EACH PARTY FURTHER REPRESENTS AND WARRANTS THAT IT HAS REVIEWED SUCH WAIVERS WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL AND OTHER RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

(f) THE WAIVERS IN THIS SECTION 18.03 ARE IRREVOCABLE, MEANING THAT THEY MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND SHALL APPLY TO ANY AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO ANY OF THE REPURCHASE DOCUMENTS. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

(g) THE PROVISIONS OF THIS SECTION 18.03 SHALL SURVIVE TERMINATION OF THE REPURCHASE DOCUMENTS AND THE INDEFEASIBLE PAYMENT IN FULL OF THE REPURCHASE OBLIGATIONS.

Section 18.4 Integration. The Repurchase Documents supersede and integrate all previous negotiations, contracts, agreements and understandings (whether written or oral) between the Parties relating to a sale and repurchase of Purchased Assets and the other matters addressed by the Repurchase Documents, and contain the entire final agreement of the Parties relating to the subject matter thereof.

Section 18.5 Single Agreement. Each Seller agrees that (a) each Transaction is in consideration of and in reliance on the fact that all Transactions constitute a single business and contractual relationship, and that each Transaction has been entered into in consideration of the other Transactions, (b) a default by it in the payment or performance of any its obligations under a Transaction shall constitute a default by it with respect to all Transactions, (c) Buyer may set off claims and apply properties and assets held by or on behalf of Buyer with respect to any Transaction against the Repurchase Obligations owing to Buyer with respect to other Transactions, and (d) payments, deliveries and other transfers made by or on behalf of any Seller with respect to any Transaction shall be deemed to have been made in consideration of payments, deliveries and other transfers with respect to all Transactions, and the obligations of such Seller to make any such payments, deliveries and other transfers may be applied against each other and netted.

Section 18.6 Use of Employee Plan Assets. No assets of an employee benefit plan subject to any provision of ERISA shall be used by any Party in a Transaction.

Section 18.7 Survival and Benefit of Sellers' Agreements. The Repurchase Documents and all Transactions shall be binding on and shall inure to the benefit of the Parties and their successors and permitted assigns. All of each Seller's representations, warranties, agreements and indemnities in the Repurchase Documents shall survive the termination of the Repurchase Documents and the payment in full of the Repurchase Obligations, and shall apply to and benefit all Indemnified Persons, Buyer and its successors and assigns, Eligible Assignees and Participants. No other Person shall be entitled to any benefit, right, power, remedy or claim under the Repurchase Documents.

Section 18.8 Assignments and Participations.

(a) Each Seller shall not sell, assign or transfer any of its rights or the Repurchase Obligations or delegate its duties under this Agreement or any other Repurchase Document without the prior written consent of Buyer, and any attempt by a Seller to do so without such consent shall be null and void. Buyer may at any time, without the consent of or notice to any Seller, sell participations to any Person (other than a natural person or Seller or Guarantor) (a "Participant") in all or any portion of Buyer's rights and/or obligations under the Repurchase Documents; provided, that (i) Buyer's obligations and each Seller's rights and obligations under the Repurchase Documents shall remain unchanged, (ii) Buyer shall remain solely responsible to Sellers for the performance of such obligations, and (iii) Sellers shall continue to deal solely and directly with Buyer in connection with Buyer's rights and obligations under the Repurchase Documents. No Participant shall have any right to approve any amendment, waiver or consent with respect to any Repurchase Document, except to the extent that the Repurchase Price or Price Differential of any Purchased Asset would be reduced or the Repurchase Date of any Purchased Asset would be postponed. Each Participant shall be entitled to the benefits of Article 12 to the same extent as if it had acquired its interest by assignment pursuant to Section 18.08(b); so long as such Participant agrees to be subject to Section 12.07 as if it were an Eligible Assignee. To the extent permitted by Requirements of Law, each

Participant shall be entitled to the benefits of Sections 10.02(j) and 18.17 to the same extent as if it had acquired its interest by assignment pursuant to Section 18.08(b).

(b) Buyer may at any time, without consent of any Seller or Guarantor but upon notice to Sellers, sell and assign to any Eligible Assignee all or any portion of all of the rights and obligations of Buyer under the Repurchase Documents and, so long as no Default or Event of Default has occurred and is continuing, Buyer shall act as agent for the Eligible Assignee. Each such assignment shall be made pursuant to an Assignment and Acceptance substantially in the form of Exhibit F (an "Assignment and Acceptance"). From and after the effective date of such Assignment and Acceptance, (i) such Eligible Assignee shall be a Party and, to the extent provided therein, have the rights and obligations of Buyer under the Repurchase Documents with respect to the percentage and amount of the Repurchase Price allocated to it, (ii) Buyer shall, to the extent provided therein, if such Assignment and Acceptance is executed after an Event of Default, be released from such obligations (and, in the case of an Assignment and Acceptance covering all or the remaining portion of Buyer's obligations under this Agreement, Buyer shall cease to be a Party hereto), provided that (A) at all times prior to an Event of Default, Buyer shall remain solely responsible to Sellers for the performance of such obligations and (B) Buyer shall remain solely responsible for all claims which are based on events which occurred prior to the date of such Assignment and Acceptance, (iii) at all times prior to an Event of Default, Sellers shall continue to deal solely and directly with Buyer in connection with Buyer's rights and obligations under the Repurchase Documents, (iv) the obligations of Buyer shall be deemed to be so reduced, and (v) Buyer will give prompt written notice thereof (including identification of the Eligible Assignee and the amount of Repurchase Price allocated to it) to each Party (but Buyer shall not have any liability for any failure to timely provide such notice). Any sale or assignment by Buyer of rights or obligations under the Repurchase Documents that does not comply with this Section 18.08(b) shall be treated for purposes of the Repurchase Documents as a sale by such Buyer of a participation in such rights and obligations in accordance with Section 18.08(a). Notwithstanding the foregoing, so long as no Default or Event of Default has occurred and is continuing, Buyer shall not assign, syndicate and/or participate any of its rights to any competitor of a Seller described on the attached Exhibit I hereto.

(c) Each Seller shall cooperate with Buyer in connection with any such sale and assignment of participations or assignments and shall enter into such restatements of, and amendments, supplements and other modifications to, the Repurchase Documents to give effect to any such sale or assignment; provided, that none of the foregoing shall change any economic or other material term of the Repurchase Documents in a manner adverse to a Seller without the consent of such Seller.

(d) Buyer shall have the right to partially or completely syndicate and or all of its rights under the Agreement and the other Repurchase Documents to any Eligible Assignee.

(e) Each Seller, shall maintain a copy of each Assignment and Acceptance and a register for the recordation of the names and addresses of the Eligible Assignees that become Parties hereto and, with respect to each such Eligible Assignee, the aggregate assigned

Purchase Price and applicable Price Differential (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Parties shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Buyer for all purposes of this Agreement. The Register shall be available for inspection by the Parties at any reasonable time and from time to time upon reasonable prior notice.

(f) If Buyer sells a participation of its rights hereunder, it shall, acting solely for this purpose as a non-fiduciary agent of the applicable Seller, maintain a register on which it enters the name and address of each Participant and, with respect to each such Participant, the aggregate participated Purchase Price and applicable Price Differential, and any other interest in any obligations under the Repurchase Documents (the "Participant Register"); provided that no Party shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any obligations under any Repurchase Document) to any Person except to the extent that such disclosure is necessary to establish that such obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and the participating Party shall treat each Person whose name is recorded in the Participant Register as the owner of the applicable participation for all purposes of this Agreement notwithstanding any notice to the contrary.

Section 18.9 Ownership and Hypothecation of Purchased Assets. Title to all Purchased Assets shall pass to and vest in Buyer on the applicable Purchase Dates and, subject to the terms of the Repurchase Documents, Buyer or its designee shall have free and unrestricted use of all Purchased Assets and be entitled to exercise all rights, privileges and options relating to the Purchased Assets as the owner thereof, including rights of subscription, conversion, exchange, substitution, voting, consent and approval, and to direct any servicer or trustee. Buyer or its designee may, at any time, without the consent of Sellers, Pledgor or Guarantor, engage in repurchase transactions with the Purchased Assets or otherwise sell, pledge, repledge, transfer, hypothecate, or rehypothecate the Purchased Assets, all on terms that Buyer may determine, so long as Buyer provides the applicable Seller with advance notice of them; provided, that no such transaction shall affect the obligations of Buyer to transfer the Purchased Assets to such Seller on the applicable Repurchase Dates free and clear of any pledge, Lien, security interest, encumbrance, charge or other adverse claim. In the event Buyer engages in a repurchase transaction with any of the Purchased Assets or otherwise pledges or hypothecates any of the Purchased Assets, Buyer shall have the right to assign to Buyer's counterparty any of the applicable representations or warranties herein and the remedies for breach thereof, as they relate to the Purchased Assets that are subject to such repurchase transaction.

Section 18.10 Confidentiality. All information regarding the terms set forth in any of the Repurchase Documents or the Transactions shall be kept confidential and shall not be disclosed by either Party to any Person except (a) to the Affiliates of such Party or its or their respective directors, officers, employees, agents, advisors, attorneys, accountants and other representatives who are informed of the confidential nature of such information and instructed to keep it confidential, (b) to the extent requested by any regulatory authority, stock exchange, government department or agency, or required by Requirements of Law or necessary or advisable in connection with any public company filing requirements under federal securities

laws, (c) to the extent required to be included in the financial statements of either Party or an Affiliate thereof, (d) to the extent required to exercise any rights or remedies under the Repurchase Documents, Purchased Assets or Mortgaged Properties, (e) to the extent required to consummate and administer a Transaction, (f) in the event any Party is legally compelled to make pursuant to deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process by court order of a court of competent jurisdiction, and (g) to any actual or prospective Participant, Eligible Assignee or Hedge Counterparty that agrees to comply with this Section 18.10, and (h) in connection with a public market transaction of Guarantor, but only to the extent such disclosure is legally required pursuant to an applicable Requirement of Law; provided, that, except with respect to the disclosures by Buyer under clause (g) of this Section 18.10, no such disclosure made with respect to any Repurchase Document shall include a copy of such Repurchase Document to the extent that a summary would suffice, but if it is necessary for a copy of any Repurchase Document to be disclosed, all pricing and other economic terms set forth therein shall be redacted before disclosure.

Section 18.11 No Implied Waivers; Amendments. No failure on the part of Buyer to exercise, or delay in exercising, any right or remedy under the Repurchase Documents shall operate as a waiver thereof; nor shall any single or partial exercise of any right or remedy thereunder preclude any further exercise thereof or the exercise of any other right. The rights and remedies in the Repurchase Documents are cumulative and not exclusive of any rights and remedies provided by law. Application of the Default Rate after an Event of Default shall not be deemed to constitute a waiver of any Event of Default or Buyer's rights and remedies with respect thereto, or a consent to any extension of time for the payment or performance of any obligation with respect to which the Default Rate is applied. Except as otherwise expressly provided in the Repurchase Documents, no amendment, waiver or other modification of any provision of the Repurchase Documents shall be effective without the signed agreement of the applicable Seller and Buyer. Any waiver or consent under the Repurchase Documents shall be effective only if it is in writing and only in the specific instance and for the specific purpose for which given.

Section 18.12 Notices and Other Communications. Unless otherwise provided in this Agreement, all notices, consents, approvals, requests and other communications required or permitted to be given to a Party hereunder shall be in writing and sent prepaid by hand delivery, by certified or registered mail, by expedited commercial or postal delivery service, or by facsimile or email if also sent by one of the foregoing, to the address for such Party specified in Annex I or such other address as such Party shall specify from time to time in a notice to the other Party. Any of the foregoing communications shall be effective when delivered, if delivered prior to 4:00 PM recipient local time on a Business Day; otherwise, each such communication shall be effective on the first Business Day following the date of such delivery. A Party receiving a notice that does not comply with the technical requirements of this Section 18.12 may elect to waive any deficiencies and treat the notice as having been properly given.

Section 18.13 Counterparts; Electronic Transmission. Any Repurchase Document may be executed in separate counterparts, each of which when so executed and delivered shall be deemed to be an original, but all of which shall together constitute but one and

the same instrument. The Parties agree that this Agreement, any documents to be delivered pursuant to this Agreement, any other Repurchase Document and any notices hereunder may be transmitted between them by email and/or facsimile. The Parties intend that faxed signatures and electronically imaged signatures such as .pdf files shall constitute original signatures and are binding on all parties.

Section 18.14 No Personal Liability. No administrator, incorporator, Affiliate, owner, member, partner, stockholder, officer, director, employee, agent or attorney of Buyer, any Indemnified Person, any Seller, Pledgor or Guarantor, as such, shall be subject to any recourse or personal liability under or with respect to any obligation of Buyer, any Seller, Pledgor or Guarantor under the Repurchase Documents, whether by the enforcement of any assessment, by any legal or equitable proceeding, by virtue of any statute or otherwise; it being expressly agreed that the obligations of Buyer, any Seller, Pledgor or Guarantor under the Repurchase Documents are solely their respective corporate, limited liability company or partnership obligations, as applicable, and that any such recourse or personal liability is hereby expressly waived. This Section 18.14 shall survive the termination of the Repurchase Documents and the repayment in full of the Repurchase Obligations.

Section 18.15 Protection of Buyer's Interests in the Purchased Assets; Further Assurances.

(a) Each Seller shall take such actions as necessary to cause the Repurchase Documents and/or all financing statements and continuation statements and any other necessary documents covering the right, title and interest of Buyer to the Purchased Assets to be promptly recorded, registered and filed, and at all times to be kept recorded, registered and filed, all in such manner and in such places as may be required by law fully to preserve and protect such right, title and interest. Each Seller shall deliver to Buyer file–stamped copies of, or filing receipts for, any document recorded, registered or filed as provided above, as soon as available following such recording, registration or filing. Each Seller shall execute any and all documents reasonably required to fulfill the intent of this Section 18.15.

(b) Each Seller will promptly at its expense execute and deliver such instruments and documents and take such other actions as Buyer may reasonably request from time to time in order to perfect, protect, evidence, exercise and enforce Buyer's rights and remedies under and with respect to the Repurchase Documents, the Transactions and the Purchased Assets. Sellers and Guarantor shall, promptly upon Buyer's request, deliver documentation in form and substance satisfactory to Buyer which Buyer deems necessary or desirable to evidence compliance with all applicable "know your customer" due diligence checks.

(c) If either Seller fails to perform any of its Repurchase Obligations, then Buyer may (but shall not be required to) perform or cause to be performed such Repurchase Obligation, and the costs and expenses incurred by Buyer in connection therewith shall be payable by Sellers. Without limiting the generality of the foregoing, each Seller authorizes Buyer, at the option of Buyer and the expense of such Seller, at any time and from time to time, to take all actions and pay all amounts that Buyer deems necessary or appropriate to protect,

enforce, preserve, insure, service, administer, manage, perform, maintain, safeguard, collect or realize on the Purchased Assets and Buyer's Liens and interests therein or thereon and to give effect to the intent of the Repurchase Documents. No Default or Event of Default shall be cured by the payment or performance of any Repurchase Obligation by Buyer on behalf of a Seller. Buyer may make any such payment in accordance with any bill, statement or estimate procured from the appropriate public office or holder of the claim to be discharged without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax assessment, sale, forfeiture, tax Lien, title or claim except to the extent such payment is being contested in good faith by a Seller in appropriate proceedings and against which adequate reserves are being maintained in accordance with GAAP. Buyer shall endeavor to give Sellers notice prior to commencing any action under this Section 18.15(c), but the failure to do so shall have no adverse effect of any kind on Buyer.

(d) Without limiting the generality of the foregoing, each Seller will no earlier than six (6) months or later than three (3) months before the fifth (5^{th}) anniversary of the date of filing of each UCC financing statement filed in connection with to any Repurchase Document or any Transaction, (i) deliver and file or cause to be filed an appropriate continuation statement with respect to such financing statement (provided that Buyer may elect to file such continuation statement), and (ii) if requested by Buyer, deliver or cause to be delivered to Buyer an opinion of counsel, in form and substance reasonably satisfactory to Buyer, confirming and updating the security interest opinion delivered pursuant to Section 6.01(a) with respect to perfection and otherwise to the effect that the security interests hereunder continue to be enforceable and perfected security interests, subject to no other Liens of record except as expressly permitted hereunder, which opinion may contain usual and customary assumptions, limitations and exceptions.

(e) Except as provided in the Repurchase Documents, the sole duty of Buyer, Custodian or any other designee or agent of Buyer with respect to the Purchased Assets shall be to use reasonable care in the custody, use, operation and preservation of the Purchased Assets in its possession or control. Buyer shall incur no liability to any Seller or any other Person for any act of Governmental Authority, act of God or other destruction in whole or in part or negligence or wrongful act of custodians or agents selected by Buyer with reasonable care, or Buyer's failure to provide adequate protection or insurance for the Purchased Assets. Buyer shall have no obligation to take any action to preserve any rights of any Seller in any Purchased Asset against prior parties, and each Seller hereby agrees to take such action. Buyer shall have no obligation to realize upon any Purchased Asset except through proper application of any distributions with respect to the Purchased Assets made directly to Buyer or its agent(s). So long as Buyer and Custodian shall act in good faith in their handling of the Purchased Assets, each Seller waives or is deemed to have waived the defense of impairment of the Purchased Assets by Buyer and Custodian.

(f) At Buyer's election (at Buyer's sole cost and expense) and at any time during the term of this Agreement, Buyer may complete and record any or all of the Blank Assignment Documents as further evidence of Buyer's ownership interest in the related Purchased Assets.

Section 18.16 Default Rate. To the extent permitted by Requirements of Law, each Seller shall pay interest at the Default Rate on the amount of all Repurchase Obligations (other than payments of Price Differential calculated at the Default Rate) not paid when due under the Repurchase Documents until such Repurchase Obligations are paid or satisfied in full.

Section 18.17 Set-off. In addition to any rights now or hereafter granted under the Repurchase Documents, Requirements of Law or otherwise, each Seller hereby grants to Buyer and each Indemnified Person, to secure repayment of the Repurchase Obligations, a right of set-off upon any and all of the following: monies, securities, collateral or other property of each Seller and any proceeds from the foregoing, now or hereafter held or received by Buyer, any Affiliate of Buyer or any Indemnified Person, for the account of any Seller, whether for safekeeping, custody, pledge, transmission, collection or otherwise, and also upon any and all deposits (general, specified, special, time, demand, provisional or final) and credits, claims or Indebtedness of a Seller at any time existing, and any obligation owed by Buyer or any Affiliate of Buyer to a Seller and to set–off against any Repurchase Obligations or Indebtedness owed by any Seller and any Indebtedness owed by Buyer or any Affiliate of Buyer to Seller, in each case whether direct or indirect, absolute or contingent, matured or unmatured, whether or not arising under the Repurchase Documents and irrespective of the currency, place of payment or booking office of the amount or obligation and in each case at any time held or owing by Buyer, any Affiliate of Buyer or any Indemnified Person to or for the credit of a Seller, without prejudice to Buyer's right to recover any deficiency. Each of Buyer, each Affiliate of Buyer and each Indemnified Person is hereby authorized upon any amount becoming due and payable by a Seller to Buyer or any Indemnified Person under the Repurchase Documents, the Repurchase Obligations or otherwise or upon the occurrence of an Event of Default, without notice to any Seller, any such notice being expressly waived by each Seller to the extent permitted by any Requirements of Law, to set–off, appropriate, apply and enforce such right of set–off against any and all items hereinabove referred to against any amounts owing to Buyer or any Indemnified Person by a Seller under the Repurchase Documents and the Repurchase Obligations, irrespective of whether Buyer, any Affiliate of Buyer or any Indemnified Person shall have made any demand under the Repurchase Documents and regardless of any other collateral securing such amounts, and in all cases without waiver or prejudice of Buyer's rights to recover a deficiency. Each Seller shall be deemed directly indebted to Buyer and the other Indemnified Persons in the full amount of all amounts owing to Buyer and the other Indemnified Persons by any Seller under the Repurchase Documents and the Repurchase Obligations, and Buyer and the other Indemnified Persons shall be entitled to exercise the rights of set–off provided for above. ANY AND ALL RIGHTS TO REQUIRE BUYER OR OTHER INDEMNIFIED PERSONS TO EXERCISE THEIR RIGHTS OR REMEDIES WITH RESPECT TO THE PURCHASED ASSETS, THE PLEDGED COLLATERAL OR OTHER INDEMNIFIED PERSONS UNDER THE REPURCHASE DOCUMENTS, PRIOR TO EXERCISING THE FOREGOING RIGHT OF SET–OFF, ARE HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVED BY EACH SELLER.

Buyer or any Indemnified Person shall promptly notify the applicable Seller after any such set-off and application made by Buyer or such Indemnified Person, provided that the failure to give such notice shall not affect the validity of such set–off and application. If an amount or obligation is unascertained, Buyer may in good faith estimate that obligation and setoff in respect of the estimate, subject to the relevant Party accounting to the other Party

when the amount or obligation is ascertained. Nothing in this Section 18.17 shall be effective to create a charge or other security interest. This Section 18.17 shall be without prejudice and in addition to any right of set-off, combination of accounts, Lien or other rights to which any Party is at any time otherwise entitled.

Section 18.18 Sellers' Waiver of Setoff. Each Seller hereby waives any right of setoff it may have or to which it may be or become entitled under the Repurchase Documents or otherwise against Buyer, any Affiliate of Buyer, any Indemnified Person or their respective assets or properties.

Section 18.19 Power of Attorney. Each Seller hereby authorizes Buyer to file such financing statement or statements relating to the Purchased Assets without such Seller's signature thereon as Buyer, at its option, may deem appropriate. Each Seller hereby appoints Buyer as such Seller's agent and attorney in fact to file any such financing statement or statements in such Seller's name and to perform all other acts which Buyer deems appropriate to perfect and continue its ownership interest in and/or the security interest granted hereby, if applicable, and at all times after the occurrence of a Default or an Event of Default to protect, preserve and realize upon the Purchased Assets, including, but not limited to, the right to endorse notes, complete blanks in documents, transfer servicing, and sign assignments on behalf of such Seller as its agent and attorney in fact. This agency and power of attorney is coupled with an interest and is irrevocable without Buyer's consent. Each Seller shall pay the filing costs for any financing statement or statements prepared pursuant to this Section 18.19.

Section 18.20 Periodic Due Diligence Review. Buyer may perform continuing due diligence reviews with respect to any or all of the Purchased Assets, each Seller, Guarantor, Interim Servicer and Manager, including ordering new third party reports, for purposes of, among other things, verifying compliance with the representations, warranties, covenants, agreements, duties, obligations and specifications made under the Repurchase Documents or otherwise. Upon reasonable prior notice to the applicable Seller, unless a Default or Event of Default exists, in which case no notice is required, Buyer or its representatives may during normal business hours inspect any properties and examine, inspect and make copies of the books and records of such Seller, Guarantor, Interim Servicer and Manager, the Purchased Asset Documents and the Servicing Files, except that such rights shall not apply with respect to assets other than the Purchased Assets. Each Seller shall make available to Buyer one or more knowledgeable financial or accounting officers. Each Seller shall cause Interim Servicer to cooperate with Buyer by permitting Buyer to conduct due diligence reviews of the Servicing Files. Buyer may purchase Purchased Assets from a Seller based solely on the information provided by such Seller to Buyer in the Underwriting Package and the representations, warranties, duties, obligations and covenants contained herein, and Buyer may at any time conduct a partial or complete due diligence review on some or all of the Purchased Assets, including ordering new credit reports and new Appraisals on the underlying Mortgaged Properties and otherwise re-generating the information used to originate and underwrite such Purchased Assets. Buyer may underwrite such Purchased Assets itself or engage a mutually acceptable third-party underwriter to do so. Each Seller shall reimburse Buyer for all actual, out-of-pocket, third-party costs and expenses incurred in connection with the activities described in this Section 18.20, subject to an annual, calendar year dollar cap of $30,000.

Section 18.21 Time of the Essence. Time is of the essence with respect to all obligations, duties, covenants, agreements, notices or actions or inactions of the parties under the Repurchase Documents.

Section 18.22 Joint and Several Repurchase Obligations.

(a) Each Seller hereby acknowledges and agrees that (i) each Seller shall be jointly and severally liable to Buyer to the maximum extent permitted by Requirements of Law for all Repurchase Obligations, (ii) until all Repurchase Obligations shall have been paid in full and the expiration of any applicable preference or similar period pursuant to any Insolvency Law, or at law or in equity, has expired without any claims having been made, the liability of each Seller (A) shall be absolute and unconditional and shall remain in full force and effect (and, if suspended or terminated, shall be reinstated) and, for the avoidance of doubt, such liability shall be absolute and unconditional and shall remain in full force and effect even if Buyer shall not make a claim before the expiration of such period asserting an interest in all or any part of any payment(s) received by Buyer, and (B) shall not be discharged, affected, modified or impaired on the occurrence from time to time of any event, including, but not limited to, any of the following events, whether or not with notice to, or the consent of, each or any Seller: (1) the waiver, forbearance, compromise, settlement, release, termination, modification or amendment (including, but not limited to, any extension or postponement of the time for payment or performance or renewal or refinancing) of any of the Repurchase Obligations or Repurchase Documents, (2) the failure to give notice to each or any Seller of the occurrence of a Default or an Event of Default, (3) the release, substitution or exchange by Buyer of any Purchased Asset (with or without consideration) or the acceptance by Buyer of any additional collateral or the availability or claimed availability of any other collateral or source of repayment or any nonperfection, subordination of priority (whether at law or equity) or any other impairment of any collateral, (4) the full or partial release of, or waiver or forbearance from enforcing any rights against, any Person primarily or secondarily liable for payment or performance of all or any part of the Repurchase Obligations, whether or not by Buyer, and whether or not in connection with any Insolvency Proceeding affecting any Seller or any other Person who, or any of whose property, shall at the time in question be obligated in respect of the Repurchase Obligations or any part thereof, (5) the sale, exchange, waiver, surrender or release of any Purchased Asset, guarantee or other collateral by Buyer, (6) the failure of Buyer to protect, secure, perfect or insure any Lien at any time held by Buyer as security for amounts owed by Sellers, or (7) to the extent permitted by Requirements of Law, any other event, occurrence, action or circumstance that would, in the absence of this Section 18.22, result in the release or discharge, in whole or in part, of any or all of Sellers from the payment, performance or observance of any Repurchase Obligation, (iii) Buyer shall not be required first to initiate any suit or to attempt to enforce or exhaust its remedies against any Seller or any other Person in order to enforce the Repurchase Documents or seek payment and/or performance of any or all of the Repurchase Obligations against any Seller and each Seller expressly agrees that, notwithstanding the occurrence of any of the foregoing, each Seller is and shall remain directly and primarily liable for all sums due under any of the Repurchase Documents, including, but not limited to, all of the Repurchase Obligations, (iv) when making any demand hereunder against any Seller or any of the Purchased Assets, Buyer may, but shall be under no obligation to, make a similar demand on any other Seller, or otherwise pursue such rights and remedies as it may have against any Seller or any other Person or against any collateral security or guarantee related

thereto or any right of offset with respect thereto, and any failure by Buyer to make any such demand, file suit or otherwise pursue such other rights or remedies or to collect any payments from any other Seller or any such other Person or to realize upon any such collateral security or guarantee or to exercise any such right offset, or any release of any Seller or any such other Person or any such collateral security, guarantee or right of offset, shall not relieve any Seller in a respect of which a demand or collection is not made or Sellers not so released of their obligations or liabilities hereunder, and shall not impair or affect the rights and remedies, express or implied, or as a matter of law, of Buyer against Sellers (as used herein, the term "demand" shall include the commencement and continuation of legal proceedings), (v) on disposition by Buyer of any property encumbered by any Purchased Assets, each Seller shall be and shall remain jointly and severally liable for any deficiency, (vi) each Seller waives (A) any and all notice of the creation, renewal, extension or accrual of any amounts at any time owing to Buyer by any other Seller under the Repurchase Documents and notice of or proof of reliance by Buyer upon any Seller or acceptance of the obligations of any Seller under this Section 18.22, and all such amounts, and any of them, shall conclusively be deemed to have been created, contracted or incurred, or renewed, extended, amended or waived, in reliance upon the obligations of Sellers under this Agreement, and all dealings between Sellers, on the one hand, and Buyer, on the other hand, likewise shall be conclusively presumed to have been had or consummated in reliance upon the obligations of Sellers under this Agreement, and (B) diligence, presentment, protest, demand for payment and notice of default or nonpayment to or upon any Seller with respect to any amounts at any time owing to Buyer by any Seller under the Repurchase Documents, and (vii) each Seller shall continue to be liable under this Section 18.22 without regard to (A) the validity, regularity or enforceability of any other provision of this Agreement or any other Repurchase Document, any amounts at any time owing to Buyer by any Seller under the Repurchase Documents, or any other collateral security therefor or guarantee or right of offset with respect thereto at any time or from time to time held by Buyer, (B) any defense, set-off or counterclaim (other than a defense of payment or performance) which may at any time be available to or be asserted by any Seller against Buyer, or (C) any other circumstance whatsoever (with or without notice to or knowledge of any Seller) which constitutes, or might be construed to constitute, an equitable or legal discharge of any Seller for any amounts owing to Buyer by any Seller under the Repurchase Documents, or of Sellers under this Agreement, in bankruptcy or in any other instance.

(b) Each Seller shall remain fully obligated under this Agreement notwithstanding that, without any reservation of rights against any Seller and without notice to or further assent by any Seller, any demand by Buyer for payment of any amounts owing to Buyer by any other Seller under the Repurchase Documents may be rescinded by Buyer and any the payment of any such amounts may be continued, and the liability of any other party upon or for any part thereof, or any collateral security or guarantee therefor or right of offset with respect thereto, may, from time to time, in whole or in part, be renewed, extended, amended, modified, accelerated, compromised, waived, surrendered or released by Buyer (including any extension or postponement of the time for payment or performance or renewal or refinancing of any Repurchase Obligation), and this Agreement and the other Repurchase Documents and any other documents executed and delivered in connection therewith may be amended, modified, supplemented or terminated, in whole or in part, in accordance with its terms, as Buyer may deem advisable from time to time, and any collateral security, guarantee or right of offset at any

time held by Buyer for the payment of amounts owing to Buyer by Sellers under the Repurchase Documents may be sold, exchanged, waived, surrendered or released. Buyer shall not have any obligation to protect, secure, perfect or insure any Lien at any time held by it as security for amounts owing to Buyer by Sellers under the Repurchase Documents, or any property subject thereto.

(c) To the extent that any Seller (the "Paying Seller") pays more than its proportionate share of any payment made hereunder, the Paying Seller shall be entitled to seek and receive contribution from and against any other Seller that has not paid its proportionate share; provided, that the provisions of this Section 18.22 shall not limit the duties, covenants, agreements, obligations and liabilities of any Seller to Buyer, and, notwithstanding any payment or payments made by the Paying Seller hereunder or any setoff or application of funds of the Paying Seller by Buyer, the Paying Seller shall not be entitled to be subrogated to any of the rights of Buyer against any other Seller or any collateral security or guarantee or right of setoff held by Buyer, nor shall the Paying Seller seek or be entitled to seek any contribution or reimbursement from any other Seller in respect of payments made by the Paying Seller hereunder, until all Repurchase Obligations are paid in full. If any amount shall be paid to the Paying Seller on account of such subrogation rights at any time when all such amounts shall not have been paid in full, such amount shall be held by the Paying Seller in trust for Buyer, segregated from other funds of the Paying Seller, and shall, forthwith upon receipt by the Paying Seller, be turned over to Buyer in the exact form received by the Paying Seller (duly indorsed by the Paying Seller to Buyer, if required), to be applied against the Repurchase Obligations, whether matured or unmatured, in such order as Buyer may determine.

(d) The Repurchase Obligations are full recourse obligations to each Seller, and each Seller hereby forever waives, demises, acquits and discharges any and all defenses, and shall at no time assert or allege any defense, to the contrary.

Section 18.23 PATRIOT Act Notice. Buyer hereby notifies each Seller that Buyer is required by the PATRIOT Act to obtain, verify and record information that identifies such Seller.

Section 18.24 Successors and Assigns. Subject to the foregoing, the Repurchase Documents and any Transactions shall be binding upon and shall inure to the benefit of the Parties and their successors and permitted assigns.

Section 18.25 Acknowledgement of Anti-Predatory Lending Policies. Each Seller and Buyer each have in place internal policies and procedures that expressly prohibit their purchase of any high cost mortgage loan.

Section 18.26 Effect of Amendment and Restatement. From and after the date hereof, the Existing Repurchase Agreement shall be amended, restated and superseded in its entirety by this Agreement. The parties hereto acknowledge and agree that the liens and security interests granted under the Existing Repurchase Agreement are, in each case, continuing in full force and effect and, upon the amendment and restatement of the Existing Repurchase

Agreement pursuant to this Agreement, such liens and security interests secure and continue to secure the payment of the Repurchase Obligations.

Section 18.27 No Novation, Effect of Agreement. Sellers and Buyer have entered into this Agreement solely to amend and restate in their entirety the terms of the Existing Repurchase Agreement and do not intend this Agreement or the transactions contemplated hereby to be, and this Agreement and the transactions contemplated hereby shall not be construed to be, a novation of any of the obligations owing by Sellers, Guarantor or Pledgor (the "Repurchase Parties") under or in connection with the Existing Repurchase Agreement, the Pledge Agreement or any of the other Repurchase Documents to which any Repurchase Party is a party. It is the intention of each of the parties hereto that (i) the perfection and priority of all security interests securing the payment of the Repurchase Obligations of the Repurchase Parties under the Existing Repurchase Agreement and the Pledge Agreement are preserved, (ii) the liens and security interests granted under the Existing Repurchase Agreement and the Pledge Agreement continue in full force and effect, and (iii) any reference to the Existing Repurchase Agreement in any such Repurchase Document shall be deemed to reference this Agreement.

Section 18.28 Recognition of the U.S. Special Resolution Regimes.

(a) In the event that Buyer becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer from Buyer of this Agreement and/or the Repurchase Documents, and any interest and obligation in or under this Agreement and/or the Repurchase Documents, will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if this Agreement and/or the Repurchase Documents, and any such interest and obligation, were governed by the laws of the United States or a state of the United States.

(b) In the event that Buyer or a BHC Act Affiliate of Buyer becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under this Agreement and/or the Repurchase Documents that may be exercised against Buyer are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if this Agreement and/or the Repurchase Documents were governed by the laws of the United States or a state of the United States.

[ONE OR MORE UNNUMBERED SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be **duly** executed as of the date first above written.

SELLERS:

ACRC LENDER W LLC, a Delaware limited liability company

By:
Name:
Title:

ACRC LENDER W TRS LLC, a Delaware limited liability company

By:
Name:
Title:

BUYER:

WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association

By:
Name:
Title:

Schedule 1(a)

REPRESENTATIONS AND WARRANTIES
RE: PURCHASED ASSETS CONSISTING OF WHOLE LOANS

Each Seller represents and warrants to Buyer, with respect to each Purchased Asset that is a Whole Loan that, except as specifically disclosed in the Confirmation for such Purchased Asset, as of the Purchase Date for each such Purchased Asset by Buyer from Seller and as of the date of each Transaction hereunder and at all times while the Repurchase Documents or any Transaction hereunder is in full force and effect, the representations set forth on this Schedule 1(a) are true and correct in all material respects. For purposes of this Schedule 1(a) and the representations and warranties set forth herein, a breach of a representation or warranty shall be deemed to have been cured with respect to a Purchased Asset that is a Whole Loan if and when such Seller has taken or caused to be taken action such that the event, circumstance or condition that gave rise to such breach no longer affects such Purchased Asset or has repurchased such Purchased Asset in accordance with the terms of the Agreement.

1. The Whole Loan is a performing mortgage loan secured by a perfected, first priority security interest in a commercial, office, retail, self-storage, student housing, industrial, hotel or multifamily property.

2. As of the Purchase Date, such Whole Loan complied in all material respects with, or is exempt from, all requirements of federal, state or local law relating to such Whole Loan.

3. Immediately prior to the sale, transfer and assignment to Buyer thereof, Seller had good and marketable title to, and was the sole owner and holder of, such Whole Loan, and Seller is transferring such Whole Loan free and clear of any and all liens, pledges, encumbrances, charges, security interests or any other ownership interests of any nature encumbering such Whole Loan. Upon consummation of the purchase contemplated to occur in respect of such Whole Loan on the Purchase Date therefor, Seller will have validly and effectively conveyed to Buyer all legal and beneficial interest in and to such Whole Loan free and clear of any pledge, lien, encumbrance or security interest. There are no participation agreements affecting such Whole Loan.

4. To Seller's Knowledge, no fraudulent acts were committed by Seller in connection with its acquisition or origination of such Whole Loan nor were any fraudulent acts committed by any Person in connection with the origination of such Whole Loan.

5. All information contained in the related Underwriting Package (or as otherwise provided to Buyer) in respect of such Whole Loan is accurate and complete in all material respects. Seller has made available to Buyer for inspection, with respect to such Whole Loan, true, correct and complete Purchased Asset Documents.

6. Except as included in the Underwriting Package, Seller is not a party to any document, instrument or agreement, and there is no document, instrument or agreement, that

by its terms modifies or affects the rights and obligations of any holder of such Whole Loan and Seller has not consented to any material change or waiver to any term or provision of any such document, instrument or agreement and no such change or waiver exists.

7. Such Whole Loan is presently outstanding, the proceeds thereof have been fully disbursed pursuant to the terms of the related Purchased Asset Documents and, except for amounts held in escrow, reserve or similar accounts by Seller or Interim Servicer or as expressly agreed by Buyer in the related Confirmation, there is no requirement for any future advances thereunder.

8. Seller has full right, power and authority to sell and assign such Whole Loan, and such Whole Loan or any related Mortgage Note has not been cancelled, satisfied or rescinded in whole or part nor has any instrument been executed that would effect a cancellation, satisfaction or rescission thereof.

9. Other than consents and approvals obtained as of the related Purchase Date or those already granted in the related Mortgage and/or Mortgage Note, no consent or approval by any Person is required in connection with Seller's sale and/or Buyer's acquisition of such Whole Loan, for Buyer's exercise of any rights or remedies in respect of such Whole Loan or for Buyer's sale, pledge or other disposition of such Whole Loan. To Seller's Knowledge, no third party holds any "right of first refusal", "right of first negotiation", "right of first offer", purchase option, or other similar rights of any kind, and no other impediment exists to any such transfer or exercise of rights or remedies.

10. No consent, approval, authorization or order of, or registration or filing with, or notice to, any court or governmental agency or body having jurisdiction or regulatory authority is required for any transfer or assignment by the holder of such Whole Loan, other than recordation of assignments of each Mortgage and Assignment of Leases securing the related Whole Loan in the applicable real estate records where the Mortgaged Properties are located and the filing of UCC-3 assignments in all applicable filing offices.

11. Seller has not received written notice of any outstanding liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind for which the holder of such Whole Loan is or may become obligated.

12. Seller has not advanced funds, or knowingly received any advance of funds from a party other than the Mortgagor or any other recourse party relating to such Whole Loan or the related Mortgage Note, directly or indirectly, for the payment of any amount required by such Whole Loan or the related Mortgage Note.

13. Each related Mortgage Note, Mortgage, Assignment of Leases (if a document separate from the Mortgage) and other agreement executed by the related Mortgagor in connection with such Whole Loan is legal, valid and binding obligation of the related Mortgagor (subject to any non-recourse provisions therein and any state anti-deficiency or market value limit deficiency legislation), enforceable in accordance with its terms, except (i) that certain provisions contained in such Purchased Asset Documents are or may be

unenforceable in whole or in part under applicable state or federal laws, but neither the application of any such laws to any such provision nor the inclusion of any such provisions renders any of the Purchased Asset Documents invalid as a whole and such Purchased Asset Documents taken as a whole are enforceable to the extent necessary and customary for the practical realization of the rights and benefits afforded thereby and (ii) as such enforcement may be limited by bankruptcy, insolvency, receivership, reorganization, moratorium, redemption, liquidation or other laws relating to or affecting the enforcement of creditors' rights generally, or by general principles of equity (regardless of whether such enforcement is considered in a proceeding in equity or at law). The related Mortgage Note and Mortgage contain no provision limiting the right or ability of Seller to assign, transfer and convey the related Whole Loan to any other Person, except, however, for customary intercreditor restrictions limiting assignees to "Qualified Transferees". With respect to any Underlying Mortgaged Property that has tenants, there exists as either part of the Mortgage or as a separate document, an assignment of leases.

14. To Seller's Knowledge, as of the date of its origination, there was no valid offset, defense, counterclaim, abatement or right to rescission with respect to any related Mortgage Note, Mortgage or other agreements executed in connection therewith, and, as of the Purchase Date, there is no valid offset, defense, counterclaim or right to rescission with respect to any such Mortgage Note, Mortgage or other agreements, except in each case, with respect to the enforceability of any provisions requiring the payment of default interest, late fees, additional interest, prepayment premiums or yield maintenance charges.

15. Seller has delivered to Buyer or its designee the original Mortgage Note(s) made in respect of such Whole Loan, together with an original endorsement thereof executed by Seller in blank, it being understood that in the case of a wet funding, Seller shall deliver such documents when contemplated by and in accordance with the applicable procedures set forth in the Agreement.

16. Each related assignment of Mortgage and assignment of Assignment of Leases from Seller in blank constitutes (or, in the case of a wet funding, will constitute upon delivery in accordance with the terms of the Agreement) the legal, valid and binding perfected, first priority assignment from Seller (assuming the insertion of the Buyer's name), except as such enforcement may be limited by bankruptcy, insolvency, receivership, reorganization, moratorium, redemption, liquidation or other laws relating to or affecting the enforcement of creditors' rights generally, or by general principles of equity (regardless of whether such enforcement is considered in a proceeding in equity or at law). Each Mortgage and Assignment of Leases is freely assignable.

17. The Whole Loan is secured by one or more Mortgages and each such Mortgage is a valid and enforceable first lien on the related Underlying Mortgaged Property subject only to the exceptions set forth in paragraph (13) above and the following title exceptions (each such title exception, a "Title Exception", and collectively, the "Title Exceptions"): (a) the lien of current real property taxes, water charges, sewer rents and assessments not yet due and payable, (b) covenants, conditions and restrictions, rights of way, easements and other matters of public record, none of which, individually or in the aggregate, materially and adversely interferes

with the current use of the Underlying Mortgaged Property or the security intended to be provided by such Mortgage or with the Mortgagor's ability to pay its obligations under the Whole Loan when they become due or materially and adversely affects the value of the Underlying Mortgaged Property, (c) the exceptions (general and specific) and exclusions set forth in the applicable policy described in paragraph (21) below or appearing of record, none of which, individually or in the aggregate, materially and adversely interferes with the current use of the Underlying Mortgaged Property or the security intended to be provided by such Mortgage or with the Mortgagor's ability to pay its obligations under the Whole Loan when they become due or materially and adversely affects the value of the Underlying Mortgaged Property, (d) other matters to which like properties are commonly subject, none of which, individually or in the aggregate, materially and adversely interferes with the current use of the Underlying Mortgaged Property or the security intended to be provided by such Mortgage or with the Mortgagor's ability to pay its obligations under the Whole Loan when they become due or materially and adversely affects the value of the Underlying Mortgaged Property, (e) the right of tenants (whether under ground leases, space leases or operating leases) at the Underlying Mortgaged Property to remain following a foreclosure or similar proceeding (provided that such tenants are performing under such leases) and (f) if such Whole Loan is cross-collateralized with any other Whole Loan, the lien of the Mortgage for such other Whole Loan, none of which, individually or in the aggregate, materially and adversely interferes with the current use of the Underlying Mortgaged Property or the security intended to be provided by such Mortgage or with the Mortgagor's ability to pay its obligations under the Whole Loan when they become due or materially and adversely affects the value of the Underlying Mortgaged Property. Except with respect to cross-collateralized and cross-defaulted Whole Loans and as provided below, there are no mortgage loans that are senior or *pari passu* with respect to the related Underlying Mortgaged Property or such Whole Loan.

18. UCC Financing Statements have been filed and/or recorded (or, if not filed and/or recorded, have been submitted in proper form for filing and recording), in all UCC filing offices necessary to perfect a valid security interest in all items of personal property located on the Underlying Mortgaged Property that are owned by the Mortgagor and either (i) are reasonably necessary to operate the Underlying Mortgaged Property or (ii) are (as indicated in the appraisal obtained in connection with the origination of the related Whole Loan) material to the value of the Underlying Mortgaged Property to the extent perfection may be effected pursuant to applicable law by recording or filing of UCC Financing Statements, and the Mortgages, security agreements, chattel Mortgages or equivalent documents related to and delivered in connection with the related Whole Loan establish and create a valid and enforceable lien and priority security interest on such items of personalty except as such enforcement may be limited by bankruptcy, insolvency, receivership, reorganization, moratorium, redemption, liquidation or other laws relating to or affecting the enforcement of creditor's rights generally, or by general principles of equity (regardless of whether such enforcement is considered in a proceeding in equity or at law). Notwithstanding any of the foregoing, no representation is made as to the perfection of any security interest in rents or other personal property to the extent that possession or control of such items or actions other than the filing of UCC Financing Statements are required in order to effect such perfection.

19. All real estate taxes and governmental assessments, or installments thereof, which would be a lien on the Underlying Mortgaged Property and that prior to the Purchase Date have become delinquent in respect of the Underlying Mortgaged Property have been paid, or an escrow of funds in an amount sufficient to cover such payments has been established, or, if permitted by the applicable Purchased Asset Documents, such payment is being contested in good faith pursuant to procedures set forth in the applicable Purchased Asset Documents. For purposes of this representation and warranty, real estate taxes and governmental assessments and installments thereof shall not be considered delinquent until the earlier of (a) the date on which interest and/or penalties would first be payable thereon and (b) the date on which enforcement action is entitled to be taken by the related taxing authority.

20. Except as may be set forth in the property condition reports delivered to Buyer with respect to the Mortgaged Properties, as of the Purchase Date, the related Underlying Mortgaged Property was free and clear of any material damage (other than deferred maintenance for which escrows were established at origination or which are currently being maintained) that would affect materially and adversely the value of such Underlying Mortgaged Property as security for the Whole Loan and there was no proceeding pending or, based solely upon the delivery of written notice thereof from the appropriate condemning authority, threatened for the total or partial condemnation of such Underlying Mortgaged Property.

21. The lien of each related Mortgage as a first priority lien in the original principal amount of such Whole Loan after all advances of principal is insured by an ALTA lender's title insurance policy (or a binding commitment therefor), or its equivalent as adopted in the applicable jurisdiction, insuring Seller, its successors and assigns, subject only to the Title Exceptions; the holder of the Mortgage (the "Mortgagee") or its successors or assigns is the sole named insured of such policy; such policy is assignable without consent of the insurer and will inure to the benefit of the Buyer as the Mortgagee of record; such title policy is in full force and effect upon the consummation of the transactions contemplated by this Agreement; all premiums thereon have been paid; no claims have been made under such policy and no circumstance exists which would impair or diminish the coverage of such policy. The insurer issuing such policy is either (x) a nationally-recognized title insurance company or (y) qualified to do business in the jurisdiction in which the related Underlying Mortgaged Property is located to the extent required; such policy contains no material exclusions for, or affirmatively insures (except for any Underlying Mortgaged Property located in a jurisdiction where such insurance is not available) (a) access to public road or (b) against any loss due to encroachments of any material portion of the improvements thereon.

22. As of the origination date of each Whole Loan, and to Seller's Knowledge, as of the Purchase Date of each Whole Loan, all insurance coverage was maintained with respect to the Underlying Mortgaged Property in compliance in all material respects with the requirements under each related Mortgage, which insurance covered such risks as were customarily acceptable to prudent commercial and multifamily mortgage lending institutions lending on the security of property comparable to the related Underlying Mortgaged Property in the jurisdiction in which such Underlying Mortgaged Property is located, and with respect to a fire and extended perils insurance policy, is in an amount (subject to a customary deductible) at

least equal to the lesser of (i) the replacement cost of improvements located on such Underlying Mortgaged Property, or (ii) the outstanding principal balance of the Whole Loan, and in any event, the amount necessary to prevent operation of any co-insurance provisions; and, except if such Underlying Mortgaged Property is operated as a mobile home park, is also covered by business interruption or rental loss insurance, in an amount at least equal to 12 months of operations of the related Underlying Mortgaged Property, all of which was in full force and effect with respect to the related Underlying Mortgaged Property; and insurance covering such other risks and in such amounts as are customarily acceptable to prudent commercial and multifamily mortgage lending institutions lending on the security of property comparable to the related Underlying Mortgaged Property in the jurisdiction in which such Underlying Mortgaged Property is located, is in full force and effect with respect to the related Underlying Mortgaged Property; all premiums due and payable through the Purchase Date have been paid; and no notice of termination or cancellation with respect to any such insurance policy has been received by Seller. Except for certain amounts not greater than amounts which would be considered prudent by an institutional commercial and/or multifamily mortgage lender with respect to a similar Whole Loan and which are set forth in the related Mortgage, any insurance proceeds in respect of a casualty loss, will be applied either (i) to the repair or restoration of all or part of the related Underlying Mortgaged Property or (ii) the reduction of the outstanding principal balance of the Whole Loan, subject in either case to requirements with respect to leases at the related Underlying Mortgaged Property and to other exceptions customarily provided for by prudent institutional lenders for similar loans. The Underlying Mortgaged Property is also covered by comprehensive general liability insurance against claims for personal and bodily injury, death or property damage occurring on, in or about the related Underlying Mortgaged Property, in an amount customarily required by prudent institutional lenders. An architectural or engineering consultant has performed an analysis of the Underlying Mortgaged Properties located in seismic zone 3 or 4 in order to evaluate the structural and seismic condition of such property, for the sole purpose of assessing the probable maximum loss ("PML") for the Underlying Mortgaged Property in the event of an earthquake; provided, that for purposes of compliance with the foregoing requirement, the PML shall be deemed to be the Scenario Expected Loss ("SEL") reflected in the seismic report of the Underlying Mortgaged Property. If the resulting report concluded that the PML would exceed 20% of the amount of the replacement costs of the improvements, earthquake insurance on such Underlying Mortgaged Property was obtained by an insurer rated at least A-:V by A.M. Best Company or "BBB-" (or the equivalent) from S&P and Fitch or "Baa3" (or the equivalent) from Moody's. If the Underlying Mortgaged Property is located in Florida or within 25 miles of the coast of Texas, Louisiana, Mississippi, Alabama, Georgia, North Carolina or South Carolina, such Underlying Mortgaged Property is required to be insured by windstorm insurance in an amount at least equal to the lesser of (i) the outstanding principal balance of such Whole Loan and (ii) 100% of the full insurable value, or 100% of the replacement cost, of the improvements located on the related Underlying Mortgaged Property.

23. The insurance policies contain a standard Mortgagee clause naming the Mortgagee and its successors and assigns as loss payee, in the case of a property insurance policy, or additional insured in the case of a liability insurance policy, and provide that they are not terminable without thirty (30) days prior written notice to the Mortgagee (or, with respect to non-payment, ten (10) days prior written notice to the Mortgagee) or such lesser period as

prescribed by applicable law. Each Mortgage (a) requires that the Mortgagor maintain insurance as described above or permits the Mortgagee to require that the Mortgagor maintain insurance as described above, and (b) permits the Mortgagee to purchase such insurance at the Mortgagor's expense if Mortgagor fails to do so. The insurer with respect to each policy is qualified to write insurance in the relevant jurisdiction to the extent required.

24. As of the Purchase Date, (a) there is no material default, breach, violation or event of acceleration existing under the related Mortgage or the related Mortgage Note, and no event has occurred (other than payments due but not yet delinquent) which, with the passage of time or with notice and the expiration of any grace or cure period, would constitute a material default, breach, violation or event of acceleration, provided, however, that this representation and warranty does not address or otherwise cover any default, breach, violation or event of acceleration that specifically pertains to any matter otherwise covered by any other representation and warranty made by Seller in any paragraph of this Schedule 1(a) and (b) Seller has not waived any material default, breach, violation or event of acceleration under such Mortgage or Mortgage Note and pursuant to the terms of the related Mortgage or the related Mortgage Note and other documents in the related Purchased Asset Documents, no Person or party other than the holder of such Mortgage Note (or its servicer) may declare any event of default or accelerate the related indebtedness under either of such Mortgage or Mortgage Note.

25. As of the Purchase Date, such Whole Loan is not, and since its origination, has not been 30 days or more past due in respect of any scheduled payment.

26. Each related Mortgage does not provide for or permit, without the prior written consent of the holder of the Mortgage Note, the related Underlying Mortgaged Property to secure any other promissory note or obligation except as expressly described in the following sentence. The related Underlying Mortgaged Property is not encumbered, and none of the Purchased Asset Documents permits the related Underlying Mortgaged Property to be encumbered subsequent to the Purchase Date without the prior written consent of the holder of such Whole Loan, by any lien securing the payment of money junior to or of equal priority with, or superior to, the lien of the related Mortgage (other than Title Exceptions, taxes, assessments and contested mechanics and materialmens liens that become payable after the Purchase Date of the related Whole Loan).

27. To Seller's Actual Knowledge, there is no material and adverse environmental condition or circumstance affecting the Underlying Mortgaged Property; to Seller's Actual Knowledge, there is no material violation of any applicable Environmental Law with respect to the Underlying Mortgaged Property; to Seller's Actual Knowledge, neither Seller nor the Underlying Obligor has taken any actions which would cause the Underlying Mortgaged Property not to be in compliance with all applicable Environmental Laws; the Purchased Asset Documents require the borrower to comply with all Environmental Laws; and each Mortgagor has agreed to indemnify the Mortgagee for any losses resulting from any material, adverse environmental condition or failure of the Mortgagor to abide by such Environmental Laws or has provided environmental insurance.

28. Each related Mortgage and Assignment of Leases, together with applicable state law, contains customary and enforceable provisions for comparable mortgaged properties similarly situated such as to render the rights and remedies of the holder thereof adequate for the practical realization against the Underlying Mortgaged Property of the benefits of the security, including realization by judicial or, if applicable, non-judicial foreclosure, subject to the effects of bankruptcy, insolvency, receivership, reorganization, moratorium, redemption, liquidation or other laws relating to or affecting the enforcement of creditors' rights generally, or by general principles of equity (regardless of whether such enforcement is considered in a proceeding in equity or at law).

29. As of the Purchase Date, no Mortgagor is a debtor in any state or federal bankruptcy or insolvency proceeding.

30. Each Whole Loan is a whole loan and contains no equity participation by the lender or shared appreciation feature and does not provide for any contingent or additional interest in the form of participation in the cash flow of the related Underlying Mortgaged Property or provide for negative amortization. Seller holds no preferred equity interest.

31. Subject to certain exceptions, which are customarily acceptable to prudent commercial and multifamily mortgage lending institutions lending on the security of property comparable to the related Underlying Mortgaged Property, each related Mortgage or loan agreement contains provisions for the acceleration of the payment of the unpaid principal balance of such Whole Loan if, without complying with the requirements of the Mortgage or loan agreement, (a) the related Underlying Mortgaged Property, or any controlling interest in the related Mortgagor, is directly transferred or sold (other than by reason of family and estate planning transfers, transfers by devise, descent or operation of law upon the death of a member, general partner or shareholder of the related borrower and transfers of less than a controlling interest (as such term is defined in the related Purchased Asset Documents) in a mortgagor, issuance of non-controlling new equity interests, transfers among existing members, partners or shareholders in the Mortgagor or an affiliate thereof, transfers among affiliated Mortgagors with respect to Whole Loans which are cross-collateralized or cross-defaulted with other mortgage loans or multi-property Whole Loans or transfers of a similar nature to the foregoing meeting the requirements of the Whole Loan (such as pledges of ownership interests that do not result in a change of control) or a substitution or release of collateral within the parameters of paragraph (34) below), or (b) the related Underlying Mortgaged Property or controlling interest in the borrower is encumbered in connection with subordinate financing by a lien or security interest against the related Underlying Mortgaged Property, other than any existing permitted additional debt. The Purchased Asset Documents require the borrower to pay all reasonable costs incurred by the Mortgagor with respect to any transfer, assumption or encumbrance requiring lender's approval.

32. Except as set forth in the related Purchased Asset Documents delivered to Buyer, the terms of the related Mortgage Note(s) and Mortgage(s) have not been waived, modified, altered, satisfied, impaired, canceled, subordinated or rescinded in any manner which materially interferes with the security intended to be provided by such Mortgage and no such

waiver, modification, alteration, satisfaction, impairment, cancellation, subordination or recission has occurred since the date upon which the due diligence file related to the applicable Whole Loan was delivered to Buyer or its designee.

33. Each related Underlying Mortgaged Property was inspected by or on behalf of the related originator or an affiliate during the 12 month period prior to the related origination date.

34. Since origination, no material portion of the related Underlying Mortgaged Property has been released from the lien of the related Mortgage in any manner which materially and adversely affects the value of the Whole Loan or materially interferes with the security intended to be provided by such Mortgage, and, except with respect to Whole Loans (a) which permit defeasance by means of substituting for the Underlying Mortgaged Property (or, in the case of a Whole Loan secured by multiple Underlying Mortgaged Properties, one or more of such Underlying Mortgaged Properties) U.S. "government securities" as defined in Section 2(a)(16) of the Investment Company Act of 1940, as amended, sufficient to pay the Whole Loans (or portions thereof) in accordance with its terms, (b) where a release of the portion of the Underlying Mortgaged Property was contemplated at origination and such portion was not considered material for purposes of underwriting the Whole Loan, (c) where release is conditional upon the satisfaction of certain underwriting and other requirements, including the payment of a release price that represents adequate consideration for such Underlying Mortgaged Property or the portion thereof that is being released, (d) which permit the related Mortgagor to substitute a replacement property acceptable to Mortgagee pursuant to its underwriting standards in compliance with certain underwriting and legal requirements, (e) which permit the release(s) of unimproved out-parcels or other portions of the Underlying Mortgaged Property that will not have a material adverse effect on the underwritten value of the security for the Whole Loan or that were not allocated to any value in the underwriting during the origination of the Whole Loan, or (f) upon the payment in full of such Whole Loan, the terms of the related Mortgage do not provide for release of any portion of the Underlying Mortgaged Property from the lien of the Mortgage except in consideration of payment in full therefor.

35. There are no material violations of any applicable zoning ordinances, building codes or land laws applicable to the Underlying Mortgaged Property or the use and occupancy thereof other than those which (i) are insured by an ALTA lender's title insurance policy (or a binding commitment therefor), or its equivalent as adopted in the applicable jurisdiction, or a law and ordinance insurance policy or (ii) would not have a material adverse effect on the value, operation or net operating income of the Underlying Mortgaged Property. The Purchased Asset Documents require the Underlying Mortgaged Property to comply with all applicable laws and ordinances.

36. None of the material improvements which were included for the purposes of determining the appraised value of the related Underlying Mortgaged Property at the time of the origination of the Whole Loan lies outside of the boundaries and building restriction lines of such property (except Underlying Mortgaged Properties which are legal non-conforming uses), to an extent which would have a material adverse affect on the value of the Underlying

Mortgaged Property or related Mortgagor's use and operation of such Underlying Mortgaged Property (unless affirmatively covered by title insurance) and no improvements on adjoining properties encroached upon such Underlying Mortgaged Property to any material and adverse extent (unless affirmatively covered by title insurance).

37. With respect to each Whole Loan with an unpaid balance in excess of $5,000,000, the related Mortgagor has covenanted in its organizational documents and/or the Purchased Asset Documents to own no significant asset other than the related Underlying Mortgaged Properties, as applicable, and assets incidental to its ownership and operation of such Underlying Mortgaged Properties, and to hold itself out as being a legal entity, separate and apart from any other Person.

38. After origination, no advance of funds has been made other than pursuant to the loan documents, directly or indirectly, by Seller to the Mortgagor, other than pursuant to the related Mortgage Loan Documents and, to Seller's Knowledge, no funds have been received from any Person other than the Mortgagor or a recourse party, for or on account of payments due on the Mortgage Note or the Mortgage.

39. As of the Purchase Date, there was no pending action, suit or proceeding, or governmental investigation of which Seller has received notice, against the Mortgagor or the related Underlying Mortgaged Property the adverse outcome of which could reasonably be expected to materially and adversely affect such Mortgagor's ability to pay principal, interest or any other amounts due under such Whole Loan or the security intended to be provided by the Purchased Asset Documents or the current use of the Underlying Mortgaged Property.

40. As of the Purchase Date, if the related Mortgage is a deed of trust, a trustee, duly qualified under applicable law to serve as such, has either been properly designated and serving under such Mortgage or may be substituted in accordance with the Mortgage and applicable law.

41. The Whole Loan and the interest (exclusive of any default interest, late charges or prepayment premiums) contracted for complied as of the date of origination with, or is exempt from, applicable state or federal laws, regulations and other requirements pertaining to usury.

42. Each Whole Loan that is cross-collateralized or cross-defaulted is cross-collateralized or cross-defaulted, as applicable, only with other Whole Loans sold pursuant to this Agreement.

43. The improvements located on the Underlying Mortgaged Property are either not located in a federally designated special flood hazard area or, if so located, the Mortgagor is required to maintain or the Mortgagee maintains, flood insurance with respect to such improvements and such policy is in full force and effect in an amount no less than the lesser of (i) the original principal balance of the Whole Loan, (ii) the value of such improvements on the related Underlying Mortgaged Property located in such flood hazard area or (iii) the maximum allowed under the related federal flood insurance program.

44. To Seller's Knowledge, all escrow deposits and payments required pursuant to the Whole Loan as of the Purchase Date required to be deposited with Seller in accordance with the Purchased Asset Documents have been so deposited, are in the possession, or under the control, of Seller or its agent and there are no material deficiencies in connection therewith.

45. As of the Purchase Date, the related Mortgagor and, to Seller's Actual Knowledge, the related lessee, franchisor or operator was in possession of all material licenses, permits and authorizations then required for the use of the related Underlying Mortgaged Property by the related Mortgagor. The Purchased Asset Documents require the borrower to maintain all licenses, permits and authorizations required for the current use of the related Underlying Mortgaged Property by the related Mortgagor.

46. The origination (or acquisition, as the case may be), servicing and collection practices used by Seller with respect to the Whole Loan have been in all respects legal and have met customary industry standards for servicing of commercial mortgage loans for conduit loan programs.

47. Except for Mortgagors under Whole Loans secured in whole or in part by a Ground Lease, the related Mortgagor (or its affiliate) has title in the fee simple interest in each related Underlying Mortgaged Property.

48. The Purchased Asset Documents for such Whole Loan provide that such Whole Loan is either (a) recourse or (b) non-recourse to the related Mortgagor except that, with respect to Whole Loans that are non-recourse, the related Mortgagor and a natural person (or an entity with assets other than an interest in the related Mortgagor) as guarantor have agreed to be liable with respect to losses incurred due to (i) fraud and/or other intentional material misrepresentation, (ii) misapplication or misappropriation of rents collected in advance or received by the related Mortgagor after the occurrence of an event of default and not paid to the Mortgagee or applied to the Underlying Mortgaged Property in the ordinary course of business, (iii) misapplication or conversion by the related Mortgagor of insurance proceeds or condemnation awards, (iv) breach of the environmental covenants in the related Purchased Asset Documents, and (v) other carveouts reasonably imposed by Seller.

49. Subject to the exceptions set forth in paragraph (13) and upon possession of the Underlying Mortgaged Property as required under applicable state law, any Assignment of Leases set forth in the Mortgage or separate from the related Mortgage and related to and delivered in connection with such Whole Loan establishes and creates a valid, subsisting and enforceable lien and security interest in the related Mortgagor's interest in all leases, subleases, licenses or other agreements pursuant to which any Person is entitled to occupy, use or possess all or any portion of the real property.

50. To the extent required under applicable law as of the date of origination, and necessary for the enforceability or collectability of the Whole Loan, the originator of such Whole Loan was authorized to do business in the jurisdiction in which the related Underlying Mortgaged Property is located at all times when it originated and held the Whole Loan.

51. Neither Seller nor any affiliate thereof has any obligation to make any capital contributions to the Mortgagor under the Whole Loan.

52. Each related Underlying Mortgaged Property constitutes one or more complete separate tax lots (or the related Mortgagor has covenanted to obtain separate tax lots and a Person has indemnified the Mortgagee for any loss suffered in connection therewith or an escrow of funds in an amount sufficient to pay taxes resulting from a breach thereof has been established) or is subject to an endorsement under the related title insurance policy.

53. An appraisal of the related Underlying Mortgaged Property was conducted in connection with the origination of such Whole Loan; and, to Seller's Actual Knowledge, such appraisal satisfied in all material respects either (A) the requirements of the "Uniform Standards of Professional Appraisal Practice" as adopted by the Appraisal Standards Board of the Appraisal Foundation, or (B) the guidelines in Title XI of the Financial Institutions Reform, Recovery and Enforcement Act or 1989, in either case as in effect on the date such Whole Loan was originated.

54. The related Purchased Asset Documents require the Mortgagor to provide the Mortgagee with certain financial information at the times required under the related Purchased Asset Documents.

55. The related Underlying Mortgaged Property is served by public utilities, water and sewer (or septic facilities) and otherwise appropriate for the use in which the Underlying Mortgaged Property is currently being utilized.

56. With respect to each related Underlying Mortgaged Property consisting of a Ground Lease, Seller represents and warrants the following with respect to the related Ground Lease:

(i) Such Ground Lease or a memorandum thereof has been or will be duly recorded no later than 30 days after the Purchase Date and such Ground Lease permits the interest of the lessee thereunder to be encumbered by the related Mortgage or, if consent of the lessor thereunder is required, it has been obtained prior to the Purchase Date.

(ii) Upon the foreclosure of the Whole Loan (or acceptance of a deed in lieu thereof), the Mortgagor's interest in such Ground Lease is assignable to the Mortgagee under the leasehold estate and its assigns without the consent of the lessor thereunder (or, if any such consent is required, it has been obtained prior to the Purchase Date).

(iii) Such Ground Lease may not be amended, modified, canceled or terminated without the prior written consent of the Mortgagee, and any such action without such consent is not binding on the Mortgagee, its successors or assigns, except termination or cancellation if (i) an event of default occurs under the Ground Lease, (ii) notice thereof is provided to the Mortgagee and (iii) such default is curable by the

Mortgagee as provided in the Ground Lease but remains uncured beyond the applicable cure period.

(iv) Such Ground Lease is in full force and effect, there is no material default under such Ground Lease, and to Seller's Knowledge, there is no event which, with the passage of time or with notice and the expiration of any grace or cure period, would constitute a material default under such Ground Lease.

(v) The Ground Lease or ancillary agreement between the lessor and the lessee requires the lessor to give notice of any default by the lessee to the Mortgagee. The Ground Lease or ancillary agreement further provides that no notice of termination given is effective against the Mortgagee unless a copy has been given to the Mortgagee in a manner described in the Ground Lease or ancillary agreement.

(vi) The Ground Lease (i) is not subject to any liens or encumbrances superior to, or of equal priority with, the Mortgage, subject, however, to only the Title Exceptions or (ii) is subject to a subordination, non-disturbance and attornment agreement to which the Mortgagee on the lessor's fee interest in the Underlying Mortgaged Property is subject.

(vii) A Mortgagee is permitted a reasonable opportunity (including, where necessary, sufficient time to gain possession of the interest of the lessee under the Ground Lease) to cure any curable default under such Ground Lease before the lessor thereunder may terminate such Ground Lease.

(viii) Such Ground Lease has an original term (together with any extension options, whether or not currently exercised, set forth therein all of which can be exercised by the Mortgagee if the Mortgagee acquires the lessee's rights under the Ground Lease) that extends not less than 20 years beyond the stated maturity date of the Whole Loan.

(ix) Under the terms of such Ground Lease, any estoppel or consent letter received by the Mortgagee from the lessor, and the related Mortgage, taken together, any related insurance proceeds or condemnation award (other than in respect of a total or substantially total loss or taking) will be applied either to the repair or restoration of all or part of the related Underlying Mortgaged Property, with the Mortgagee or a trustee appointed by it having the right to hold and disburse such proceeds as repair or restoration progresses, or to the payment or defeasance of the outstanding principal balance of the Whole Loan, together with any accrued interest (except in cases where a different allocation would not be viewed as commercially unreasonable by any commercial mortgage lender, taking into account the relative duration of the Ground Lease and the related Mortgage and the ratio of the market value of the related Underlying Mortgaged Property to the outstanding principal balance of such Whole Loan).

(x) The Ground Lease does not impose any restrictions on subletting that would be viewed as commercially unreasonable by a prudent commercial lender.

(xi) The ground lessor under such Ground Lease is required to enter into a new lease upon termination of the Ground Lease for any reason, including the rejection of the Ground Lease in bankruptcy.

Schedule 1(b)

REPRESENTATIONS AND WARRANTIES
RE: PURCHASED ASSETS CONSISTING OF
SENIOR INTERESTS

Seller represents and warrants to Buyer, with respect to each Purchased Asset that is a Senior Interest that, except as specifically disclosed in the Confirmation for such Purchased Asset, as of the Purchase Date for each such Purchased Asset by Buyer from Seller and as of the date of each Transaction hereunder and at all times while the Repurchase Documents or any Transaction hereunder is in full force and effect, the representations set forth on this Schedule 1(b) are true and correct in all material respects. For purposes of this Schedule 1(b) and the representations and warranties set forth herein, a breach of a representation or warranty shall be deemed to have been cured with respect to a Purchased Asset that is a Senior Interest if and when Seller has taken or caused to be taken action such that the event, circumstance or condition that gave rise to such breach no longer affects such Purchased Asset or has repurchased such Purchased Asset in accordance with the terms of the Agreement.

1. The Senior Interest is either (a) a controlling senior or controlling or non-controlling pari-passu participation interest in a Whole Loan or (b) a controlling senior or controlling or non-controlling pari-passu "A-Note" in an "A/B structure" of a Whole Loan.

2. As of the Purchase Date, such Senior Interest complies in all material respects with, or is exempt from, all requirements of federal, state or local law relating to such Senior Interest.

3. Immediately prior to the sale, transfer and assignment to Buyer thereof, Seller had good and marketable title to, and was the sole owner and holder of, such Senior Interest, and Seller is transferring such Senior Interest free and clear of any and all liens, pledges, encumbrances, charges, security interests or any other ownership interests of any nature encumbering such Senior Interest. Upon consummation of the purchase contemplated to occur in respect of such Senior Interest on the Purchase Date therefor, Seller will have validly and effectively conveyed to Buyer all legal and beneficial interest in and to such Senior Interest free and clear of any pledge, lien, encumbrance or security interest.

4. To Seller's Knowledge, no fraudulent acts were committed by Seller in connection with its acquisition or origination of such Senior Interest, nor were any fraudulent acts committed by any Person in connection with the origination of such Senior Interest.

5. All information contained in the related Underwriting Package (or as otherwise provided to Buyer) in respect of such Senior Interest is accurate and complete in all material respects. Seller has made available to Buyer for inspection, with respect to such Senior Interest, true, correct and complete Senior Interest Documents.

6. Except as included in the Underwriting Package, Seller is not a party to any document, instrument or agreement, and there is no document, that by its terms modifies or

affects the rights and obligations of any holder of such Senior Interest and Seller has not consented to any material change or waiver to any term or provision of any such document, instrument or agreement and no such change or waiver exists.

7. Seller has full right, power and authority to sell and assign such Senior Interest and such Senior Interest or any related Mortgage Note has not been cancelled, satisfied or rescinded in whole or part nor has any instrument been executed that would effect a cancellation, satisfaction or rescission thereof.

8. Other than consents and approvals obtained as of the related Purchase Date or those already granted in the related Mortgage and/or Mortgage Note, and assuming that Buyer and any other transferees comply with customary intercreditor restrictions in the Senior Interest Documents limiting assignees to "Qualified Transferees", "Institutional Lender/ Owners" or "Qualified Institutional Lenders", no consent or approval by any Person is required in connection with Seller's sale and/or Buyer's acquisition of such Senior Interest, for Buyer's exercise of any rights or remedies in respect of such Senior Interest or for Buyer's sale, pledge or other disposition of such Senior Interest. To Seller's Knowledge, no third party holds any "right of first refusal", "right of first negotiation", "right of first offer", purchase option, or other similar rights of any kind, and no other impediment exists to any such transfer or exercise of rights or remedies.

9. No consent, approval, authorization or order of, or registration or filing with, or notice to, any court or governmental agency or body having jurisdiction or regulatory authority is required for any transfer or assignment by the holder of such Senior Interest, other than recordation of assignments of each Mortgage and Assignment of Leases securing the related Whole Loan in the applicable real estate records where the Underlying Mortgaged Properties are located and the filing of UCC-3 assignments in all applicable filing offices.

10. Seller has delivered to Buyer or its designee the original promissory note, certificate or other similar indicia of ownership of such Senior Interest, however denominated, together with an original assignment thereof, executed by Seller in blank.

11. To Seller's Knowledge, no default or event of default has occurred under any agreement pertaining to any lien relating to the Underlying Mortgaged Property ranking junior to, *pari passu* or senior to the Mortgage securing the underlying Whole Loan relating to such Senior Interest, and there is no provision in any such agreement which would provide for any increase in the principal amount of any such lien.

12. As of the Purchase Date, (a) there is no material default, breach, violation or event of acceleration existing under the Senior Interest, the related Mortgage or the related Mortgage Note, and no event has occurred (other than payments due but not yet delinquent) which, with the passage of time or with notice and the expiration of any grace or cure period, would constitute a material default, breach, violation or event of acceleration, provided, however, that this representation and warranty does not address or otherwise cover any default, breach, violation or event of acceleration that specifically pertains to any matter otherwise covered by any other representation and warranty made by Seller in any paragraph of this Schedule 1(b) and

(b) Seller has not waived any material default, breach, violation or event of acceleration under such Senior Interest, Mortgage or Mortgage Note and pursuant to the terms of the related Mortgage or the related Mortgage Note and other documents in the related Senior Interest Documents.

13. Each Senior Interest has not been and shall not be deemed to be a Security within the meaning of the Securities Act of 1933, as amended or the Securities Exchange Act of 1934, as amended.

14. As of the Purchase Date, each related underlying Whole Loan complied in all material respects with, or is exempt from, all requirements of federal, state or local law relating to the origination of such underlying Whole Loan.

15. Seller has not received written notice of any outstanding liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind for which the holder of such Senior Interest is or may become obligated under the Senior Interest Documents.

16. Seller has not advanced funds, or knowingly received any advance of funds from a party other than the Mortgagor relating to such Senior Interest, directly or indirectly, for the payment of any amount required by such Senior Interest.

17. With respect to each related underlying Whole Loan, each related Mortgage Note, Mortgage, Assignment of Leases (if a document separate from the Mortgage) and other agreement executed by the related Mortgagor in connection with such underlying Whole Loan is legal, valid and binding obligation of the related Mortgagor (subject to any non-recourse provisions therein and any state anti-deficiency or market value limit deficiency legislation), enforceable in accordance with its terms, except (i) that certain provisions contained in such Purchased Asset Documents are or may be unenforceable in whole or in part under applicable state or federal laws, but neither the application of any such laws to any such provision nor the inclusion of any such provisions renders any of the Purchased Asset Documents invalid as a whole and such Purchased Asset Documents taken as a whole are enforceable to the extent necessary and customary for the practical realization of the rights and benefits afforded thereby and (ii) as such enforcement may be limited by bankruptcy, insolvency, receivership, reorganization, moratorium, redemption, liquidation or other laws affecting the enforcement of creditors' rights generally, or by general principles of equity (regardless of whether such enforcement is considered in a proceeding in equity or at law). The related Mortgage Note and Mortgage contain no provision limiting the right or ability of any holder thereof to assign, transfer and convey all or any portion of the related underlying Whole Loan or the related Senior Interest to any other Person, except, however, for customary intercreditor restrictions in the Senior Interest Documents, limiting assignees to "Qualified Transferees" "Institutional Lender/Owners" or "Qualified Institutional Lenders". With respect to any Underlying Mortgaged Property that has tenants, there exists as either part of the Mortgage or as a separate document, an assignment of leases.

18. With respect to the Senior Interest and each related underlying Whole Loan, as of the date of its origination, there was no valid offset, defense, counterclaim, abatement or right to rescission with respect to any related Mortgage Note, Mortgage or other agreements executed in connection therewith, and, as of the Purchase Date for the related Purchased Asset, there is no valid offset, defense, counterclaim or right to rescission with respect to any such Mortgage Note, Mortgage or other agreements, except in each case, with respect to the enforceability of any provisions requiring the payment of default interest, late fees, additional interest, prepayment premiums or yield maintenance charges.

19. With respect to the underlying Whole Loan, each related Assignment of Mortgage and assignment of Assignment of Leases from Seller in blank constitutes the legal, valid and binding first priority assignment from Seller (assuming the insertion of the Buyer's name), except as such enforcement may be limited by bankruptcy, insolvency, receivership, reorganization, moratorium, redemption, liquidation or other laws relating to or affecting the enforcement of creditors' rights generally, or by general principles of equity (regardless of whether such enforcement is considered in a proceeding in equity or at law). Each Mortgage and Assignment of Leases is freely assignable.

20. The underlying Whole Loan is secured by one or more Mortgages and each such Mortgage is a valid and enforceable first lien on the related Underlying Mortgaged Property subject only to the exceptions set forth in paragraph (17) above and the following title exceptions (each such title exception, a "Title Exception", and collectively, the "Title Exceptions"): (a) the lien of current real property taxes, water charges, sewer rents and assessments not yet due and payable, (b) covenants, conditions and restrictions, rights of way, easements and other matters of public record, none of which, individually or in the aggregate, materially and adversely interferes with the current use of the Underlying Mortgaged Property or the security intended to be provided by such Mortgage or with the Mortgagor's ability to pay its obligations under the underlying Whole Loan when they become due or materially and adversely affects the value of the Underlying Mortgaged Property, (c) the exceptions (general and specific) and exclusions set forth in the applicable policy described in paragraph (24) below or appearing of record, none of which, individually or in the aggregate, materially and adversely interferes with the use of the Underlying Mortgaged Property or the security intended to be provided by such Mortgage or with the Mortgagor's ability to pay its obligations under the underlying Whole Loan when they become due or materially and adversely affects the value of the Underlying Mortgaged Property, (d) other matters to which like properties are commonly subject, none of which, individually or in the aggregate, materially and adversely interferes with the use of the Underlying Mortgaged Property or the security intended to be provided by such Mortgage or with the Mortgagor's ability to pay its obligations under the underlying Whole Loan when they become due or materially and adversely affects the value of the Underlying Mortgaged Property, (e) the right of tenants (whether under ground leases, space leases or operating leases) at the Underlying Mortgaged Property to remain following a foreclosure or similar proceeding (provided that such tenants are performing under such leases) and (f) if such underlying Whole Loan is cross-collateralized with any other underlying Whole Loan, the lien of the Mortgage for such other underlying Whole Loan, none of which, individually or in the aggregate, materially and adversely interferes with the use of the Underlying Mortgaged Property or the security

intended to be provided by such Mortgage or with the Mortgagor's ability to pay its obligations under the underlying Whole Loan when they become due or materially and adversely affects the value of the Underlying Mortgaged Property. Except with respect to cross-collateralized and cross-defaulted underlying Whole Loans and as provided below, there are no mortgage loans that are senior or *pari passu* with respect to the related Underlying Mortgaged Property or such underlying Whole Loan.

21. UCC Financing Statements have been filed and/or recorded (or, if not filed and/or recorded, have been submitted in proper form for filing and recording), in all UCC filing offices necessary to perfect a valid security interest in all items of personal property located on each related Underlying Mortgaged Property that are owned by the Mortgagor and either (i) are reasonably necessary to operate such Underlying Mortgaged Property or (ii) are (as indicated in the appraisal obtained in connection with the origination of the related underlying Whole Loan) material to the value of such Underlying Mortgaged Property (other than any personal property subject to a purchase money security interest or a sale and leaseback financing arrangement permitted under the terms of such underlying Whole Loan or any other personal property leases applicable to such personal property), to the extent perfection may be effected pursuant to applicable law by recording or filing of UCC Financing Statements, and the Mortgages, security agreements, chattel Mortgages or equivalent documents related to and delivered in connection with the related underlying Whole Loan establish and create a valid and enforceable lien and priority security interest on such items of personalty except as such enforcement may be limited by bankruptcy, insolvency, receivership, reorganization, moratorium, redemption, liquidation or other laws affecting the enforcement of creditor's rights generally, or by general principles of equity (regardless of whether such enforcement is considered in a proceeding in equity or at law). Notwithstanding any of the foregoing, no representation is made as to the perfection of any security interest in rents or other personal property to the extent that possession or control of such items or actions other than the filing of UCC Financing Statements are required in order to effect such perfection.

22. All real estate taxes and governmental assessments, or installments thereof, which would be a lien on any related Underlying Mortgaged Property and that prior to the Purchase Date for the related Purchased Asset have become delinquent in respect of such Underlying Mortgaged Property have been paid, or an escrow of funds in an amount sufficient to cover such payments has been established, or, if permitted by the applicable Senior Interest Documents, such payment is being contested in good faith pursuant to procedures set forth in the applicable Senior Interest Documents. For purposes of this representation and warranty, real estate taxes and governmental assessments and installments thereof shall not be considered delinquent until the earlier of (a) the date on which interest and/or penalties would first be payable thereon and (b) the date on which enforcement action is entitled to be taken by the related taxing authority.

23. Except as may be set forth in the property condition reports delivered to Buyer with respect to the Mortgaged Properties, as of the Purchase Date for the related Purchased Asset, each related Underlying Mortgaged Property was free and clear of any material damage (other than deferred maintenance for which escrows were established at origination or

which are currently being maintained) that would affect materially and adversely the value of such Underlying Mortgaged Property as security for the related underlying Whole Loan and there was no proceeding pending or, based solely upon the delivery of written notice thereof from the appropriate condemning authority, threatened for the total or partial condemnation of such Underlying Mortgaged Property.

24. With respect to each related underlying Whole Loan, the lien of each related Mortgage as a first priority lien in the original principal amount of such underlying Whole Loan after all advances of principal is insured by an ALTA lender's title insurance policy (or a binding commitment therefor), or its equivalent as adopted in the applicable jurisdiction, insuring the Mortgagee, its successors and assigns, subject only to the Title Exceptions; the Mortgagee or its successors or assigns is the sole named insured of such policy; such policy is assignable without consent of the insurer and Seller and will inure to the benefit of the Buyer as the Mortgagee of record; such title policy is in full force and effect upon the consummation of the transactions contemplated by this Agreement; all premiums thereon have been paid; no claims have been made under such policy and no circumstance exists which would impair or diminish the coverage of such policy. The insurer issuing such policy is either (x) a nationally-recognized title insurance company or (y) qualified to do business in the jurisdiction in which the related Underlying Mortgaged Property is located to the extent required; such policy contains no material exclusions for, or affirmatively insures (except for any Underlying Mortgaged Property located in a jurisdiction where such insurance is not available) (a) access to public road or (b) against any loss due to encroachments of any material portion of the improvements thereon.

25. With respect to each related underlying Whole Loan, as of the origination date of each underlying Whole Loan, and to Seller's Knowledge, as of the Purchase Date of each underlying Whole Loan, all insurance coverage was being maintained with respect to the Underlying Mortgaged Property in compliance in all material respects with the requirements under each related Mortgage, which insurance covered such risks as were customarily acceptable to prudent commercial and multifamily mortgage lending institutions lending on the security of property comparable to the related Underlying Mortgaged Property in the jurisdiction in which such Underlying Mortgaged Property is located, and with respect to a fire and extended perils insurance policy, is in an amount (subject to a customary deductible) at least equal to the lesser of (i) the replacement cost of improvements located on such Underlying Mortgaged Property, or (ii) the outstanding principal balance of the underlying Whole Loan, and in any event, the amount necessary to prevent operation of any co-insurance provisions; and, except if such Underlying Mortgaged Property is operated as a mobile home park, is also covered by business interruption or rental loss insurance, in an amount at least equal to 12 months of operations of the related Underlying Mortgaged Property, all of which is in full force and effect with respect to each related Underlying Mortgaged Property; and insurance covering such other risks and in such amounts as are customarily acceptable to prudent commercial and multifamily mortgage lending institutions lending on the security of property comparable to the related Underlying Mortgaged Property in the jurisdiction in which such Underlying Mortgaged Property is located, is in full force and effect with respect to the related Underlying Mortgaged Property; all premiums due and payable through the Purchase Date for the related Purchased Asset have been paid; and no notice of termination or cancellation with respect to any such insurance policy has

been received by Seller. Except for certain amounts not greater than amounts which would be considered prudent by an institutional commercial and/or multifamily mortgage lender with respect to a similar mortgage loan and which are set forth in the related Mortgage, any insurance proceeds in respect of a casualty loss, will be applied either (i) to the repair or restoration of all or part of the related Underlying Mortgaged Property or (ii) the reduction of the outstanding principal balance of the underlying Whole Loan, subject in either case to requirements with respect to leases at the related Underlying Mortgaged Property and to other exceptions customarily provided for by prudent institutional lenders for similar loans. The Underlying Mortgaged Property is also covered by comprehensive general liability insurance against claims for personal and bodily injury, death or property damage occurring on, in or about the related Underlying Mortgaged Property, in an amount customarily required by prudent institutional lenders. An architectural or engineering consultant has performed an analysis of the Underlying Mortgaged Properties located in seismic zone 3 or 4 in order to evaluate the structural and seismic condition of such property, for the sole purpose of assessing the PML for the Underlying Mortgaged Property in the event of an earthquake; provided, that for purposes of compliance with the foregoing requirement, the PML shall be deemed to be the SEL reflected in the seismic report of the Underlying Mortgaged Property. If the resulting report concluded that the PML would exceed 20% of the amount of the replacement costs of the improvements, earthquake insurance on such Underlying Mortgaged Property was obtained by an insurer rated at least A-:V by A.M. Best Company or "BBB-" (or the equivalent) from S&P and Fitch or "Baa3" (or the equivalent) from Moody's. If the Underlying Mortgaged Property is located in Florida or within 25 miles of the coast of Texas, Louisiana, Mississippi, Alabama, Georgia, North Carolina or South Carolina, such Underlying Mortgaged Property is required to be insured by windstorm insurance in an amount at least equal to the lesser of (i) the outstanding principal balance of such underlying Whole Loan and (ii) 100% of the full insurable value, or 100% of the replacement cost, of the improvements located on the related Underlying Mortgaged Property.

The insurance policies contain a standard Mortgagee clause naming the Mortgagee and its successors and assigns as loss payee, in the case of a property insurance policy, or additional insured in the case of a liability insurance policy, and provide that they are not terminable without thirty (30) days prior written notice to the Mortgagee (or, with respect to non-payment, ten (10) days prior written notice to the Mortgagee) or such lesser period as prescribed by applicable law. Each Mortgage (a) requires that the Mortgagor maintain insurance as described above or permits the Mortgagee to require that the Mortgagor maintain insurance as described above, and (b) permits the Mortgagee to purchase such insurance at the Mortgagor's expense if Mortgagor fails to do so. The insurer with respect to each policy is qualified to write insurance in the relevant jurisdiction to the extent required.

26. As of the Purchase Date, the underlying Whole Loan is not, and since its origination, has not been 30 days or more past due in respect of any scheduled payment.

27. Each Mortgage related to the underlying Whole Loan does not provide for or permit, without the prior written consent of the holder of the Mortgage Note, the related Underlying Mortgaged Property to secure any other promissory note or obligation except as expressly described in the following sentence. The related Underlying Mortgaged Property is

not encumbered, and none of the Purchased Asset Documents permits the related Underlying Mortgaged Property to be encumbered subsequent to the Purchase Date without the prior written consent of the holder of such Whole Loan, by any lien securing the payment of money junior to or of equal priority with, or superior to, the lien of the related Mortgage (other than Title Exceptions, taxes, assessments and contested mechanics and materialmens liens that become payable after the Purchase Date of the related Whole Loan).

28. To Seller's Actual Knowledge, there is no material and adverse environmental condition or circumstance affecting the Underlying Mortgaged Property; to Seller's Actual Knowledge, there is no material violation of any applicable Environmental Law with respect to the Underlying Mortgaged Property; to Seller's Actual Knowledge, neither Seller nor the Underlying Obligor has taken any actions which would cause the Underlying Mortgaged Property not to be in compliance with all applicable Environmental Laws; the related Senior Interest Documents require the borrower to comply with all Environmental Laws; and each Mortgagor has agreed to indemnify the Mortgagee for any losses resulting from any material, adverse environmental condition or failure of the Mortgagor to abide by such Environmental Laws or has provided environmental insurance.

29. As of the Purchase Date, no issuer of the Purchased Asset, no co-participant and no Mortgagor related to any underlying Whole Loan, is a debtor in any state or federal bankruptcy or insolvency proceeding.

30. Except for the related Purchased Asset, each related underlying Whole Loan is a whole loan and contains no equity participation by the lender or shared appreciation feature and does not provide for any contingent or additional interest in the form of participation in the cash flow of the related Underlying Mortgaged Property or provide for negative amortization.

31. With respect to each related underlying Whole Loan, subject to certain exceptions, which are customarily acceptable to prudent commercial and multifamily mortgage lending institutions lending on the security of property comparable to the related Underlying Mortgaged Property, each related Mortgage or loan agreement contains provisions for the acceleration of the payment of the unpaid principal balance of such underlying Whole Loan if, without complying with the requirements of the Mortgage or loan agreement, (a) the related Underlying Mortgaged Property, or any controlling interest in the related Mortgagor, is directly transferred or sold (other than by reason of family and estate planning transfers, transfers by devise, descent or operation of law upon the death of a member, general partner or shareholder of the related borrower and transfers of less than a controlling interest (as such term is defined in the related underlying Senior Interest Documents) in a mortgagor, issuance of non-controlling new equity interests, transfers among existing members, partners or shareholders in the Mortgagor or an affiliate thereof, transfers among affiliated Mortgagors with respect to underlying Whole Loans which are cross-collateralized or cross-defaulted with other mortgage loans or transfers of a similar nature to the foregoing meeting the requirements of the underlying Whole Loan (such as pledges of ownership interests that do not result in a change of control) or a substitution or release of collateral within the parameters of paragraph (35) below), or (b) the

related Underlying Mortgaged Property or controlling interest in the borrower is encumbered in connection with subordinate financing by a lien or security interest against the related Underlying Mortgaged Property, other than any existing permitted additional debt. The underlying Senior Interest Documents require the borrower to pay all reasonable costs incurred by the Mortgagor with respect to any transfer, assumption or encumbrance requiring lender's approval.

32. With respect to each Purchased Asset and the related underlying Whole Loan, except as set forth in the related Purchased Asset documents delivered to Buyer, the terms of the related documents have not been waived, modified, altered, satisfied, impaired, canceled, subordinated or rescinded in any manner which materially interferes with the security intended to be provided by such documents and no such waiver, modification, alteration, satisfaction, impairment, cancellation, subordination or recission has occurred since the date upon which the due diligence file related to the applicable Purchased Asset was delivered to Buyer or its designee.

33. Each related Underlying Mortgaged Property was inspected by or on behalf of the related originator or an affiliate during the 12 month period prior to the related origination date.

34. Since origination, no material portion of any related Underlying Mortgaged Property has been released from the lien of the related Mortgage in any manner which materially and adversely affects the value of the underlying Whole Loan or the Purchased Asset or materially interferes with the security intended to be provided by such Mortgage, and, except with respect to underlying Whole Loans (a) which permit defeasance by means of substituting for the Underlying Mortgaged Property (or, in the case of an underlying Whole Loan secured by multiple Underlying Mortgaged Properties, one or more of such Underlying Mortgaged Properties) U.S. "government securities" as defined in Section 2(a)(16) of the Investment Company Act of 1940, as amended, sufficient to pay the underlying Whole Loan (or portions thereof) in accordance with its terms, (b) where a release of the portion of the Underlying Mortgaged Property was contemplated at origination and such portion was not considered material for purposes of underwriting the underlying Whole Loan, (c) where release is conditional upon the satisfaction of certain underwriting and other requirements including the payment of a release price that represents adequate consideration for such Underlying Mortgaged Property or the portion thereof that is being released, (d) which permit the related Mortgagor to substitute a replacement property acceptable to Mortgagee pursuant to its underwriting standards in compliance with certain underwriting and legal requirements, (e) which permit the release(s) of unimproved out-parcels or other portions of the Underlying Mortgaged Property that will not have a material adverse effect on the underwritten value of the security for the underlying Whole Loan or that were not allocated to any value in the underwriting during the origination of the underlying Whole Loan, or (f) upon the payment in full of such underlying Whole Loan, the terms of the related Mortgage do not provide for release of any portion of the Underlying Mortgaged Property from the lien of the Mortgage except in consideration of payment in full therefor.

35. With respect to each related underlying Whole Loan, there are no material violations of any applicable zoning ordinances, building codes and land laws applicable to the Underlying Mortgaged Property or the use and occupancy thereof which (i) are not insured by an ALTA lender's title insurance policy (or a binding commitment therefor), or its equivalent as adopted in the applicable jurisdiction, or a law and ordinance insurance policy or (ii) would have a material adverse effect on the value, operation or net operating income of the Underlying Mortgaged Property. The underlying Senior Interest Documents require the Underlying Mortgaged Property to comply with all applicable laws and ordinances.

36. None of the material improvements which were included for the purposes of determining the appraised value of any related Underlying Mortgaged Property at the time of the origination of the respective underlying Whole Loan lies outside of the boundaries and building restriction lines of such property (except Underlying Mortgaged Properties which are legal non-conforming uses), to an extent which would have a material adverse affect on the value of the Underlying Mortgaged Property or related Mortgagor's use and operation of such Underlying Mortgaged Property (unless affirmatively covered by title insurance) and no improvements on adjoining properties encroached upon such Underlying Mortgaged Property to any material and adverse extent (unless affirmatively covered by title insurance).

37. The related Mortgagor has covenanted in its respective organizational documents and/or the underlying Senior Interest Documents to own no significant asset other than the related Underlying Mortgaged Properties, as applicable, and assets incidental to its respective ownership and operation of such Underlying Mortgaged Properties, and to hold itself out as being a legal entity, separate and apart from any other Person.

38. With respect to each related underlying Whole Loan, after origination, no advance of funds has been made other than pursuant to the loan documents, directly or indirectly, by Seller to the Mortgagor, other than pursuant to the related underlying Senior Interest Documents and, to Seller's Knowledge, no funds have been received from any Person other than the Mortgagor or a recourse party, for or on account of payments due on the Mortgage Note or the Mortgage related thereto.

39. With respect to each related underlying Whole Loan, as of the Purchase Date for the related Purchased Asset, there was no pending action, suit or proceeding, or governmental investigation of which Seller has received notice or has Knowledge, against the Mortgagor or the related Underlying Mortgaged Property the adverse outcome of which could reasonably be expected to materially and adversely affect such Mortgagor's ability to pay principal, interest or any other amounts due under such underlying Whole Loan or the security intended to be provided by the Purchased Asset Documents or the current use of the Underlying Mortgaged Property.

40. As of the Purchase Date, with respect to each related underlying Whole Loan, if the related Mortgage is a deed of trust, a trustee, duly qualified under applicable law to serve as such, has either been properly designated and serving under such Mortgage or may be substituted in accordance with the Mortgage and applicable law.

41. With respect to the Purchased Asset and each related underlying Whole Loan, such underlying Whole Loan and the Purchased Asset and all interest thereon (exclusive of any default interest, late charges or prepayment premiums) contracted for complied as of the date of origination with, or is exempt from, applicable state or federal laws, regulations and other requirements pertaining to usury.

42. Each underlying Whole Loan that is cross-collateralized is cross-collateralized only with other underlying Whole Loans sold pursuant to this Agreement.

43. The improvements located on the Underlying Mortgaged Property are either not located in a federally designated special flood hazard area or, if so located, the Mortgagor is required to maintain or the Mortgagee maintains, flood insurance with respect to such improvements and such policy is in full force and effect in an amount no less than the lesser of (i) the original principal balance of the underlying Whole Loan, (ii) the value of such improvements on the related Underlying Mortgaged Property located in such flood hazard area or (iii) the maximum allowed under the related federal flood insurance program.

44. To Seller's Knowledge, all escrow deposits and payments required pursuant to the underlying Whole Loan as of the Purchase Date required to be deposited with Seller in accordance with the underlying Senior Interest Documents have been so deposited, are in the possession, or under the control, of Seller or its agent and there are no deficiencies in connection therewith.

45. With respect to each related underlying Whole Loan, as of the Purchase Date, the related Mortgagor, the related lessee, franchisor or operator was in possession of all material licenses, permits and authorizations then required for the use of the related Underlying Mortgaged Property by the related Mortgagor. The underlying Senior Interest Documents require the borrower to maintain all licenses, permits and authorizations required for the current use of the related Underlying Mortgaged Property by the related Mortgagor.

46. With respect to the Senior Interest and each related underlying Whole Loan, the origination (or acquisition, as the case may be), and, if Seller is the party responsible for servicing and administration of the related underlying Whole Loan under the applicable Senior Interest Documents, the servicing and collection practices used by Seller with respect to such underlying Whole Loan have been in all respects legal and have met customary industry standards for servicing of commercial mortgage loans for conduit loan programs.

47. With respect to each related underlying Whole Loan, except for Mortgagors under underlying Whole Loans secured in whole or in part by a Ground Lease, the related Mortgagor (or its affiliate) has title in the fee simple interest in each related Underlying Mortgaged Property.

48. The documents for each related underlying Whole Loan provide that each such underlying Whole Loan is either (a) recourse or (b) non-recourse to the related Mortgagor except that, with respect to underlying Whole Loans that are non-recourse, the related Mortgagor and a natural person (or an entity with assets other than an interest in the related Mortgagor) as

guarantor have agreed to be liable with respect to losses incurred due to (i) fraud and/or other intentional material misrepresentation, (ii) misappropriation of rents collected in advance or received by the related Mortgagor after the occurrence of an event of default and not paid to the Mortgagee or applied to the Underlying Mortgaged Property in the ordinary course of business, (iii) misapplication or conversion by the related Mortgagor of insurance proceeds or condemnation awards, (iv) breach of the environmental covenants in the related Purchased Asset Documents, and (v) other carveouts reasonably imposed by Seller.

49. Subject to the exceptions set forth in paragraph (17) and upon possession of the Underlying Mortgaged Property as required under applicable state law, any Assignment of Leases set forth in the Mortgage or separate from the related Mortgage and related to and delivered in connection with each underlying Whole Loan establishes and creates a valid, subsisting and enforceable lien and security interest in the related Mortgagor's interest in all leases, subleases, licenses or other agreements pursuant to which any Person is entitled to occupy, use or possess all or any portion of the real property.

50. With respect to each related underlying Whole Loan, to the extent required under applicable law as of the date of origination, and necessary for the enforceability or collectability of such underlying Whole Loan, the originator of such underlying Whole Loan was authorized to do business in the jurisdiction in which the related Underlying Mortgaged Property is located at all times when it originated and held the underlying Whole Loan.

51. Neither Seller nor any affiliate thereof has any obligation to make any capital contributions to the Mortgagor under any related underlying Whole Loan.

52. With respect to each related underlying Whole Loan, each related Underlying Mortgaged Property constitutes one or more complete separate tax lots (or the related Mortgagor has covenanted to obtain separate tax lots and a Person has indemnified the Mortgagee for any loss suffered in connection therewith or an escrow of funds in an amount sufficient to pay taxes resulting from a breach thereof has been established) or is subject to an endorsement under the related title insurance policy.

53. With respect to each related underlying Whole Loan, an appraisal of the related Underlying Mortgaged Property was conducted in connection with the origination of such underlying Whole Loan; and, to Seller's Actual Knowledge, such appraisal satisfied, in all material respects, either (A) the requirements of the "Uniform Standards of Professional Appraisal Practice" as adopted by the Appraisal Standards Board of the Appraisal Foundation, or (B) the guidelines in Title XI of the Financial Institutions Reform, Recovery and Enforcement Act or 1989, in either case as in effect on the date such underlying Whole Loan was originated.

54. With respect to each related underlying Whole Loan, the related Purchased Asset Documents require the Mortgagor to provide the Mortgagee with certain financial information at the times required under such Purchased Asset Documents.

55. With respect to each related underlying Whole Loan, the related Underlying Mortgaged Property is served by public utilities, water and sewer (or septic facilities)

and otherwise appropriate for the use in which the Underlying Mortgaged Property is currently being utilized.

56. With respect to each related Underlying Mortgaged Property consisting of a Ground Lease, Seller represents and warrants the following with respect to the related Ground Lease:

(i) Such Ground Lease or a memorandum thereof has been or will be duly recorded no later than 30 days after the Purchase Date of the related Purchased Asset and such Ground Lease permits the interest of the lessee thereunder to be encumbered by the related Mortgage or, if consent of the lessor thereunder is required, it has been obtained prior to the Purchase Date.

(ii) Upon the foreclosure of the underlying Whole Loan (or acceptance of a deed in lieu thereof), the Mortgagor's interest in such Ground Lease is assignable to the Mortgagee under the leasehold estate and its assigns without the consent of the lessor thereunder (or, if any such consent is required, it has been obtained prior to the Purchase Date).

(iii) Such Ground Lease may not be amended, modified, canceled or terminated without the prior written consent of the Mortgagee, and any such action without such consent is not binding on the Mortgagee, its successors or assigns, except termination or cancellation if (i) an event of default occurs under the Ground Lease, (ii) notice thereof is provided to the Mortgagee and (iii) such default is curable by the Mortgagee as provided in the Ground Lease but remains uncured beyond the applicable cure period.

(iv) Such Ground Lease is in full force and effect, there is no material default under such Ground Lease, and, to Seller's Knowledge, there is no event which, with the passage of time or with notice and the expiration of any grace or cure period, would constitute a material default under such Ground Lease.

(v) The Ground Lease or ancillary agreement between the lessor and the lessee requires the lessor to give notice of any default by the lessee to the Mortgagee. The Ground Lease or ancillary agreement further provides that no notice of termination given is effective against the Mortgagee unless a copy has been given to the Mortgagee in a manner described in the Ground Lease or ancillary agreement.

(vi) The Ground Lease (i) is not subject to any liens or encumbrances superior to, or of equal priority with, the Mortgage, subject, however, to only the Title Exceptions or (ii) is subject to a subordination, non-disturbance and attornment agreement to which the Mortgagee on the lessor's fee interest in the Underlying Mortgaged Property is subject.

(vii) A Mortgagee is permitted a reasonable opportunity (including, where necessary, sufficient time to gain possession of the interest of the lessee under the

Ground Lease) to cure any curable default under such Ground Lease before the lessor thereunder may terminate such Ground Lease.

(viii) Such Ground Lease has an original term (together with any extension options, whether or not currently exercised, set forth therein all of which can be exercised by the Mortgagee if the Mortgagee acquires the lessee's rights under the Ground Lease) that extends not less than 20 years beyond the stated maturity date of the underlying Whole Loan.

(ix) Under the terms of such Ground Lease, any estoppel or consent letter received by the Mortgagee from the lessor, and the related Mortgage, taken together, any related insurance proceeds or condemnation award (other than in respect of a total or substantially total loss or taking) will be applied either to the repair or restoration of all or part of the related Underlying Mortgaged Property, with the Mortgagee or a trustee appointed by it having the right to hold and disburse such proceeds as repair or restoration progresses, or to the payment or defeasance of the outstanding principal balance of the underlying Whole Loan, together with any accrued interest (except in cases where a different allocation would not be viewed as commercially unreasonable by any commercial mortgage lender, taking into account the relative duration of the Ground Lease and the related Mortgage and the ratio of the market value of the related Underlying Mortgaged Property to the outstanding principal balance of such underlying Whole Loan).

(x) The Ground Lease does not impose any restrictions on subletting that would be viewed as commercially unreasonable by a prudent commercial lender.

(xi) The ground lessor under such Ground Lease is required to enter into a new lease upon termination of the Ground Lease for any reason, including the rejection of the Ground Lease in bankruptcy.

REPRESENTATIONS AND WARRANTIES
RE: PURCHASED ASSETS CONSISTING OF MEZZANINE LOANS

Seller represents and warrants to Buyer, with respect to each Purchased Asset which is a Mezzanine Loan, that except as specifically disclosed to and approved by Buyer in accordance with the Agreement, as of the Purchase Date for each such Purchased Asset by Buyer from Seller and as of the date of each Transaction hereunder and at all times while the Repurchase Documents or any Transaction hereunder is in full force and effect the representations set forth on this Schedule 1(c) shall be true and correct in all material respects. For purposes of this Schedule 1(c) and the representations and warranties set forth herein, a breach of a representation or warranty shall be deemed to have been cured with respect to a Purchased Asset which is a Mezzanine Loan if and when Seller has taken or caused to be taken action such that the event, circumstance or condition that gave rise to such breach no longer affects such Purchased Asset.

1. The Mezzanine Loan is a performing senior or junior mezzanine loan secured by a pledge of one hundred percent (100%) of the direct or indirect Equity Interests in a Person that owns commercial real estate (a "Property Owner").

2. As of the Purchase Date, such Mezzanine Loan complies in all material respects with, or is exempt from, all requirements of federal, state or local law relating to such Mezzanine Loan.

3. Immediately prior to the sale, transfer and assignment to Buyer thereof, Seller had good and marketable title to, and was the sole owner and holder of, such Mezzanine Loan, and Seller is transferring such Mezzanine Loan free and clear of any and all liens, pledges, encumbrances, charges, security interests or any other ownership interests of any nature encumbering such Mezzanine Loan. Upon consummation of the purchase contemplated to occur in respect of such Mezzanine Loan on the Purchase Date therefor, Seller will have validly and effectively conveyed to Buyer all legal and beneficial interest in and to such Mezzanine Loan free and clear of any pledge, lien, encumbrance or security interest.

4. No fraudulent acts were committed by Seller in connection with its acquisition or origination of such Mezzanine Loan nor were any fraudulent acts committed by any Person in connection with the origination of such Mezzanine Loan.

5. All information contained in the related Underwriting Package (or as otherwise provided to Buyer) in respect of such Mezzanine Loan is accurate and complete in all material respects. Seller has made available to Buyer for inspection with respect to such Mezzanine Loan, true, correct and complete Mezzanine Loan Documents.

6. Except as included in the Underwriting Package, Seller is not a party to any document, instrument or agreement, and there is no document, that by its terms modifies or affects the rights and obligations of any holder of such Mezzanine Loan and Seller has not

consented to any material change or waiver to any term or provision of any such document, instrument or agreement and no such change or waiver exists.

7. Such Mezzanine Loan is presently outstanding, the proceeds thereof have been fully disbursed pursuant to the terms of the related Mezzanine Loan Documents and, except for amounts held in escrow by Seller, there is no requirement for any future advances thereunder.

8. Seller has full right, power and authority to sell and assign such Mezzanine Loan, and such Mezzanine Loan or any related Mezzanine Note has not been cancelled, satisfied or rescinded in whole or part nor has any instrument been executed that would effect a cancellation, satisfaction or rescission thereof.

9. Other than consents and approvals obtained as of the related Purchase Date or those already granted in the documentation governing such Mezzanine Loan (the "Mezzanine Loan Documents"), no consent or approval by any Person is required in connection with Seller's sale and/or Buyer's acquisition of such Mezzanine Loan, for Buyer's exercise of any rights or remedies in respect of such Mezzanine Loan (except for compliance with applicable Requirements of Law in connection with the exercise of any rights or remedies by Buyer) or for Buyer's sale, pledge or other disposition of such Mezzanine Loan. No third party holds any "right of first refusal", "right of first negotiation", "right of first offer", purchase option, or other similar rights of any kind, and no other impediment exists to any such transfer or exercise of rights or remedies.

10. The Mezzanine Loan is secured by a pledge of one hundred percent (100%) of the direct or indirect Equity Interests in a Property Owner and the security interest created thereby has been fully perfected in favor of Seller as Mezzanine Lender.

11. The Underlying Obligor (hereinafter defined) has been duly organized and is validly existing and in good standing under the laws of its jurisdiction of organization, with requisite power and authority to own its assets and to transact the business in which it is now engaged, the sole purpose of the Underlying Obligor under its organizational documents is to own, finance, sell or otherwise manage the Underlying Mortgaged Property (or the Capital Stock of the Property Owner) and to engage in any and all activities related or incidental thereto, and the Underlying Mortgaged Property (or the Capital Stock of the Property Owner) constitute the sole assets of the Underlying Obligor.

12. The Underlying Obligor has good and marketable title to the Underlying Mortgaged Property, subject to any Title Exceptions, and, no claims have been made and are pending under the title policies insuring the Underlying Obligor's title to the Underlying Mortgaged Property.

13. Intentionally Omitted.

14. The Mezzanine Loan Documents provide for the acceleration of the payment of the unpaid principal balance of the Mezzanine Loan if (i) the Mezzanine Borrower voluntarily transfers or encumbers all or any portion of any related Mezzanine Collateral, or (ii)

any direct or indirect interest in the related Mezzanine Borrower is voluntarily transferred or assigned, other than, in each case, as permitted under the terms and conditions of the related Mezzanine Loan Documents.

15. Pursuant to the terms of the Mezzanine Loan Documents: (a) no material terms of any related underlying Mortgage may be waived, canceled, subordinated or modified in any material respect; (b) no action which could have a materially adverse impact on the market value of the Underlying Mortgaged Property may be taken by the Underlying Obligor with respect to the Underlying Mortgaged Property without the consent of the holder of the Mezzanine Loan; (c) the holder of the Mezzanine Loan is entitled to approve the budget of the Underlying Obligor as it relates to the Underlying Mortgaged Property; and (d) the holder of the Mezzanine Loan's consent is required prior to the Underlying Obligor incurring any additional indebtedness, other than indebtedness relating to trade payables and other liabilities incurred in the ordinary course of business.

16. (a) Other than payments due but not yet 30 days or more delinquent, there is no material default, breach, violation or event of acceleration existing under the related underlying Mortgage or the related Whole Loan, and no event has occurred (other than payments due but not yet delinquent) which, with the passage of time or with notice and the expiration of any grace or cure period, would constitute a material default, breach, violation or event of acceleration, provided, however, that this representation and warranty does not address or otherwise cover any default, breach, violation or event of acceleration that specifically pertains to any matter otherwise covered by any other representation and warranty made by Seller in any paragraph of this Schedule 1(c) and (b) Seller has not waived any material default, breach, violation or event of acceleration under such Mezzanine Loan and pursuant to the terms of the Mezzanine Loan Documents, no Person or party other than the holder of such Mezzanine Loan (or its servicer) may declare any event of default or accelerate the related indebtedness under such Mezzanine Loan.

17. No event of default has occurred under any other agreement pertaining to any lien relating to the Mezzanine Loan ranking junior to, *pari passu* with or senior to the interests of the holder of such Mezzanine Loan.

18. Seller's security interest in the Mezzanine Loan is covered by a UCC-9 insurance policy (the "UCC-9 Policy") in the maximum principal amount of the Mezzanine Loan insuring that the related pledge is a valid first priority lien on the collateral pledged in respect of such Mezzanine Loan (the "Mezzanine Collateral"), subject only to the exceptions stated therein (or a pro forma title policy or marked up title insurance commitment on which the required premium has been paid exists which evidences that such UCC-9 Policy will be issued), such UCC-9 Policy (or, if it has yet to be issued, the coverage to be provided thereby) is in full force and effect, no material claims have been made thereunder and no claims have been paid thereunder, Seller has not done, by act or omission, anything that would materially impair the coverage under the UCC-9 Policy and as of the Purchase Date, the UCC-9 Policy (or, if it has yet to be issued, the coverage to be provided thereby) will inure to the benefit of Buyer without the consent of (but upon notice to) the insurer.

19. Intentionally Omitted.

20. Seller has delivered to Buyer or its designee the original promissory note made in respect of such Mezzanine Loan, together with an original assignment thereof executed by Seller in blank.

21. Seller has not received any written notice that the Mezzanine Loan may be subject to reduction or disallowance for any reason, including without limitation, any setoff, right of recoupment, defense, counterclaim or impairment of any kind.

22. Seller has no obligation to make additional loans to, make guarantees on behalf of, or otherwise extend additional credit to, or make any of the foregoing for the benefit of, the Mezzanine Borrower or any other person under or in connection with the Mezzanine Loan.

23. The origination (or acquisition, as the case may be), servicing and collection practices used by Seller with respect to the Mezzanine Loan have been in all respects legal and have met customary industry standards used by prudent institutional commercial mezzanine lenders and mezzanine loan servicers for the origination (or acquisition, as the case may be), and servicing of mezzanine loans.

24. If applicable, the ground lessor consented to and acknowledged that (i) the Mezzanine Loan is permitted / approved, (ii) any foreclosure of the Mezzanine Loan and related change in ownership of the ground lessee will not require the consent of the ground lessor or constitute a default under the ground lease, (iii) copies of default notices would be sent to Mezzanine Lender and (iv) it would accept cure from Mezzanine Lender on behalf of the ground lessee.

25. Intentionally Omitted.

26. No consent, approval, authorization or order of, or registration or filing with, or notice to, any court or governmental agency or body having jurisdiction or regulatory authority is required for any transfer or assignment by the holder of such Mezzanine Loan.

27. Seller has not received written notice of any outstanding liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind for which the holder of such Mezzanine Loan is or may become obligated.

28. Seller has not advanced funds, or knowingly received any advance of funds from a party other than the Mezzanine Borrower relating to such Mezzanine Loan, directly or indirectly, for the payment of any amount required by such Mezzanine Loan.

29. All real estate taxes and governmental assessments, or installments thereof, which would be a lien on any related Underlying Mortgaged Property and that prior to the Purchase Date for the related Purchased Asset have become delinquent in respect of such

Underlying Mortgaged Property have been paid, or an escrow of funds in an amount sufficient to cover such payments has been established (either by Seller or a Mortgagee under any Underlying Mortgage). For purposes of this representation and warranty, real estate taxes and governmental assessments and installments thereof shall not be considered delinquent until the earlier of (a) the date on which interest and/or penalties would first be payable thereon and (b) the date on which enforcement action is entitled to be taken by the related taxing authority.

30. Except as may be set forth in the property condition reports delivered to Buyer with respect to the Underlying Mortgaged Property, as of the Purchase Date for the related Purchased Asset, each related Underlying Mortgaged Property was free and clear of any material damage (other than deferred maintenance for which escrows were established at origination) that would affect materially and adversely the value of such Underlying Mortgaged Property as security for the related underlying Whole Loan and there was no proceeding pending or, based solely upon the delivery of written notice thereof from the appropriate condemning authority, threatened for the total or partial condemnation of such Underlying Mortgaged Property.

31. As of the Purchase Date, Mezzanine Borrower was maintaining insurance coverage with respect to the Underlying Mortgaged Property in compliance in all material respects with the requirements under the Mezzanine Loan Documents and/or any Underlying Mortgage, which insurance covered such risks as were customarily acceptable to prudent commercial and multifamily mortgage lending institutions lending on the security of property comparable to the related Underlying Mortgaged Property in the jurisdiction in which such Underlying Mortgaged Property is located, and with respect to a fire and extended perils insurance policy, is in an amount (subject to a customary deductible) at least equal to the lesser of (i) the replacement cost of improvements located on such Underlying Mortgaged Property, or (ii) the outstanding principal balance of the underlying Whole Loan, and in any event, the amount necessary to prevent operation of any co-insurance provisions; and, except if such Underlying Mortgaged Property is operated as a mobile home park, is also covered by business interruption or rental loss insurance, in an amount at least equal to 12 months of operations of the related Underlying Mortgaged Property, all of which is in full force and effect with respect to each related Underlying Mortgaged Property; all premiums due and payable through the Purchase Date for the related Purchased Asset have been paid; and no notice of termination or cancellation with respect to any such insurance policy has been received by Seller. Except for certain amounts not greater than amounts which would be considered prudent by an institutional commercial and/or multifamily mortgage lender with respect to a similar mortgage loan and which are set forth in the Mezzanine Loan Documents and/or any underlying Whole Loan related to the Underlying Mortgaged Property, any insurance proceeds in respect of a casualty loss, will be applied either (i) to the repair or restoration of all or part of the related Underlying Mortgaged Property or (ii) the reduction of the outstanding principal balance of the underlying Whole Loan, subject in either case to requirements with respect to leases at the related Underlying Mortgaged Property and to other exceptions customarily provided for by prudent institutional lenders for similar loans. The Underlying Mortgaged Property is also covered by comprehensive general liability insurance against claims for personal and bodily injury, death or property damage occurring on, in or about the related Underlying Mortgaged Property, in an amount customarily required by prudent institutional lenders. An architectural or engineering consultant has

performed an analysis of the Underlying Mortgaged Properties located in seismic zone 3 or 4 in order to evaluate the structural and seismic condition of such property, for the sole purpose of assessing the probable maximum loss ("PML") for the Underlying Mortgaged Property in the event of an earthquake. If the resulting report concluded that the PML would exceed 20% of the amount of the replacement costs of the improvements, earthquake insurance on such Underlying Mortgaged Property was obtained by an insurer rated at least A-:V by A.M. Best Company or "BBB-" (or the equivalent) from S&P and Fitch or "Baa3" (or the equivalent) from Moody's. If the Underlying Mortgaged Property is located in Florida or within 25 miles of the coast of Texas, Louisiana, Mississippi, Alabama, Georgia, North Carolina or South Carolina such Underlying Mortgaged Property is insured by windstorm insurance in an amount at least equal to the lesser of (i) the outstanding principal balance of such underlying Whole Loan and (ii) 100% of the full insurable value, or 100% of the replacement cost, of the improvements located on the related Underlying Mortgaged Property.

32. The insurance policies contain a standard mortgagee clause naming the holder of the underlying Mortgage (the "Mortgagee"), its successors and assigns as loss payee, in the case of a property insurance policy, and additional insured in the case of a liability insurance policy and provide that they are not terminable without 30 days prior written notice to the Mortgagee or, with respect to non-payment, 10 days prior written notice to the Mortgagee or such lesser period as prescribed by applicable law. Each underlying Mortgage requires that Property Owner maintain insurance as described above or permits the Mortgagee to require insurance as described above, and permits the Mortgagee to purchase such insurance at the Property Owner's expense if Property Owner fails to do so.

33. There is no material and adverse environmental condition or circumstance affecting the Underlying Mortgaged Property; there is no material violation of any applicable Environmental Law with respect to the Underlying Mortgaged Property; neither Seller nor the related Property Owner has taken any actions which would cause the Underlying Mortgaged Property not to be in compliance with all applicable Environmental Laws; the underlying Whole Loan documents require the borrower to comply with all Environmental Laws; and the related Property Owner has agreed to indemnify the Mortgagee for any losses resulting from any material, adverse environmental condition or failure of the Mortgagor to abide by such Environmental Laws or has provided environmental insurance.

34. No Mezzanine Borrower under the Mezzanine Loan nor any Property Owner under any underlying Whole Loan is a debtor in any state or federal bankruptcy or insolvency proceeding.

35. Each related Underlying Mortgaged Property was inspected by or on behalf of the related originator or an affiliate during the 12 month period prior to the related origination date.

36. There are no material violations of any applicable zoning ordinances, building codes and land laws applicable to the Underlying Mortgaged Property or the use and occupancy thereof other than those which (i) are insured by an ALTA lender's title insurance policy (or a binding commitment therefor), or its equivalent as adopted in the applicable

jurisdiction, or a law and ordinance insurance policy or (ii) would not have a material adverse effect on the value, operation or net operating income of the Underlying Mortgaged Property. The Mezzanine Loan Documents and the underlying Whole Loan documents require the Underlying Mortgaged Property to comply with all applicable laws and ordinances.

37. None of the material improvements which were included for the purposes of determining the appraised value of any related Underlying Mortgaged Property at the time of the origination of the Mezzanine Loan or any related underlying Whole Loan lies outside of the boundaries and building restriction lines of such property (except Underlying Mortgaged Properties which are legal non-conforming uses), to an extent which would have a material adverse affect on the value of the Underlying Mortgaged Property or the related Mortgagor's use and operation of such Underlying Mortgaged Property (unless affirmatively covered by title insurance) and no improvements on adjoining properties encroached upon such Underlying Mortgaged Property to any material and adverse extent (unless affirmatively covered by title insurance).

38. As of the Purchase Date, there was no pending action, suit or proceeding, or governmental investigation of which Seller has received notice or has Knowledge, against the related Property Owner or the related Underlying Mortgaged Property the adverse outcome of which could reasonably be expected to materially and adversely affect the Mezzanine Loan or the underlying Whole Loan.

39. The improvements located on the Underlying Mortgaged Property are either not located in a federally designated special flood hazard area or, if so located, the Mortgagor is required to maintain or the Mortgagee maintains, flood insurance with respect to such improvements and such policy is in full force and effect in an amount no less than the lesser of (i) the original principal balance of the underlying Whole Loan, (ii) the value of such improvements on the related Underlying Mortgaged Property located in such flood hazard area or (iii) the maximum allowed under the related federal flood insurance program.

40. Except for Property Owners under underlying Whole Loans secured in whole or in part by a Ground Lease, the related Property Owner (or its affiliate) has title in the fee simple interest in each related Underlying Mortgaged Property.

41. The related Underlying Mortgaged Property is not encumbered, and none of the Mezzanine Loan Documents or any underlying Whole Loan documents permits the related Underlying Mortgaged Property to be encumbered subsequent to the Purchase Date of the related Purchased Asset without the prior written consent of the holder thereof, by any lien securing the payment of money junior to or of equal priority with, or superior to, the lien of the related underlying Mortgage (other than Title Exceptions, taxes, assessments and contested mechanics and materialmens liens that become payable after such Purchase Date).

42. Each related Underlying Mortgaged Property constitutes one or more complete separate tax lots (or the related Property Owner has covenanted to obtain separate tax lots and a Person has indemnified the Mortgagee for any loss suffered in connection therewith or

an escrow of funds in an amount sufficient to pay taxes resulting from a breach thereof has been established) or is subject to an endorsement under the related title insurance policy.

43. An appraisal of the related Underlying Mortgaged Property was conducted in connection with the origination of the underlying Whole Loan; and, to Seller's Knowledge, such appraisal satisfied, in all material respects, either (A) the requirements of the "Uniform Standards of Professional Appraisal Practice" as adopted by the Appraisal Standards Board of the Appraisal Foundation, or (B) the guidelines in Title XI of the Financial Institutions Reform, Recovery and Enforcement Act or 1989, in either case as in effect on the date such underlying Whole Loan was originated.

44. The related Underlying Mortgaged Property is served by public utilities, water and sewer (or septic facilities) and otherwise appropriate for the use in which the Underlying Mortgaged Property is currently being utilized.

45. With respect to each related Underlying Mortgaged Property consisting of a Ground Lease, Seller represents and warrants the following with respect to the related Ground Lease:

(i) Such Ground Lease or a memorandum thereof has been or will be duly recorded no later than 30 days after the Purchase Date of the related Purchased Asset and such Ground Lease permits the interest of the lessee thereunder to be encumbered by the related mortgage or, if consent of the lessor thereunder is required, it has been obtained prior to the Purchase Date.

(ii) Upon the foreclosure of the underlying Whole Loan (or acceptance of a deed in lieu thereof), the Property Owner's interest in such Ground Lease is assignable to the Mortgagee under the leasehold estate and its assigns without the consent of the lessor thereunder.

(iii) Such Ground Lease may not be amended, modified, canceled or terminated without the prior written consent of the Mortgagee and any such action without such consent is not binding on the Mortgagee, its successors or assigns, except termination or cancellation if (i) an event of default occurs under the Ground Lease, (ii) notice thereof is provided to the Mortgagee and (iii) such default is curable by the Mortgagee as provided in the Ground Lease but remains uncured beyond the applicable cure period.

(iv) Such Ground Lease is in full force and effect, there is no material default under such Ground Lease, and there is no event which, with the passage of time or with notice and the expiration of any grace or cure period, would constitute a material default under such Ground Lease.

(v) The Ground Lease or ancillary agreement between the lessor and the lessee requires the lessor to give notice of any default by the lessee to the Mortgagee. The Ground Lease or ancillary agreement further provides that no notice given is effective against the Mortgagee unless a copy has been given to the Mortgagee in a manner described in the Ground Lease or ancillary agreement.

(vi) The Ground Lease (i) is not subject to any liens or encumbrances superior to, or of equal priority with, the Underlying Mortgage, subject, however, to only the Title Exceptions or (ii) is subject to a subordination, non-disturbance and attornment agreement to which the Mortgagee on the lessor's fee interest in the Underlying Mortgaged Property is subject.

(vii) A Mortgagee is permitted a reasonable opportunity (including, where necessary, sufficient time to gain possession of the interest of the lessee under the Ground Lease) to cure any curable default under such Ground Lease before the lessor thereunder may terminate such Ground Lease.

(viii) Such Ground Lease has an original term (together with any extension options, whether or not currently exercised, set forth therein all of which can be exercised by the Mortgagee if the Mortgagee acquires the lessee's rights under the Ground Lease) that extends not less than 20 years beyond the stated maturity date.

(ix) Under the terms of such Ground Lease, any estoppel or consent letter received by the Mortgagee from the lessor, and the related Underlying Mortgage, taken together, any related insurance proceeds or condemnation award (other than in respect of a total or substantially total loss or taking) will be applied either to the repair or restoration of all or part of the related Underlying Mortgaged Property, with the Mortgagee or a trustee appointed by it having the right to hold and disburse such proceeds as repair or restoration progresses, or to the payment or defeasance of the outstanding principal balance of the underlying Whole Loan, together with any accrued interest (except in cases where a different allocation would not be viewed as commercially unreasonable by any commercial mortgage lender, taking into account the relative duration of the Ground Lease and the related underlying Mortgage and the ratio of the market value of the related Underlying Mortgaged Property to the outstanding principal balance of such underlying Whole Loan).

(x) The Ground Lease does not impose any restrictions on subletting that would be viewed as commercially unreasonable by a prudent commercial lender.

(xi) The ground lessor under such Ground Lease is required to enter into a new lease upon termination of the Ground Lease for any reason, including the rejection of the Ground Lease in bankruptcy.

Schedule 2

Wells Fargo Bank, NA
ABA # 121 000 248
Account # 4124021965
Account Name: ACRC Lender W LLC and
ACRC Lender W TRS LLC for the benefit of
Wells Fargo Bank NA, Waterfall Account

Schedule 3

APPRAISAL PROCEDURE

If Buyer and Seller shall fail to resolve such dispute on or before the date that is fifteen (15) days after Buyer's receipt of the notice from Seller described in Section 4.01(b) of the Agreement, then Buyer and Seller each shall give notice to the other party setting forth the name and address of an Independent Appraiser designated by the party giving such notice.

If either party shall fail to give notice of such designation, then the Independent Appraiser chosen shall make the determination of the applicable market value of the underlying Mortgaged Property alone. If two Independent Appraisers have been designated, such two Independent Appraisers may consult with each other and shall, not later than the 30th day after Buyer's receipt of Seller's Notice, each issue their Appraisals of the applicable market value in writing, and give notice thereof to each other and to Buyer and Seller. If the Appraisals of the two Independent Appraisers are within ten percent (10%) of the greater appraised amount, then the applicable market value shall be the average of the two determinations. Such averaged amount shall be final and binding upon Buyer and Seller. If the Appraisals of the two Independent Appraisers are not within ten percent (10%) of the greater appraised amount, then such two Independent Appraisers, within the next ten days, shall designate a third Independent Appraiser. If the two Independent Appraisers shall be unable to select a third Independent Appraiser within such ten day period, then either party may apply to the American Arbitration Association or any successor thereto having jurisdiction, for the designation of such Independent Appraiser. The third Independent Appraiser shall prepare an Appraisal on an expedited basis, and in any event, within thirty (30) days after its designation. Upon issuance of such third Appraisal, the applicable market value shall be the average of the two Appraisals that are the closest to each other in amount. Such averaged amount shall be final and binding upon Buyer and Seller. Seller shall pay the fees of each Independent Appraiser. The determination rendered in accordance with the provisions of this Schedule shall be final, conclusive and binding in fixing the applicable market value. Such determination shall not be appealable.

In the event that the market value of the underlying Mortgaged Property as determined in accordance with this Schedule meant that a Credit Event under clause (iv) of such definition in fact did not occur on the date of the original Margin Call, then Buyer shall, within two Business Days after such determination, refund to Seller the amount of any Margin Call payment Seller has made on account thereof or, if applicable, reverse any reallocation of previous partial prepayments made in lieu of such Margin Call.

EXHIBIT LIST

	EXHIBIT
[Reserved]	A
Confirmation	B
Power of Attorney	C
Closing Certificate	D
Compliance Certificate	E
Assignment and Acceptance	F
Account Control Agreement	G
Irrevocable Redirection Notice	H
List of Prohibited Assignees	I
Locations of Buyer and Seller	Annex I

EXHIBIT A

[RESERVED]

EXHIBIT B-1

[AMENDED AND RESTATED] CONFIRMATION[1]

[ ] [ ], 20[__] (the "Confirmation Date")

Wells Fargo Bank, National Association
One Wells Fargo Center
301 South College Street
MAC D1053-125, 12th Floor
Charlotte, North Carolina 28202
Attention: Karen Whittlesey
Attention: Michael Genay

Re: Third Amended and Restated Master Repurchase and Securities Contract, dated as of February 10, 2022 (as the same has been and may be further amended, restated, supplemented or otherwise modified from time to time, the "Agreement") among ACRC Lender W LLC ("ACRC Seller"), ACRC Lender W TRS LLC ("TRS Seller" and together with ACRC Seller, "Sellers") and Wells Fargo Bank, National Association ("Buyer").

Ladies and Gentlemen:

[This is a Confirmation (this "Confirmation") executed and delivered by the undersigned Seller and Buyer pursuant to the Agreement. Terms used but not defined herein are as defined in the Agreement. The undersigned Seller and Buyer hereby confirm and agree that as of the Purchase Date and upon the other terms specified below, such Seller shall sell and assign to Buyer, and Buyer shall purchase from such Seller, all of such Seller's right, title and interest in, to and under the Purchased Asset identified in this Confirmation (the "Purchased Asset").][2]

[This is an amended and restated Confirmation (this "Confirmation") executed and delivered by the undersigned Seller and Buyer pursuant to the Agreement. Terms used but not defined herein are as defined in the Agreement. The undersigned Seller and Buyer hereby confirm and agree that as of the Purchase Date and upon the other terms specified below, such Seller has sold and assigned to Buyer, and Buyer has purchased from such Seller, all of such Seller's right, title and interest in, to and under the Purchased Asset identified in this Confirmation (the "Purchased Asset").

[1] Note to Form: Use this form for a single Purchased Asset.
[2] Note to Form: Use for initial Confirmation.

Effective as of the Confirmation Date set forth above, this Amended and Restated Confirmation amends, restates and replaces in its entirety any and all previously-delivered Confirmations relating to the Purchased Asset.][3]

Name of Purchased Asset:	[__]
Purchase Date:	[__], 20[__]
Class of Purchased Asset:	[Whole Loan][Senior Interest][Senior Interest (Eligible NCPPP)][Mezzanine Loan]
Property Type:	[__]
Book Value:	$[__]
Market Value:	$[__]
Outstanding Principal Balance:	$[__]
Seller's Remaining Future Funding Obligations:	[N/A][$[__]]
Recourse Percentage:	[__]%
Purchase Price:	$[__]
Change in Purchase Price:	[N/A][$[__]]
Applicable Percentage:	[__]%
Maximum Applicable Percentage:	[__]%
Pricing Margin:	[__]%
Applicable Benchmark (subject to Section 12.01 of the Agreement):	[LIBOR Based Transaction] [SOFR Based Transaction]
Applicable SOFR (subject to Section 12.01 of the Agreement):	[N/A][SOFR Average][Term SOFR]
Repurchase Date:	[As defined in the Agreement][__]
Additional Terms and Conditions:	[N/A][__][It is the intent of Buyer and the undersigned Seller that the grant of the security interest set forth in Section 11.01 of the Agreement, including the grant of a security interest in the Mezzanine Loans, constitutes "a security agreement or arrangement or other credit enhancement" that is related to the Agreement and the Transactions thereunder within the meaning of Sections 101(47)(A)(v) and 741(7)(A)(xi) of the Bankruptcy Code.]

[3] Note to Form: Use for Amended and Restated Confirmation.

The undersigned Seller hereby certifies as follows, on and as of the Confirmation Date with respect to the Purchased Asset that (a) all of the conditions precedent in Article 6 of the Agreement have been satisfied, (b) all information contained in the related Underwriting Package (or as otherwise provided by such Seller) is accurate and complete in all material respects, (c) such Seller has made available to Buyer for inspection, true, correct and complete versions of the related Purchased Asset Documents, (d) except as otherwise disclosed by such Seller to Buyer in writing, no Default or Event of Default has occurred and is continuing and (e) except as otherwise disclosed by such Seller to Buyer in writing, Guarantor is in compliance with the financial covenants set forth in Section 9 of the Guarantee Agreement.

The undersigned Seller acknowledges and agrees that upon funding by Buyer of the Purchase Price for the Purchased Asset (including any Future Funding Amount, if applicable) that (a) such Seller shall be deemed to have confirmed, represented and warranted, and does hereby represent and warrant, that all of the representations and warranties set forth in the Agreement (including, without limitation, the representations and warranties as to such Purchased Asset which are applicable to the Class of such asset set forth in Schedule 1 to the Agreement) are true and correct as of the Purchase Date (and if applicable, the Confirmation Date), except as set forth in an Approved Representation Exception and (b) with respect to the funding of any Future Funding Transaction, such Seller shall be deemed to have confirmed, represented and warranted, and does hereby represent and warrant, as of the funding date of such Future Funding Transaction, that all of the conditions to the funding of such future advance under the related Purchased Asset Documents have been satisfied (and no conditions have been waived, except as has been previously disclosed by such Seller to Buyer in writing).

[SIGNATURE PAGES FOLLOW]

Seller:

[ACRC LENDER W LLC][ACRC LENDER W TRS LLC]

By:
Name:
Title:

Buyer:

WELLS FARGO BANK, NATIONAL ASSOCIATION

By: _____
Name:
Title:

Appendix 1 to Confirmation

[Reserved]

Appendix 2 to Confirmation

[Description of any exceptions to representations and warranties to be made by Seller in this Confirmation]

EXHIBIT B-2

[AMENDED AND RESTATED] CONFIRMATION[4]

[ ] [ ], 20[__] (the "Confirmation Date")

Wells Fargo Bank, National Association
One Wells Fargo Center
301 South College Street
MAC D1053-125, 12th Floor
Charlotte, North Carolina 28202
Attention: Karen Whittlesey
Attention: Michael Genay

Re: Third Amended and Restated Master Repurchase and Securities Contract, dated as of February 10, 2022 (as the same has been and may be further amended, restated, supplemented or otherwise modified from time to time, the "Agreement") among ACRC Lender W LLC ("ACRC Seller"), ACRC Lender W TRS LLC ("TRS Seller" and together with ACRC Seller, "Sellers") and Wells Fargo Bank, National Association ("Buyer")

Ladies and Gentlemen:

[This is a Confirmation (this "Confirmation") executed and delivered by the undersigned Seller and Buyer pursuant to the Agreement. Terms used but not defined herein are as defined in the Agreement. The undersigned Seller and Buyer hereby confirm and agree that as of the Purchase Date and upon the other terms specified in Appendix 1 to this Confirmation, such Seller shall sell and assign to Buyer, and Buyer shall purchase from such Seller, all of such Seller's right, title and interest in, to and under the Purchased Assets identified in Appendix 1 to this Confirmation (the "Purchased Assets").][5]

[This is an amended and restated Confirmation (this "Confirmation") executed and delivered by the undersigned Seller and Buyer pursuant to the Agreement. Terms used but not defined herein are as defined in the Agreement. The undersigned Seller and Buyer hereby confirm and agree that as of the Purchase Date and upon the other terms specified in Appendix 1 to this Confirmation, such Seller has sold and assigned to Buyer, and Buyer has purchased from such Seller, all of such Seller's right, title and interest in, to and under the Purchased Assets identified in Appendix 1 to this Confirmation (the "Purchased Assets").

[4] Note to Form: Use this form for multiple Purchased Assets.
[5] Note to Form: Use for initial Confirmation.

Effective as of the Confirmation Date set forth above, this Amended and Restated Confirmation amends, restates and replaces in its entirety any and all previously-delivered Confirmations relating to the Purchased Assets.][6]

Notwithstanding the use of a single Confirmation to evidence the multiple Transactions described on Appendix 1 hereto, (i) each such Transaction shall constitute an individual Transaction for all purposes under the Repurchase Documents and (ii) each Purchased Asset identified on such Appendix 1 shall constitute an individual Purchased Asset for all purposes under the Repurchase Documents.

The undersigned Seller hereby certifies as follows, on and as of the Confirmation Date with respect to the Purchased Assets that (a) all of the conditions precedent in Article 6 of the Agreement have been satisfied, (b) all information contained in the related Underwriting Package (or as otherwise provided by such Seller) is accurate and complete in all material respects, (c) such Seller has made available to Buyer for inspection, true, correct and complete versions of the related Purchased Asset Documents, (d) except as otherwise disclosed by such Seller to Buyer in writing, no Default or Event of Default has occurred and is continuing and (e) except as otherwise disclosed by such Seller to Buyer in writing, Guarantor is in compliance with the financial covenants set forth in Section 9 of the Guarantee Agreement.

The undersigned Seller acknowledges and agrees that upon funding by Buyer of the Purchase Price for the Purchased Assets (including any Future Funding Amount, if applicable) that (a) such Seller shall be deemed to have confirmed, represented and warranted, and does hereby represent and warrant, that all of the representations and warranties set forth in the Agreement (including, without limitation, the representations and warranties as to such Purchased Assets which are applicable to the Class of such asset set forth in Schedule 1 to the Agreement) are true and correct as of the Purchase Date (and if applicable, the Confirmation Date), except as set forth in an Approved Representation Exception and (b) with respect to the funding of any Future Funding Transaction, such Seller shall be deemed to have confirmed, represented and warranted, and does hereby represent and warrant, as of the funding date of such Future Funding Transaction, that all of the conditions to the funding of such future advance under the related Purchased Asset Documents have been satisfied (and no conditions have been waived, except as has been previously disclosed by such Seller to Buyer in writing).

[SIGNATURE PAGES FOLLOW]

---

[6]

Seller:

[ACRC LENDER W LLC][ACRC LENDER W TRS LLC]

By:
Name:
Title:

Buyer:

WELLS FARGO BANK, NATIONAL ASSOCIATION

By: _____
Name:
Title:

Appendix 1 to Confirmation

Name of Purchased Asset	Purchase Date	Class of Purchased Asset	Property Type	Book Value	Market Value	Outstanding Principal Balance	Seller's Remaining Future Funding Obligations
[__]	[__], 20[__]	[Whole Loan][Senior Interest][Senior Interest (Eligible NCPPP)][Mezzanine Loan]	[__]	$[__]	$[__]	$[__]	$[__]
[__]	[__], 20[__]	[Whole Loan][Senior Interest][Senior Interest (Eligible NCPPP)][Mezzanine Loan]	[__]	$[__]	$[__]	$[__]	$[__]
[__]	[__], 20[__]	[Whole Loan][Senior Interest][Senior Interest (Eligible NCPPP)][Mezzanine Loan]	[__]	$[__]	$[__]	$[__]	$[__]
[__]	[__], 20[__]	[Whole Loan][Senior Interest][Senior Interest (Eligible NCPPP)][Mezzanine Loan]	[__]	$[__]	$[__]	$[__]	$[__]
[__]	[__], 20[__]	[Whole Loan][Senior Interest][Senior Interest (Eligible NCPPP)][Mezzanine Loan]	[__]	$[__]	$[__]	$[__]	$[__]

Appendix 1 to Confirmation (Continued)

Name of Purchased Asset	Recourse Percentage	Purchase Price	Change in Purchase Price	Applicable Percentage	Maximum Applicable Percentage	Pricing Margin	Applicable Benchmark (subject to Section 12.01 of the Agreement):	Applicable SOFR (subject to Section 12.01 of the Agreement):	Repurchase Date:
[__]	[__]%	$[__]	$[__]	[__]%	[__]%	[__]%	[LIBOR Based Transaction] [SOFR Based Transaction]	[N/A] [SOFR Average] [Term SOFR]	[As defined in the Agreement] [__]
[__]	[__]%	$[__]	$[__]	[__]%	[__]%	[__]%	[LIBOR Based Transaction] [SOFR Based Transaction]	[N/A] [SOFR Average] [Term SOFR]	[As defined in the Agreement] [__]
[__]	[__]%	$[__]	$[__]	[__]%	[__]%	[__]%	[LIBOR Based Transaction] [SOFR Based Transaction]	[N/A] [SOFR Average] [Term SOFR]	[As defined in the Agreement] [__]
[__]	[__]%	$[__]	$[__]	[__]%	[__]%	[__]%	[LIBOR Based Transaction] [SOFR Based Transaction]	[N/A] [SOFR Average] [Term SOFR]	[As defined in the Agreement] [__]
[__]	[__]%	$[__]	$[__]	[__]%	[__]%	[__]%	[LIBOR Based Transaction] [SOFR Based Transaction]	[N/A] [SOFR Average] [Term SOFR]	[As defined in the Agreement] [__]

Appendix 1 to Confirmation (Continued)

Additional Terms and Conditions: [N/A][__][It is the intent of Buyer and Seller that the grant of the security interest set forth in Section 11.01 of the Agreement, including the grant of a security interest in the Mezzanine Loans, constitutes "a security agreement or arrangement or other credit enhancement" that is related to the Agreement and the Transactions thereunder within the meaning of Sections 101(47)(A)(v) and 741(7)(A)(xi) of the Bankruptcy Code.]

Appendix 2 to Confirmation

[Description of any exceptions to representations and warranties to be made by Seller in this Confirmation]

Name of Purchased Asset: [__]

- [__]
- [__]
- [__]

Name of Purchased Asset: [__]

- [__]
- [__]
- [__]

Name of Purchased Asset: [__]

- [__]
- [__]
- [__]

Name of Purchased Asset: [__]

- [__]
- [__]
- [__]

Name of Purchased Asset: [__]

- [__]
- [__]
- [__]

EXHIBIT C

FORM OF POWER OF ATTORNEY

[_____] [____], 20[____]

Know All Men by These Presents, that [ACRC LENDER W LLC] [ACRC LENDER W TRS LLC], a Delaware limited liability company ("Seller"), does hereby appoint WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association ("Buyer"), its attorney-in-fact to act in Seller's name, place and stead in any way that Seller could do with respect to the enforcement of Seller's rights under the Purchased Assets purchased by Buyer pursuant to the Third Amended and Restated Master Repurchase and Securities Contract, dated as of February 10, 2022, among Buyer, Seller and [ACRC LENDER W LLC] [ACRC LENDER W TRS LLC] (the "Repurchase Agreement"), and to take such other steps as may be necessary or desirable to enforce Buyer's rights against such Purchased Assets to the extent that Seller is permitted by law to act through an agent.

TO INDUCE ANY THIRD PARTY TO ACT HEREUNDER, SELLER HEREBY AGREES THAT ANY THIRD PARTY RECEIVING A DULY EXECUTED COPY OR FACSIMILE OF THIS INSTRUMENT MAY ACT HEREUNDER, AND THAT REVOCATION OR TERMINATION HEREOF SHALL BE INEFFECTIVE AS TO SUCH THIRD PARTY UNLESS AND UNTIL ACTUAL NOTICE OR KNOWLEDGE OF SUCH REVOCATION OR TERMINATION SHALL HAVE BEEN RECEIVED BY SUCH THIRD PARTY, AND SELLER, HEREBY AGREES TO INDEMNIFY AND HOLD HARMLESS ANY SUCH THIRD PARTY FROM AND AGAINST ANY AND ALL CLAIMS THAT MAY ARISE AGAINST SUCH THIRD PARTY BY REASON OF SUCH THIRD PARTY HAVING RELIED ON THE PROVISIONS OF THIS INSTRUMENT.

[ACRC LENDER W LLC, a Delaware limited liability company]

[ACRC LENDER W TRS LLC, a Delaware limited liability company]

By:
Name:
Title:

EXHIBIT D

FORM OF CLOSING CERTIFICATE

ACRC LENDER W LLC
CLOSING CERTIFICATE

February 10, 2022

The undersigned hereby certifies that he is the Assistant Secretary of ACRC Lender W LLC, a Delaware limited liability company ("Seller"), and that, in the capacity as such officer, is duly authorized to execute and deliver this certificate on behalf of Seller in connection with the Third Amended and Restated Master Repurchase and Securities Contract, dated as of the date hereof (such agreement, as amended, modified, waived, supplemented or restated from time to time, the "Repurchase Agreement"), by and between Seller, ACRC Lender W TRS LLC and Wells Fargo Bank, National Association, as buyer ("Buyer") (all capitalized terms used herein without definition have the respective meanings set forth in the Repurchase Agreement), and further certifies in his capacity as such officer to Buyer as follows:

1. Seller's legal name is ACRC Lender W LLC and there are no additional, different or former names other than that name.

2. No event has occurred and is continuing that would constitute a Default or an Event of Default.

3. Since the respective dates as of which information was given to Buyer pursuant to the Repurchase Agreement and except as set forth therein, there has been no Material Adverse Effect.

4. All representations and warranties of Seller contained in the Repurchase Documents or in any other document, agreement, statement, affirmation, certificate, notice, report or financial or other statement delivered in connection herewith or therewith, are true and correct in all material respects as of the date hereof.

5. Each of the conditions of the Sellers, Guarantor and Pledgor to be performed on or before the Closing Date pursuant to the Repurchase Documents have been performed in all material respects. Seller, Guarantor and Pledgor are in compliance with all covenants, duties and agreements under the Repurchase Documents in all material respects.

6. The undersigned certifies that Seller is in compliance in all respects with the financial covenants in the Repurchase Agreement in all material respects.

7. The address (including street number, street, suite number, city, state, zip code and county) of the chief executive office of Seller is as follows:

   Address: 245 Park Avenue, 42nd Floor
   New York, NY, 10167
   County: New York County

8. Seller maintains records at the following additional locations:

   None.

9. Seller's Federal Tax ID Number is as follows: 45-3561907.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned has hereunto set his hand as of the date first above written.

ACRC LENDER W LLC, a Delaware limited liability company

By:
Name: Anton Feingold
Title: Authorized Signatory

ACRC LENDER W TRS LLC

CLOSING CERTIFICATE

February 10, 2022

The undersigned hereby certifies that he is the Assistant Secretary of ACRC Lender W TRS LLC, a Delaware limited liability company ("Seller"), and that, in the capacity as such officer, is duly authorized to execute and deliver this certificate on behalf of Seller in connection with the Third Amended and Restated Master Repurchase and Securities Contract, dated as of the date hereof (such agreement, as amended, modified, waived, supplemented or restated from time to time, the "Repurchase Agreement"), by and between Seller, ACRC Lender W LLC and Wells Fargo Bank, National Association, as buyer ("Buyer") (all capitalized terms used herein without definition have the respective meanings set forth in the Repurchase Agreement), and further certifies in his capacity as such officer to Buyer as follows:

1. Seller's legal name is ACRC Lender W TRS LLC and there are no additional, different or former names other than that name.

2. No event has occurred and is continuing that would constitute a Default or an Event of Default.

3. Since the respective dates as of which information was given to Buyer pursuant to the Repurchase Agreement and except as set forth therein, there has been no Material Adverse Effect.

4. All representations and warranties of Seller contained in the Repurchase Documents or in any other document, agreement, statement, affirmation, certificate, notice, report or financial or other statement delivered in connection herewith or therewith, are true and correct in all material respects as of the date hereof.

5. Each of the conditions of the Sellers, Guarantor and Pledgor to be performed on or before the Closing Date pursuant to the Repurchase Documents have been performed in all material respects. Seller, Guarantor and Pledgor are in compliance with all covenants, duties and agreements under the Repurchase Documents in all material respects.

6. The undersigned certifies that Seller is in compliance in all respects with the financial covenants in the Repurchase Agreement in all material respects.

7. The address (including street number, street, suite number, city, state, zip code and county) of the chief executive office of Seller is as follows:

   Address: 245 Park Avenue, 42nd Floor
   New York, NY, 10167
   County: New York County

8. Seller maintains records at the following additional locations:

   None.

9. Seller's Federal Tax ID Number is as follows: 80-0966058.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned has hereunto set his hand as of the date first above written.

ACRC LENDER W TRS LLC, a Delaware limited liability company

By:
Name: Anton Feingold
Title: Authorized Signatory

EXHIBIT E

FORM OF COMPLIANCE CERTIFICATE

[ ] [ ], 20[ ]

Wells Fargo Bank, National Association
One Wells Fargo Center
301 South College Street
MAC D1053-160, 12th Floor
Charlotte, NC 28202

Attention: Karen Whittlesey

Re: Third Amended and Restated Master Repurchase and Securities Contract, dated as of February 10, 2022 (as the same has been and may be further amended, restated, supplemented or otherwise modified from time to time, the "Agreement"), among ACRC Lender W LLC, ACRC Lender W TRS LLC (individually and collectively, "Seller") and Wells Fargo Bank, National Association ("Buyer")

This Compliance Certificate is furnished pursuant to the above Agreement. Unless otherwise defined herein, capitalized terms used in this Compliance Certificate have the respective meanings ascribed thereto in the Agreement.

THE UNDERSIGNED HEREBY CERTIFIES THAT:

1. I am a duly elected Responsible Officer of Guarantor.

2. All of the financial statements, calculations and other information set forth in this Compliance Certificate, including in any exhibit or other attachment hereto, are true, complete and correct as of the date hereof.

3. I have reviewed the terms of the Agreement and I have made, or have caused to be made under my supervision, a detailed review of the transactions and financial condition of Guarantor during the accounting period covered by the financial statements attached hereto (or most recently delivered to Buyer if none are attached).

4. The examinations described in the preceding paragraph did not disclose, and I have no knowledge of, the existence of any condition or event which constitutes an Event of Default or Default during or at the end of the accounting period covered by the attached financial statements or as of the date of this Compliance Certificate (including after giving effect to any pending Transactions requested to be entered into), except as set forth below.

5. Attached as Exhibit 1 hereto are the financial statements required to be delivered pursuant to Section 8.07 of the Agreement (or, if none are required to be delivered as of the date of this Compliance Certificate, the financial statements most recently delivered pursuant to Section 8.07 of the Agreement), which financial statements, to the best of my knowledge after due inquiry, fairly and accurately present in all material respects, the consolidated financial condition and operations of Guarantor and the consolidated results of its operations as of the date or with respect to the period therein specified, determined in accordance with GAAP.

6. Attached as Exhibit 2 hereto are the calculations demonstrating compliance with the financial covenants set forth in Section 8.05 of the Agreement and in Section 9 of the Guarantee Agreement, each for the immediately preceding fiscal quarter. Notwithstanding the foregoing, to the extent that Exhibit 2 is not attached hereto, the certification set forth in the preceding sentence shall incorporate by reference the calculations set forth on Exhibit 2 to the most recently dated Compliance Certificate that included a certified copy of the required calculations.

7. To the best of my knowledge, Seller has, during the period since the delivery of the immediately preceding Compliance Certificate, observed or performed all of its covenants and other agreements in all material respects, and satisfied in all material respects every condition, contained in the Agreement and the other Repurchase Documents to be observed, performed or satisfied by it, and I have no knowledge of the occurrence during such period, or present existence, of any condition or event which constitutes an Event of Default or Default (including after giving effect to any pending Transactions requested to be entered into), except as set forth below.

Described below are the exceptions, if any, to the above paragraph, setting forth in detail the nature of the condition or event, the period during which it has existed and the action which the Guarantor or Seller has taken, is taking, or proposes to take with respect to such condition or event:

_____
_____
_____
_____
_____

The foregoing certifications, together with the financial statements, updates, reports, materials, calculations and other information set forth in any exhibit or other attachment hereto, or otherwise covered by this Compliance Certificate, are made and delivered as of _____, 20__.

Name:
Title:

Exhibit 1: Financial Statements
Exhibit 2: Financial Covenant Compliance Calculations

EXHIBIT F

FORM OF ASSIGNMENT AND ACCEPTANCE

1. Reference is made to the Third Amended and Restated Master Repurchase and Securities Contract dated as of February 10, 2022 (as the same has been and may be further amended, restated, supplemented or otherwise modified from time to time, the "Agreement"), among ACRC Lender W LLC, ACRC Lender W TRS LLC (individually and collectively, "Seller") and Wells Fargo Bank, National Association ("Buyer").

2. Wells Fargo Bank, National Association ("Assignor") and ("Assignee") hereby agree as follows:

3. Assignor hereby sells and assigns and delegates, without recourse except as to the representations and warranties made by it herein, to Assignee, and Assignee hereby purchases and assumes from Assignor, an interest in and to Assignor's rights and obligations under the Agreement as of the Effective Date (as hereinafter defined) equal to the percentage interest specified on Schedule I hereto of all outstanding rights and obligations under the Repurchase Agreement (collectively, the "Assigned Interest").

4. Assignor:

(a) hereby represents and warrants that its name set forth on Schedule I hereto is its legal name, that it is the legal and beneficial owner of the Assigned Interest and that such Assigned Interest is free and clear of any adverse claim;

(b) other than as provided herein, makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with the Agreement or any of the other Repurchase Documents, or the execution, legality, validity, enforceability, genuineness, sufficiency or value of, or the perfection or priority of any lien or security interest created or purported to be created under or in connection with, the Repurchase Agreement or any of the other Repurchase Documents, or any other instrument or document furnished pursuant thereto; and

(c) makes no representation or warranty and assumes no responsibility with respect to the financial condition of Seller or the performance or observance by the Seller of any of its Obligations.

5. Assignee:

(a) confirms that it has received a copy of the Agreement, the other Repurchase Documents and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Acceptance;

(b) agrees that it will, independently and without reliance upon the Agent or any Buyer, and based on such documents and information as it shall deem appropriate at

the time, continue to make its own credit decisions in taking or not taking action under the Repurchase Agreement;

(c) represents and warrants that its name set forth on Schedule I hereto is its legal name;

(d) agrees that, from and after the Effective Date, it will be bound by the provisions of the Agreement and the other Repurchase Documents and, to the extent of the Assigned Interest, it will perform in accordance with their terms all of the obligations that by the terms of the Repurchase Agreement are required to be performed by it as a Buyer; and

(e) The effective date for this Assignment and Acceptance (the "Effective Date") shall be the date specified on Schedule I hereto.

6. As of the Effective Date, (a) Assignee shall be a party to the Agreement and, to the extent of the Assigned Interest, shall have the rights and obligations of Buyer thereunder and (b) Assignor shall, to the extent that any rights and obligations under the Agreement have been assigned and delegated by it pursuant to this Assignment and Acceptance, relinquish its rights (other than provisions of the Agreement and the other Repurchase Documents that are specified under the terms thereof to survive the payment in full of the Obligations) and be released from its obligations under the Agreement (and, if this Assignment and Acceptance covers all or the remaining rights and obligations of such Assignor under the Agreement, such Assignor shall cease to be a party thereto).

7. Assignor and Assignee shall make all appropriate adjustments in payments under the Agreement for periods prior to the Effective Date directly between themselves.

8. This Assignment and Acceptance and any claim, controversy or dispute arising under or related to or in connection with this Assignment and Acceptance, the relationship of the parties, and/or the interpretation and enforcement of the rights and duties of the parties will be governed by the laws of the State of New York without regard to any conflicts of law principles other than Section 5-1401 of the New York General Obligations Law.

9. This Assignment and Acceptance shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Acceptance may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of Schedule I hereto in Portable Document Format (PDF) or by telecopier or facsimile transmission shall be effective as delivery of an originally executed counterpart of this Assignment and Acceptance.

IN WITNESS WHEREOF, each of Assignor and Assignee have caused Schedule I hereto to be executed by their respective officers thereunto duly authorized, as of the date specified thereon.

Schedule I
to
ASSIGNMENT AND ACCEPTANCE

Assignor: Wells Fargo Bank, National Association

Assignee:

Effective Date: _____, 20[___]

Assigned Purchase Price	$
Aggregate Purchase Price	$
Assigned Buyer Percentage	%
Outstanding Aggregate Purchase Amount	$
Outstanding Buyer Purchase Amount	$

Assignor:

Wells Fargo Bank, National Association, as
Assignor
[Type or print legal name of Assignor]

By
Name:
Title:

Dated: _____ __, 20[___]

Assignee:

_____, as
Assignee
[Type or print legal name of Assignee]

By
Name:
Title:

Dated: _____ __, _____

Address for Notices:

EXHIBIT G

FORM OF ACCOUNT CONTROL AGREEMENT
(Securities Account)

Account Control Agreement dated as of _____, 20[_] (the "**Agreement**"), among [ACRC Lender W LLC, ACRC Lender W TRS LLC and/or applicable pledge agent] ("**Secured Party**"), [identify underlying borrower] ("**Pledgor**"), and [identify custodian] (the "**Custodian**").

WHEREAS, the Custodian maintains the [escrow and reserve account and securities account] for the benefit of by the Pledgor; and

WHEREAS, pursuant to the terms the [identify security agreement] between Secured Party and Pledgor (as amended from time to time, the "**Security Agreement**"), Pledgor has granted to Secured Party a security interest in the Collateral Accounts and the Collateral (each as defined below) to secure the obligations of Pledgor described in the Security Agreement; and

WHEREAS, Secured Party, Pledgor and the Custodian are entering into this Agreement to provide for the control of the Collateral;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, it is agreed as follows:

1. Collateral Accounts. All Collateral (other than cash Collateral) shall be identified and segregated on the Custodian's books and records under the name "[Name of Pledgor] for the benefit of [ACRC Lender W LLC, ACRC Lender W TRS LLC and/or applicable pledge agent]" (the "**Securities Account**"). The Custodian agrees to treat all Collateral at any time credited to the Securities Account as financial assets under Article 8 of the Uniform Commercial Code as in effect from time to time in The State of New York (the "**UCC**"), and shall credit all such Collateral to the Securities Account. The Custodian represents that the Securities Account is a "securities account" (as defined in Section 8-501(a) of the UCC).

2. Account Control.

2.1 Security Interest. This Agreement is intended by Secured Party and Pledgor to grant "control" of the Collateral Accounts to Secured Party for purposes of perfection of Secured Party's security interest in such Collateral pursuant to Article 8 and Article 9 of the UCC, and the Custodian hereby acknowledges that it has been advised of Pledgor's grant to Secured Party of a security interest in the Collateral Accounts and all financial assets, funds and other property credited thereto or held therein from time to time (collectively, the "**Collateral**"). Notwithstanding anything to the contrary in this Agreement, the Custodian will at all times comply with entitlement orders (within the meaning of Sections 8-102 and 9-106 of the UCC) received from Secured Party with respect to the Collateral Accounts, including without limitation instructions directing the disposition of all amounts credited thereto, without further consent of the Pledgor or any other person.

2.2 Control by Pledgor. Unless and until the Custodian receives written notice from Secured Party pursuant to Section 2.3 below instructing the Custodian that Secured Party is exercising its right to exclusive control over the Collateral Accounts, which notice is substantially in the form attached hereto as Exhibit A (a "**Notice of Exclusive Control**") the Custodian shall accept account instructions from Pledgor.

2.3 Control by Secured Party.

(i) Secured Party agrees to provide the Custodian, in the form of Exhibit B attached (as may be amended from time to time), the names and signatures of authorized parties who may give notices, instructions, or entitlement orders concerning the Collateral Accounts. Other means of notice or instruction may be used provided that Secured Party and the Custodian agree to appropriate security procedures. Upon receipt by the Custodian of a Notice of Exclusive Control, the Custodian shall thereafter follow only the entitlement orders of Secured Party with respect to the Collateral Accounts and shall comply with any entitlement order or instructions (within the meaning of Sections 8-102 and 9-106 of the UCC) received from Secured Party with respect thereto, including without limitation instructions directing the disposition of any amounts credited thereto, without further consent of Pledgor or any other person, and Custodian will not comply with entitlement orders concerning the Collateral originated by Pledgor without the prior written consent of Secured Party.

(ii) The Custodian shall have no responsibility or liability to Pledgor for complying with a Notice of Exclusive Control or complying with entitlement orders or instructions originated by Secured Party concerning the Collateral Accounts. The Custodian shall have no duty to investigate or make any determination to verify the existence of an event of default or compliance by either Secured Party or Pledgor with applicable law or the Security Agreement, and the Custodian shall be fully protected in complying with a Notice of Exclusive Control whether or not Pledgor may allege that no such event of default or other like event exists.

3. Distributions. The Custodian shall, without further action by Pledgor or Secured Party, credit to the Securities Account all interest, dividends and other income received by the Custodian on the Collateral (collectively, "**Proceeds**") as additional Collateral.

4. Release of Collateral; Release of Security Interest.

4.1 Release of Collateral. Subject to Section 2.3 hereof, Custodian will release all, or any designated portion, of the Collateral held in the Collateral Accounts as soon as reasonably practicable after receiving written instructions or entitlement orders from Secured Party and Pledgor authorizing such release.

4.2 Release of Security Interest. Secured Party agrees to notify the Custodian promptly in writing when all obligations of Pledgor to Secured Party secured by the Security Agreement have been fully paid and satisfied (and any commitment of Secured Party to advance further amounts or credit thereunder has been terminated) or Secured Party otherwise no longer

claims any interest in the Collateral in the Collateral Accounts, whichever is sooner; at which time the Custodian shall have no further liabilities or responsibilities hereunder and the Custodian's obligations under this Agreement shall terminate.

5. Duties and Services of Custodian.

(i) Custodian agrees that it is acting as a "securities intermediary," as defined in Section 8-102(a)(14) of the UCC, with respect to the Securities Account and the Collateral credited thereto.

(ii) The Custodian shall have no duties, obligations, responsibilities or liabilities with respect to the Collateral Accounts except as and to the extent expressly set forth in this Agreement. The Custodian shall not be liable or responsible for anything done or omitted to be done by it in good faith and in the absence of bad faith, negligence or willful misconduct.

(iii) Pledgor shall indemnify and hold the Custodian harmless with regard to any losses or liabilities of the Custodian (including reasonable attorneys' fees) imposed on or incurred by the Custodian arising out of any action or omission of the Custodian under this Agreement, except for any such losses or liabilities caused by the bad faith, negligence or willful misconduct of the Custodian.

6. Force Majeure. The Custodian shall not be liable for delays, errors or losses occurring by reason of circumstances beyond its control, including, without limitation, acts of God, market disorder, terrorism, insurrection, war, riots, failure of transportation or equipment, or failure of vendors, communication or power supply. In no event shall the Custodian be liable to any person for indirect, consequential or special damages, even if the Custodian has been advised of the possibility or likelihood of such damages (each, a "**Force Majeure Event**"); provided, however, that the Custodian shall (i) make reasonably diligent efforts to mitigate the effects of any Force Majeure Event and (ii) resume performance under this Agreement as soon as reasonably possible after the cessation of such Force Majeure Event.

7. Custodian Representations. The Custodian agrees and confirms, as of the date hereof, and at all times until the termination of this Agreement, that it has not entered into, and until the termination of this Agreement will not enter into, any agreement with any other person or entity relating to the Collateral or the Collateral Accounts under which it has agreed to comply with entitlement orders (as defined in Section 8-102(a)(8) of the UCC) or other instructions of such other person or entity.

8. Fees and Expenses of Custodian; Subordination of Security Interest. Pledgor hereby agrees to pay and reimburse the Custodian for any advances, fees, costs, expenses (including, without limitation, reasonable attorneys' fees and costs) and disbursements that may be paid or incurred by the Custodian in connection with this Agreement or the arrangement contemplated hereby. The Custodian agrees that any security interest, lien, encumbrance or other right that the Custodian may have with respect to the Collateral or the Collateral Accounts shall be subordinate to the security interest of Secured Party therein.

9. Notices. Any notice, instruction, entitlement order or other instrument required to be given hereunder, or requests and demands to or upon the respective parties hereto, shall be in writing and may be sent by hand, or by facsimile transmission, email, telex, or overnight delivery by any recognized delivery service, prepaid or, for termination of this Agreement only, by certified or registered mail, and addressed as follows, or to such other address as any party may hereafter notify the other respective parties hereto in writing:

If to Secured Party, then:

[ACRC Lender W LLC, ACRC Lender W TRS LLC and/or applicable pledge agent]
[ADDRESS]
Attention:
Facsimile:
Telephone:

If to Pledgor, then:

[NAME OF PLEDGOR]
[ADDRESS]
Attention:
Facsimile:
Telephone:

If to Custodian, then:

[NAME OF CUSTODIAN]
[ADDRESS]
Attention:
Facsimile:
Telephone:

10. Amendment. No amendment or modification of this Agreement will be effective unless it is in writing and signed by each of the parties hereto.

11. Termination. This Agreement shall continue in effect until Secured Party has notified the Custodian in writing that this Agreement is to be terminated.

12. Severability. In the event any provision of this Agreement is held illegal, void or unenforceable, the remainder of this Agreement shall remain in effect.

13. Governing Law. This Agreement and any claim, controversy or dispute arising under or related to or in connection with this Agreement, the relationship of the parties, and/or the interpretation and enforcement of the rights and duties of the parties will be governed by the laws of the State of New York without regard to any conflicts of law principles other than Section 51401 of the New York General Obligations Law. The parties agree that the securities

intermediary's jurisdiction, within the meaning of Section 8-110(e) of the UCC shall be the State of New York.

14. Headings. Any headings appearing on this Agreement are for convenience only and shall not affect the interpretation of any of the terms of this Agreement.

15. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, and all such counterparts taken together shall constitute one and the same Agreement.

16. Successors; Assignment. The Agreement will be binding upon the parties and their respective successors and assigns. This Agreement may not be assigned without the written consent of all parties, and any attempted assignment in violation this Section 16 shall be null and void.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers or duly authorized representatives as of the date first above written.

[NAME OF PLEDGOR]

By:
Name:
Title:

By:
Name:
Title:

[ACRC LENDER W LLC, ACRC LENDER W TRS LLC AND/OR APPLICABLE PLEDGE AGENT]

By:
Name:
Title:

[NAME OF CUSTODIAN]

By:
Name:
Title:

Exhibit A

[ACRC Lender W LLC, ACRC Lender W TRS LLC and/or applicable pledge agent]

Date:_____

[Name of Custodian]
[Address]
Attn:

RE: [Name of Pledgor]

NOTICE OF EXCLUSIVE CONTROL

We hereby instruct you pursuant to the terms of that certain Account Control Agreement dated as of [ ] (the "**Control Agreement**") among the undersigned, [name of underlying borrower] ("**Pledgor**"), and you, as Custodian, that you (i) shall not follow any instructions or entitlement orders of Pledgor with respect to the Collateral or the Collateral Accounts (as defined in the Control Agreement) held by you for Pledgor, and (ii) unless and until otherwise expressly instructed by the undersigned, shall exclusively follow the entitlement orders and instructions of the undersigned with respect to such Collateral and such Collateral Accounts.

Very truly yours,

[ACRC Lender W LLC, ACRC Lender W TRS LLC and/or applicable pledge agent]

By:
Authorized Signatory

Exhibit B

TO

CONTROL AGREEMENT

DATED __, 20[ ]

AUTHORIZED PERSONS FOR [SECURED PARTY].

[Custodian] is directed to accept and act upon notices, instructions or entitlement orders received from any one of the following persons at [ACRC Lender W LLC, ACRC Lender W TRS LLC and/or applicable pledge agent]:

Name	Telephone/Fax Number	Signature
1.	1. Telephone: Facsimile:	1.
2.	2. Telephone: Facsimile:	2.
3.	3. Telephone: Facsimile:	3.
4.	4. Telephone: Facsimile:	4.
5.	5. Telephone Facsimile:	5.

Authorized by: _____
as authorized agent of [ACRC Lender W LLC, ACRC Lender W TRS LLC and/or applicable pledge agent]

Name:

Title:

Date:

FORM OF ACCOUNT CONTROL AGREEMENT
(Securities Account Only)

Account Control Agreement dated as of _____ ____, 20[ ] (the "**Agreement**"), among [ACRC Lender W LLC, ACRC Lender W TRS LLC and/or applicable pledge agent] ("**Secured Party**"), [identify underlying borrower] ("**Pledgor**"), and [identify custodian] (the "**Custodian**").

WHEREAS, the Custodian maintains the [escrow and reserve account and securities account] for the benefit of by the Pledgor; and

WHEREAS, pursuant to the terms the [identify security agreement] between Secured Party and Pledgor (as amended from time to time, the "**Security Agreement**"), Pledgor has granted to Secured Party a security interest in the Collateral Account and the Collateral (each as defined below) to secure the obligations of Pledgor described in the Security Agreement; and

WHEREAS, Secured Party, Pledgor and the Custodian are entering into this Agreement to provide for the control of the Collateral;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, it is agreed as follows:

1. Collateral Account. All Collateral shall be identified and segregated on the Custodian's books and records under the name "[Name of Pledgor] for the benefit of [ACRC Lender W LLC, ACRC Lender W TRS LLC and/or applicable pledge agent]" (the "**Collateral Account**"). The Custodian shall treat all Collateral, including without limitation cash, as financial assets under Article 8 of the Uniform Commercial Code as in effect from time to time in The State of New York (the "**UCC**"), and shall credit the Collateral to the Collateral Account. The Custodian represents that the Collateral Account is a "securities account" (as defined in Section 8-501(a) of the UCC).

2. Account Control.

2.1 Security Interest. This Agreement is intended by Secured Party and Pledgor to grant "control" of the Collateral Account to Secured Party for purposes of perfection of Secured Party's security interest in such Collateral pursuant to Article 8 and Article 9 of the UCC, and the Custodian hereby acknowledges that it has been advised of Pledgor's grant to Secured Party of a security interest in the Collateral Account and all financial assets credited thereto from time to time (collectively, the "**Collateral**"). Notwithstanding anything to the contrary in this Agreement, the Custodian will at all times comply with entitlement orders (within the meaning of Sections 8-102(a)(8) and 9-106 of the UCC) received from Secured Party with respect to the Collateral Accounts, without further consent of the Pledgor or any other person.

2.2 Control by Pledgor. Unless and until the Custodian receives written notice from Secured Party pursuant to Section 2.3 below instructing the Custodian that Secured Party is exercising its right to exclusive control over the Collateral Account, which notice is substantially

in the form attached hereto as Exhibit A (a "**Notice of Exclusive Control**") the Custodian shall take all actions with respect to the Collateral in the Collateral Account upon the joint instructions of Secured Party and Pledgor.

2.3 Control by Secured Party.

(i) Secured Party agrees to provide the Custodian, in the form of Exhibit B attached (as may be amended from time to time), the names and signatures of authorized parties who may give notices, instructions, or entitlement orders concerning the Collateral Account. Other means of notice or instruction may be used provided that Secured Party and the Custodian agree to appropriate security procedures. Upon receipt by the Custodian of a Notice of Exclusive Control, the Custodian shall thereafter follow only the entitlement orders of Secured Party with respect to the Collateral Account and shall comply with any entitlement order (within the meaning of Sections 8-102(a)(8) and 9-106 of the UCC) received from Secured Party with respect thereto, without further consent of Pledgor or any other person, and Custodian will not comply with entitlement orders or instructions concerning the Collateral originated by Pledgor without the prior written consent of Secured Party.

(ii) The Custodian shall have no responsibility or liability to Pledgor for complying with a Notice of Exclusive Control or complying with entitlement orders originated by Secured Party concerning the Collateral Account. The Custodian shall have no duty to investigate or make any determination to verify the existence of an event of default or compliance by either Secured Party or Pledgor with applicable law or the Security Agreement, and the Custodian shall be fully protected in complying with a Notice of Exclusive Control whether or not Pledgor may allege that no such event of default or other like event exists.

3. Distributions. The Custodian shall, without further action by Pledgor or Secured Party, credit to Collateral Account all interest, dividends and other income received by the Custodian on the Collateral as additional Collateral.

4. Release of Collateral; Release of Security Interest.

4.1 Release of Collateral. Subject to Section 2.3 hereof, Custodian will release all, or any designated portion, of the Collateral held in the Collateral Account as soon as reasonably practicable after receiving written instructions or entitlement orders from Secured Party and Pledgor authorizing such release.

4.2 Release of Security Interest. Secured Party agrees to notify the Custodian promptly in writing when all obligations of Pledgor to Secured Party secured by the Security Agreement have been fully paid and satisfied (and any commitment of Secured Party to advance further amounts or credit thereunder has been terminated) or Secured Party otherwise no longer claims any interest in the Collateral in the Collateral Account, whichever is sooner; at which time the Custodian shall have no further liabilities or responsibilities hereunder and the Custodian's obligations under this Agreement shall terminate.

5. Duties and Services of Custodian.

(i) Custodian agrees that it is acting as a "securities intermediary," as defined in Section 8-102(a)(14) of the UCC, with respect to the Collateral Account and the Collateral credited thereto.

(ii) The Custodian shall have no duties, obligations, responsibilities or liabilities with respect to the Collateral Account except as and to the extent expressly set forth in this Agreement. The Custodian shall not be liable or responsible for anything done or omitted to be done by it in good faith and in the absence of bad faith, negligence or willful misconduct.

(iii) Pledgor shall indemnify and hold the Custodian harmless with regard to any losses or liabilities of the Custodian (including reasonable attorneys' fees) imposed on or incurred by the Custodian arising out of any action or omission of the Custodian under this Agreement, except for any such losses or liabilities caused by the bad faith, negligence or willful misconduct of the Custodian.

6. Force Majeure. The Custodian shall not be liable for delays, errors or losses occurring by reason of circumstances beyond its control, including, without limitation, acts of God, market disorder, terrorism, insurrection, war, riots, failure of transportation or equipment, or failure of vendors, communication or power supply. In no event shall the Custodian be liable to any person for indirect, consequential or special damages, even if the Custodian has been advised of the possibility or likelihood of such damages (each, a "**Force Majeure Event**"); provided, however, that the Custodian shall (i) make reasonably diligent efforts to mitigate the effects of any Force Majeure Event and (ii) resume performance under this Agreement as soon as reasonably possible after the cessation of such Force Majeure Event.

7. Custodian Representations. The Custodian agrees and confirms, as of the date hereof, and at all times until the termination of this Agreement, that it has not entered into, and until the termination of this Agreement will not enter into, any agreement with any other person or entity relating to the Collateral or the Collateral Account under which it has agreed to comply with entitlement orders (as defined in Section 8-102(a)(8) of the UCC) or other instructions of such other person or entity.

8. Fees and Expenses of Custodian; Subordination of Security Interest. Pledgor hereby agrees to pay and reimburse the Custodian for any advances, fees, costs, expenses (including, without limitation, reasonable attorneys' fees and costs) and disbursements that may be paid or incurred by the Custodian in connection with this Agreement or the arrangement contemplated hereby. The Custodian agrees that any security interest, lien, encumbrance or other right that the Custodian may have with respect to the Collateral or the Collateral Account shall be subordinate to the security interest of Secured Party therein.

9. Notices. Any notice, instruction, entitlement order or other instrument required to be given hereunder, or requests and demands to or upon the respective parties hereto, shall be in writing and may be sent by hand, or by facsimile transmission, email, telex, or overnight delivery

by any recognized delivery service, prepaid or, for termination of this Agreement only, by certified or registered mail, and addressed as follows, or to such other address as any party may hereafter notify the other respective parties hereto in writing:

If to Secured Party, then:

[ACRC Lender W LLC, ACRC Lender W TRS LLC and/or applicable pledge agent]
[ADDRESS]
Attention:
Facsimile:
Telephone:

If to Pledgor, then:

[NAME OF PLEDGOR]
[ADDRESS]
Attention:
Facsimile:
Telephone:

If to Custodian, then:

[NAME OF CUSTODIAN]
[ADDRESS]
Attention:
Facsimile:
Telephone:

10. Amendment. No amendment or modification of this Agreement will be effective unless it is in writing and signed by each of the parties hereto.

11. Termination. This Agreement shall continue in effect until Secured Party has notified the Custodian in writing that this Agreement is to be terminated.

12. Severability. In the event any provision of this Agreement is held illegal, void or unenforceable, the remainder of this Agreement shall remain in effect.

13. Governing Law. This Agreement and any claim, controversy or dispute arising under or related to or in connection with this Agreement, the relationship of the parties, and/or the interpretation and enforcement of the rights and duties of the parties will be governed by the laws of the State of New York without regard to any conflicts of law principles other than Section 51401 of the New York General Obligations Law.

14. Headings. Any headings appearing on this Agreement are for convenience only and shall not affect the interpretation of any of the terms of this Agreement.

15. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, and all such counterparts taken together shall constitute one and the same Agreement.

16. Successors; Assignment. The Agreement will be binding upon the parties and their respective successors and assigns. This Agreement may not be assigned without the written consent of all parties, and any attempted assignment in violation this Section 16 shall be null and void.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers or duly authorized representatives as of the date first above written.

[NAME OF PLEDGOR]

By:
Name:
Title:

By:
Name:
Title:

[ACRC LENDER W LLC, ACRC LENDER W TRS LLC AND/OR APPLICABLE PLEDGE AGENT]

By:
Name:
Title:

[NAME OF CUSTODIAN]

By:
Name:
Title:

Exhibit A

[ACRC Lender W LLC, ACRC Lender W TRS LLC and/or applicable pledge agent]

Date:_____

[Name of Custodian]
[Address]
Attn:

RE: [Name of Pledgor]

NOTICE OF EXCLUSIVE CONTROL

We hereby instruct you pursuant to the terms of that certain Account Control Agreement dated as of [ ] (the "**Control Agreement**") among the undersigned, [name of underlying borrower] ("**Pledgor**"), and you, as Custodian, that you (i) shall not follow any instructions or entitlement orders of Pledgor with respect to the Collateral or the Collateral Account (as defined in the Control Agreement) held by you for Pledgor, and (ii) unless and until otherwise expressly instructed by the undersigned, shall exclusively follow the entitlement orders and instructions of the undersigned with respect to such Collateral and such Collateral Account.

Very truly yours,

[ACRC Lender W LLC, ACRC Lender W TRS LLC and/or applicable pledge agent]

By:
Authorized Signatory

Exhibit B

TO

CONTROL AGREEMENT

DATED _____ __, 20[ ]

AUTHORIZED PERSONS FOR [SECURED PARTY].

[Custodian] is directed to accept and act upon notices, instructions or entitlement orders received from any one of the following persons at [ACRC Lender W LLC, ACRC Lender W TRS LLC and/or applicable pledge agent]:

Name	Telephone/Fax Number	Signature
1.	1. Telephone: Facsimile:	1.
2.	2. Telephone: Facsimile:	2.
3.	3. Telephone: Facsimile:	3.
4.	4. Telephone: Facsimile:	4.
5.	5. Telephone Facsimile:	5.

Authorized by: _____
as authorized agent of [ACRC Lender W LLC, ACRC Lender W TRS LLC and/or applicable pledge agent]

Name:

Title:

Date:

EXHIBIT H

IRREVOCABLE REDIRECTION NOTICE

[DATE]

[SERVICER]
[ADDRESS]
Attention:_____

Re: Third Amended and Restated Master Repurchase and Securities Contract dated as of February 10, 2022 (as the same has been and may be further amended, restated, supplemented or otherwise modified from time to time, the "Agreement") among ACRC Lender W LLC and ACRC Lender W TRS LLC (each a "Seller"), and Wells Fargo Bank, National Association ("Buyer")

Ladies and Gentlemen:

[SERVICER] (the "Servicer") is servicing certain mortgage loans for the Seller pursuant to one or more Servicing Agreements between the Servicer and the Seller. Pursuant to the Master Repurchase Agreement, the Servicer is hereby notified that the Seller has granted a security interest to Buyer in certain Mortgage Assets which are serviced by Servicer.

The Servicer shall segregate all amounts collected on account of the Mortgage Assets sold to Buyer under the Agreement (the "Purchased Assets"), hold them in trust for the sole and exclusive benefit of Buyer, and remit such collections to the following account which has been established at [BANK]: ABA#_____, Account # _____, (the "Waterfall Account"). Servicer acknowledges that the Waterfall Account is held for the benefit of Buyer pursuant to the Account Control Agreement, dated as of _____, by and between Seller, Buyer and Wells Fargo Bank, National Association. Upon receipt of a notice of Event of Default from Buyer, the Servicer shall follow the instructions of Buyer with respect to the Purchased Assets, and shall deliver to Buyer any information with respect to the Purchased Assets reasonably requested by Buyer.

The Servicer hereby agrees that upon the occurrence of an Event of Default, Buyer may terminate any Servicing Agreement which exists between the Servicer and Seller in respect of any Purchased Assets and in any event transfer servicing to Buyer's designee, at no cost or expense to Buyer, it being agreed that the Seller will pay any and all fees required to terminate any Servicing Agreement and to effectuate the transfer of servicing to the designee of Buyer.

Notwithstanding any contrary information or direction which may be delivered to the Servicer by the Seller, the Servicer may conclusively rely on any information, direction or notice of an Event of Default delivered by Buyer, and the Seller shall indemnify and hold the Servicer harmless for

any and all claims asserted against the Servicer for any actions taken in good faith by the Servicer in connection with the delivery of such information or notice of Event of Default.

No provision of this letter may be amended, countermanded or otherwise modified without the prior written consent of Buyer. Buyer is an intended third party beneficiary of this letter.

Please acknowledge receipt and your agreement to the terms of this instruction letter by signing in the signature block below and forwarding an executed copy to the Buyer promptly upon receipt. Any notices to Buyer should be delivered to the following address: 301 South College Street, MAC D1053-160, 12th Floor, Charlotte, North Carolina 28202; Attention: _____; Telephone:_____; Facsimile:_____.

Very truly yours,

[SERVICER]

By:
Name:
Title:

ACKNOWLEDGED AND AGREED TO:

[ACRC Lender W LLC] [ACRC Lender W TRS LLC]

By: _____
Name:
Title:
Telephone:
Facsimile:

EXHIBIT I

PROHIBITED ASSIGNEES

Angelo, Gordon & Co., L.P.;
Annaly Capital Management, Inc.;
Apollo Commercial Real Estate Finance, Inc.;
Arbor Realty Trust, Inc.;
Blackstone Mortgage Trust, Inc.;
Brookfield Investment Management Inc.;
Cantor Fitzgerald & Co.;
CapitalSource Inc.;
Colony Northstar, Inc.;
Fortress Credit Corp.;
Guggenheim Partners, LLC;
H/2 Credit Manager LP;
iStar Financial Inc.;
Invesco Ltd.;
KKR & Co. L.P.;
Ladder Capital Securities LLC;
LoanCore Capital, LLC;
Loan Star U.S. Acquisitions, LLC;
Macquarie Group Limited;
Mesa West Capital, LLC;
NCH Capital Inc.;
Newcastle Investment Corp.;
Pacific Investment Management Company LLC;
RAIT Financial Trust;
Redwood Trust Inc.;
Rialto Capital Management, LLC;
SL Green Realty Corp.;
Square Mile Capital Management, LLC;
Starwood Capital Group;
Starwood Property Trust, Inc.;
TPG Capital Management, L.P.;
Winthrop Capital Management LLC.

ANNEX 1

BUYER'S LOCATION

Wells Fargo Bank, National Association
550 ~~S~~South Tryon ~~St.~~Street, ~~14th~~22nd Floor
MAC D1086-146
Charlotte, North Carolina 28202-4200
Attn: Allen Lewis

SELLER'S LOCATION

[ACRC Lender W LLC][ACRC Lender W TRS LLC]
c/o Ares Management
245 Park Avenue, 42nd Floor, New York, NY 10167
Attn: Real Estate Capital Markets & Legal Department
Telephone: 646-259-4842
Telecopy: 310-388-3041

with a copy to:
[ACRC Lender W LLC][ACRC Lender W TRS LLC]
c/o Ares Management
2000 Avenue of the Stars, 12th Floor
Los Angeles, CA 90067
Attention: Chief Accounting Officer
Telephone: 310-201-4100
Telecopy: 310-203-8820

and
[ACRC Lender W LLC][ACRC Lender W TRS LLC]
c/o Ares Management
One North Wacker Drive, 48th Floor
Chicago, Illinois 60606
Attn: Legal Department and Capital Markets Group
Telephone: 312-252-7500
Telecopy: 312-252-7501

EXHIBIT B

[Attached]

SECOND AMENDED AND RESTATED GUARANTEE AGREEMENT

SECOND AMENDED AND RESTATED GUARANTEE AGREEMENT, dated as of February 10, 2022 (as the same has been and may be further amended, restated, supplemented, or otherwise modified from time to time, this "Guarantee"), made by ARES COMMERCIAL REAL ESTATE CORPORATION, a Maryland corporation ("Guarantor") having its principal place of business c/o Ares Management LLC, One North Wacker Drive, 48th Floor, Chicago, IL 60606, in favor of WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association ("Buyer") and any of its parent, subsidiary or affiliated companies (collectively, "Beneficiary").

RECITALS

Pursuant to that certain Master Repurchase and Securities Contract, dated as of December 14, 2011 (as amended and/or amended and restated from time to time and as most recently amended and restated by that certain Third Amended and Restated Master Repurchase and Securities Contract among Buyer, ACRC Lender W LLC and ACRC Lender W TRS LLC (individually, each a "Seller", and collectively, "Sellers") dated as of February 10, 2022, and as further amended, restated, supplemented or otherwise modified from time to time, the "Repurchase Agreement"), Sellers agreed to sell, from time to time, to Buyer certain Whole Loans, Senior Interests and Mezzanine Loans, each as defined in the Repurchase Agreement (collectively, the "Purchased Assets"), upon the terms and subject to the conditions as set forth therein. The Repurchase Agreement, this Guarantee and any other agreements executed in connection with the Repurchase Agreement shall be referred to herein as the "Repurchase Documents".

In connection with the execution and delivery by the parties thereto of the Repurchase Documents, Guarantor executed and delivered to Buyer a Guarantee Agreement dated as of May 12, 2012 (the "Original Guarantee"), which was amended and restated by that certain Amended and Restated Guarantee Agreement delivered by Guarantor dated as of December 20, 2013 (as amended, supplemented or otherwise modified from time to time prior to the date hereof, the "Existing Guarantee").

It is a condition to Buyer entering into an amendment of the Repurchase Agreement and other Repurchase Documents and purchasing the Purchased Assets that Guarantor amend and restate the Existing Guarantee in its entirety by executing and delivering this Guarantee in favor of Beneficiary with respect to the due and punctual payment and performance when due, whether at stated maturity, by acceleration or otherwise, of all of the following: (a) all payment obligations owing by any Seller to Buyer under or in connection with the Repurchase Agreement and any other Repurchase Documents; (b) any and all extensions, renewals, modifications, amendments or substitutions of the foregoing; (c) all expenses, including, without limitation, reasonable attorneys' fees and disbursements, that are incurred by Buyer in the enforcement of any of the foregoing or any obligation of Guarantor hereunder; (d) any other obligations of any Seller with respect to Buyer under each of the Repurchase Documents; and (e) if Interim Servicer is an Affiliate of either Seller or Guarantor, the timely delivery by Interim Servicer of Income

into the Waterfall Account in accordance with the applicable provisions of the Repurchase Agreement including, without limitation, Section 5.01 thereof (collectively, the "Obligations").

NOW, THEREFORE, in consideration of the foregoing premises, to induce Buyer to enter into the Repurchase Documents and to enter into the transactions contemplated thereunder, Guarantor hereby agrees with Buyer as follows:

1. Defined Terms. Unless otherwise defined herein, terms which are defined in the Repurchase Agreement and used herein are so used as so defined.

"Aggregate Recourse Amount": The total sum, for all Purchased Assets, of the applicable Recourse Percentage for each such Purchased Asset, multiplied by the then-currently unpaid aggregate outstanding Repurchase Price of each such Purchased Asset.

"Available Borrowing Capacity" means, with respect to any Person, on any date of determination, the total unrestricted borrowing capacity which may be drawn (taking into account required reserves and discounts) upon by such Person or its Subsidiaries, at such Person's or its Subsidiaries' request based upon approved but undrawn amounts, under committed credit facilities or repurchase agreements which provide financing to such Person or its Subsidiaries.

"Cash Liquidity" means, at any date of determination, the amount of Guarantor's Cash or Cash Equivalents.

"Cash or Cash Equivalents": All unencumbered cash, together with any and all of the following, in each case to the extent owned by Guarantor or any of its Subsidiaries free and clear of all Liens and having a maturity of not greater than ninety (90) days from the date of issuance thereof: (a) readily marketable direct obligations of the government of the United States or any agency or instrumentality thereof or obligations unconditionally guaranteed by the full faith and credit of the government of the United States, (b) certificates of deposit of or time deposits with Buyer or a member of the Federal Reserve System that issues (or the parent of which issues) commercial paper rated as described in clause (c) below, is organized under the laws of the United states or any State thereof and has combined capital and surplus of at least $500,000,000, (c) commercial paper in an aggregate amount of not more than $50,000,000 per issuer outstanding at any time, issued by any corporation organized under the laws of any State of the United States and rated at least "Prime-1" (or the then equivalent grade) by Moody's or "A-1" (or the then equivalent grade) by S&P, (d) repurchase obligations of any commercial bank satisfying the requirements of clause (b) of this definition, having a term of not more than seven days with respect to securities issued or fully guaranteed or insured by the United States Government, (e) securities with maturities of ninety (90) days or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States, by any political subdivision or taxing authority of any such state, commonwealth or territory or by any foreign government, the securities of which state, commonwealth, territory, political subdivision, taxing authority or foreign government (as the case may be) are rated at least A by S&P or A2 by Moody's, (f) securities with maturities of ninety (90) days or less from the date of acquisition backed by standby letters of credit issued by any commercial bank satisfying the requirements of

clause (b) of this definition or (g) shares of money market mutual or similar funds which invest exclusively in assets satisfying the requirements of clauses (a) through (f) of this definition.

"CECL Reserves": Current expected credit loss reserve amounts on both outstanding balances and unfunded commitments and any other applicable investment, property or assets, in each case, established by Guarantor in accordance with GAAP including Accounting Standards Codification (ASC) 326.

"Debt": With respect to any Person: (i) all indebtedness, whether or not represented by bonds, debentures, notes, securities, or other evidences of indebtedness, for the repayment of money borrowed, (ii) all indebtedness representing deferred payment of the purchase price of property or assets (excluding trade accounts payable and accrued obligations incurred in the ordinary course of business and payable within 60 days), (iii) all indebtedness under any lease which, in conformity with GAAP, is required to be capitalized for balance sheet purposes, (iv) all indebtedness under guaranties, endorsements, assumptions, or other contingent obligations, other than contingent obligations with respect to future funding obligations of the Subsidiaries of Guarantor, and (v) all indebtedness secured by a lien existing on property owned, subject to such lien, whether or not the indebtedness secured thereby shall have been assumed by the owner thereof; provided, that "Debt" shall be determined without regard to the effects of consolidation of any issuer of a Specified Third Party Securitization on the financial statements of the Guarantor under Accounting Standards Codification Section 810, as amended, modified or supplemented from time to time, or otherwise under GAAP.

"Debt Service": For any Test Period, the sum of (a) Interest Expense for Guarantor determined on a consolidated basis for such period, and (b) all regularly scheduled principal payments made with respect to Indebtedness of Guarantor and its Subsidiaries during such period, other than (i) any voluntary or involuntary prepayment or (ii) prepayment occasioned by the repayment of an underlying asset, or any balloon, bullet, margin or similar principal payment which repays such Indebtedness in part or in full.

"Fixed Charge Coverage Ratio": With respect to Guarantor at any time, the EBITDA (as determined in accordance with GAAP **and as further defined in the Repurchase Agreement**) for the immediately preceding twelve (12) month period ending on the last date of the applicable Test Period, divided by the Fixed Charges for the immediately preceding twelve (12) month period ending on the last date of the applicable Test Period; provided, that the "Fixed Charge Coverage Ratio" and associated components thereof shall be determined without regard to the effects of consolidation of any issuer of a Specified Third Party Securitization on the financial statements of the Guarantor under Accounting Standards Codification Section 810, as amended, modified or supplemented from time to time, or otherwise under GAAP.

"Fixed Charges": With respect to Guarantor at any time, the sum of (a) Debt Service, (b) all preferred dividends that Guarantor is required, pursuant to the terms of the certificate of designation or other similar document governing the rights of preferred shareholders, to pay and is not permitted to defer, (c) Capital Lease Obligations paid or accrued during such period, and (d) any amounts payable under any Ground Lease.

"Investment Securities": Any of the following, but only to the extent approved by Buyer in its sole discretion:

(a) negotiable debt obligations issued by the U.S. Treasury Department having a remaining maturity of less than one year;

(b) negotiable debt obligations issued by the U.S. Treasury Department having a remaining maturity of one to ten years; and

(c) negotiable debt obligations issued by the U.S. Treasury Department having a remaining maturity of more than ten years.

"Recourse Debt": Without duplication, (a) Debt of a consolidated Subsidiary of Guarantor for which Guarantor has provided a payment guarantee and/or (b) any Debt of Guarantor other than Debt in respect of which recourse for payment (except for customary exceptions for fraud, misrepresentation, misapplication of cash, waste, environmental claims and liabilities, prohibited transfers, violations of single purpose entity covenants customarily excluded by institutional lenders from exculpation provisions and/or included in separate guaranty or indemnification agreements in non-recourse financings of real estate) is contractually limited to specific assets of Guarantor (and not a majority of Guarantor's assets) encumbered by a Lien securing such Debt; provided, that "Recourse Debt" shall be determined without regard to the effects of consolidation of any issuer of a Specified Third Party Securitization on the financial statements of the Guarantor under Accounting Standards Codification Section 810, as amended, modified or supplemented from time to time, or otherwise under GAAP.

"Specified Third Party Securitization": Any securitization transaction that was not established or sponsored by Guarantor, Manager or any of their respective Affiliates.

"Tangible Net Worth": With respect to Guarantor at any ~~time~~**date**, determined on a consolidated basis, all amounts that ~~would be~~**are** included under capital or shareholder's equity (or any like caption) on the balance sheet of Guarantor **in accordance with GAAP**, *minus* (a) amounts owing to Guarantor from any Affiliate thereof, or from officers, employees, partners, members, directors, shareholders or other Persons similarly affiliated with ~~such Person~~**the Guarantor** or any Affiliate thereof, (b) intangible assets, and (c) prepaid taxes and/or expenses, *plus* **(1)** deferred origination fees, net of deferred origination costs, **and (2) the aggregate amount of CECL Reserves and any other non-cash items (including inter alia credit loss or valuation reserves or allowances, unrealized losses, and accumulated depreciation and amortization),** all on or as of such date; provided, that "Tangible Net Worth" shall be determined without regard to the effects of consolidation of any issuer of a Specified Third Party Securitization on the financial statements of the Guarantor under Accounting Standards Codification Section 810, as amended, modified or supplemented from time to time, or otherwise under GAAP. For the sake of clarity, mortgage servicing rights shall not be deemed to be intangible assets.

"Test Period": The time period from the first day of each calendar quarter, through and including the last day of such calendar quarter.

"Total Liquidity" means, at any date of determination, the sum of (i) Cash Liquidity plus (ii) unencumbered Investment Securities; provided, that "Total Liquidity" and associated components thereof shall be determined without regard to the effects of consolidation of any issuer of a Specified Third Party Securitization on the financial statements of Guarantor under Accounting Standards Codification Section 810, as amended, modified or supplemented from time to time, or otherwise under GAAP.

2. Guarantee. (a) Guarantor hereby unconditionally and irrevocably guarantees to Beneficiary the prompt and complete payment and performance by each Seller when due (whether at the stated maturity, by acceleration or otherwise) of the Obligations.

(a) Notwithstanding anything herein to the contrary, but subject to clause (c) below, the maximum liability of Guarantor hereunder and under the Repurchase Documents shall in no event exceed the sum of (x) the Aggregate Recourse Amount, and (y) one hundred percent (100%) of all of the Obligations described in clause (e) of the definition thereof.

(b) Notwithstanding the foregoing, the limitation on recourse liability as set forth in both of clauses (x) and (y) of subsection (b) above SHALL BECOME NULL AND VOID and shall be of no further force and effect and the Obligations shall be fully recourse to each Seller and Guarantor, jointly and severally, upon the occurrence of any of the following:

(i) a voluntary bankruptcy or insolvency proceeding is commenced by either Seller under the U.S. Bankruptcy Code or any similar federal or state law;

(ii) an involuntary bankruptcy or insolvency proceeding is commenced against Guarantor or either Seller in connection with which Seller, Guarantor or any Affiliate of any of the foregoing has or have colluded in any way with the creditors commencing or filing such proceeding; or

(iii) fraud or intentional misrepresentation by Guarantor, either Seller or any other Affiliate of Seller or Guarantor in connection with the execution and the delivery of this Guarantee, the Repurchase Agreement, or any of the other Repurchase Documents, or any certificate, report, financial statement or other instrument or document furnished to Buyer at the time of the closing of the Repurchase Agreement or during the term of the Repurchase Agreement.

(c) In addition to the foregoing and notwithstanding the limitation on recourse liability set forth in both of clauses (x) and (y) of subsection (b) above, Guarantor shall be liable for any losses, costs, claims, expenses or other liabilities incurred by Buyer arising out of or attributable to the following items:

(i) any material breach of the separateness covenants set forth in Article 9 of the Repurchase Agreement; and

(ii) any material breach of any representations and warranties by Guarantor contained in any Repurchase Document and any material breach by Guarantor,

either Seller or any of their respective Affiliates, of any representations and warranties relating to Environmental Laws, or any indemnity for costs incurred in connection with the violation of any Environmental Law, the correction of any environmental condition, or the removal of any Materials of Environmental Concern, in each case in any way affecting any Seller's or Guarantor's properties or any of the Purchased Assets.

(d) Nothing herein shall be deemed to be a waiver of any right which Buyer may have under Section 506(a), 506(b), 1111(b) or any other provision of the U.S. Bankruptcy Code to file a claim for the full amount of the indebtedness secured by the Repurchase Agreement or to require that all collateral shall continue to secure all of the indebtedness owing to the Buyer in accordance with the Repurchase Agreement or any other Repurchase Documents.

(e) Guarantor further agrees to pay any and all reasonable expenses (including, without limitation, all reasonable fees and disbursements of counsel) which may be paid or incurred by Beneficiary in enforcing, or obtaining advice of counsel in respect of, any rights with respect to, or collecting, any or all of the Obligations and/or enforcing any rights with respect to, or collecting against, Guarantor under this Guarantee. This Guarantee shall remain in full force and effect until the Obligations are satisfied or paid in full, notwithstanding that from time to time prior thereto Sellers may be free from any Obligations.

(f) No payment or payments made by any Seller or any other Person or received or collected by Beneficiary from any Seller or any other Person by virtue of any action or proceeding or any set-off or appropriation or application, at any time or from time to time, in reduction of or in payment of the Obligations shall be deemed to modify, reduce, release or otherwise affect the liability of Guarantor hereunder which shall, notwithstanding any such payment or payments, remain liable for the amount of the Obligations until the Obligations are paid in full.

(g) Guarantor agrees that whenever, at any time, or from time to time, Guarantor shall make any payment to Beneficiary on account of Guarantor's liability hereunder, Guarantor will notify Buyer in writing that such payment is made under this Guarantee for such purpose.

3. Subrogation. Upon making any payment hereunder, Guarantor shall be subrogated to the rights of Buyer against Sellers and any collateral for any Obligations with respect to such payment; provided that Guarantor shall not seek to enforce any right or receive any payment by way of subrogation until all amounts due and payable by Sellers to Buyer under the Repurchase Documents or any related documents have been paid in full; and further provided that such subrogation rights shall be subordinate in all respects to all amounts owing to the Buyer under the Repurchase Documents.

4. Amendments, etc. with respect to the Obligations. Until the Obligations shall have been paid or performed in full, and subject to the provisions of Section 11 of this Guarantee, Guarantor shall remain obligated hereunder notwithstanding that, without any reservation of rights against Guarantor, and without notice to or further assent by Guarantor, any demand for payment of any of the Obligations made by Buyer may be rescinded by Buyer and

any of the Obligations continued, and the Obligations, or the liability of any other party upon or for any part thereof, or any collateral security or guarantee therefor or right of offset with respect thereto, may, from time to time, in whole or in part, be renewed, extended, amended, modified, accelerated, compromised, waived, surrendered or released by Buyer, and any Repurchase Document and any other document in connection therewith may be amended, modified, supplemented or terminated, in whole or in part, as Buyer may deem advisable from time to time, and any collateral security, guarantee or right of offset at any time held by Buyer for the payment of the Obligations may be sold, exchanged, waived, surrendered or released. Buyer shall have no obligation to protect, secure, perfect or insure any lien at any time held by it as security for the Obligations or for this Guarantee or any property subject thereto. When making any demand hereunder against Guarantor, Buyer may, but shall be under no obligation to, make a similar demand on any Seller or any other guarantor, and any failure by Buyer to make any such demand or to collect any payments from any such Seller or any such other guarantor or any release of any such Seller or such other guarantor shall not relieve Guarantor of its Obligations or liabilities hereunder, and shall not impair or affect the rights and remedies, express or implied, or as a matter of law, of Buyer against Guarantor. For the purposes hereof "demand" shall include the commencement and continuance of any legal proceedings.

5. Guarantee Absolute and Unconditional. (a) Guarantor hereby agrees that its obligations under this Guarantee constitute a guarantee of payment when due and not of collection. Guarantor waives any and all notice of the creation, renewal, extension or accrual of any of the Obligations and notice of or proof of reliance by Beneficiary upon this Guarantee or acceptance of this Guarantee; the Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred in reliance upon this Guarantee; and all dealings between any Seller or Guarantor, on the one hand, and Beneficiary, on the other hand, shall likewise be conclusively presumed to have been had or consummated in reliance upon this Guarantee. Guarantor waives promptness, diligence, presentment, protest, demand for payment and notice of default or nonpayment to or upon Sellers or Guarantor with respect to the Obligations. This Guarantee shall be construed as a continuing, absolute and unconditional guarantee of payment without regard to (i) the validity, regularity or enforceability of any Repurchase Document, any of the Obligations or any collateral security therefor or guarantee or right of offset with respect thereto at any time or from time to time held by Beneficiary, (ii) any defense, set-off or counterclaim (other than a defense of payment or performance) which may at any time be available to or be asserted by a Seller against Beneficiary, (iii) any requirement that Beneficiary exhaust any right to take any action against a Seller or any other Person prior to or contemporaneously with proceeding to exercise any right against Guarantor under this Guarantee or (iv) any other circumstance whatsoever (with or without notice to or knowledge of any Seller or Guarantor) which constitutes, or might be construed to constitute, an equitable or legal discharge of a Seller for the Obligations or of Guarantor under this Guarantee, in bankruptcy or in any other instance. When pursuing its rights and remedies hereunder against Guarantor, Beneficiary may, but shall be under no obligation, to pursue such rights and remedies that Beneficiary may have against a Seller or any other Person or against any collateral security or guarantee for the Obligations or any right of offset with respect thereto, and any failure by Beneficiary to pursue such other rights or remedies or to collect any payments from a Seller or any such other Person or to realize upon any such collateral security or guarantee or to exercise

any such right of offset, or any release of any such Seller or any such other Person or any such collateral security, guarantee or right of offset, shall not relieve Guarantor of any liability hereunder, and shall not impair or affect the rights and remedies, whether express, implied or available as a matter of law, of Beneficiary against Guarantor. This Guarantee shall remain in full force and effect and be binding in accordance with and to the extent of its terms upon Guarantor and its successors and assigns thereof, and shall inure to the benefit of Beneficiary, and its successors, endorsees, transferees and assigns, until all of the Obligations shall have been satisfied in full, notwithstanding any sale by Buyer of any Purchased Asset as set forth in Article 10 of the Repurchase Agreement or the exercise by Buyer of any of the other rights and remedies set forth in any of the Repurchase Documents.

(h) Without limiting the generality of the foregoing, Guarantor hereby agrees, acknowledges, and represents and warrants to Beneficiary as follows:

(i) Guarantor hereby waives any defense arising by reason of, and any and all right to assert against Buyer any claim or defense based upon, an election of remedies by Beneficiary which in any manner impairs, affects, reduces, releases, destroys and/or extinguishes Guarantor's subrogation rights, rights to proceed against any Seller, or any other guarantor for reimbursement or contribution, and/or any other rights of Guarantor to proceed against any Seller against any other guarantor, or against any other person or security.

(ii) Guarantor is presently informed of the financial condition of Sellers and of all other circumstances which diligent inquiry would reveal and which bear upon the risk of nonpayment of the Obligations. Guarantor hereby covenants that it will make its own investigation and will continue to keep itself informed about each of Sellers' financial condition, the status of other guarantors, if any, of circumstances which bear upon the risk of nonpayment and that it will continue to rely upon sources other than Buyer for such information and will not rely upon Beneficiary or any Beneficiary for any such information. Absent a written request for such information by Guarantor to Beneficiary, Guarantor hereby waives the right, if any, to require Beneficiary to disclose to Guarantor any information which Beneficiary may now or hereafter acquire concerning such condition or circumstances including, but not limited to, the release of or revocation by any other guarantor.

(iii) Guarantor has independently reviewed the Repurchase Documents and related agreements and has made an independent determination as to the validity and enforceability thereof, and in executing and delivering this Guarantee to Beneficiary, Guarantor is not in any manner relying upon the validity, and/or enforceability, and/or attachment, and/or perfection of any liens or security interests of any kind or nature granted by any Seller or any other guarantor to Buyer or any Buyer, now or at any time and from time to time in the future.

6. Reinstatement. This Guarantee shall continue to be effective, or be reinstated, as the case may be, if at any time payment, or any part thereof, of any of the Obligations is rescinded or must otherwise be restored or returned by Buyer upon the insolvency, bankruptcy,

dissolution, liquidation or reorganization of any Seller or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, any of any Seller or any substantial part of such Seller's property, or otherwise, all as though such payments had not been made.

7. Payments. Guarantor hereby agrees that the Obligations will be paid to Buyer without set-off or counterclaim in U.S. Dollars at the address specified in writing by Buyer.

8. Representations and Warranties. Guarantor represents and warrants that:

(a) Guarantor has the legal capacity and the legal right to execute and deliver this Guarantee and to perform Guarantor's obligations hereunder;

(b) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or governmental authority and no consent of any other Person (including, without limitation, any creditor of Guarantor) is required in connection with the execution, delivery, performance, validity or enforceability of this Guarantee;

(c) this Guarantee has been duly executed and delivered by Guarantor and constitutes a legal, valid and binding obligation of Guarantor enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and by general principles of equity (whether enforcement is sought in proceedings in equity or at law);

(d) the execution, delivery and performance of this Guarantee will not violate any law, treaty, rule or regulation or determination of an arbitrator, a court or other governmental authority, applicable to or binding upon Guarantor or any of its property or to which Guarantor or any of its property is subject ("Requirement of Law"), or any provision of any security issued by Guarantor or of any agreement, instrument or other undertaking to which Guarantor is a party or by which it or any of its property is bound ("Contractual Obligation"), and will not result in or require the creation or imposition of any lien on any of the properties or revenues of Guarantor pursuant to any Requirement of Law or Contractual Obligation of Guarantor;

(e) no litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending or, to the Knowledge of Guarantor, threatened by or against Guarantor or against any of Guarantor's properties or revenues with respect to this Guarantee or any of the transactions contemplated hereby; and

(f) except as disclosed in writing to Buyer prior to the date hereof, Guarantor has filed or caused to be filed all tax returns which, to the Knowledge of Guarantor, are required to be filed and has paid all taxes shown to be due and payable on said returns or on any assessments made against him or any of Guarantor's property and all other taxes, fees or other charges imposed on him or any of Guarantor's property by any Governmental Authority (other than any the amount or validity of which are currently being contested in good faith by appropriate proceedings); no tax lien has been filed, and, to the Knowledge of Guarantor, no claim is being asserted, with respect to any such tax, fee or other charge.

Guarantor agrees that the foregoing representations and warranties shall be deemed to have been made by Guarantor on the date of each Transaction under the Repurchase Agreement, on and as of such date of the Transaction, as though made hereunder on and as of such date.

9. Covenants.

(a) Ratio of Debt to Tangible Net Worth. At the end of each Test Period, Guarantor (on a consolidated basis) shall maintain its ratio of Debt to Tangible Net Worth to not more than 4.50 to 1.00.

(b) Fixed Charge Coverage Ratio. Guarantor shall not permit its Fixed Charge Coverage Ratio for the immediately preceding twelve (12) month period ending on the last date of the applicable Test Period to be less than 1.25 to 1.00, with compliance to be tested as of the end of each Test Period.

(c) Tangible Net Worth. Guarantor shall not permit its Tangible Net Worth to be less than the sum of (i) $135,520,000, plus (ii) eighty percent (80%) of the net proceeds (after the deduction of all related transaction costs) of all issuances of equity by Guarantor occurring after the date of the Original Guarantee, with compliance to be tested as of the end of each Test Period. Sellers shall confirm the amount of Guarantor's Tangible Net Worth as of the date of this Guarantee, in writing in a Compliance Certificate executed and delivered to Buyer on February 10, 2022. As of the date of such Compliance Certificate, the minimum Tangible Net Worth required to be maintained pursuant to this Section 9(c) is $716,032,081.

(d) Minimum Total Liquidity. Guarantor's Total Liquidity to be less than the greater of (x) $5,000,000 and (y) 5% of Guarantor's Recourse Debt, not to exceed $10,000,000; provided, that notwithstanding the foregoing or anything herein to the contrary, in the event Guarantor's Total Liquidity shall equal or exceed $5,000,000 (such amount, the "Guarantor's Actual Total Liquidity Amount"), then Guarantor may satisfy the difference between the minimum Total Liquidity requirement and the Guarantor's Actual Total Liquidity Amount with Available Borrowing Capacity.

(e) Guarantor shall deliver to Buyer those documents required to be delivered by or on behalf of Guarantor pursuant to Sections 8.07(a), (b), (d) and (e) of the Repurchase Agreement as soon as such documents are available but, in any event, no later than as and when required under the Repurchase Agreement.

10. Severability. Any provision of this Guarantee which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

11. Paragraph Headings. The paragraph headings used in this Guarantee are for convenience of reference only and are not to affect the construction hereof or be taken into consideration in the interpretation hereof.

12. No Waiver; Cumulative Remedies. Buyer shall not by any act (except by a written instrument pursuant to Section 13 hereof), delay, indulgence, omission or otherwise be deemed to have waived any right or remedy hereunder or to have acquiesced in any default or event of default or in any breach of any of the terms and conditions hereof. No failure to exercise, nor any delay in exercising, on the part of Buyer, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by Buyer of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which Buyer would otherwise have on any future occasion. The rights and remedies herein provided are cumulative, may be exercised singly or concurrently and are not exclusive of any rights or remedies provided by law.

13. Waivers and Amendments; Successors and Assigns; Governing Law. None of the terms or provisions of this Guarantee may be waived, amended, supplemented or otherwise modified except by a written instrument executed by Guarantor and Buyer, provided that, subject to any limitations set forth in the Repurchase Agreement, any provision of this Guarantee may be waived by Buyer in a letter or agreement executed by Buyer or by telex or facsimile transmission from Buyer. This Guarantee shall be binding upon the heirs, personal representatives, successors and assigns of Guarantor and shall inure to the benefit of Buyer, and their respective successors and assigns. **THIS GUARANTEE AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO OR IN CONNECTION WITH THIS GUARANTEE, THE RELATIONSHIP OF THE PARTIES, AND/OR THE INTERPRETATION AND ENFORCEMENT OF THE RIGHTS AND DUTIES OF THE PARTIES WILL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO ANY CONFLICTS OF LAW PRINCIPLES OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.**

14. Notices. Notices by Buyer to Guarantor may be given by mail, or by telecopy transmission, addressed to Guarantor at the address or transmission number set forth under its signature below and shall be effective (a) in the case of mail, five days after deposit in the postal system, first class certified mail and postage pre-paid, (b) one Business Day following timely delivery to a nationally recognized overnight courier service for next Business Day delivery and (c) in the case of telecopy transmissions, when sent, transmission electronically confirmed if prior to 5:00 p.m. local recipient time on a Business Day, and otherwise on the next succeeding Business Day. Notices to Buyer by Guarantor may be given in the manner set forth in the Repurchase Agreement.

15. SUBMISSION TO JURISDICTION; WAIVERS. EACH OF GUARANTOR AND BENEFICIARY HEREBY IRREVOCABLY AND UNCONDITIONALLY:

(a) SUBMITS FOR GUARANTOR AND GUARANTOR'S PROPERTY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS GUARANTEE AND THE OTHER REPURCHASE DOCUMENTS TO WHICH GUARANTOR IS A PARTY, OR FOR RECOGNITION AND ENFORCEMENT OF ANY JUDGMENT IN RESPECT THEREOF, TO

THE NON-EXCLUSIVE GENERAL JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK, THE COURTS OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK, AND APPELLATE COURTS FROM ANY THEREOF;

(b) CONSENTS THAT ANY SUCH ACTION OR PROCEEDING MAY BE BROUGHT IN SUCH COURTS AND WAIVES ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH ACTION OR PROCEEDING IN ANY SUCH COURT OR THAT SUCH ACTION OR PROCEEDING WAS BROUGHT IN AN INCONVENIENT COURT AND AGREES NOT TO PLEAD OR CLAIM THE SAME;

(c) AGREES THAT SERVICE OF PROCESS IN ANY ACTION OR PROCEEDING UNDER THIS GUARANTEE MAY BE EFFECTED BY MAILING A COPY THEREOF BY REGISTERED OR CERTIFIED MAIL (OR ANY SUBSTANTIALLY SIMILAR FORM OF MAIL), POSTAGE PREPAID, TO SUCH PARTY AT SUCH PARTY'S ADDRESS, AS SET FORTH UNDER GUARANTOR'S SIGNATURE BELOW, WITH RESPECT TO DELIVERIES SENT TO GUARANTOR, OR, WITH RESPECT TO DELIVERIES SENT TO BUYER, AT THE ADDRESS SET FORTH IN THE REPURCHASE AGREEMENT, OR, IN EITHER CASE, AT SUCH OTHER ADDRESS OF WHICH THE OTHER PARTY SHALL HAVE BEEN NOTIFIED; AND

(d) AGREES THAT NOTHING HEREIN SHALL AFFECT THE RIGHT TO EFFECT SERVICE OF PROCESS IN ANY OTHER MANNER PERMITTED BY LAW.

16. Integration. This Guarantee represents the agreement of Guarantor with respect to the subject matter hereof and there are no promises or representations by Buyer or any Buyer relative to the subject matter hereof not reflected herein.

17. Acknowledgments. Guarantor hereby acknowledges that:

(a) Guarantor has been advised by counsel in the negotiation, execution and delivery of this Guarantee and the related documents;

(b) neither Buyer nor any Beneficiary has any fiduciary relationship to Guarantor, and the relationship between Beneficiary and Guarantor is solely that of surety and creditor; and

(c) no joint venture exists between or among any of Buyer, the Beneficiary, Guarantor and Sellers.

18. WAIVERS OF JURY TRIAL. EACH OF GUARANTOR AND BENEFICIARY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS GUARANTEE OR ANY RELATED DOCUMENT AND FOR ANY COUNTERCLAIM HEREIN OR THEREIN.

19. Effect of Amendment and Restatement. From and after the date hereof, the Existing Guarantee from Guarantor in favor of Buyer, shall be amended, restated and superseded in its entirety by this Guarantee.

[SIGNATURES COMMENCE ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned has caused this Second Amended and Restated Guarantee Agreement to be duly executed and delivered as of the date first above written.

ARES COMMERCIAL REAL ESTATE CORPORATION, a Maryland corporation

By: _____
Name:
Title:

Address for Notices:

Ares Commercial Real Estate Corporation
245 Park Avenue, 42nd Floor
New York, NY 10167
Attention: Real Estate Debt

With a copy to:

Latham & Watkins LLP
1271 Avenue of the Americas
New York, NY 10020
Attention: Loren Finegold

THIRD AMENDMENT TO SECOND AMENDED AND RESTATED SUBSTITUTE GUARANTY AGREEMENT

THIS THIRD AMENDMENT TO SECOND AMENDED AND RESTATED SUBSTITUTE GUARANTY AGREEMENT (this "Amendment"), dated as of April 23, 2024 is made and entered into by and among **ARES COMMERCIAL REAL ESTATE CORPORATION**, a Maryland corporation ("Guarantor"), **CITIBANK, N.A.**, a national banking association (together with its successors and/or assigns, "Buyer"), and for the purpose of acknowledging and agreeing to the provision set forth in Section 5 hereof, **ACRC LENDER C LLC**, a Delaware limited liability company ("Seller").

W I T N E S S E T H:

WHEREAS, Seller and Buyer have entered into that certain Master Repurchase Agreement, dated as of December 8, 2014, as amended by that certain First Amendment to Master Repurchase Agreement, dated as of July 13, 2016, that certain Second Amendment to Master Repurchase Agreement, dated as of July 13, 2016, that certain Third Amendment to Master Repurchase Agreement, dated as of December 8, 2016, that certain Fourth Amendment to Master Repurchase Agreement, dated as of December 10, 2018, that certain Amended and Restated Fourth Amendment to Master Repurchase Agreement, dated as of December 13, 2018 (the "Amended and Restated Fourth MRA Amendment"), that certain Fifth Amendment to Master Repurchase Agreement, dated as of November 30, 2021, and that certain Sixth Amendment to Master Repurchase Agreement, dated as of January 13, 2022 (the foregoing collectively, as so amended and as the same may be further amended, restated, supplemented or otherwise modified and in effect from time to time, the "Repurchase Agreement");

WHEREAS, in connection with the Amended and Restated Fourth MRA Amendment, Guarantor entered into that certain Second Amended and Restated Substitute Guaranty Agreement, dated as of December 13, 2018, as amended by that certain First Amendment to Second Amended and Restated Substitute Guaranty Agreement, dated as of July 24, 2019 and that Second Amendment to Second Amended and Restated Substitute Guaranty Agreement, dated as of February 10, 2022 (as the same may be further amended, restated, supplemented or otherwise modified and in effect from time to time, the "Guaranty");

WHEREAS, all capitalized terms used herein and not otherwise defined shall have the respective meanings set forth in the Guaranty;

WHEREAS, Guarantor, Seller and Buyer desire to modify certain terms and provisions of the Guaranty as set forth herein.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Guarantor and Buyer hereby agree as follows, and Seller acknowledges and agrees as to the provisions set forth in Section 5, in each case as of the date hereof:

1. Modification of Guaranty.

(a) Section 1.7 of the Guaranty is hereby deleted in its entirety and replaced with the following:

""EBITDA" means, with respect to any Person and for any Test Period, an amount equal to the sum of (a) Net Income (or loss) of such Person (prior to any impact from minority or non-controlling interests or joint venture net income and before deduction of any dividends on preferred stock of such Person), plus the following (but only to the extent actually included in determination of such Net Income (or loss)): (i) depreciation and amortization expense (other than those related to capital expenditures that have not been included in the calculation of Fixed Charges as defined in the Guarantee Agreement), (ii) Interest Expense, (iii) income tax expense, (iv) extraordinary or non-recurring gains, losses and expenses including but not limited to transaction expenses relating to business combinations, other acquisitions and unconsummated transactions, (v) unrealized loan loss reserves (including but not limited to CECL Reserves), impairments and other similar charges including but not limited to reserves for loss sharing arrangement associated with mortgage servicing rights, (vi) realized losses on loans and loss sharing arrangements associated with mortgage servicing rights and (vii) unrealized gains, losses and expenses associated with (A) derivative liabilities including but not limited to convertible note issuances and (B) mortgage servicing rights (other than the initial revenue recognition of recording an asset), plus (b) such Person's proportionate share of Net Income (prior to any impact from minority or non-controlling interests or joint venture net income and before deduction of any dividends on preferred stock of such Person) of the joint venture investments and unconsolidated Affiliates of such Person, all with respect to such period."

(b) Section 1.8 of the Guaranty is hereby deleted in its entirety and replaced with the following:

""Fixed Charge Coverage Ratio" means, with respect to Guarantor, the EBITDA (as determined in accordance with GAAP and as further defined herein) for the immediately preceding twelve (12) month period ending on the last date of the applicable Test Period, divided by the Fixed Charges for the immediately preceding twelve (12) month period ending on the last date of the applicable Test Period; provided, that the "Fixed Charge Coverage Ratio" and associated components thereof shall be determined without regard to the effects of consolidation of any issuer of a Specified Third Party Securitization on the financial statements of Guarantor under Accounting Standards Codification Section 810, as amended, modified or supplemented from time to time, or otherwise under GAAP."

(c) Section 1.16 of the Guaranty is hereby deleted in its entirety and replaced with the following:

""Tangible Net Worth" means, with respect to any Person and any date, (i) all amounts that are included under capital or shareholder's equity (or any like caption) on the consolidated balance sheet of such Person and its consolidated Subsidiaries, as determined in accordance with GAAP, *plus*, without duplication, (ii) all Qualified Capital Commitments *plus* (1) deferred origination fees, net of deferred origination costs, and (2) the aggregate amount of CECL Reserves and any other non-cash items (including inter alia credit loss or valuation reserves or allowances, unrealized losses, and accumulated depreciation and

amortization), all on or as of such date, *minus* (a) intangible assets and (b) prepaid taxes and/or expenses, all on or as of such date; provided, that "Tangible Net Worth" and associated components thereof shall be determined without regard to the effects of consolidation of any issuer of a Specified Third Party Securitization on the financial statements of such Person under Accounting Standards Codification Section 810, as amended, modified or supplemented from time to time, or otherwise under GAAP. For sake of clarity, mortgage servicing rights shall not be deemed to be intangible assets."

(d) The following Section 1.5 is hereby added to the Guaranty and each of the subsequent clauses in Section 1 are renumbered accordingly:

""CECL Reserves" shall mean, with respect to any Person, current expected credit loss reserve amounts on both outstanding balances and unfunded commitments and any other applicable investment, property or assets, in each case, established by such Person in accordance with GAAP including Accounting Standards Codification (ASC) 326."

2. Reaffirmation of Guaranty. Guarantor has executed this Amendment for the purpose of acknowledging and agreeing that, notwithstanding the execution and delivery of this Amendment and the amendment of the Guaranty hereunder, all of Guarantor's obligations under the Guaranty remain in full force and effect and the same are hereby irrevocably and unconditionally ratified and confirmed by Guarantor in all respects.

3. Conditions Precedent. This Amendment and its provisions shall become effective upon the execution and delivery of this Amendment by a duly authorized officer of each of Seller, Buyer and Guarantor.

4. Agreement Regarding Expenses. Seller agrees to pay Buyer's reasonable out of pocket expenses (including reasonable legal fees) incurred in connection with the preparation and negotiation of this Amendment promptly after Buyer or Buyer's counsel gives Seller an invoice for such expenses.

5. Full Force and Effect. Except as expressly modified hereby, all of the terms, covenants and conditions of the Guaranty and the other Transaction Documents remain unmodified and in full force and effect and are hereby ratified and confirmed by Seller. Any inconsistency between this Amendment and the Guaranty (as it existed before this Amendment) shall be resolved in favor of this Amendment, whether or not this Amendment specifically modifies the particular provision(s) in the Guaranty inconsistent with this Amendment. All references to the "Guaranty" in the Repurchase Agreement or in any of the other Transaction Documents shall mean and refer to the Guaranty as modified and amended hereby.

6. No Waiver. The execution, delivery and effectiveness of this Amendment shall not operate as a waiver of any right, power or remedy of the Buyer under the Repurchase Agreement, the Guaranty, any of the other Transaction Documents or any other document, instrument or agreement executed and/or delivered in connection therewith.

7. Headings. Each of the captions contained in this Amendment are for the convenience of reference only and shall not define or limit the provisions hereof.

8. **Counterparts**. This Amendment may be executed in any number of counterparts, and all such counterparts shall together constitute the same agreement. Signatures delivered by email (in PDF format) shall be considered binding with the same force and effect as original signatures.

9. **Governing Law.** This Amendment shall be governed in accordance with the terms and provisions of Section 17.1 of the Guaranty.

[No Further Text on this Page; Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their duly authorized representatives as of the day and year first above written.

BUYER:

CITIBANK, N.A.

By:/s/ Lindsay DeChiaro
Name: Lindsay DeChiaro
Title:Authorized Signatory

[SIGNATURES CONTINUE ON NEXT PAGE]

GUARANTOR:

ARES COMMERCIAL REAL ESTATE CORPORATION, a Maryland corporation

By:/s/ Keith Kooper
Name: Keith Kooper
Title: Vice President and Assistant Secretary

(SIGNATURES CONTINUE ON NEXT PAGE]

SELLER:

ACRC LENDER C LLC,
a Delaware limited liability company

By:/s/ Keith Kooper
Name: Keith Kooper
Title: Vice President and Assistant Secretary

Exhibit 10.4

Execution Version

AMENDMENT NUMBER THREE TO GENERAL CONTINUING GUARANTY

THIS AMENDMENT NUMBER THREE TO GENERAL CONTINUING GUARANTY (this "Amendment"), dated as of April 26, 2024, is entered into by and among, on the one hand, the several banks and other financial institutions and lenders from time to time party hereto (such lenders, together with their respective successors and permitted assigns, are referred to hereinafter each individually as a "Lender" and, collectively, as the "Lenders"), and **CITY NATIONAL BANK**, a national banking association, as administrative agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, "Agent"), and, on the other hand, **ARES COMMERCIAL REAL ESTATE CORPORATION,** a Maryland corporation (the "Guarantor").

W I T N E S S E T H

WHEREAS, ACRC LENDER LLC, a Delaware limited liability company (the "Borrower"), Lenders, and Agent are parties to that certain Credit Agreement, dated as of March 12, 2014 (as amended, restated, supplemented, or otherwise modified from time to time, the "Credit Agreement");

WHEREAS, the Guarantor has provided that certain General Continuing Guaranty, dated as of March 12, 2014 (as amended by Amendment Number Four to Credit Agreement and Amendment Number One to General Continuing Guaranty dated as of December 27, 2016, and by Amendment Number Eight to Credit Agreement, Amendment to Security Agreement, and Amendment to General Continuing Guaranty dated as of November 12, 2021, the "Existing Guaranty" and, as further amended, restated, supplemented, or otherwise modified from time to time, the "Guaranty") for the benefit of the Agent;

WHEREAS, Guarantor has requested that Agent and Lenders make certain amendments to the Existing Guaranty; and

WHEREAS, upon the terms and conditions set forth herein, Agent and Lenders are willing to make certain amendments to the Existing Guaranty.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Defined Terms. All initially capitalized terms used herein and not otherwise defined herein (including the preamble and recitals hereof) shall have the meanings ascribed thereto in the Guaranty or the Credit Agreement.

2. Amendments to the Existing Guaranty. The Existing Guaranty is hereby amended as follows:

(a) The definition "EBITDA" in Section 1(a) is deleted entirely and replaced with the following:

""EBITDA" with respect to any Person and for any Test Period, means an amount equal to the sum of (a) Net Income (or loss) of such Person (prior to any impact from minority or non-controlling interests or joint venture net income and before deduction of any

dividends on preferred stock of such Person), plus the following (but only to the extent actually included in determination of such Net Income (or loss)): (i) depreciation and amortization expense (other than those related to capital expenditures that have not been included in the calculation of Fixed Charges), (ii) Interest Expense, (iii) income tax expense, and (iv) extraordinary or non-recurring gains, losses and expenses, including but not limited to transaction expenses relating to business combinations, other acquisitions and unconsummated transactions, (v) unrealized loan loss reserves (including but not limited to CECL Reserves), impairments associated with owned real estate, and other similar charges, including but not limited to reserves for loss sharing arrangement associated with mortgage servicing rights, (vi) realized losses on loans and loss sharing arrangements associated with mortgage servicing rights and (vii) unrealized gains, losses and expenses associated with (A) derivative liabilities including but not limited to convertible note issuances and (B) mortgage servicing rights (other than the initial revenue recognition of recording an asset), plus (b) such Person's proportionate share of Net Income (prior to any impact from minority or non-controlling interests or joint venture net income and before deduction of any dividends on preferred stock of such Person) of the joint venture investments and unconsolidated Affiliates of such Person, all with respect to such period."

(b) The definition "Fixed Charge Coverage Ratio" in Section 1(a) is deleted entirely and replaced with the following:

""Fixed Charge Coverage Ratio" means EBITDA (as determined in accordance with GAAP and as further defined herein) for the immediately preceding twelve (12) month period ending on the last date of the applicable Test Period, divided by the Fixed Charges for the immediately preceding twelve (12) month period ending on the last date of the applicable Test Period; provided, that the "Fixed Charge Coverage Ratio" and associated components thereof (including Debt Service, EBITDA, Fixed Charges and Net Income) shall be determined without regard to the effects of consolidation of any issuer of a Specified Third Party Securitization on the financial statements of any applicable Person under Accounting Standards Codification Section 810, as amended, modified or supplemented from time to time, or otherwise under GAAP."

(c) The definition "Tangible Net Worth" in Section 1(a) is deleted entirely and replaced with the following:

""Tangible Net Worth" means all amounts that are included under capital or shareholder's equity (or any like caption) on the balance sheet of any Person on a consolidated basis in accordance with GAAP, *minus* (a) amounts owing to that Person from any Affiliate thereof, or from officers, employees, partners, members, directors, shareholders or other Persons similarly affiliated with such Person or any Affiliate thereof, (b) intangible assets, and (c) prepaid taxes and/or expenses, *plus* (1) deferred origination fees, net of deferred origination costs, and (2) the aggregate amount of CECL Reserves and any other non-cash items (including inter alia credit loss or valuation reserves or allowances, unrealized losses, and accumulated depreciation and amortization), all on or as of such date; provided, that "Tangible Net Worth" shall be determined without regard to the effects of consolidation of any issuer of a Specified Third Party Securitization on the financial statements of such Person under Accounting Standards Codification Section 810, as amended, modified or supplemented from time to time, or otherwise under

GAAP. For sake of clarity, mortgage servicing rights shall not be deemed to be intangible assets."

(d) The following definition is added in the correct alphabetical order:

""CECL Reserves" means, with respect to any Person, current expected credit loss reserve amounts on both outstanding balances and unfunded commitments and any other applicable investment, property or assets, in each case, established by such Person in accordance with GAAP including Accounting Standards Codification (ASC) 326."

3. Conditions Precedent to Amendment. The satisfaction of each of the following shall constitute conditions precedent to the effectiveness of the Amendment:

(a) Agent shall have received this Amendment, duly executed by the parties hereto, and the same shall be in full force and effect.

(b) After giving effect to this Amendment, the representations and warranties herein and in the Guaranty and the other Loan Documents shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that are already qualified or modified by materiality in the text thereof) on and as of the date hereof as though made on and as of such date (except to the extent that such representations and warranties relate solely to an earlier date).

(c) No litigation, inquiry, other action or proceeding (governmental or otherwise), or injunction or other restraining order prohibiting, directly or indirectly, the consummation of the transactions contemplated herein shall be pending or, to Guarantor's knowledge, overtly threatened that could reasonably be expected to have: (i) a material adverse effect on Borrower's ability to repay the Loans, (ii) a Material Adverse Effect on Borrower or (iii) a material adverse effect on Guarantor's ability to perform under the Guaranty.

(d) After giving effect to this Amendment, no Event of Default or Unmatured Event of Default shall have occurred and be continuing or shall result from the consummation of the transactions contemplated herein.

4. Representations and Warranties. Guarantor hereby represents and warrants to Agent and the Lenders as follows:

(a) Guarantor is a duly organized and validly existing limited liability company, corporation, limited partnership or other entity, as applicable, in good standing under the laws of its jurisdiction of organization and is duly qualified to conduct business in all jurisdictions where its failure to do so could reasonably be expected to have a Material Adverse Effect on the Loan Parties, taken as a whole.

(b) Guarantor has all requisite limited liability company, corporate, limited partnership or other entity power to execute and deliver this Amendment. The execution, delivery, and performance of this Amendment have been duly authorized by Guarantor and all necessary limited liability company, corporate, limited partnership or other entity action in respect thereof has been taken, and the execution, delivery, and performance of this Amendment does not require any consent or approval of any other Person that has not been obtained (except for such consents or approvals as could not reasonably be expected to have a Material Adverse Effect on the Loan Parties, taken as a whole).

(c) This Amendment, when executed and delivered by Guarantor, will constitute the legal, valid, and binding obligations of Guarantor, enforceable against Guarantor, in accordance with its terms, except as the enforceability hereof may be affected by: (i) bankruptcy, insolvency, reorganization, moratorium, or other similar laws affecting the enforcement of creditors' rights generally, and (ii) equitable principles of general applicability (whether considered in a proceeding in equity or law).

5. **GOVERNING LAW; JURISDICTION AND VENUE; WAIVER OF TRIAL BY JURY. THIS AMENDMENT SHALL BE SUBJECT TO THE PROVISIONS REGARDING GOVERNING LAW, JURISDICTION AND VENUE, AND WAIVER OF TRIAL BY JURY SET FORTH IN SECTIONS 11.6 – 11.8 OF THE CREDIT AGREEMENT, AND SUCH PROVISIONS ARE INCORPORATED HEREIN BY THIS REFERENCE, *MUTATIS MUTANDIS*.**

6. Counterpart Execution. This Amendment may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, taken together shall constitute but one and the same agreement. Delivery of an executed counterpart of this Amendment by telefacsimile or other electronic method of transmission shall be equally effective as delivery of an original executed counterpart of this Amendment. Any party delivering an executed counterpart of this Amendment by telefacsimile or other electronic method of transmission also shall deliver an original executed counterpart of this Amendment, but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Amendment.

7. Effect on Loan Documents.

(a) The Existing Guaranty, as amended hereby, and each of the other Loan Documents shall be and remain in full force and effect in accordance with their respective terms and hereby are ratified and confirmed in all respects. The execution, delivery, and performance of this Amendment shall not operate, except as expressly set forth herein, as a modification or waiver of any right, power, or remedy of Agent or any Lender under the Guaranty or any other Loan Document. Except for the amendments to the Existing Guaranty expressly set forth herein, the Existing Guaranty and the other Loan Documents shall remain unchanged and in full force and effect. The modifications set forth herein are limited to the specifics hereof (including facts or occurrences on which the same are based), shall not apply with respect to any facts or occurrences other than those on which the same are based, shall neither excuse any future non-compliance with the Loan Documents nor operate as a waiver of any Event of Default or Unmatured Event of Default, shall not operate as a consent to any waiver, consent or further amendment or other matter under the Loan Documents, and shall not be construed as an indication that any future waiver or amendment of covenants or any other provision of the Guaranty will be agreed to, it being understood that the granting or denying of any waiver or amendment which may hereafter be requested by Borrower or Guarantor remains in the sole and absolute discretion of Agent and the Lenders. To the extent that any terms or provisions of this Amendment conflict with those of the Guaranty or the other Loan Documents, the terms and provisions of this Amendment shall control.

(b) Upon and after the effectiveness of this Amendment, each reference in the Credit Agreement to "this Agreement", "hereunder", "herein", "hereof" or words of like import referring to the Guaranty, and each reference in the other Loan Documents to "the Guaranty", "thereunder", "therein", "thereof" or words of like import referring to the Guaranty, shall mean and be a reference to the Guaranty modified and amended hereby.

(c) To the extent that any of the terms and conditions in any of the Loan Documents shall contradict or be in conflict with any of the terms or conditions of the Guaranty, after giving effect to this

Amendment, such terms and conditions are hereby deemed modified or amended accordingly to reflect the terms and conditions of the Guaranty as modified or amended hereby.

(d) This Amendment is a Loan Document.

(e) The rules of construction set forth in Section 1.2 of the Credit Agreement are incorporated herein by this reference, *mutatis mutandis*.

8. Entire Agreement. This Amendment, and the terms and provisions hereof, the Guaranty and the other Loan Documents constitute the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersede any and all prior or contemporaneous amendments or understandings with respect to the subject matter hereof, whether express or implied, oral or written.

9. Integration. This Amendment, together with the other Loan Documents, incorporates all negotiations of the parties hereto with respect to the subject matter hereof and is the final expression and agreement of the parties hereto with respect to the subject matter hereof.

10. Reaffirmation of Obligations. Guarantor hereby reaffirms its obligations under each Loan Document to which it is a party.

11. Ratification. Guarantor hereby restates, ratifies and reaffirms each and every term and condition set forth in the Guaranty and the Loan Documents to which it is a party effective as of the date hereof and as amended hereby.

12. Severability. In case any provision in this Amendment shall be invalid, illegal or unenforceable, such provision shall be severable from the remainder of this Amendment and the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

[signature pages follow]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed and delivered as of the date first above written.

ARES COMMERCIAL REAL ESTATE CORPORATION,
a Maryland corporation, as Guarantor

By: /s/ Keith Kooper
Name: Keith Kooper
Title:Vice President and Assistant Secretary

CITY NATIONAL BANK,
a national banking association,
as Agent and as a Lender

By: /s/Brandon Feitelson
Name: Brandon Feitelson
Title: Senior Vice President

[SIGNATURE PAGE TO AMENDMENT NUMBER THREE TO GENERAL CONTINUING GUARANTY]

Exhibit 10.5

Execution Version

FIRST AMENDMENT TO GUARANTY OF RECOURSE OBLIGATIONS

THIS FIRST AMENDMENT TO GUARANTY OF RECOURSE OBLIGATIONS (this "Amendment"), dated as of May 6, 2024 is by and between **ARES COMMERCIAL REAL ESTATE CORPORATION**, a Maryland corporation ("Guarantor"), and **CAPITAL ONE, NATIONAL ASSOCIATION**, a national banking association, as administrative agent for the Lenders under the hereinafter described Credit Agreement (together with its successors and/or assigns in such capacity, "Administrative Agent"), for the benefit of the Lenders, and as Lender.

W I T N E S S E T H:

WHEREAS, ACRC Lender CO LLC ("Borrower"), Administrative Agent and Lenders have entered into that certain Credit and Security Agreement, dated as of July 28, 2022 (as amended, restated, supplemented and otherwise modified from time to time, the "Credit Agreement");

WHEREAS, in connection with the Credit Agreement, Guarantor entered into that certain Guaranty of Recourse Obligations, dated as of July 28, 2022, (the "Existing Guaranty" and as amended hereby and as may be further amended, restated, supplemented or otherwise modified and in effect from time to time, the "Guaranty");

WHEREAS, Guarantor, Administrative Agent and Lender desire to modify certain terms and provisions of the Existing Guaranty as set forth herein.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor, Administrative Agent and Lender hereby agree as follows:

1. Modification of Existing Guaranty.

(a) Section 5.3 of the Existing Guaranty is hereby deleted in its entirety and replaced with the following:

"**Minimum Tangible Net Worth and Liquidity Covenants**. Until the Obligations have been finally and indefeasibly paid in full, Guarantor shall maintain, as of the last day of each calendar quarter: (a) Tangible Net Worth in an amount not less than the sum of (1) 80% of Guarantor's tangible net worth as of June 30, 2022, plus (2) 80% of the total net contributed capital actually received (after deducting transaction costs) as a result of the issuance of equity interest in the Guarantor subsequent to June 30, 2022; and (b) Liquid Assets having a market value of at least the greater of (1) $5,000,000 and (2) 50% of the Guarantor's recourse debt (not to exceed $10,000,000).

As used in this Section 5.3:

"Tangible Net Worth" means, with respect to Guarantor at any date, determined on a consolidated basis, all amounts that are included under capital or shareholder's equity (or any like caption) on the balance sheet of Guarantor in accordance with GAAP, minus (a) amounts owing to Guarantor from any Affiliate thereof, or from officers, employees, partners, members, directors, shareholders or other Persons similarly affiliated with the Guarantor or any Affiliate thereof, (b) intangible assets, and (c) prepaid taxes and/or expenses, plus (1) deferred origination fees, net of deferred origination costs, (2) the aggregate amount of CECL Reserves (not to exceed $300,000,000 as of any such date of determination), and (3) valuation reserves and accumulated depreciation and amortization for assets classified as "Real Estate Owned", all on or as of such date; provided, that "Tangible Net Worth" shall be determined without regard to the effects of consolidation of any issuer of a Specified Third Party Securitization on the financial statements of the Guarantor under Accounting Standards Codification Section 810, as amended, modified or supplemented from time to time, or otherwise under GAAP. For the sake of clarity, mortgage servicing rights shall not be deemed to be intangible assets.

"CECL Reserves" shall mean current expected credit loss reserve amounts on both outstanding balances and unfunded commitments and any other applicable investment, property or assets, in each case, established by Guarantor in accordance with GAAP including Accounting Standards Codification (ASC) 326.

"Specified Third Party Securitization" means any securitization transaction that was not established or sponsored by Guarantor or any of its consolidated Subsidiaries.

"Liquid Assets" means, as of the applicable date, Guarantor's unrestricted and unencumbered (whether by Liens, negative pledges, or otherwise) (i) cash, and (ii) stocks, bonds, and mutual fund shares, in each instance that can be readily sold for cash on stock exchanges or over-the-counter markets provided that if the Guarantor's liquid assets equal or exceed $5,000,000 then for purposes of clause (b)(2) above, Guarantor may include Guarantor's available borrowing capacity in the calculation of liquid assets under clause (b)(2) above."

2. **Effectiveness**. The effectiveness of this Amendment is subject to receipt by Administrative Agent of this Amendment, duly executed and delivered by Guarantor and Administrative Agent.

3. **Guarantor Representations**. Guarantor hereby represents and warrants that:

(a) No Event of Default or Potential Default exists and no Event of Default or Potential Default will occur as a result of the execution, delivery and performance by Guarantor of this Amendment;

(b) the representations and warranties made by Guarantor in all of the Transaction Documents are true and correct, with the same force and effect as if made on and as of such date; except to the extent that such representations and warranties (a) are made as of a particular date, (b) are no longer true as a result of a change in fact with respect to

a Purchased Asset that was consented to in writing by Administrative Agent hereunder or (c) regarding Guarantor's financial statements shall be deemed to refer to the most recent financial statements furnished to Administrative Agent; and

(c) the person signing this Amendment on its behalf is duly authorized to do so on its behalf.

4. **Defined Terms**. Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Guaranty.

5. **Reaffirmation of Guaranty**. As amended by this Amendment, all terms, covenants and provisions of the Guaranty are ratified and confirmed and shall remain in full force and effect. In addition, any and all guaranties and indemnities (including the Guaranty Agreement) for the benefit of Administrative Agent and agreements subordinating rights and liens to the rights and liens of Administrative Agent, are hereby ratified and confirmed and shall not be released, diminished, impaired, reduced or adversely affected by this Amendment, and each party indemnifying Administrative Agent, and each party subordinating any right or lien to the rights and liens of Administrative Agent, hereby consents, acknowledges and agrees to the modifications set forth in this Amendment.

6. **Binding Effect; No Partnership; Counterparts**. The provisions of the Guaranty, as amended hereby, shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Nothing herein contained shall be deemed or construed to create a partnership or joint venture between any of the parties hereto. For the purpose of facilitating the execution of this Amendment as herein provided, this Amendment may be executed simultaneously in any number of counterparts, each of which shall be deemed to be an original, and such counterparts when taken together shall constitute but one and the same instrument. This Amendment may be delivered by facsimile transmission, by electronic mail, or by other electronic transmission, in portable document format (.pdf) or otherwise, and each such executed facsimile, .pdf, or other electronic record shall be considered an original executed counterpart for purposes of this Amendment. Each party to this Amendment (a) agrees that it will be bound by its own Electronic Signature,(b) accepts the Electronic Signature of each other party to this Amendment and each Transaction Document, and (c) agrees that such Electronic Signatures shall be the legal equivalent of manual signatures. The words "execution," "executed", "signed," "signature," and words of like import in this paragraph shall, for the avoidance of doubt, be deemed to include Electronic Signatures and the use and keeping of records in electronic form, each of which shall have the same legal effect, validity and enforceability as manually executed signatures and the use of paper records and paper-based recordkeeping systems, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, state laws based on the Uniform Electronic Transactions Act, or any other state law.

7. **Further Agreements**. Guarantor agrees to execute and deliver such additional documents, instruments or agreements as may be reasonably requested by Administrative Agent and as may be necessary or appropriate from time to time to effectuate the purposes of this Amendment.

8. **Governing Law; Consent to Jurisdiction**. The provisions of Sections 6.12 and 6.17 of the Guaranty are incorporated herein by reference.

9. **Headings**. The headings of the sections and subsections of this Amendment are for convenience of reference only and shall not be considered a part hereof nor shall they be deemed to limit or otherwise affect any of the terms or provisions hereof.

10. **References to Transaction Documents**. All references to the Guaranty in any Credit Document, or in any other document executed or delivered in connection therewith shall, from and after the execution and delivery of this Amendment, be deemed a reference to the Guaranty as amended hereby, unless the context expressly requires otherwise.

11. **No Waiver**. The execution, delivery and effectiveness of this Amendment shall not operate as a waiver of any right, power or remedy of the Borrower under the Credit Agreement, the Guaranty, any of the other Credit Documents or any other document, instrument or agreement executed and/or delivered in connection therewith.

[No Further Text on this Page; Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their duly authorized representatives as of the day and year first above written.

GUARANTOR:

ARES COMMERCIAL REAL ESTATE CORPORATION,
a Maryland corporation

By:/s/ Keith Kooper
Name: Keith Kooper
Title: Vice President and Assistant Secretary

[Signature Page to First Amendment to Guaranty of Recourse Obligations Agreement]

Acknowledged and Agreed:

ADMINISTRATIVE AGENT AND LENDER: CAPITAL ONE, NATIONAL ASSOCIATION

By:/s/ Katarzyna Dobrzanska
Name: Katarzyna Dobrzanska
Title: Duly Authorized Signatory

FOURTH AMENDMENT TO MASTER REPURCHASE AND SECURITIES CONTRACT
AND
SECOND AMENDMENT OF PARENT GUARANTY AND INDEMNITY

This **FOURTH AMENDMENT TO MASTER REPURCHASE AND SECURITIES CONTRACT AND SECOND AMENDMENT TO PARENT GUARANTY AND INDEMNITY** (this "Amendment"), dated as of May 6, 2024, is entered into by and among MORGAN STANLEY BANK, N.A., a national banking association, as buyer (together with its successors and assigns, "Buyer"), ACRC LENDER MS LLC, a Delaware limited liability company, as seller ("Seller"), and ARES COMMERCIAL REAL ESTATE CORPORATION, a Maryland corporation, as guarantor ("Guarantor").

RECITALS

WHEREAS, Buyer and Seller are parties to that certain Master Repurchase and Securities Contract Agreement, dated as of January 16, 2020 (as amended prior to the date hereof, the "Existing Repurchase Agreement"; as amended hereby and as the same may be further amended, restated, supplemented or otherwise modified from time to time, the "Repurchase Agreement");

WHEREAS, Guarantor provided that certain Parent Guaranty and Indemnity, dated as of January 16, 2020 (as amended by that certain Amendment to Parent Guaranty and Indemnity, dated February 10, 2022, the "Existing Guaranty" and, as amended pursuant to this Amendment and as the same may be further amended, restated, supplemented or otherwise modified from time to time, the "Guaranty") for the benefit of the Buyer; and

WHEREAS, Seller and Guarantor have requested certain amendments and modifications be made to the Existing Guaranty and the Existing Repurchase Agreement, and Buyer has agreed to amend the Existing Guaranty and the Existing Repurchase Agreement as more specifically set forth herein.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Amendments to Existing Repurchase Agreement.

   a. The Existing Repurchase Agreement is hereby amended by deleting Section 12(t) entirely and replacing it with the following:

   "If Guarantor or any Subsidiary of Guarantor has entered into or shall enter into or amend a repurchase agreement, warehouse facility, credit facility or other similar arrangement with any Person (other than that certain term loan facility pursuant to that certain Amended and Restated Credit and Guaranty Agreement, dated November 12, 2021, by and among ARES Commercial Real Estate Corporation, as borrower, certain affiliates of the borrower, as guarantors, the lenders party thereto from time to time and Cortland Capital Markets Services LLC, as administrative agent and collateral agent, as it may be amended, amended and restated or otherwise modified from time to time) which by its terms provides more favorable terms with respect to any financial covenants (including defined terms used to calculate such financial covenants) tested at the Guarantor level, including without limitation covenants covering the

same or similar subject matter set forth in any Financial Covenant Compliance Certificate required to be delivered hereunder (a "More Favorable Third-Party Covenant"), Seller shall (i) give notice to Buyer of such More Favorable Third-Party Covenant on the same day that that the agreement evidencing such More Favorable Third Party-Covenant is executed and the terms of such More Favorable Third-Party Covenant shall, without any action by any party, automatically become part of the terms of this Agreement and the other Transaction Documents and be incorporated herein and/or therein for so long as (and only for so long as) the More Favorable Third-Party Covenant remain in effect and (ii) if required by the Buyer, enter into such amendments to this Agreement and the other Transaction Documents to evidence such More Favorable Third-Party Covenant in accordance with this Section 12(t) (provided that the execution of such amendment shall not be a precondition to the effectiveness of such amendment, but shall merely be for the convenience of the parties hereto and thereto)."

2. Amendments to Existing Guaranty.

a. Section 1 of the Existing Guaranty is amended by deleting the definition of "EBITDA" and replacing it with the following:

""EBITDA" means with respect to any Person and for any Test Period, an amount equal to the sum of (a) Net Income (or loss) of such Person (prior to any impact from minority or non-controlling interests or joint venture net income and before deduction of any dividends on preferred stock of such Person), plus the following (but only to the extent actually included in determination of such Net Income (or loss)): (i) depreciation and amortization expense (other than those related to capital expenditures that have not been included in the calculation of Fixed Charges), (ii) Interest Expense, (iii) income tax expense, and (iv) extraordinary or non-recurring gains, losses and expenses, including but not limited to transaction expenses relating to business combinations, other acquisitions and unconsummated transactions, (v) unrealized loan loss reserves (including but not limited to CECL Reserves), impairments associated with owned real estate, and other similar charges, including but not limited to reserves for loss sharing arrangement associated with mortgage servicing rights, (vi) realized losses on loans and loss sharing arrangements associated with mortgage servicing rights and (vii) unrealized gains, losses and expenses associated with (A) derivative liabilities including but not limited to convertible note issuances and (B) mortgage servicing rights (other than the initial revenue recognition of recording an asset), plus (b) such Person's proportionate share of Net Income (prior to any impact from minority or non-controlling interests or joint venture net income and before deduction of any dividends on preferred stock of such Person) of the joint venture investments and unconsolidated Affiliates of such Person, all with respect to such period."

b. Section 1 of the Existing Guaranty is amended by deleting the definition of "Fixed Charge Coverage Ratio" and replacing it with the following:

""Fixed Charge Coverage Ratio" means EBITDA (as determined in accordance with GAAP and as further defined herein) for the immediately preceding twelve (12) month period ending on the last date of the applicable Test Period, divided by the Fixed Charges for the immediately preceding twelve (12) month period ending on the last date of the applicable Test Period; provided that the "Fixed Charge Coverage Ratio" and associated components thereof shall be determined without regard to the effects of consolidation of any issuer of a Specified Third Party Securitization on the financial statements of the Guarantor under Accounting Standards

Codification Section 810, as amended, modified or supplemented from time to time, or otherwise under GAAP."

c. Section 1 of the Existing Guaranty is amended by deleting the definition of "Tangible Net Worth" and replacing it with the following:

""Tangible Net Worth" means, with respect to any Person and any date, on a consolidated basis, all amounts that are included under capital or shareholder's equity (or any like caption) on the balance sheet of such Person in accordance with GAAP, *minus* (a) amounts owing to that Person from any Affiliate thereof, or from officers, employees, partners, members, directors, shareholders or other Persons similarly affiliated with such Person or any Affiliate thereof, (b) intangible assets, and (c) prepaid taxes and/or expenses, *plus* (1) deferred origination fees, net of deferred origination costs, and (2) the aggregate amount of CECL Reserves and any other non-cash items (including inter alia credit loss or valuation reserves or allowances, unrealized losses, and accumulated depreciation and amortization), all on or as of such date; provided that "Tangible Net Worth" shall be determined without regard to the effects of consolidation of any issuer of a Specified Third Party Securitization on the financial statements of such Person under Accounting Standards Codification Section 810, as amended, modified or supplemented from time to time, or otherwise under GAAP. For the avoidance of doubt, mortgage servicing rights shall not be deemed to be intangible assets."

d. Section 1 of the Existing Guaranty is amended by adding the following definition in the correct alphabetical order:

""CECL Reserves" shall mean, with respect to any Person, current expected credit loss reserve amounts on both outstanding balances and unfunded commitments and any other applicable investment, property or assets, in each case, established by such Person in accordance with GAAP including Accounting Standards Codification (ASC) 326."

e. The Existing Guaranty is hereby amended by deleting Section 9(c) entirely and replacing it with the following:

"(c) Notwithstanding anything to the contrary contained in this Guaranty, in the event that Guarantor, Seller or any Affiliate thereof that is a Subsidiary of Guarantor has entered into or shall enter into or amend any other commercial real estate loan repurchase agreement, warehouse facility or credit facility with any other lender or repurchase buyer (other than that certain term loan facility pursuant to that certain Amended and Restated Credit and Guaranty Agreement, dated November 12, 2021, by and among ARES Commercial Real Estate Corporation, as borrower, certain affiliates of the borrower, as guarantors, the lenders party thereto from time to time and Cortland Capital Markets Services LLC, as administrative agent and collateral agent, as it may be amended, amended and restated or otherwise modified from time to time) with terms more restrictive to the repurchase seller or borrower thereunder than the covenants in this Section 9, then this Section 9 shall be deemed to be automatically modified to such more restrictive terms for so long as (and only for so long as) the more restrictive terms remain in effect."

3. Representations and Warranties. Seller hereby represents and warrants to Buyer as follows:

a. No Margin Deficit, Event of Default, Default or, to Seller or Guarantor's knowledge, Material Adverse Effect has occurred and is continuing as of the date hereof, and no Default, Event of

Default or Margin Deficit will occur as a result of the execution, delivery and performance by Seller or Guarantor of this Amendment.

b. All representations and warranties contained in the Repurchase Agreement and Existing Guaranty are true, correct, complete and accurate in all respects as of the date hereof (except (i) such representations which by their terms speak as of a specified date and subject to any exceptions disclosed to Buyer in an Exception Report prior to such date and approved by Buyer, and (ii) the representations and warranties regarding Seller or Guarantor's financial statements shall be deemed to refer to the most recent financial statements furnished to Administrative Agent).

c. No amendments have been made to the organizational documents of Seller or Guarantor since January 16, 2020.

d. Seller and Guarantor have the authority to execute and deliver this Amendment and the other Transaction Documents to be executed and delivered in connection with this Amendment.

4. Effectiveness. The effectiveness of this Amendment is subject to receipt by Buyer of the following:

a. Amendment. This Amendment, duly executed and delivered by Seller, Guarantor and Buyer.

b. Fees. Payment by Seller of the actual costs and expenses, including, without limitation, the reasonable fees and expenses of counsel to Buyer, incurred by Buyer in connection with this Amendment and the transactions contemplated hereby

c. Good Standing. Certificates of existence and good standing for the Seller and Guarantor.

5. Continuing Effect. As amended by this Amendment, all terms, covenants and provisions of the Repurchase Agreement, the Guaranty and the other Transaction Documents are ratified and confirmed and shall remain in full force and effect. As amended by this Amendment, all terms, covenants and provisions of the Repurchase Agreement and the Guaranty are ratified and confirmed and shall remain in full force and effect. This Amendment shall be deemed a "Transaction Document" for all purposes under the Repurchase Agreement.

6. Binding Effect; No Partnership; Counterparts. The provisions of the Repurchase Agreement and the Guaranty, as amended hereby, shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Nothing herein contained shall be deemed or construed to create a partnership or joint venture between any of the parties hereto. For the purpose of facilitating the execution of this Amendment as herein provided, this Amendment may be executed simultaneously in any number of counterparts, each of which shall be deemed to be an original, and such counterparts when taken together shall constitute but one and the same instrument. This Amendment and any other Transaction Document may be delivered by facsimile transmission, by electronic mail, or by other electronic transmission, in portable document format (.pdf) or otherwise, and each such executed facsimile, .pdf, or other electronic record shall be considered an original executed counterpart for purposes of this Amendment. Each party to this Amendment (a) agrees that it will be bound by its own Electronic Signature, (b) accepts the Electronic Signature of each other party to this

Amendment, and (c) agrees that such Electronic Signatures shall be the legal equivalent of manual signatures.

7. Further Agreements. Seller agrees to execute and deliver such additional documents, instruments or agreements as may be reasonably requested by Buyer, and as may be necessary or appropriate from time to time to effectuate the purposes of this Amendment.

8. Defined Terms. Capitalized terms used but not defined herein shall have the meanings set forth in the Guaranty.

9. Costs and Expenses. Seller shall pay Buyers' actual out of pocket costs and expenses incurred in connection with the preparation, negotiation, execution and consummation of this Amendment in accordance with the Repurchase Agreement.

10. Governing Law; Consent to Jurisdiction; Waiver of Jury Trial. The parties agree that Article 18 (Governing Law; Consent to Jurisdiction; Waiver of Jury Trial; Etc.) of the Repurchase Agreement is hereby incorporated herein by reference, mutatis mutandis.

11. Headings. The headings of the sections and subsections of this Amendment are for convenience of reference only and shall not be considered a part hereof nor shall they be deemed to limit or otherwise affect any of the terms or provisions hereof.

12. References to Transaction Documents. All references to the Guaranty in any Transaction Document, or in any other document executed or delivered in connection therewith shall, from and after the execution and delivery of this Amendment, be deemed a reference to the Guaranty, as amended hereby, unless the context expressly requires otherwise.

13. No Waiver. The execution, delivery and effectiveness of this Amendment shall not operate as a waiver of any right, power or remedy of Buyer, under the Guaranty, the Repurchase Agreement or any other Transaction Document, nor constitute an amendment of any provision of the Guaranty or any other Transaction Document by any of the parties hereto, other than as expressly set forth herein.

[signature pages follow]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed and delivered as of the date first above written.

ACRC LENDER MS LLC, a Delaware limited liability company, as Seller

By: /s/Keith Kooper
Name: Keith Kooper
Title: Vice President and Assistant Secretary

ARES COMMERCIAL REAL ESTATE CORPORATION, a Maryland corporation, as Guarantor

By: /s/Keith Kooper
Name: Keith Kooper
Title: Vice President and Assistant Secretary

[signatures continue on next page]

MORGAN STANLEY BANK, N.A.,
a national banking association, as Buyer

By: /s/Evan Hershy
Name: Evan Hershy
Title: Authorized Signatory

Exhibit 10.7

Execution Version

FIRST AMENDMENT TO AMENDED AND RESTATED CREDIT AND GUARANTY AGREEMENT

THIS FIRST AMENDMENT TO AMENDED AND RESTATED CREDIT AND GUARANTY AGREEMENT (this "Amendment") is dated as of May 8, 2024 and is entered into by and among, on the one hand, the lender identified on the signature pages hereof (the "Lender") which Lender constitutes the Required Lenders under the Credit Agreement, Cortland Capital Market Services LLC, as the administrative agent for the Lender (in such capacity, together with its successors and permitted assigns in such capacity, "Administrative Agent") and as the collateral agent for the Secured Parties (in such capacity, together with its successors and permitted assigns in such capacity, "Collateral Agent" and, together with the Administrative Agent, the "Agents"), and, on the other hand, Ares Commercial Real Estate Corporation, a Maryland corporation ("Borrower"), and is made with reference to that certain Amended and Restated Credit and Guaranty Agreement, dated November 12, 2021 (the "Credit Agreement"), by and among the Borrower, ACRC Holdings LLC, a Delaware limited liability company ("ACRC Holdings"), ACRC Mezz Holdings LLC, a Delaware limited liability company ("ACRC Mezz"), ACRC Warehouse Holdings LLC, a Delaware limited liability company ("ACRC Warehouse" and, together with ACRC Holdings and ACRC Mezz, the "Guarantors" and, each a "Guarantor"), the lenders, the Agents and the other persons party thereto. Capitalized terms used herein without definition shall have the same meanings herein as set forth in the Credit Agreement after giving effect to this Amendment (the "Amended Agreement").

RECITALS

WHEREAS, the Borrower has requested that the Lender agree to amend the Credit Agreement as provided for herein; and

WHEREAS, subject to certain conditions, the Lender is willing to agree to such amendment.

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, the parties hereto agree as follows:

SECTION I AMENDMENTS TO CREDIT AGREEMENT

A. The Borrower, the Lender, the Administrative Agent, the Guarantors and the Collateral Agent agree that on the First Amendment Effective Date (as defined below), the Credit Agreement shall be amended to reflect Exhibit A attached hereto.

B. Except as expressly set forth in this Amendment, the Exhibits and Schedules to the Credit Agreement shall be the Exhibits and Schedules to the Credit Agreement, as amended hereby, and on and after the date hereof, unless otherwise specified, any reference to "Credit Agreement" in the Exhibits and/or Schedules included in the Credit Agreement shall be a reference to the Amended Agreement, as amended, amended and restated, supplemented or otherwise modified from time to time.

SECTION II CONDITIONS TO EFFECTIVENESS

This Amendment shall become effective as of the date hereof only upon the satisfaction of all of the following conditions precedent (the date of satisfaction of such conditions being referred to herein as the "First Amendment Effective Date"):

A. Executed Counterparts. The Agents shall have received (i) this Amendment and (ii) that certain Side Letter, dated as of May 8, 2024 (the "Side Letter"), by and among the Borrower, the Lender and J.P. Morgan Investment Management, Inc., as grantor trust representative;

B. Closing Date Certificate. The Agents shall have received a certificate of an officer of the Borrower with respect to the absence of a Material Adverse Effect, the accuracy of representations and warranties, the absences of Defaults or Events of Default and compliance with certain covenants.

C. Fees and Expenses. The Borrower shall have paid all fees incurred in connection with the transactions evidenced by this Amendment on the First Amendment Effective Date and all Lender Group Expenses incurred in connection with the transactions evidenced by this Amendment for which the Borrower received an invoice at least 1 Business Day prior to the First Amendment Effective Date;

D. Representations and Warranties. The representations and warranties of the Borrower contained in this Amendment and the other Loan Documents shall be true and correct on the First Amendment Effective Date in all material respects (except that such materiality qualifier shall not be applicable to any representation or warranty to the extent that such representation or warranty is qualified or modified by materiality) on and as of the First Amendment Effective Date as though made on and as of such date (except to the extent that such representations and warranties solely relate to an earlier date);

E. Financial Covenants. Borrower shall be in pro forma compliance with the covenants set forth in Section 6.12 of the Amended Agreement;

F. No Event of Default or Default. No Event of Default or Default shall have occurred and be continuing on the First Amendment Effective Date, nor shall either result from the effectiveness of this Amendment on the First Amendment Effective Date or the consummation of the other transactions contemplated by this Amendment;

G. No Material Adverse Effect. No Material Adverse Effect in the Loan Parties shall have occurred as of December 31, 2023, except as set forth in publicly available information as of December 31, 2023;

H. Searches. The Agents shall have received the results of a recent lien, tax lien, judgment and litigation search in each of the jurisdictions or offices in which UCC financing statement or other filings or recordations should be made to evidence or perfect security interests in all assets of the Loan parties;

I. Opinions. The Agents and the Lender shall have received (i) an opinion of counsel to the Borrowers and Guarantors, dated as of the date of this Amendment, relating to corporate matters, enforceability with respect to this Amendment and security interest matters and (ii) an opinion of Maryland counsel to the Borrower, dated as of the date of this Amendment, relating to corporate matters, each in form and substance satisfactory to the Lender; and

SECTION III REPRESENTATIONS AND WARRANTIES

The Borrower hereby represents and warrants to the Administrative Agent, the Collateral Agent and the Lenders that all of the representations and warranties of the Borrowers set forth in each of the Amended Agreement and the other Loan Documents are true and correct in all material respects (or in all respects to the extent such representation or warranty is limited by materiality except that such materiality qualifier shall not be applicable to any representation or warranty to the extent that such representation or warranty is qualified or modified by materiality) as of the First Amendment Effective Date (except to the extent that such representations and warranties solely relate to an earlier date).

SECTION IV MISCELLANEOUS

A. Reference to and Effect on the Credit Agreement and the Other Loan Documents.

(i) This Amendment shall constitute a Loan Document for purposes of each of the Credit Agreement, this Amendment and the other Loan Documents and on and after the First Amendment Effective Date, each reference in the Credit Agreement to "this Agreement", "hereunder", "hereof", "herein" or words of like import referring to the Credit Agreement, and each reference in the other Loan Documents to the "Credit Agreement", "thereunder", "thereof" or words of like import referring to the Credit Agreement shall mean and be a reference to the Amended Agreement.

(ii) Except as specifically amended by this Amendment, the Credit Agreement and the other Loan Documents shall remain in full force and effect and are hereby ratified and confirmed.

(iii) The execution, delivery and performance of this Amendment shall not constitute a waiver of any provision of, or operate as a waiver of any right, power or remedy of the Administrative Agent, the Collateral Agent, the Lender or any other secured party under the Credit Agreement or any of the other Loan Documents.

B. Reaffirmation.

The Borrower hereby (a) agrees that, notwithstanding the occurrence of the First Amendment Effective Date, each of the guarantees, the Security Agreement and each of the Negative Pledge Agreement, the Borrower DACA continue to be in full force and effect and are not impaired or adversely affected in any manner whatsoever, (b) confirms its guarantee of the Obligations and its grant of a security interest in its assets as Collateral therefor, all as provided in the Loan Documents as originally executed and (c) acknowledges that such guarantee and grant continues in full force and effect in respect of, and to secure, the Obligations under the Amended Agreement and the other Loan Documents. In furtherance of the foregoing, the Borrower does hereby grant to the Collateral Agent a security interest in all collateral described in the Amended Agreement and any other Loan Document as security for the Obligations, as amended, restated, increased and/or extended pursuant to this Amendment.

(i) The Guarantors hereby (a) agree that, notwithstanding the occurrence of the First Amendment Effective Date, each of the guarantees, the Security Agreement and each of the Negative Pledge Agreement, the Mezz DACA continue to be in full force and effect and are not impaired or adversely affected in any manner whatsoever, (b) confirms its guarantee of the Obligations and its grant of a security interest in its assets as Collateral therefor, all as provided in the Loan Documents as originally executed and (c)

acknowledges that such guarantee and grant continues in full force and effect in respect of, and to secure, the Obligations under the Amended Agreement and the other Loan Documents. In furtherance of the foregoing, each Guarantor does hereby grant to the Collateral Agent a security interest in all collateral described in the Amended Agreement and any other Loan Document as security for the Obligations, as amended, restated, increased and/or extended pursuant to this Amendment.

C. Headings. Section headings used in this Amendment are for convenience of reference only and are not to affect the construction hereof or to be taken in consideration in the interpretation hereof.

D. GOVERNING LAW. EXCEPT AS SPECIFICALLY SET FORTH IN ANY OTHER LOAN DOCUMENT: (A) THIS AMENDMENT SHALL BE DEEMED TO HAVE BEEN MADE IN THE STATE OF NEW YORK; AND (B) THE VALIDITY OF THIS AMENDMENT, AND THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF AND THEREOF, AND THE RIGHTS OF THE PARTIES THERETO SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF NEW YORK.

E. JURISDICTION AND VENUE. TO THE EXTENT THEY MAY LEGALLY DO SO, THE PARTIES HERETO AGREE THAT ALL ACTIONS, SUITS, OR PROCEEDINGS ARISING BETWEEN ANY MEMBER OF THE LENDER GROUP OR THE BORROWER AND ITS SUBSIDIARIES IN CONNECTION WITH THIS AMENDMENT SHALL BE TRIED AND LITIGATED ONLY IN THE STATE OR FEDERAL COURTS LOCATED IN THE COUNTY OF NEW YORK, STATE OF NEW YORK; PROVIDED HOWEVER THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT AT ANY AGENT'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE ANY AGENT ELECTS TO BRING SUCH ACTION TO THE EXTENT SUCH COURTS HAVE IN PERSONAM JURISDICTION OVER THE RELEVANT OBLIGOR OR IN REM JURISDICTION OVER SUCH COLLATERAL OR OTHER PROPERTY. THE BORROWER AND ITS SUBSIDIARIES AND EACH MEMBER OF THE LENDER GROUP, TO THE EXTENT THEY MAY LEGALLY DO SO, HEREBY WAIVE ANY RIGHT EACH MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION AND STIPULATE THAT THE STATE AND FEDERAL COURTS LOCATED IN THE COUNTY OF NEW YORK, STATE OF NEW YORK SHALL HAVE IN PERSONAM JURISDICTION AND VENUE OVER SUCH PERSON FOR THE PURPOSE OF LITIGATING ANY SUCH DISPUTE, CONTROVERSY, OR PROCEEDING ARISING OUT OF OR RELATED TO THIS AMENDMENT. TO THE EXTENT PERMITTED BY LAW, SERVICE OF PROCESS SUFFICIENT FOR PERSONAL JURISDICTION IN ANY ACTION AGAINST BORROWER OR ANY MEMBER OF THE LENDER GROUP MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO ITS ADDRESS INDICATED ON EXHIBIT 11.3 OF THE INDENTURE.

F. WAIVER OF TRIAL BY JURY. THE BORROWER AND ITS SUBSIDIARIES AND EACH MEMBER OF THE LENDER GROUP, TO THE EXTENT THEY MAY LEGALLY DO SO, HEREBY EXPRESSLY WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION, CAUSE OF ACTION, OR PROCEEDING ARISING UNDER OR WITH RESPECT TO THIS AMENDMENT, OR IN ANY WAY CONNECTED WITH, OR RELATED TO, OR INCIDENTAL TO, THE DEALINGS OF THE PARTIES HERETO WITH RESPECT TO THIS AMENDMENT,

OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND IRRESPECTIVE OF WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE. TO THE EXTENT THEY MAY LEGALLY DO SO, THE BORROWER AND ITS SUBSIDIARIES AND EACH MEMBER OF THE LENDER GROUP HEREBY AGREE THAT ANY SUCH CLAIM, DEMAND, ACTION, CAUSE OF ACTION, OR PROCEEDING SHALL BE DECIDED BY A COURT TRIAL WITHOUT A JURY AND THAT ANY PARTY HERETO MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE OTHER PARTY OR PARTIES HERETO TO WAIVER OF ITS OR THEIR RIGHT TO TRIAL BY JURY.

G. Severability. Any provision of this Amendment that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

H. Counterparts; Electronic Execution.

(i) This Amendment may be executed by one or more of the parties to this Amendment on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed signature page of this Amendment or any document or instrument delivered in connection herewith by facsimile transmission or electronic image scan transmission (e.g., PDF) shall be effective as delivery of a manually executed counterpart of this Amendment or such other document or instrument, as applicable.

(ii) The words "execution," "signed," "signature," and words of like import shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

I. It is expressly understood and agreed by the parties hereto that, (a) this Amendment is executed and delivered by Wilmington Trust, National Association, not individually or personally but solely as Trustee under the Trust Agreement (in such capacity, the "Grantor Trust Trustee"), in the exercise of the powers and authority conferred upon and vested in it under the Trust Agreement, (b) each of the representations, undertakings and agreements herein made on the part of the Grantor Trust Trustee as a Lender is made and intended not as the personal representation, undertaking or agreement of Wilmington Trust, National Association but is made and intended for the purpose of binding only the trust estate created pursuant to the Trust Agreement, (c) nothing herein contained shall be construed as creating any liability on the part of Wilmington Trust, National Association individually or personally, to perform any covenant or obligation of the Grantor Trust Trustee as a Lender, either expressed or implied, contained herein, all such liability, if any, being expressly waived by the parties hereto and by any Person claiming by, through or under the parties hereto, (d) Wilmington Trust, National Association has not made any investigation as to the accuracy of any representations, warranties or other obligations of the Grantor Trust Trustee as a Lender under this Amendment or any other related documents and (e) under no circumstances shall Wilmington Trust, National Association be personally liable for the payment of any indebtedness or expenses of the Grantor Trust

Trustee as a Lender or be liable for the breach or failure of any obligation, representation, warranty or covenant made or undertaken by the Grantor Trust Trustee as a Lender under this Amendment or any other related documents.

[*Remainder of Page Intentionally Blank; Signature Pages Follow*]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

Borrower:

ARES COMMERCIAL REAL ESTATE CORPORATION.,
a Maryland corporation

By: /s/ Anton Feingold
Name: Anton Feingold
Title: General Counsel, Vice President and Secretary

Guarantors

ACRC HOLDINGS LLC,
a Delaware limited liability company, as Guarantor

By: /s/ Anton Feingold
Name: Anton Feingold
Title: Vice President and Secretary

ACRC WAREHOUSE HOLDINGS LLC,
a Delaware limited liability company, as Guarantor

By: /s/ Anton Feingold
Name: Anton Feingold
Title: Vice President and Secretary

ACRC MEZZ HOLDINGS LLC,
a Delaware limited liability company, as Guarantor

By: /s/ Anton Feingold
Name: Anton Feingold
Title: Vice President and Secretary

WILMINGTON TRUST, NATIONAL ASSOCIATION, as Lender and as the Required Lenders

By: /s/ Beverly D. Capers
Name: Beverly D. Capers
Title: Vice President

CORTLAND CAPITAL MARKET SERVICES LLC,
as Administrative Agent and Collateral Agent

By: /s/ Pinju Chiu
Name: Pinju Chiu
Title: Associate Counsel

Exhibit A

(See Attached)

AMENDED AND RESTATED CREDIT AND GUARANTY AGREEMENT

by and among

ARES COMMERCIAL REAL ESTATE CORPORATION

as Borrower,

ACRC HOLDINGS LLC, ACRC MEZZ HOLDINGS LLC and ACRC WAREHOUSE HOLDINGS LLC

as Guarantors,

THE LENDERS PARTIES HERETO FROM TIME TO TIME

as the Lenders,

CORTLAND CAPITAL MARKET SERVICES LLC,

together with its successors and assigns

as the Administrative Agent

and

CORTLAND CAPITAL MARKET SERVICES LLC,

together with its successors and assigns

as the Collateral Agent

Dated as of November 12, 2021

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AMENDED AND RESTATED CREDIT AND GUARANTY AGREEMENT

THIS AMENDED AND RESTATED CREDIT AND GUARANTY AGREEMENT, dated as of November 12, 2021, is entered into by and among, on the one hand, the lenders identified on the signature pages hereof, **CORTLAND CAPITAL MARKET SERVICES LLC** ("Cortland"), as the administrative agent for the Lenders (in such capacity, together with its successors and permitted assigns in such capacity, "Administrative Agent"), and as the collateral agent for the Lenders (in such capacity, together with its successors and permitted assigns in such capacity, "Collateral Agent" and, together with the Administrative Agent, the "Agents"), and, on the other hand, **ARES COMMERCIAL REAL ESTATE CORPORATION**, a Maryland corporation ("Borrower"), **ACRC HOLDINGS LLC**, a Delaware limited liability company ("ACRC Holdings"), **ACRC MEZZ HOLDINGS LLC**, a Delaware limited liability company ("ACRC Mezz") and **ACRC WAREHOUSE HOLDINGS LLC**, a Delaware limited liability company ("ACRC Warehouse," together with ACRC Holdings and ACRC Mezz, the "Guarantors" and each individually a "Guarantor").

The parties to this Agreement are party to that certain Credit and Guaranty Agreement, dated as of December 9, 2015 (the "Original Credit Agreement"), as amended by that certain First Amendment thereto, dated as of December 22, 2017 and as may be further amended, supplemented or otherwise modified prior to the date hereof (the Original Credit Agreement, as so amended, supplemented or otherwise modified prior to the date hereof, the "Existing Credit Agreement"); and

Such parties wish to amend and restate in its entirety the Existing Credit Agreement by the execution and delivery of this Agreement, intending that such execution and delivery shall constitute a continuation of the transactions contemplated by the Existing Credit Agreement and not a novation of the Existing Credit Agreement.

ARTICLE I

DEFINITION AND CONSTRUCTION

1.1 Definitions. For purposes of this Agreement (as defined below), the following initially capitalized terms shall have the following meanings:

"A&R Effective Date" shall mean November 12, 2021.

"A&R Effective Date Subsidiary" means any direct wholly-owned Subsidiary of the Borrower formed after the Original Closing Date but on or before the A&R Effective Date.

"A&R Effective Date Term Loan" has the meaning set forth in Section 2.1(a)(ii).

"A&R Effective Date Term Loan Commitment" has the meaning set forth in Section 2.1(a)(ii).

"A&R Effective Date Transactions" means collectively, the transactions to occur on or prior to the A&R Effective Date including the execution and delivery of this Agreement and the performance of this Agreement and the other Loan Documents, the making of the A&R Term Loan Commitment and the borrowing of the A&R Effective Date Term Loans and the use of proceeds thereof.

"ACRC Lender" means ACRC Lender LLC, a Delaware limited liability company.

"ACRC Mezz" has the meaning set forth in the preamble to this Agreement.

"Additional Lender" has the meaning set forth in Section 2.15(b).

"Administrative Agent" has the meaning set forth in the preamble to this Agreement.

"Administrative Questionnaire" means an Administrative Questionnaire in a form supplied by the Administrative Agent.

"Affiliate" means, with respect to any Person, any other Person which, directly or indirectly, controls, is controlled by, or is under common control with, such Person. For purposes of this definition, "control" (together with the correlative meanings of "controlled by" and "under common control with") means possession, directly or indirectly, of the power (a) to vote 10% or more of the securities (on a fully diluted basis) having ordinary voting power for the directors or managing general partners (or their equivalent) of such Person, or (b) to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by contract, or otherwise; provided, that no issuer of a Specified Third Party Securitization shall be considered an "Affiliate" of such Person.

"Agency" means The Federal National Mortgage Association, The Federal Home Loan Mortgage Corporation, The Government National Mortgage Association, the Federal Housing Administration, a division of HUD, and including the Federal Housing Commissioner and the Secretary of HUD where appropriate under the FHA Regulations, United States Department of Housing and Urban Development, Consumer Financial Protection Bureau, an agency of the United States, the U.S. Department of Veterans Affairs, an executive branch department of the United States of America headed by the Secretary of Veterans Affairs, or any successor of the foregoing.

"Agent" or "Agents" has the meaning set forth in the preamble to this Agreement.

"Agent's Account" means a Deposit Account as designated in writing by the applicable Agent to the Borrower and the Lenders form time to time.

"Agent Fee Letter" means that certain fee letter agreement dated as of December 22, 2017 by and between Borrower and Cortland.

"Agent-Related Persons" means any Agent, together with its Affiliates, partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives.

"Agreement" means this Amended and Restated Credit and Guaranty Agreement by and among the Borrower, the Guarantors, the Lenders and the Agents, together with all exhibits and schedules hereto.

"All-In Yield" means, as to any Debt, the yield thereof, whether in the form of interest rate, margin, OID or upfront fees (subject to any applicable "cap," "floor" or limit pursuant to any Swap Agreement); provided that OID and upfront fees shall be equated to interest rate assuming the stated life to maturity at the time of incurrence of the applicable Debt; provided, further, that "All-In Yield" shall not include arrangement fees, structuring fees, underwriting fees or other fees not paid to all providers of such Debt.

"Anti-Corruption Laws" means all laws, rules, and regulations of any jurisdiction applicable to any Loan Party from time to time concerning or relating to bribery or corruption, including without limitation the United States Foreign Corrupt Practices Act of 1977, as amended and other similar legislation in any other jurisdictions.

"Anti-Money Laundering Laws" means applicable laws or regulations in any jurisdiction in which the Borrower or any Loan Party is located or doing business that relates to money laundering, any predicate crime to money laundering, or any financial record keeping and reporting requirements related thereto.

"Applicable Advance Rate" means, for each Borrowing Base Eligible Asset, the percentage as set forth below:

Senior Commercial Real Estate Loan:	75%
Senior Commercial Real Estate Construction Loan:	65%
Subordinated Commercial Real Estate Loan:	50%
Preferred Equity Investment:	45%
Borrowing Base Debt Subsidiary:	50%
Triple Net Leased Properties:	40%

The Applicable Advance Rate for a Borrowing Base Eligible Asset comprised of equity interests in a Borrowing Base Subsidiary (other than a Borrowing Base Debt Subsidiary) shall be determined and applied with respect to each Mortgage Asset held by such Borrowing Base Subsidiary based on the Applicable Advance Rates applicable to such type of Mortgage Asset as set forth above.

"Application Event" means the occurrence of (a) a failure by the Borrower to repay in full all of the Obligations on the Maturity Date, or (b) an Event of Default and the election by the Required Lenders to require that payments and Proceeds of Collateral be applied pursuant to Section 2.3(a)(ii)(E) and (F) of this Agreement.

"Approved Fund" means any fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

"Asset" means any interest of a Person in any kind of property or asset, whether real, personal, or mixed real and personal, or whether tangible or intangible; provided, that "Assets" shall be determined without regard to the effects of consolidation of any issuer of a Specified Third Party Securitization on the financial statements of such Person under Accounting Standards Codification Section 810, as amended, modified or supplemented from time to time, or otherwise under GAAP.

"Asset Coverage Ratio" means, at any date, the ratio of (a) the Borrowing Base to (b) the aggregate principal amount of the Loans outstanding under this Agreement.

"Assigned Value" means, as of any date of determination, as to any single asset included as a Borrowing Base Eligible Asset, the value of such Borrowing Base Eligible Asset as of such date of determination as set forth below:

(a) at any time prior to the occurrence of a VAE:

(i) which is a Mortgage Asset shall, in each case, be the current outstanding principal balance of such Borrowing Base Eligible Asset (net of any specific reserves);

(ii) which is comprised of the equity interests of a Borrowing Base Debt Subsidiary shall be the excess of (A) the current outstanding principal balance of the Mortgage Assets held by such Borrowing Base Debt Subsidiary (net of any specific reserves) over (B) the current outstanding principal balance of the associated Warehousing Debt, Securitization Indebtedness and/or all other debt outstanding related to such Mortgage Assets (net of any specific reserves);

(iii) which is comprised of the equity interests of a Borrowing Base Subsidiary that is not a Borrowing Base Debt Subsidiary, shall be the current outstanding principal balance of the Mortgage Assets held by such Borrowing Base Subsidiary (net of any specific reserves, outstanding Debt and other liabilities);

(iv) which is a Triple Net Leased Property, the purchase price (net of any outstanding Debt and other liabilities); and

(v) for all other Borrowing Base Eligible Assets, the current outstanding principal balance of such Borrowing Base Eligible Assets (net of any specific reserves, outstanding Debt and other liabilities);

(b) At any time following the occurrence of a VAE, the "Assigned Value" in respect of any Borrowing Base Eligible Asset:

(i) which is either a Senior Commercial Real Estate Loan, a Senior Commercial Real Estate Construction Loan or a Borrowing Base Eligible Asset that is not covered under clauses (ii) through (vi) below and has experienced a VAE under clause (i), (ii) or (iii) of the definition thereof, the Assigned Value determined in clause (a)(i) above; provided that if such Assigned Value is disputed by the Required Agents,

which notice of such dispute shall be delivered to the Borrower in writing within five (5) business days after the Agents receive notice that a VAE has occurred with respect to such Borrowing Base Eligible Assets, the Determined Valuation shall apply;

(ii) which is either a Subordinated Commercial Real Estate Loan, Preferred Equity Investment or Triple Net Leased Property and has experienced a VAE under clause (i) or (ii) of the definition thereof, for the first 30 days after the VAE, 50% times the Assigned Value determined pursuant to clause (a)(i) above and, thereafter for so long as such VAE continues to apply, zero (unless a valuation by a valuation agent has been obtained by the Borrower, in which case, the Determined Valuation shall apply);

(iii) which is either a Subordinated Commercial Real Estate Loan, Preferred Equity Investment or Triple Net Leased Property and has experienced a VAE under clause (iii), (iv) or (vi) of the definition thereof, for the first 30 days after the VAE, 75% times the Assigned Value determined pursuant to clause (a)(i) above and, thereafter for so long as such VAE continues to apply, zero (unless a valuation by a valuation agent has been obtained by the Borrower, in which case, the Determined Valuation shall apply);

(iv) which is comprised of the equity interests of a Borrowing Base Debt Subsidiary and has experienced a VAE under clause (i) or (ii) of the definition thereof (and which Assigned Value shall only be applied to the particular underlying Mortgage Asset(s) which has experienced a VAE), for the first 30 days after such VAE, 50% times the Assigned Value determined pursuant to clause (a)(ii) above and, thereafter for so long as such VAE continues to apply, zero (unless a valuation by a valuation agent has been obtained by the Borrower, in which case, the Determined Valuation shall apply);

(v) which is comprised of the equity interests of a Borrowing Base Debt Subsidiary and has experienced a VAE under clause (v) of the definition thereof, clause (vi) of the definition thereof (but only to the extent the occurrence of a material modification of an Borrowing Base Eligible Asset or a Mortgage Asset held by a Borrowing Base Debt Subsidiary results in a modification that has a material adverse effect on such Borrowing Base Debt Subsidiary) or clause (vii) of the definition thereof, for the first 30 days after such VAE, 75% times the Assigned Value determined pursuant to clause (a)(ii) above and, thereafter for so long as such VAE continues to apply, zero (unless a valuation by a valuation agent has been obtained by the Borrower, in which case, the Determined Valuation shall apply); and

(vi) which is comprised of the equity interests of a Borrowing Base Subsidiary that is not a Borrowing Base Debt Subsidiary (and which Assigned Value shall be applied only to the particular underlying Mortgage Asset(s) which has experienced a VAE), the Assigned Value shall be determined and applied with

respect to each Mortgage Asset held by such Borrowing Base Subsidiary based on clauses (i), (ii), (iii) and (vii) of this section (b).

"Assignment and Acceptance" means an Assignment and Acceptance Agreement substantially in the form of Exhibit A-1 or such other form approved by the Administrative Agent.

"B Note" means a promissory note secured by a mortgage on multi-family or commercial real estate property, which note is subordinate in right of payment to one or more separate promissory notes secured by the same property.

"Bank Product" means any financial accommodation extended to a Loan Party by a Bank Product Provider in connection with Swap Agreements.

"Bank Product Agreements" means those agreements entered into from time to time by any Loan Party with a Bank Product Provider in connection with the obtaining of any of the Bank Products.

"Bank Product Obligations" means all obligations, liabilities, contingent reimbursement obligations, fees, and expenses owing by any Loan Party to any Bank Product Provider pursuant to or evidenced by the Bank Product Agreements and irrespective of whether for the payment of money, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising.

"Bank Product Provider" means each counterparty to any Loan Party under a Bank Product Agreement.

"Bankruptcy Code" means Title 11 of the United States Code, as amended or supplemented from time to time, and any successor statute, and all of the rules and regulations issued or promulgated in connection therewith.

"Bankruptcy Plan" has the meaning set forth in Section 9.1(f)(iii).

"Basel III" means the agreements on capital requirements, leverage ratio and liquidity standards contained in "Basel III: A global regulatory framework for more resilient banks and banking systems", "Basel III: International framework for liquidity risk measurement, standards and monitoring" and "Guidance for national authorities operating the countercyclical capital buffer" published by the Basel Committee on Banking Supervision on 16 December 2010, each as amended, supplemented or restated.

"Board of Directors" means, as to any Person, the board of directors (or comparable managers) of such Person, or any committee thereof duly authorized to act on behalf of the board of directors (or comparable managers).

"Board of Governors" means the Board of Governors of the Federal Reserve System of the United States of America, or any successor thereto.

"Borrower" has the meaning set forth in the introduction to this Agreement.

"Borrower Affiliate" means any Affiliate of the Borrower (other than a natural Person, or a holding company, investment vehicle or trust for or owned and operated for the primary benefit of a natural Person or the Borrower and its Subsidiaries).

"Borrower DACA" means the deposit account control agreement by and among the Borrower, Bank of America, N.A. and the Collateral Agent respect to the Borrower's deposit account number 8188693212.

"Borrowing Base" means, as of any date of determination, the sum of the Borrowing Base Value of each Borrowing Base Eligible Asset as of such date as determined by the most recent Borrowing Base Certificate and adjusted as reflected in any Determined Valuation; provided that, at the time of origination or purchase by the Borrower or its Subsidiaries of a Borrowing Base Eligible Asset, the allocated Borrowing Base Value of any single property underlying any Borrowing Base Eligible Asset shall not comprise in excess of 10.0% of the total Borrowing Base Value of all Borrowing Base Eligible Assets (and any such excess shall be disregarded for purposes of determining the Borrowing Base); provided, further, that the Borrowing Base shall be recalculated on (i) the last day of each fiscal quarter, (ii) the date on which any Loan is requested and (iii) the date on which the Borrower has actual knowledge of a VAE.

"Borrowing Base Certificate" means a certificate, signed and certified as accurate and complete by a Responsible Officer of the Borrower, in substantially the form of Exhibit B-2.

"Borrowing Base Debt Subsidiary" means any Subsidiary of the Borrower listed on Schedule C-2 that has associated Warehousing Debt, Securitization Indebtedness or other debt outstanding; provided, that, such Subsidiary shall be a "Borrowing Base Debt Subsidiary" only to the extent that the Borrower, directly or indirectly, holds all of the non-rated debt issued in connection with any Securitization Transaction and all of the preferred or other equity interests and all risk retention interests related to any such Warehousing Debt, Securitization Indebtedness or other debt, as applicable.

"Borrowing Base Deficiency" means the circumstance that exists in the event that the outstanding aggregate principal amount of the Loans outstanding under this Agreement exceeds the Borrowing Base on any date of determination

"Borrowing Base Eligibility Criteria" means, with respect to an asset which the Borrower represents and warrants is a Borrowing Base Eligible Asset:

(i) Such asset is (x) held by the Borrower or a Subsidiary thereof (other than a Borrowing Base Subsidiary) and is (A) a Senior Commercial Real Estate Loan, (B) a Subordinated Commercial Real Estate Loan, (C) a Preferred Equity Investment (directly or indirectly), (D) a Senior Commercial Real Estate Construction Loan acceptable to the Required Lenders (in their sole discretion) , or (E) such other asset (including an interest in a CRE-CLO and/or CMBS)

acceptable to the Required Lenders (in their sole and absolute discretion), (y) an equity interest in a Borrowing Base Subsidiary that is not a Borrowing Base Debt Subsidiary, which subsidiary holds (directly or indirectly), any asset referred to in subclause (x) of this clause (i) that would otherwise qualify as Borrowing Base Eligible Asset or (z) an equity interest in a Borrowing Base Debt Subsidiary that (A) owns (directly or indirectly), any asset referred to in subclause (x) of this clause (i) that would otherwise qualify as Borrowing Base Eligible Assets and (B) to the extent the Borrowing Base Debt Subsidiary owns any asset of the type set forth in subclauses (x)(B) or (x)(C) of this clause (i), such assets do not exceed 15% of the total assets held by such subsidiary as measured by the respective outstanding principal balance of all assets held by such subsidiary, including, without limitation, any assets of the type set forth in subclauses (x)(B) or (x)(C) of this clause (i);

(ii) such asset (or, in the case of any Borrowing Base Subsidiary, the associated Mortgage Asset), together with the underlying loan documents related thereto (A) is in full force and effect and constitutes the legal, valid and binding obligation of the obligor thereunder (subject to customary qualifications and exceptions), (B) is not subject to any material litigation or dispute and (C) contains provisions that the obligor's payment obligations thereunder are absolute and unconditional without any right of rescission, setoff, counterclaim or defense against the holder thereof (subject to customary qualifications and exceptions);

(iii) such asset (or, in the case of any Borrowing Base Subsidiary, the associated Mortgage Asset) and any related collateral are each in compliance in all material respects with any applicable laws (subject to customary qualifications and exceptions);

(iv) at the time of purchase or origination (as applicable), such asset (or, in the case of any Borrowing Base Subsidiary, the associated Mortgage Asset) is not in payment default. At any time thereafter, such asset or Mortgage Asset is not in payment default after giving effect to any applicable grace, cure or notice periods (as such periods may be extended);

(v) for any Subordinated Commercial Real Estate Loan or Preferred Equity Investment, such asset (or, in the case of any Borrowing Base Subsidiary, the associated Mortgage Asset) is eligible to be sold and does not by its terms prohibit the granting of a security interest therein, subject to Section 6.2(d);

(vi) such asset (or, in the case of any Borrowing Base Subsidiary, the associated Mortgage Asset) does not contain a confidentiality provision that would prohibit the Agents from reviewing the asset and underlying loan documentation (notwithstanding that the Agents are advised of the confidential nature of information relating to the asset and agrees to keep such information confidential);

(vii) the applicable Subsidiary of the Borrower has good and marketable title to, and is the sole owner of, such asset (or, in the case of any Borrowing Base Subsidiary, the associated Mortgage Asset) subject, in the case of Mortgage Assets of Borrowing Base Debt Subsidiaries, to the terms of the associated Warehousing Debt, Securitization Indebtedness or other applicable debt;

(viii) such asset (or, in the case of any Borrowing Base Subsidiary, the associated Mortgage Asset) will not cause the Borrower to be required to register as an investment company under the Investment Company Act of 1940;

(ix) such asset (or, in the case of any Borrowing Base Subsidiary, the associated Mortgage Asset) is not a Margin Security;

(x) for any Subordinated Commercial Real Estate Loan or Preferred Equity Investment, whether held directly or by a Borrowing Base Subsidiary or Borrowing Base Debt Subsidiary, the loan to value percentage of all indebtedness senior to such asset (or, in the case of any Borrowing Base Subsidiary or Borrowing Base Debt Subsidiary, the associated Mortgage Asset) does not exceed 80%;

(xi) such asset is cash or Cash Equivalents held in a Deposit Account that is the subject of a control agreement in favor of the Collateral Agent for the benefit of the Secured Parties; provided that, any cash or Cash Equivalents pledged under Section 6.2(c) to secure Debt permitted under Section 6.1(o) shall not be a Borrowing Base Eligible Asset;

(xii) such asset is (x) a Triple Net Leased Property or (y) an equity interest in a Subsidiary of the Borrower that owns a Triple Net Leased Property; and

(xiii) such asset does not include any option that would allow the tenant on the property to purchase the property;

(xiv) for any Securities that are encumbered by or otherwise subject to a Permitted Collateral Lien (other than in respect to Liens arising pursuant to clauses (d) and (g) of the definition thereof) such Securities have not been encumbered by or otherwise subject to such Permitted Collateral Lien for longer than 10 Business Days after Borrower or any Grantor, as applicable, obtains knowledge thereof.

"Borrowing Base Eligible Assets" means (a) on and from the A&R Effective Date, the assets set forth on Schedule C-1 and (b) as of any date of determination after the A&R Effective Date, the assets that (pursuant to a Borrowing Base Certificate) the Borrower has represented and warranted satisfies the Borrowing Base Eligibility Criteria (except to the extent compliance with any one or more of such Borrowing Base Eligibility Criteria is waived by the Agents in writing with respect to any such asset); provided that Liens arising pursuant to clauses (d) and (g) of the definition of Permitted Collateral Liens shall not be subject to such 10 Business Day limitation.

"Borrowing Base Subsidiary" means any Subsidiary of the Borrower whose equity interests constitute Borrowing Base Eligible Assets pursuant to subclauses (i)(y) or (i)(z) of the definition of Borrowing Base Eligibility Criteria and shall include, without limitation, all Borrowing Base Debt Subsidiaries listed on Schedule C-2.

"Borrowing Base Value" means, with respect to any Borrowing Base Eligible Asset as of any date of determination, the sum of (a) product of (x) the Applicable Advance Rate for such Borrowing Base Eligible Asset as of such date and (y) the Assigned Value of such Borrowing Base Eligible Asset as of such date, *plus* (b) the consolidated unrestricted cash and Cash Equivalent of the Borrower and its Subsidiaries.

"Business Day" means a day when major commercial banks are open for business in New York, New York, other than Saturdays or Sundays.

"Capitalized Lease Obligations" means with respect to any Person, the amount of all obligations of such Person to pay rent or other amounts under a lease of property to the extent and in the amount that such obligations are required to be classified and accounted for as a capital lease on a balance sheet of such Person in accordance with GAAP.

"Cash Cure Amount" has the meaning set forth in Section 7.3(c).

"Cash Equivalents" means (a) marketable direct obligations issued by, or unconditionally guaranteed by, the United States or issued by any agency thereof and backed by the full faith and credit of the United States, in each case maturing within 1 year from the date of acquisition thereof, (b) marketable direct obligations issued by any state of the United States or any political subdivision of any such state or any public instrumentality thereof maturing within 1 year from the date of acquisition thereof and, at the time of acquisition, having one of the two highest ratings obtainable from either Standard & Poor's Rating Group ("S&P") or Moody's Investors Service, Inc. ("Moody's"), (c) commercial paper maturing no more than 270 days from the date of creation thereof and, at the time of acquisition, having a rating of at least A-1 from S&P or at least P-1 from Moody's, (d) certificates of deposit or bankers' acceptances maturing within 1 year from the date of acquisition thereof issued by any bank organized under the laws of the United States or any state thereof having at the date of acquisition thereof combined capital and surplus of not less than $250,000,000, (e) demand deposit accounts maintained with any bank organized under the laws of the United States or any state thereof having combined capital and surplus of not less than $1,000,000,000, so long as the amount maintained with any individual bank is less than or equal to $1,000,000 and is insured by the Federal Deposit Insurance Corporation, or larger amounts, to the extent that such amounts are covered by insurance which is reasonably satisfactory to the Required Agents, (f) demand deposit accounts maintained with any of the financial institutions listed on Schedule A-2 hereto (as may be modified from time to time with the consent of the Required Agents, which consent shall not be unreasonably withheld or delayed), Affiliates thereof, or any Lender that is a bank that is insured by the Federal Deposit Insurance Corporation, and (g) Investments in money market funds substantially all of whose assets are invested in the types of assets described in clauses (a) through (e) above.

"Change in Law" means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty. (b) any change in law, rule or treaty in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued.

"Change of Control Event" means the occurrence of any of the following events has occurred without the prior written approval of the Required Lenders:

(a) any "person" or "group" (within the meaning of Section 13(d) or 14(d) of the Exchange Act) shall become, or obtain rights (whether by means of warrants, options or otherwise) to become, the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Exchange Act), directly or indirectly, of a percentage of the total voting power of all classes of capital stock of the Borrower entitled to vote generally in the election of directors, of thirty-five percent (35%) or more;

(b) the Borrower shall cease to maintain its status as a publicly traded REIT;

(c) the consummation of a merger or consolidation of the Borrower with or into another entity or any other reorganization of the Borrower pursuant to which the Borrower is not the surviving entity following such merger, consolidation or reorganization;

(d) a transfer of all or substantially all of the Borrower's Assets (excluding any transfer in connection with any Securitization Transaction or any repurchase or other similar transactions);

provided that, notwithstanding anything to the contrary herein, any event that does not result in a Change of Manager Event, will not constitute a Change of Control Event.

"Change of Manager Event" means Ares Management, L.P. or any of its Affiliates ceases to be the manager of the Borrower and a replacement for such manager, which replacement shall be approved by the Required Lenders (in their sole discretion), has not occurred within 90 days.

"City National Bank Facility" means that certain Credit Agreement dated as of March 12, 2014, by and among ACRC Lender, the lenders party thereto and City National Bank, as arranger and administrative agent (as amended by Amendment Number One to Credit Agreement and Consent, dated July 30, 2014, by and among the Lenders (as defined therein) party thereto, City National Bank, as administrative agent and ACRC Lender, as further amended by the Amendment Number Two to Credit Agreement, dated August 17, 2015, by and among the

Lenders (as defined therein) party thereto, City National Bank, as administrative agent and ACRC Lender, as further amended by the Amendment Number Three to Credit Agreement, dated February 26, 2016, by and among the Lenders (as defined therein) party thereto, City National Bank, as administrative agent and ACRC Lender, as further amended by the Amendment Number Four to Credit Agreement and Amendment Number One to General Continuing Guaranty, dated December 27, 2016, by and among the Lenders (as defined therein) party thereto, City National Bank, as administrative agent and ACRC Lender, as further amended by the Amendment Number Five to Credit Agreement, dated March 2, 2017, by and among the Lenders (as defined therein) party thereto, City National Bank, as administrative agent and ACRC Lender, as further amended by the Amendment Number Six to Credit Agreement, dated April 19, 2017, by and among the Lenders (as defined therein) party thereto, City National Bank, as administrative agent and ACRC Lender and as further amended by the Amendment Number Seven to Credit Agreement, dated June 5, 2019, by and among the Lenders (as defined therein) party thereto, City National Bank, as administrative agent and ACRC Lender), as amended, restated, amended and restated, refinanced, renewed, replaced, supplemented or otherwise modified from time to time.

"Code" means the Internal Revenue Code of 1986, as amended or supplemented from time to time, and any successor statute, and all of the rules and regulations issued or promulgated in connection therewith.

"Collateral" has the meaning ascribed thereto in the Security Agreement; provided, however, that, to the extent such Collateral is denominated in a currency, such denomination shall be in Dollars.

"Collateral Agent" has the meaning set forth in the preamble to this Agreement.

"Collateral Agent's Liens" means the Liens granted by any Loan Party to the Collateral Agent, for the benefit of the Lenders, under the Loan Documents.

"Collateral Detail Report" means a report in the form of Exhibit R-3 attached hereto.

"Collections" means all cash, checks, notes, instruments, and other items of payment.

"Commitments" means any Term Loan Commitment, Incremental Term Loan Commitment or Delayed Draw Term Loan Commitment, as applicable.

"Commodity Exchange Act" means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

"Compliance Certificate" means a certificate duly executed by a Responsible Officer of the Borrower, substantially in the form of Exhibit P-1.

"Connection Income Taxes" means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

"Contingent Obligation" means, as to any Person and without duplication of amounts, any written obligation of such Person guaranteeing or intended to guarantee (whether guaranteed, endorsed, co-made, discounted, or sold with recourse to such Person) any Debt, noncancellable lease, dividend, reimbursement obligations relating to letters of credit, or any other obligation that pertains to Debt, a noncancellable lease, a dividend, or a reimbursement obligation related to letters of credit (each, a "primary obligation") of any other Person ("primary obligor") in any manner, whether directly or indirectly, including any written obligation of such Person, irrespective of whether contingent, (a) to purchase any such primary obligation, (b) to advance or supply funds (whether in the form of a loan, advance, stock purchase, capital contribution, or otherwise) (i) for the purchase, repurchase, or payment of any such primary obligation or any Asset constituting direct or indirect security therefor, or (ii) to maintain working capital or equity capital of the primary obligor, or otherwise to maintain the net worth, solvency, or other financial condition of the primary obligor, or (c) to purchase or make payment for any Asset, securities, services, or noncancellable lease if primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation.

"Contractual Obligation" means, as applied to any Person, any indenture, mortgage, deed of trust, contract, undertaking, agreement, or other instrument to which that Person is a party or by which any of its Assets is subject.

"Cortland" has the meaning set forth in the introduction to this Agreement.

"Credit Facilities" means each of (a) the Term Loan Commitments and the Initial Term Loans and the A&R Effective Date Term Loans made thereunder (the "Term Loan Facility"), (b) the Delayed Draw Term Loan Commitments and the Delayed Draw Term Loans made thereunder (the "Delayed Draw Term Loan Facility") and (c) the Incremental Term Commitments and the Incremental Term Loans made thereunder.

"Cure Expiration Date" has the meaning set forth in Section 7.3(a).

"Debt" means, with respect to any Person, (a) all indebtedness, whether or not represented by bonds, debentures, notes, securities, or other evidences of indebtedness, for the repayment of money borrowed, (b) all indebtedness representing deferred payment of the purchase price of property or Assets, exclusive of trade payables that are due and payable in the ordinary course of such Person's business, (c) all Capitalized Lease Obligations of such Person and (d) all indebtedness currently due under guaranties, endorsements, assumptions, or other Contingent Obligations in respect of the foregoing; *provided* that "Debt" shall be determined without regard to the effects of consolidation of any issuer of a Specified Third Party Securitization on the financial statements of such Person under Accounting Standards Codification Section 810, as amended, modified or supplemented from time to time, or otherwise under GAAP.

"Debt Service" means, for any Test Period, the sum of (a) Interest Expense for the Borrower and the Guarantors determined on a consolidated basis for such period, and (b) all regularly scheduled principal payments made with respect to Indebtedness of Guarantor and its

Subsidiaries during such period, other than (i) any voluntary or involuntary prepayment or (ii) prepayment occasioned by the repayment of an underlying asset, or any balloon, bullet, margin or similar principal payment which repays such Indebtedness in part or in full.

"Debtor Relief Laws" means the Bankruptcy Code, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization or similar debtor relief laws of the United States of America or other applicable jurisdictions from time to time in effect.

"Default" means an event, act, or occurrence which, with the giving of notice or the passage of time, would become an Event of Default.

"Defaulting Lender" means any Lender that (a) has failed to (i) fund all or any portion of its Loans within two Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Agents and the Borrower in writing that such failure is the result of such Lender's good faith determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Agents or any other Lender any other amount required to be paid by it hereunder within two (2) Business Days of the date when due, (b) has notified the Borrower or the Agents in writing that it does not intend to comply with its funding obligations hereunder, or has, subject to Section 11.12, made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's good faith determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three (3) Business Days after written request by the Agents or the Borrower, to confirm in writing to the Agents and the Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Agents and the Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, or (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Required Agents that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender upon delivery of written notice of such determination to the Borrower and each Lender; provided

that either Agent can declare the other Agent to be a Defaulting Lender under any one or more of clauses (a) through (d) above.

"Defaulting Lender Rate" means the Federal Funds Rate.

"Delayed Draw Availability Period" shall mean the period from and including the day after the A&R Effective Date until and including January 12, 2022

"Delayed Draw Funding Date" has the meaning assigned to such term in Section 2.12(a).

"Delayed Draw Term Loan Commitment" shall mean, with respect to each Lender, the commitment, if any, of such Lender to make Delayed Draw Term Loans to the Borrower hereunder in a principal amount not to exceed the amount set forth under the heading "Delayed Draw Term Loan Commitment" opposite such Lender's name on Annex A-2 or in the Assignment and Acceptance pursuant to which such Lender assumed its Delayed Draw Term Loan Commitment, as applicable, as the same may be reduced from time to time pursuant to Section 2.8. The total amount of the Delayed Draw Term Loan Commitments as of the A&R Effective Date is $50,000,000. The total amount of the Delayed Draw Term Loan Commitments to be funded on the A&R Effective Date is $50,000,000.

"Delayed Draw Term Loans" has the meaning set forth in Section 2.1(b)(i).

"Delayed Draw Term Loan Facilities" has the meaning set forth in the definition of "Credit Facilities".

"Delayed Draw Term Loan Lender" means each Lender that has a Delayed Draw Term Loan Commitment or that holds a Delayed Draw Term Loan.

"Deposit Account" means any "deposit account" (as that term is defined in the UCC).

"Designated Account" means account number 8188090603 of the Borrower maintained with Bank of America, N.A., or such other deposit account of the Borrower (located within the United States) designated, in writing, from time to time, by the Borrower to the Agents.

"Determined Valuation" has the meaning set forth in Section 11.5.

"Distribution" has the meaning set forth in Section 6.4.

"Dollars" or "$" means United States dollars.

"EBITDA" means, with respect to any Person and for any Test Period, an amount equal to the sum of (a) Net Income (or loss) of such Person (prior to any impact from minority or non-controlling interests or joint venture net income and before deduction of any dividends on preferred stock of such Person), plus the following (but only to the extent actually included in determination of such Net Income (or loss)): (i) depreciation and amortization expense (other than those related to capital expenditures that have not been included in the calculation of Fixed Charges), (ii) Interest Expense, (iii) income tax expense, (iv) extraordinary or non-recurring

gains, losses and expenses including but not limited to transaction expenses relating to business combinations, other acquisitions and unconsummated transactions, (v) unrealized loan loss reserves, impairments and other similar charges and (vi) unrealized gains, losses and expenses associated with (A) derivative liabilities including but not limited to convertible note issuances and (B) mortgage servicing rights (other than the initial revenue recognition of recording an asset), plus (b) such Person's proportionate share of Net Income (prior to any impact from minority or noncontrolling interests or joint venture net income and before deduction of any dividends on preferred stock of such Person) of the joint venture investments and unconsolidated Affiliates of such Person, all with respect to such period.

"Eligible Assignee" means any Person that meets the requirements to be an assignee under Section 9.1(b)(iii), (v) and (vi) (subject to such consents, if any, as may be required under Section 9.1(b)(iii)); provided however, that "Eligible Assignee" shall not include (a) any natural Person or (b) any Defaulting Lender, its parent, any of its Subsidiaries or any Person who, upon becoming a Lender hereunder, would constitute a Defaulting Lender or a Subsidiary thereof.

"Environmental Law" means any federal, state, provincial, foreign or local statute, law, rule, regulation, ordinance, code, binding and enforceable guideline, binding and enforceable written policy, or rule of common law now or hereafter in effect and in each case as amended, or any legally binding judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree or judgment, in each case, to the extent applicable to Borrower or any of its Subsidiaries, relating to the environment, the effect of the environment on employee health, or Hazardous Materials, in each case as amended from time to time.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time, the regulations promulgated thereunder and any successor thereto.

"ERISA Affiliate" means any trade or business (whether or not incorporated) that, together with any Loan Party, is treated as a single employer under Section 414(b) or (c) of the Code, or solely for purposes of Section 302 or 303 of ERISA or Section 412 or 430 of the Code, is treated as a single employer under Section 414 of the Code. Any former ERISA Affiliate of the Loan Parties shall continue to be considered an ERISA Affiliate of the Loan Parties within the meaning of this definition with respect to the period such entity was an ERISA Affiliate of any Loan Party and with respect to liabilities arising after such period for which any Loan Party could be liable under the Code or ERISA.

"ERISA Event" means (a) a "reportable event" within the meaning of Section 4043 of ERISA and the regulations issued thereunder with respect to any Single Employer Plan (excluding those for which the provision for 30 day notice to the PBGC has been waived by regulation in effect on the date hereof); (b) the failure to meet all applicable requirements of the Pension Funding Rules with respect to any Single Employer Plan, whether or not waived; (c) the filing of an application for a waiver of the minimum funding standards under the Pension Funding Rules with respect to any Single Employer Plan; (d) the termination of any Single Employer Plan or the withdrawal or partial withdrawal of any Loan Party from any Single Employer Plan or Multiemployer Plan; (e) a determination that any Single Employer Plan is, or is expected to be, in "at risk" status (as defined in Section 430 of the Code or Section 303 of

ERISA); (f) a determination that any Multiemployer Plan is, or is expected to be, in "critical" or "endangered" status under Section 432 of the Code or Section 305 of ERISA; (g) the receipt by any Loan Party or any of their respective ERISA Affiliates from the PBGC or a plan administrator of any notice relating to an intention to terminate any Single Employer Plan or to appoint a trustee to administer any Single Employer Plan; (h) the adoption of any amendment to a Single Employer Plan that would require the provision of security pursuant to Section 436(f) of the Code; (i) the receipt by any Loan Party or any of their respective ERISA Affiliates of any notice, or the receipt by any Multiemployer Plan from any Loan Party or any of their respective ERISA Affiliates of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent, within the meaning of Title IV of ERISA; (j) the failure by any Loan Party or any of their respective ERISA Affiliates to make a required contribution to a Multiemployer Plan; (k) the occurrence of a nonexempt prohibited transaction (within the meaning of Section 4975 of the Code or Section 406 of ERISA) which could reasonably be expected to result in material liability to any Loan Party; (l) the receipt from the IRS of notice of disqualification of any Plan intended to qualify under Section 401(a) of the Code, or the disqualification of any trust forming part of any Plan intended to qualify for exemption from taxation under Section 501(a) of the Code; (m) the imposition of a lien pursuant to Section 430(k) of the Code or Section 303(k) of ERISA or a violation of Section 436 of the Code with respect to any Single Employer Plan; (n) the assertion of a material claim (other than routine claims for benefits) against any Plan other than a Multiemployer Plan or the assets thereof, or against any Loan Party or any of their respective ERISA Affiliates in connection with any Plan; or (o) the occurrence of an act or omission which could give rise to the imposition on any Loan Party or any of their respective ERISA Affiliates of any fine, penalty, tax or related charge under Chapter 43 of the Code or under Section 409, Section 502(c), (i) or (l), or Section 4071 of ERISA in respect of any Plan.

"Erroneous Payment" has the meaning set forth in Section 10.21 of this Agreement.

"Event of Default" has the meaning set forth in Article VII of this Agreement.

"Excess Refinancing Indebtedness" has the meaning set forth in Section 6.1(p) of this Agreement.

"Exchange Act" means the Securities Exchange Act of 1934, as amended or supplemented from time to time, and any successor statute, and all of the rules and regulations issued or promulgated in connection therewith.

"Excluded Assets" has the meaning as set forth in the Security Agreement.

"Excluded Information" means any non-public information with respect to the Borrower or its Subsidiaries or any of their respective securities to the extent such information could have a material effect upon, or otherwise be material to, an assigning Lender's decision to assign Initial Term Loans or A&R Effective Date Term Loans or a purchasing Lender's decision to purchase Initial Term Loans or A&R Effective Date Term Loans.

"Excluded Swap Obligation" means, with respect to any Guarantor, (x) as it relates to all or a portion of the Guaranty of such Guarantor, any Swap Obligation if, and to the extent that, such Swap Obligation (or any Guaranty thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act and the regulations thereunder at the time the Guaranty of such Guarantor becomes effective with respect to such Swap Obligation or (y) as it relates to all or a portion of the grant by such Guarantor of a security interest, any Swap Obligation if, and to the extent that, such Swap Obligation (or such security interest in respect thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act and the regulations thereunder at the time the security interest of such Guarantor becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guaranty or security interest is or becomes illegal.

"Excluded Taxes" means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Recipient with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Recipient acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower under Section 11.2) or (ii) such Recipient changes its lending office, except in each case to the extent that, pursuant to Section 10.11, amounts with respect to such Taxes were payable either to such Recipient's assignor immediately before such Recipient became a party hereto or to such Recipient immediately before it changed its lending office, (c) Taxes attributable to such Recipient's failure to comply with Section 10.11(b), (c) or (g) and (d) any U.S. federal withholding Taxes imposed under FATCA.

"Executive Order No. 13224" means the Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, as the same as been, or shall hereafter be, renewed, extended, amended or replaced.

"Existing Credit Agreement" has the meaning set forth in the preamble hereto.

"Expenses Cap" has the meaning set forth in Section 8.1 of this Agreement.

"Extraordinary Restricted Payments" means (i) the purchase, redemption, or retirement for value by the Borrower of any of their respective Securities or the making of special

distributions by the Borrower of capital to their respective stockholders not otherwise in the ordinary course of business (specifically excluding any dividends or distributions by the Borrower necessary for it to maintain its status as a REIT) or (ii) voluntary repurchases or prepayments of unsecured Debt (other than in respect of scheduled maturities or principal amortization).

"FATCA" means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code, any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to such intergovernmental agreement.

"Fixed Charges" means, with respect to the Borrower or any Guarantor at any time, the sum of (a) Debt Service, (b) all preferred dividends that the Borrower or any Guarantor is required, pursuant to the terms of the certificate of designation or other similar document governing the rights of preferred shareholders, to pay and is not permitted to defer, (c) capital lease obligations paid or accrued during such period, and (d) any amounts payable under any ground lease.

"Federal Funds Rate" means, for any day, the rate per annum (rounded upwards, if necessary, to the next 1/100th of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with member banks of the Federal Reserve System, as published by the Federal Reserve Bank of New York on the next succeeding Business Day or if such rate is not so published for any Business Day, the Federal Funds Rate for such day shall be the average rounded upwards, if necessary, to the next 1/100th of 1% of the quotations for such day on such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by the Administrative Agent.

"Federal Reserve Board" means the Board of Governors of the Federal Reserve System or any successor thereto.

"First Amendment Effective Date" means May 8, 2024.

"Fundamental Change" has the meaning set forth in Section 6.5.

"Funding Date" means the date on which any Loan is made by the Lenders.

"Funding Losses" has the meaning set forth in Section 2.5(b)(ii).

"GAAP" means generally accepted accounting principles in the United States of America in effect from time to time.

"Governing Documents" means, with respect to any Person, the certificate or articles of incorporation, by-laws, or other organizational documents of such Person.

"Governmental Authority" means the government of the United States of America or any other nation, or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government**,** including any supranational bodies such as the European Union or the European Central Bank.

"Grantor" has the meaning ascribed thereto in the Security Agreement.

"Guarantors" has the meaning set forth in the preamble hereto (and each individually, a "Guarantor").

"Guaranty" means the Guarantee set forth in Article XII.

"Hazardous Materials" means (a) substances that are defined or listed in, or otherwise classified pursuant to, any applicable laws or regulations as "hazardous substances," "hazardous materials," "hazardous wastes," "toxic substances," or any other formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, or "EP toxicity", (b) oil, petroleum, or petroleum derived substances, natural gas, natural gas liquids, synthetic gas, drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas, or geothermal resources, (c) any flammable substances or explosives or any radioactive materials, and (d) asbestos in any form, toxic mold, mycotoxins, polychlorinated biphenyls or electrical equipment that contains any oil or dielectric fluid containing levels of polychlorinated biphenyls in excess of 50 parts per million.

"Highest Lawful Rate" means the maximum non-usurious interest rate, as in effect from time to time, that may be charged, contracted for, reserved, received, or collected by a Lender in connection with this Agreement or the other Loan Documents.

"Immaterial Subsidiary" means, at any time, any Subsidiary with a Tangible Net Worth on the most recent Test Date of $10,000,000 or less; provided that, at any time, the aggregate Tangible Net Worth attributable to all Immaterial Subsidiaries shall not exceed $30,000,000.

"Incremental Amendment" has the meaning set forth in Section 2.15(f)(i).

"Incremental Facility Closing Date" has the meaning set forth in Section 2.15(d).

"Incremental Lender" has the meaning set forth in Section 2.15(b).

"Incremental Term Commitments" has the meaning set forth in Section 2.15(a).

"Incremental Term Loan" has the meaning set forth in Section 2.15(c).

"Incremental Term Loan Request" has the meaning set forth in Section 2.15(a).

"Indemnified Liabilities" has the meaning set forth in Section 8.2.

"Indemnified Taxes" means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of the Borrower under any Loan Document and (b) to the extent not otherwise described in (a), Other Taxes.

"Indemnitee" has the meaning set forth in Section 8.2.

"Information" has the meaning set forth in Section 11.10.

"Initial Dispute Notice" has the meaning as set forth in Section 11.5.

"Initial Term Loan" has the meaning set forth in Section 2.1(a)(i).

"Initial Valuation" has the meaning as set forth in Section 11.5.

"Initial Valuation Agent" means Duff & Phelps and its affiliates, or such other broker reasonably acceptable to the Required Lenders in consultation with the Borrower.

"Insolvency Proceeding" means any proceeding commenced by or against any Person under any provision of the Bankruptcy Code or under any other state or federal bankruptcy or insolvency law, assignments for the benefit of creditors, formal or informal moratoria, compositions, extensions generally with creditors, or proceedings seeking reorganization, arrangement, or other similar relief.

"Intercompany Subordination Agreement" means an intercompany subordination agreement executed and delivered by the Borrower, any Affiliate of the Borrower and the Agents, the form and substance of which is reasonably satisfactory to the Agents.

"Interest Coverage Ratio" means, at any date, the ratio of (a) EBITDA to (b) Interest Expense.

"Interest Expense" means, with respect to any Person and for any Test Period, the amount of total interest expense incurred by such Person, including capitalized or accruing interest, leases that are treated as capital leases under GAAP, plus such Person's proportionate share of interest expense from the joint venture investments and unconsolidated Affiliates of such Person, all with respect to such period.

"Interest Payment Date" means the last day of each Interest Period and the final Maturity Date of such Loan; *provided*, *however*, that, if any Interest Period for a Loan is longer than three months, the respective dates that fall every three months after the beginning of such Interest Period shall also be Interest Payment Dates.

"Interest Period" means, with respect to any Loan, the period commencing on the date such Loan is made and ending on the date which is three (3) months thereafter or, with respect to the Loan made on the A&R Effective Date, such shorter period as may be agreed by the Administrative Agent, as selected by the Borrower; provided, however, that no Interest Period may extend beyond the Maturity Date. Whenever the last day of any Interest Period would otherwise occur on a day other than a Business Day, the last day of such Interest Period shall be

extended to occur on the next succeeding Business Day, *provided* that if such extension would cause the last day of such Interest Period to occur in the next following calendar month, the last day of such Interest Period shall occur on the next preceding Business Day, and any Interest Period which begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month in which it would have ended if there were a numerically corresponding day in such calendar month.

"Interest Rate" shall mean, for each date, the sum of the following, in each case, on a per annum basis:

(a)(i) after the First Amendment Effective Date but on or prior to May 1, 2025, 4.500%, (ii) after May 1, 2025 but on or prior to August 1, 2025, 4.750%, (iii) after August 1, 2025 but on or prior to November 1, 2025, 5.000%, (iv) after November 1, 2025 but on or prior to February 1, 2026, 5.250%, (v) after February 1, 2026 but on or prior to May 1, 2026, 5.500%, (vi) after May 1, 2026 but on or prior to August 1, 2026, 5.750%, (vii) after August 1, 2026 but on or prior to November 1, 2026, 6.000% and (viii) after November 1, 2026, 6.250%,

(b) if (and only if) as of any date, the outstanding principal balance of the Loan is greater than the Targeted Principal Amount applicable to such date as indicated in the definition of Targeted Principal Amount, 4.000% only during such dates on which on which such circumstance exists and is continuing,

(c) commencing January 1, 2025, as of each Test Date, if (and only if), Tangible Net Worth is,

(i) (A) less than $500,000,000 but (B) equal to or greater than $475,000,000, 0.125% on a quarterly basis (0.500% annualized) accruing from such Test Date (and payable on and following the immediately succeeding reporting date pursuant to Section 5.3(a)) until the end of the three month period following such Test Date; or

(ii) (A) less than $475,000,000 but (B) equal to or greater than $450,000,000, 0.250% on a quarterly basis (1.000% annualized) accruing from such Test Date (and payable on and following the immediately succeeding reporting date pursuant to Section 5.3(a)) until the end of the three month period following such Test Date; or

(iii) (A) less than $450,000,000 but (B) equal to or greater than $425,000,000, 0.375% on a quarterly basis (1.500% annualized) accruing from such Test Date (and payable on and following the immediately succeeding reporting date pursuant to Section 5.3(a)) until the end of the three month period following such Test Date, and

(d) automatically and with written notice of such increase in the interest rate to be provided by the Lenders to the Administrative Agent, after the occurrence or during the continuance of an Event of Default described in Section 7.1(a), Section 7.1(b)(i) but solely as it relates to an Event of Default that has occurred under Section 6.12 (which, for the avoidance of doubt, shall be subject to Section 7.3(a)), Section 7.1(d), Section 7.1(e) and Section 7.1(f), 2.0%,

in each case, from the date of such Event of Default or if later, the date specified in any such notice, until such Event of Default is cured or waived.

"Investment" means, as applied to any Person, any direct or indirect purchase or other acquisition by that Person of, or beneficial interest in, stock, instruments, bonds, debentures or other securities of any other Person, or any direct or indirect loan, advance, or capital contribution by such Person to any other Person, including all indebtedness and accounts receivable due from that other Person that did not arise from sales or the rendition of services to that other Person in the ordinary and usual course of such Person's business, and deposit accounts (including certificates of deposit).

"IRS" means the United States Internal Revenue Service.

"Lender" means each lender that (a) has a Term Loan Commitment or is the holder of an Initial Term Loan or an A&R Effective Date Term Loan, (b) has a Delayed Draw Term Loan Commitment or is the holder of a Delayed Draw Term Loan or (c) has an Incremental Term Commitment or is the holder of an Incremental Term Loan.

"Lender Group" means, individually and collectively, the Lenders and the Agents.

"Lender Group Expenses" has the meaning given in Section 8.1.

"Lender-Related Person" means, with respect to any Lender, such Lender, together with such Lender's Affiliates, officers, directors, employees, attorneys, and agents.

"Lien" means any lien, hypothecation, mortgage, pledge, assignment (including any assignment of rights to receive payments of money or any easement, right-of-way, zoning restriction and similar encumbrance on real property) for security, security interest, charge and encumbrance of any kind (including any conditional sale or other title retention agreement, any lease in the nature thereof, and any agreement to give any security interest).

"Loan Account" has the meaning set forth in Section 2.10.

"Loan Documents" means this Agreement, the Security Agreement, any Notes, the Agent Fee Letter, the Negative Pledge Agreement, the Borrower DACA, the Mezz DACA, any other deposit account control agreements, any Bank Product Agreement relating to Bank Product Obligations that are Secured Obligations, any Swap Agreement relating to Swap Obligations that are Secured Obligations, each Intercompany Subordination Agreement and any and all other documents, agreements, or instruments that have been or are entered into by the Borrower or Guarantor, on the one hand, and the Agents, on the other hand, in connection with the transactions contemplated by this Agreement.

"Loan Party" means Borrower or Guarantor, and "Loan Parties" means, collectively, jointly and severally, the Borrower and the Guarantor.

"Loans" has the meaning set forth in Section 2.1(b)(i).

"Margin Securities" means "margin stock" as that term is defined in Regulation U of the Federal Reserve Board.

"Material Adverse Effect" means a material adverse effect on and/or material adverse developments with respect to (a) the business, operations, properties, assets or financial condition of the Borrower and its Subsidiaries taken as a whole; (b) the ability of the Loan Parties, taken as a whole, to fully and timely perform their Obligations or (c) the validity, binding effect or enforceability against any Loan Party of this Agreement or any other Loan Document to which it is a party.

"Material Agreements" means (a) the Loan Documents and (b) any agreements, documents, contracts, indentures and instruments pursuant to which a default, breach or termination thereof could reasonably be expected to result in a Material Adverse Effect.

"Material Modification" means an amendment, waiver, forbearance or other modification to or with respect to any (a) Borrowing Base Eligible Asset or (b) Borrowing Base Subsidiary (or any associated Mortgage Asset), as applicable, that:

(i) forgives, reduces, waives or forebears from collection one or more payments of principal or interest, or permits any interest payment due in cash to be deferred or capitalized and added to the principal amount of such Borrowing Base Eligible Asset or Mortgage Asset, as applicable (other than as permitted pursuant to the applicable underlying instrument);

(ii) contractually or structurally subordinates such Borrowing Base Eligible Asset or Mortgage Asset, as applicable (other than pursuant to subordination required under the related documents for such Borrowing Base Eligible Asset or Mortgage Asset, as applicable) by operation of a priority of payments, turnover provisions, consents to the transfer or encumbrance of (or waivers or forbears from exercising rights under any provision restricting transfer or encumbrance of any such Borrowing Base Eligible Asset or Mortgage Asset), as applicable, or to a transfer or encumbrance of assets in order to limit recourse to the related obligor or the granting of liens (other than permitted liens) on any of the collateral securing such Borrowing Base Eligible Asset or Mortgage Asset, as applicable, in a manner that materially and adversely affects the value of such Borrowing Base Eligible Asset or Mortgage Asset, as applicable;

(iii) substitutes, alters or releases the collateral securing such Borrowing Base Eligible Asset or Mortgage Asset, as applicable (other than as permitted pursuant to the applicable underlying instrument), and each such substitution, alteration or release, as determined in the sole discretion of the Required Agents, materially and adversely affects the value of such Borrowing Base Eligible Asset or Mortgage Asset, as applicable;

(iv) delays, postpones or extends (A) the maturity date (after giving effect to any contractual rights of extension) for such Borrowing Base Eligible Asset or

Mortgage Asset, as applicable or (B) the required scheduled payments in any way that, individually or in the aggregate, increases the weighted average life of such Borrowing Base Eligible Asset or Mortgage Asset, as applicable, by 0.50 years or more;

(v) modifications of, waivers of, or forbearances from exercising rights with respect to defaults, events of defaults, grace periods, cure periods, or any financial covenants contained in any of the documents governing such Borrowing Base Eligible Asset or Mortgage Asset to the extent such modification, waiver or forbearance materially and adversely affects the value of such Borrowing Base Eligible Asset or Mortgage Asset, in each case, as a whole, as applicable;

(vi) except for any monetary default arising from the occurrence of a maturity date that is permitted to be delayed, postponed, or extended pursuant to clause (iv) above, any waiver of or forbearance from exercising rights with respect to a monetary default involving an amount due under any of the collateral documents to the extent such waiver or forbearance materially and adversely affects the value of such applicable Borrowing Base Eligible Asset or Mortgage Asset, in each case, as a whole; or

(vii) amends, waives, forbears, supplements or otherwise modifies (A) the meaning of "Net Operating Income" or any respective comparable definitions in the underlying loan documents for such Borrowing Base Eligible Asset or Mortgage Asset, as applicable or (B) any term or provision of such underlying loan documents referenced in or utilized in the calculation of "Net Operating Income" or any respective comparable definitions for such Borrowing Base Eligible Asset or Mortgage Asset, as applicable, in either case in a manner that is materially adverse to the Lenders.

"Maturity Date" has the meaning set forth in Section 3.3(a).

"Mezz DACA" means the deposit account control agreement to be entered into by and among ACRC Mezz, Bank of America, N.A. and the Collateral Agent respect to ACRC Mezz's deposit account to be established at Bank of America, N.A.

"Mezzanine Loan" means a whole loan (or interest therein) subordinate to a senior loan that is secured by one or more direct or indirect ownership interests in a Person owning, operating or controlling, directly or indirectly, one or more multi-family or commercial real estate properties that are either fully constructed or undergoing full or partial construction or renovation.

"Minimum Tangible Net Worth Amount" means, with respect to each Test Date,

(i) if the outstanding principal balance of the Loan is greater than or equal to $130 million as of such day, an amount equal to the product of (x) such outstanding principal balance as of such day and (y) 3.75,

(ii) if the outstanding principal balance of the Loan is less than $130 million but greater than or equal to $110 million, in each case, as of such day, an amount equal to the lesser of (A) the product of (x) such outstanding principal balance as of such day and (y) 4.00 and (B) $487,500,000,

(iii) if the outstanding principal balance of the Loan is less than $110 million but greater than or equal to $90 million, in each case, as of such day, an amount equal to the lesser of (A) the product of (x) such outstanding principal balance as of such day and (y) 4.25 and (B) $440,000,000, and

(iv) if the outstanding principal balance of the Loan is less than $90 million as of such day, an amount equal to the lesser of (A) the product of (x) such outstanding principal balance as of such day and (y) 4.5 and (B) $382,500,000.

"Mortgage Assets" means any Borrowing Base Eligible Asset that is (a) Senior Commercial Real Estate Loan, (b) Senior Commercial Real Estate Construction Loan, (c) Subordinated Commercial Real Estate Loan or (d) a Preferred Equity Investment.

"MSR" means current and future agency commercial mortgage servicing rights held by the Borrower and its Subsidiaries.

"Multiemployer Plan" means a Plan that is a "multiemployer plan" as defined in Section 3(37) or Section 4001(a)(3) of ERISA to which any Loan Party or ERISA Affiliate is obligated to make contributions, or during the preceding five (5) plan years, has made or been obligated to make contributions.

"Negative Pledge Agreement" means that certain Negative Pledge Agreement, dated as of the Original Closing Date, among the Borrower, ACRC Lender, the other Negative Pledgors (as defined therein) from time to time party thereto and the Collateral Agent.

"Negative Pledgor Subsidiary" means ACRC Lender.

"Net Income" means, with respect to any Person for any period, the net income of such Person for such period as determined in accordance with GAAP.

"Non-Consenting Lender" has the meaning set forth in Section 11.2.

"Notes" means any promissory note requested by an Lender evidencing a Loan made under this Agreement.

"Obligations" means all loans (including the Loans), debts, principal, interest (including any interest that accrues after the commencement of an Insolvency Proceeding, regardless of whether allowed or allowable in whole or in part as a claim in any such Insolvency Proceeding), premiums, liabilities (including all amounts charged to the Borrower's Loan Account pursuant hereto), obligations (including indemnification obligations), fees, charges, costs, expenses (including Lender Group Expenses) (including any portion thereof that accrues after the commencement of an Insolvency Proceeding, whether or not allowed or allowable in whole or in

part as a claim in any such Insolvency Proceeding), lease payments, guaranties, covenants, and duties of any kind and description incurred and outstanding by the Borrower to the Lender Group pursuant to or evidenced by the Loan Documents and irrespective of whether for the payment of money, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, and including all interest not paid when due and all expenses that the Borrower is required to pay or reimburse by the Loan Documents, by law, or otherwise, Bank Product Obligations and Swap Obligations. Any reference in this Agreement or in the Loan Documents to the Obligations shall include all extensions, modifications, renewals, or alterations thereof, both prior and subsequent to any Insolvency Proceeding.

"OFAC" means the Office of Foreign Assets Control of the U.S. Department of the Treasury.

"OID" means original issue discount.

"OID Amount" means an amount equal to 0.50% of the aggregate principal amount of any Initial Term Loan or Delayed Draw Term Loan, as applicable.

"Original Closing Date" means December 9, 2015.

"Original Credit Agreement" has the meaning set forth in the preamble hereto.

"Other Connection Taxes" means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising solely from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

"Other Taxes" means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 11.2).

"Participant" has the meaning set forth in Section 9.1(d).

"Participant Register" has the meaning set forth in Section 9.1(d).

"PATRIOT Act" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)), as the same has been, or shall hereafter be, renewed, extended, amended or replaced.

"Payment Date Statement" means the payment date statement to be provided by the Administrative Agent to the Lenders pursuant to Section 10.1, substantially in the form of Exhibit C-1 hereto.

"Payment Default" means an Event of Default described in Section 7.1(a) hereof.

"PBGC" means the Pension Benefit Guaranty Corporation established pursuant to Subtitle A of Title IV of ERISA (or any successor).

"Pension Act" means the Pension Protection Act of 2006.

"Pension Funding Rules" means the rules of the Code and ERISA regarding minimum funding standards and minimum required contributions (including any installment payment thereof) to a Single Employer Plan or Multiemployer Plan and set forth in, with respect to plan years ending prior to the effective date of the Pension Act, Section 412 of the Code and Section 302 of ERISA, each as in effect prior to the Pension Act and, thereafter, Sections 412, 430, 431 and 436 of the Code and Sections 302,303, 304 and 305 of ERISA.

"Permitted Collateral Liens" means: (a) Liens for taxes, assessments, or governmental charges or claims the payment of which is not, at such time, required by Section 5.5 hereof, (b) any attachment or judgment Lien and Liens incurred to secure any surety bonds, appeal bonds, supersedeas bonds, or other instruments serving a similar purpose in connection with the appeal of any such judgment, in each case, so long as such judgments do not constitute an Event of Default under Section 7.1(h) of the Agreement, (c) banker's Liens in the nature of rights of setoff arising in the ordinary course of business of the Borrower or any of its Subsidiaries, (d) Liens granted by the Borrower or any of its Subsidiaries to the Collateral Agent, for the benefit of the Secured Parties, in order to secure its Obligations under this Agreement and the other Loan Documents and Bank Product Agreements to which it is a party, (e) Liens and deposits in connection with workers' compensation, unemployment insurance, social security and other legislation affecting the Assets, (f) Liens arising by operation of law in favor of carriers, warehousemen, landlords, mechanics, materialmen, laborers or employees for sums that are not yet delinquent or are being diligently contested in good faith, (g) easements, rights of way, zoning restrictions and similar encumbrances on real property and minor irregularities in the title thereto that do not (i) secure obligations for the payment of money or (ii) materially impair the value of such property or its use by any Loan Party or any of its Subsidiaries in the normal conduct of such Person's business, (h) leases or subleases granted to other Persons not materially interfering with the conduct of the business of the Borrower or any of its Subsidiaries, (i) Liens in connection with the financing of insurance premiums permitted by Section 6.1(l) provided that such Liens are limited to the applicable unearned insurance premiums, (j) Liens in favor of any escrow agent solely on and in respect of any cash earnest money deposits made by the Borrower or any of its Subsidiaries incurred in the ordinary course of business and in connection with any letter of intent or purchase agreement (to the extent that the acquisition or disposition with respect thereto is otherwise permitted hereunder), (k) Liens encumbering customary initial deposits and margin deposits, and similar Liens and margin deposits, and similar Liens attaching to commodity trading accounts and other brokerage accounts incurred in the ordinary course of business, (l) Liens deemed to exist as a matter of law in connection with permitted repurchase

obligations incurred in the ordinary course of business or set-off rights and (m) Liens in favor of collecting banks arising under Section 4-210 of the UCC.

"Permitted Debt Certificate" has the meaning set forth in Section 10.12(a)(ii)(A).

"Permitted Liens" means the collective reference to the Liens permitted by Section 6.2.

"Person" means and includes natural persons, corporations, partnerships, limited liability companies, joint ventures, associations, companies, business trusts, or other organizations, irrespective of whether they are legal entities.

"Plan" means any "employee benefit plan" as defined in Section 3(3) of ERISA which is sponsored, maintained or contributed to by, or required to be contributed to by, the Borrower or any of its ERISA Affiliates or with respect to which the Borrower or any of its ERISA Affiliates has or could reasonably be expected to have liability, contingent or otherwise, under ERISA.

"Pledged Equity Interests" has the meaning set forth in the Security Agreement.

"Pledged Securities" has the meaning set forth in the Security Agreement.

"Post-A&R Effective Date Equity Issuance" has the meaning set forth in Section 6.1(t).

"Preferred Equity Investment" means a direct or indirect preferred equity ownership interest in a Person owning, operating or controlling, directly or indirectly, one or more multi-family or commercial real estate properties that are either fully constructed or undergoing full or partial construction or renovation.

"Prepayment Premium" means, as of the date of any applicable prepayment, (i) after the A&R Effective Date but on or prior to the Yield Maintenance Date, the greater of (x) 1.0% of the outstanding principal amount of the Loans and (y) the sum of the respective present values (computed as of the date of prepayment) of the remaining scheduled payments (assuming such payments are made as scheduled) of principal and interest with respect to the portion of the Loans prepaid prior to the Yield Maintenance Date (assuming no prepayments or acceleration of the Loans ahead of the Yield Maintenance Date and all remaining principal amount on the Loans on the Yield Maintenance Date is paid in a single balloon payment on the Yield Maintenance Date), determined by discounting such payments to the date on which such prepayment is made at a rate, when compounded monthly, is equivalent to the Treasury Constant Yield when compounded semi-annually and (ii) thereafter, zero. Notwithstanding anything to the contrary herein, no Prepayment Premium will be payable with respect to any prepayments made on or following the First Amendment Effective Date.

"Pro Rata Share" means, as of any date of determination, with respect to a Lender's obligation to make Loans and receive payments of principal, interest, fees, costs, and expenses or other amounts with respect thereto, the percentage obtained by dividing (y) the aggregate outstanding principal amount of such Lender's Loans by (z) the aggregate outstanding principal amount of all Loans; provided, that if at the time of such determination, all Loans have been

paid-in-full, then such determination shall be based on the outstanding principal amount of the Loans as of the next preceding Business Day prior to the last date on which any Loans were outstanding.

"Purchase Money Obligation" shall mean, for any Person, the obligations of such Person in respect of Debt (including Capitalized Lease Obligations) incurred for the purpose of financing all or any part of the purchase price of any fixed or capital assets or the cost of installation, construction or improvement of any fixed or capital assets; *provided*, *however*, that (i) such Debt is incurred within 90 days after such acquisition, installation, construction or improvement of such fixed or capital assets by such Person and (ii) the amount of such Debt does not exceed the lesser of 100% of the fair market value of such fixed or capital asset or the cost of the acquisition, installation, construction or improvement thereof, as the case may be.

"Proceeds" shall mean all "proceeds" as such term is defined in Section 9-102(a)(64) of the UCC and, in any event, shall include, without limitation, all dividends or other income from the Pledged Securities, collections thereon and distributions or payments with respect thereto.

"Reaffirmation Agreement" means that certain reaffirmation agreement, dated as of November 12, 2021, by and among the Borrower, the Guarantors and ACRC Lender in favor of the Collateral Agent.

"Recipient" means any Agent and any Lender, as applicable.

"Register" has the meaning set forth in Section 9.1(c).

"Regulation T" means Regulation T of the Board of Governors as in effect from time to time.

"Regulation U" means Regulation U of the Board of Governors as in effect from time to time.

"Regulation X" means Regulation X of the Board of Governors as in effect from time to time.

"REIT" has the meaning set forth in Section 6.4.

"Removal Event" shall have occurred in respect of a Person then serving as an Agent under this Agreement if a court of competent jurisdiction shall have determined that such Person, or any of its officers, directors, employees or agents, or other persons under its direction or control, shall have engaged in any actions or omissions that constitute gross negligence, willful misconduct or fraud in connection with the performance of its obligations under this Agreement as Agent and such actions or omissions have a material adverse effect on the Lenders or if an Insolvency Proceeding has commenced with respect to an Agent.

"Report" has the meaning set forth in Section 10.17(a).

"Request for Borrowing" means an irrevocable written notice from any of the individuals identified on Exhibit R-1 attached hereto (or, in certain cases, two of such individuals, all as set forth in further detail in Exhibit R-1 attached hereto) to the Administrative Agent of the Borrower's request for a Loan, which notice shall be substantially in the form of Exhibit R-2 attached hereto.

"Required Agents" means, at any time, either Agent acting at the direction of the Required Lenders.

"Required Lenders" means, at any time, (a) Lenders holding 100% of the aggregate amount of the Loans and the Delayed Draw Term Loan Commitments then in effect plus unpaid principal balance of the Loans then outstanding at any time there are two or fewer Lenders and (b) Lenders holding more than 50% of the aggregate amount of the Loans and the Delayed Draw Term Loan Commitments then in effect plus unpaid principal balance of the Loans then outstanding at any time there are three or more Lenders; provided that, for purposes of determining whether there are two or fewer or three or more Lenders at any time, Affiliates and Approved Funds of any Lender shall, collectively, be deemed to be one Lender.

"Resignation Effective Date" has the meaning set forth in Section 10.9(a).

"Responsible Officer" means the president, chief executive officer, chief operating officer, chief financial officer, secretary, general counsel, vice president, manager, treasurer or controller of a Person, or such other officer of such Person designated by a Responsible Officer in a writing delivered to the Agents.

"Restricted Asset" has the meaning ascribed thereto in the Negative Pledge Agreement.

"Sanctioned Country" means, at any time, a country, region or territory that is subject to any country-wide or territory-wide Sanctions.

"Sanctioned Person" means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC, the U.S. Department of State, the United Nations Security Council, (b) any Person operating, organized or resident in a Sanctioned Country or (c) any Person owned or controlled by any such Person or Persons described in the foregoing clauses (a) or (b).

"Sanctions" means all economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by OFAC or the U.S. Department of State or (b) the United Nations Security Council.

"SEC" means the Securities and Exchange Commission of the United States of America or any successor thereto.

"Second Valuation" has the meaning as set forth in Section 11.5.

"Second Valuation Agent" means any independent broker (other than the Initial Valuation Agent) acceptable to the Borrower undertaken to determine the Second Valuation.

"Secured Obligations" means all Obligations; provided that, notwithstanding anything to the contrary, the Secured Obligations shall exclude (i) any Excluded Swap Obligations and (ii) Bank Product Obligations with respect to any Bank Product Agreement and Swap Obligations with respect to any Swap Agreement, in each case, entered into with any counterparty that was not a Lender or an Affiliate of a Lender on the date of entry into such Bank Product Agreement or Swap Agreement.

"Secured Parties" has the meaning set forth in the Security Agreement.

"Securities" means the capital stock, membership interests, partnership interests (whether limited or general) or other securities or equity interests of any kind of a Person, all warrants, options, convertible securities, and other interests which may be exercised in respect of, converted into or otherwise relate to such Person's capital stock, membership interests, partnership interests (whether limited or general) or other equity interests and any other securities, including debt securities of such Person.

"Securitization Entity" has the meaning defined in the definition of "Securitization Transaction."

"Securitization Indebtedness" means (a) indebtedness of any Subsidiaries of the Borrower incurred pursuant to on-balance sheet Securitization Transactions treated as financings and (b) any indebtedness or other securities issued by a Securitization Entity or a Subsidiary of the Borrower pursuant to a Securitization Transaction, which, in each case, is non-recourse to the Borrower (except for customary representations, warranties, covenants, indemnities and other agreements made or given by the Borrower, or made or given by a Subsidiary of the Borrower and guaranteed by the Borrower, in connection with a Securitization Transaction).

"Securitization Transaction" means a public or private transfer, sale or financing of servicing advances and/or mortgage loans, installment contracts, other loans and any other financial asset capable of being securitized by which the Borrower or any of its Subsidiaries directly or indirectly securitizes a pool of specified financial assets including, without limitation, any such transaction involving the sale of specified servicing advances or mortgage loans (directly or through a depositor) to a special purpose entity (a "Securitization Entity") established for the purpose of issuing asset-backed or mortgaged-backed or mortgage pass-through securities of any kind.

"Security Agreement" means that certain Pledge and Security Agreement, dated as of the Original Closing Date, among Borrower, the Guarantors, ACRC Lender, the other Grantors from time to time party thereto and the Collateral Agent.

"Senior Commercial Real Estate Construction Loan" means a whole loan (or senior or pari passu interest therein) made to finance the construction of multi-family or commercial real

estate properties and secured by a mortgage thereon, which loan is not subordinate in right of payment to any separate loan secured by the same property.

"Senior Commercial Real Estate Loan" means a whole loan (or senior or pari passu interest therein) secured by a mortgage on multi-family or commercial real estate properties, which loan is not subordinate in right of payment to any separate loan secured by the same property; provided, that a Senior Commercial Real Estate Construction Loan shall not constitute a Senior Commercial Real Estate Loan.

"Single Employer Plan" means any Plan that is covered by Title IV of ERISA or the Pension Funding Rules, but which is not a Multiemployer Plan.

"Solvent" means, with respect to any Person, as of any date of determination, (a) the amount of the "present fair saleable value" of the assets of such Person will, as of such date, exceed the amount of all "liabilities of such Person, contingent or otherwise," as of such date, (b) the "present fair saleable value" of the assets of such Person will, as of such date, be greater than the amount that will be required to pay the liability of such Person on its debts as such debts become absolute and matured, (c) such Person will not have, as of such date, an unreasonably small amount of capital with which to conduct its business, (d) such Person will be able to pay its debts as they mature and (e) such Person is not insolvent within the meaning of any applicable requirements of law. For purposes of this definition, (i) "debt" shall mean liability on a "claim," (ii) "claim" shall mean any (A) right to payment, whether or not such a right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured or (B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured or unmatured, disputed, undisputed, secured or unsecured and (iii) such other quoted terms used in this definition shall be determined in accordance with applicable federal and state laws governing determinations of the insolvency of debtors.

"Specified Third Party Securitization" means any securitization transaction that was not established or sponsored by Borrower or any of its Affiliates.

"Stock" means all shares, options, warrants, interests, participations, or other equivalents (regardless of how designated) of or in a Person, whether voting or nonvoting, including common stock, preferred stock, or any other "equity security" (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the SEC under the Exchange Act).

"Subordinated Commercial Real Estate Loan" means (1) a whole loan (or interest therein) secured by a mortgage on multi-family or commercial real estate properties, which loan is subordinate in right of payment to one or more separate loans secured by the same applicable property, (2) a subordinate interest in a Senior Commercial Real Estate Loan or a Senior Commercial Real Estate Construction Loan (including, without limitation, a B Note) or (3) a Mezzanine Loan secured with a pledge of 100% of the property owner's membership interests in the related obligor and subject to a commercially reasonable intercreditor arrangement on market

terms with the senior lender; provided, that for the avoidance of doubt, a Preferred Equity Investment shall not constitute a Subordinated Commercial Real Estate Loan.

"Subsidiary" means, with respect to any Person, any corporation, partnership, association, joint venture, limited liability company or other entity (heretofore, now or hereafter established) of which at least a majority of the securities or other ownership interests having by the terms thereof ordinary voting power to elect a majority of the board of directors or other persons performing similar functions of such corporation, partnership, limited liability company or other entity (without regard to the occurrence of any contingency) is at the time directly or indirectly owned or controlled by such Person or one or more Subsidiaries of such Person or by such Person and one or more Subsidiaries of such Person, and shall include all Persons the accounts of which are consolidated with those of such Person pursuant to GAAP; *provided* that no issuer of a Specified Third Party Securitization shall be considered a "Subsidiary" of Borrower or any of its Affiliates.

"Swap Agreement" means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of any of the Loan Parties shall be a Swap Agreement.

"Swap Obligations" means any and all obligations of any Loan Party, whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor), under (a) any and all cancellations, buy backs, reversals, terminations or assignments of any such Swap Agreement transaction and (b) any obligation to pay or perform under any agreement, contract or transaction that constitutes a "swap" within the meaning of section 1a(47) of the Commodity Exchange Act.

"Tangible Net Worth" means with respect to any Person and any date, all amounts that are included, on a consolidated basis, under capital or shareholder's equity (or any like caption) on the balance sheet of such Person, minus (a) amounts owing to that Person from any Affiliate thereof, or from officers, employees, partners, members, directors, shareholders or other Persons similarly affiliated with such Person or any Affiliate thereof, (b) intangible assets, and (c) prepaid taxes and/or expenses, plus (1) accumulated depreciation and amortization, and (2) deferred origination fees, net of deferred origination costs, all on or as of such date; *provided* that "Tangible Net Worth" shall be determined without regard to the effects of consolidation of any issuer of a Specified Third Party Securitization on the financial statements of such Person under Accounting Standards Codification Section 810, as amended, modified or supplemented from time to time, or otherwise under GAAP. For sake of clarity, mortgage servicing rights shall not be deemed to be intangible assets.

"Targeted Principal Amount" means, with respect to each date set forth below, the amount set forth next to such date which represents the outstanding principal balance of the Loan targeted to be outstanding as of such date:

Beginning the First Amendment Effective Date through July 31, 2024	$140,000,000
Beginning August 1, 2024 through October 31, 2024	$135,000,000
Beginning November 1, 2024 through January 31, 2025	$130,000,000
Beginning February 1, 2025 through April 30, 2025	$120,000,000
Beginning May 1, 2025 through July 31, 2025	$110,000,000
Beginning August 1, 2025 through October 31, 2025	$100,000,000
Beginning November 1, 2025 and any date thereafter	$90,000,000

"Taxes" means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"Term Loan Commitment" means, as to any Lender, the obligation of such Lender, if any, to make an Initial Term Loan or an A&R Effective Date Term Loan, as applicable, to the Borrower hereunder in a principal amount not to exceed the amount set forth under the heading "Term Loan Commitment" opposite such Lender's name on Annex A-1 or, as the case may be, in the Assignment and Acceptance pursuant to which such Lender became a party hereto, as the same may be changed from time to time pursuant to the terms hereof. The aggregate principal amount of the Term Loan Commitments on the A&R Effective Date is $100,000,000.

"Term Loan Facilities" has the meaning set forth in the definition of "Credit Facilities".

"Term Loan Increase" has the meaning set forth in Section 2.15(a).

"Term Loan Maturity Date" means (a) with respect to the Initial Term Loans, the Delayed Draw Term Loans and the A&R Effective Date Term Loan, the Maturity Date and (b) with respect to any Incremental Term Loans, the final maturity date as specified in the applicable Incremental Amendment; *provided* that, if any such day is not a Business Day, the applicable Term Loan Maturity Date shall be the Business Day immediately succeeding such day.

"Test Date" means the last day of each fiscal quarter.

"Test Period" means the time period from the first day of each fiscal quarter, through and including the last day of such fiscal quarter.

"Third Valuation" has the meaning as set forth in Section 11.5.

"Third Valuation Agent" means any independent broker (other than the Initial Valuation Agent and the Second Valuation Agent) acceptable to the Borrower and the Required Lenders undertaken to determine the Third Valuation.

"Total Net Leverage Ratio" means, at any date, the ratio of (a) aggregate outstanding consolidated Debt of the Borrower and its Subsidiaries (net of any unrestricted cash and Cash Equivalents and Warehousing Debt secured by loans available for sale) on such date to (b) consolidated Tangible Net Worth of the Borrower and its Subsidiaries for the most recent Test Date.

"Transactions" means collectively, the transactions to occur on or prior to the Original Closing Date including the execution, delivery and performance of the Loan Documents entered into on the Original Closing Date, the initial borrowings thereunder and the use of proceeds thereof.

"Treasury Constant Yield" means the arithmetic mean of the rates published as "Treasury Constant Maturities" as of 5:00 p.m. (Eastern time), for the five (5) Business Days preceding the date on which acceleration has been declared, or, as applicable, the date on which a prepayment subject to a Prepayment Premium pursuant to this Agreement is made, as shown on the USD screen of Reuters (or such other page as may replace that page on that service, or such other page or replacement therefor on any successor service), or if such service is not available, the Bloomberg Service (or any successor service), or if neither Reuters nor the Bloomberg Service is available, under Section 504 in the weekly statistical release designated H.15(519) (or any successor publication) published by the Board of Governors of the Federal Reserve System, for "On the Run" United States Treasury obligations with a term corresponding to the period beginning on the date of prepayment and ending on the Yield Maintenance Date. If no such maturity shall so exactly correspond, yields for the two most closely corresponding published maturities shall be calculated pursuant to the foregoing sentence and the Treasury Constant Yield shall be interpolated or extrapolated (as applicable) from such yields on a straight-line basis (rounding, in the case of relevant periods, to the nearest month).

"Triple Net Leased Property" means any real property that is the subject of a lease with a at least a seven (7) year term pursuant to which a single tenant of such property is responsible for net real estate taxes, net building insurance, and net common area maintenance relating to the real property (in addition to the rental fee).

"Trustee": means Wilmington Trust, National Association, as Grantor Trust Trustee under the Trust Agreement.

"Trustee Fee": means, for so long as Wilmington Trust, National Association acts as Trustee pursuant to the Trust Agreement, the fee to be paid monthly by the Borrower in advance

to Wilmington Trust, National Association, as compensation for services rendered by it in its capacity as Grantor Trust Trustee under the Trust Agreement and if a replacement Trustee is appointed pursuant to the Trust Agreement, the fees of such trustee, so long as such fee is reasonable and commercially accepted for trustees providing similar services in similar transactions.

"Trust Agreement" for so long as the Lenders under this Agreement are entities managed by J.P. Morgan Investment Management, Inc., that certain Trust Agreement, dated as of the date of December 22, 2017 between ACRC TL 2017 LLC and Wilmington Trust, National Association.

"UCC" means the New York Uniform Commercial Code as in effect from time to time.

"Unencumbered Asset Ratio" means, at any date, the ratio of (a) the sum of (i) the Assigned Value of the Borrowing Base Eligible Assets comprised of Senior Commercial Real Estate Loans and Senior Commercial Real Estate Construction Loans that are not encumbered by a Lien other than Permitted Liens *plus* (ii) the Assigned Value of other Borrowing Base Eligible Assets that are not encumbered by a Lien other than Permitted Liens to (b) the aggregate principal amount of funded and outstanding Loans.

"Updated Valuation" has the meaning set forth in Section 11.5.

"VAE" means with respect to (a) any Borrowing Base Eligible Asset or (b) in the case of a Borrowing Base Eligible Asset that is comprised of Securities in a Borrowing Base Subsidiary, one or more related Mortgage Assets, as applicable, the occurrence of any of the following:

(i) any payment default or any other default(s) (in each case, after giving effect to any applicable grace, cure or notice periods in accordance with the underlying loan documents) that, in the case of a non-payment default, could, individually or in the aggregate, reasonably be expected to materially and adversely affect value of such Borrowing Base Eligible Asset or Mortgage Asset as a whole;

(ii) an insolvency event with respect to an underlying borrower;

(iii) the loan to value percentage is greater than 90%;

(iv) for any Subordinated Commercial Real Estate Loan or Preferred Equity Investment, the first lien loan to value is greater than 80%;

(v) for any Mortgage Assets held by a Borrowing Base Debt Subsidiary, the aggregate outstanding principal balance of the associated Warehousing Debt, Securitization Indebtedness or other debt exceeds 90% of the aggregate outstanding principal balance of all Mortgage Assets of such Borrowing Base Debt Subsidiary;

(vi) the occurrence of a Material Modification with respect to such Borrowing Base Eligible Asset or Mortgage Asset, as applicable; and

(vii) a default (after giving effect to any applicable grace, cure or notice periods as such periods may be extended with the approval of the applicable counterparties to such Warehousing Debt) that occurs under any Warehousing Debt or Securitization Indebtedness for which a Borrowing Base Debt Subsidiary is a sponsor, issuer or borrower that results in a Material Adverse Effect on the value of such Borrowing Base Debt Subsidiary as a whole.

"Valuation Confirmation Process" has the meaning as set forth in Section 11.5.

"Valuation Report" has the meaning as set forth in Section 11.5.

"Warehousing Debt" means any warehouse, purchase, repurchase, participation or other similar financing facility extended by a lender or repo buyer to the Borrower or a Subsidiary thereof to finance the funding, acquisition or ownership of (a) Senior Commercial Real Estate Loans, (b) Senior Commercial Real Estate Construction Loan, (c) Subordinated Commercial Real Estate Loan, (d) Mezzanine Loans or (e) mortgage loans, mortgaged-backed or mortgage pass-through securities or other mortgage-related assets of any kind, but only for such time as the foregoing remain financed under such facility.

"Weighted Average Life to Maturity" means, when applied to any Debt at any date, the number of years obtained by dividing: (a) the sum of the products obtained by multiplying (i) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (ii) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by (b) the then outstanding principal amount of such Debt.

"Withdrawal Liability" means any liability to a Multiemployer Plan as a result of a "complete withdrawal" or "partial withdrawal" from such Multiemployer Plan, as such terms are defined in Section 4201(b) of ERISA.

"Withholding Agent" means any Loan Party and any Agent.

"Yield Differential" has the meaning set forth in Section 2.15(e)(ii).

"Yield Maintenance Date" means May 8, 2024.

1.2 Construction. Unless the context of this Agreement clearly requires otherwise, references to the plural include the singular and to the singular include the plural, the part includes the whole, the term "including" is not limiting, and the term "or" has, except where otherwise indicated, the inclusive meaning represented by the phrase "and/or." References in this Agreement to a "determination" or "designation" include estimates by the Agents (in the case of quantitative determinations or designations), and beliefs by the Agents (in the case of qualitative determinations or designations). The words "hereof," "herein," "hereby," "hereunder," and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. Article, section, subsection, clause, exhibit, and schedule references are to this Agreement unless otherwise specified. Any reference herein to this Agreement or any of the Loan Documents includes

any and all alterations, amendments, restatements, changes, extensions, modifications, renewals, or supplements thereto or thereof, as applicable, made in accordance with the terms hereof or thereof. Any reference herein or in any other Loan Document to the satisfaction or repayment in full of the Obligations, any reference herein or in any other Loan Document to the Obligations being "paid in full" or "repaid in full" (except as set forth in Section 2.3(a)(v)), and any reference herein or in any other Loan Document to the action by any Person to repay the Obligations in full, shall mean the repayment in full in cash in Dollars of all Obligations other than contingent indemnification Obligations as to which no claim has been asserted or is anticipated and other than any Bank Product Obligations that, at such time, are allowed by the applicable Bank Product Provider to remain outstanding and are not required to be repaid or cash collateralized pursuant to the provisions of this Agreement. All payments hereunder or any other Loan Document in respect of the Obligations shall be made in Dollars.

1.3 Accounting Terms; GAAP; Pro Forma Calculations. (a) Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; provided that, if the Borrower notifies Agents that the Borrower wishes to amend any provision hereof to eliminate the effect of any change occurring after the date hereof in GAAP or in the application thereof on the operation of such provision (or if any Agent notifies the Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then the Borrower's (and the Guarantor's, as applicable) compliance with such provision shall be determined on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

ARTICLE II

AMOUNT AND TERMS OF LOANS

2.1 Credit Facilities. Subject to the terms and conditions of this Agreement:

(a) Term Loan Facility.

(i) Each Lender as of the Original Closing Date made an Initial Term Loan (the "Initial Term Loan") to the Borrower on the Original Closing Date in an amount equal to the Term Loan Commitment of such Lender as of the Original Closing Date, which Initial Term Loan was funded net of the OID Amount.

(ii) Each Lender as of the date hereof agrees, severally and not jointly, to make an additional loan in an aggregate principal amount of $100,000,000 (the "A&R Effective Date Term Loan Commitment" and, the loan thereunder, the "A&R Effective Date Term Loan") to the Borrower on the A&R Effective Date, which such A&R Effective Date Term Loan shall be funded inclusive of the OID Amount with respect to the A&R Effective Date Term Loan Commitment and the Delayed Draw Term Loan Commitment, and the Borrower shall promptly pay on the A&R Effective Date to each Lender its pro rata share of the OID Amount in accordance with the flow of funds. Notwithstanding the foregoing, all calculations of interest and

fees in respect of the A&R Effective Date Term Loan will be calculated on the basis of their full stated principal amount. No later than 2:00 p.m. on the A&R Effective Date, each Lender shall make available to the Administrative Agent to the account of the Administrative Agent an amount in immediately available funds equal to the A&R Effective Date Term Loan to be made by such Lender. Upon receipt of all requested funds, the Administrative Agent shall make the proceeds of the A&R Effective Date Term Loan available to the Borrower on the A&R Effective Date by wiring all such proceeds of the A&R Effective Date Term Loan to the account of the Borrower or to such other account as may be designated in writing to the Administrative Agent by the Borrower.

(iii) The Borrower may make only one borrowing under the A&R Effective Date Term Loan Commitment pursuant to Section 2.1(a)(ii), which shall be on the A&R Effective Date. Any amount borrowed under this Section 2.1(a) and subsequently repaid or prepaid may not be reborrowed. Subject to Section 2.7 and Section 2.8, all amounts owed hereunder with respect to the Initial Term Loans and the A&R Effective Date Term Loans shall be paid in full no later than the Maturity Date. Each Lender's A&R Effective Date Term Loan Commitment shall terminate immediately and without further action on the A&R Effective Date after giving effect to the deemed funding of such Lender's A&R Effective Date Term Loan Commitment on the A&R Effective Date.

(iv) The terms and provisions of the A&R Effective Date Term Loan shall be identical to those of the Initial Term Loans and shall rank pari passu in right of payment and in respect of the Collateral with the Initial Term Loans.

(v) With effect from the A&R Effective Date, the A&R Effective Date Term Loan shall be an "Incremental Term Loan and a "Term Loan" and the related Lenders shall be a Lender with an outstanding Term Loan.

(vi) For all purposes under this Agreement and the other Loan Documents, (i) the A&R Effective Date Term Loan Commitment will constitute Commitments, Term Loan Commitments and Incremental Term Loan Commitments, (ii) the A&R Effective Date Term Loan will constitute Loans, Term Loans and Incremental Term Loans, (iii) the related Lender will be a Lender and (iv) the A&R Effective Date Term Loan and the Term Loans funded under the Existing Credit Agreement prior to the A&R Effective Date shall collectively constitute the one and the same Class of Term Loans.

(b) Delayed Draw Term Loan Facility.

(i) Each Delayed Draw Term Loan Lender agrees, severally and not jointly, to make Delayed Draw Term Loans (the "Delayed Draw Term Loans" and, together with the Initial Term Loan and any Incremental Term Loans, as applicable, collectively, the "Loans") to the Borrower pursuant to Section 2.12 on the last day of any Interest Period during the Delayed Draw Availability Period, in an aggregate principal amount not to exceed at any time the Delayed Draw Term Loan Commitments in effect at such time. Notwithstanding the foregoing, all calculations of interest and fees in respect of the Delayed Draw Term Loans will be calculated on the basis of their full stated principal amount.

(ii) Amounts paid or prepaid in respect of Delayed Draw Term Loans may not be reborrowed. All unused Delayed Draw Term Loan Commitments shall automatically terminate at 5:00 p.m. (Eastern Time) on the last Business Day of the Delayed Draw Availability Period, to the extent such amount of Delayed Draw Term Loan Commitments is not funded prior to such time.

(iii) Notwithstanding anything herein to the contrary, following the A&R Effective Date, the Borrower shall have, and the Delayed Draw Term Lenders shall provide, no more than two drawings of Delayed Draw Term Loans, each in an amount at least equal to $25,000,000, but not to exceed $25,000,000 per each drawing and not to exceed $50,000,000 in the aggregate, in each case, subject to the conditions set forth in Section 2.12.

2.2 [Reserved].

2.3 Interest Rates; Payment of Principal and Interest.

(a) Borrower shall make each payment due hereunder by making, or causing to be made in Dollars in immediately available funds, the amount thereof available to Agent's Account, not later than 1:00 p.m. (Eastern Time), on the date of payment, for the account of the Lender Group. All payments received by the Administrative Agent after 1:00 p.m. (Eastern Time), may be deemed received on the next Business Day (in the Administrative Agent's sole discretion) and any applicable interest shall continue to accrue.

(i) Unless the Administrative Agent receives notice from Borrower prior to the date on which any payment is due to the Lenders that the Borrower will not make such payment in full in Dollars in immediately available funds as and when required, the Administrative Agent may assume that the Borrower has made (or will make) such payment in full to the Administrative Agent on such date in Dollars in immediately available funds and the Administrative Agent may (but shall not be so required), in reliance upon such assumption, distribute to each Lender on such due date an amount equal to the amount then due such Lender.

(ii) Except as otherwise provided with respect to Defaulting Lenders, aggregate principal and interest payments shall be apportioned among the Lenders in accordance with their Pro Rata Share and applied thereto and payments of fees and expenses (other than fees or expenses that are for the Administrative Agent's separate account, after giving effect to any agreements between the Agents and individual Lenders) shall be apportioned ratably among the Lenders in accordance with Section 2.17. All payments shall be remitted to the Agents and all such payments, and all Proceeds of Collateral received by the Agents, shall be applied as follows:

(A) first, to pay any fees and Lender Group Expenses then due to the Agents under the Loan Documents, until paid in full,

(B) second, upon written notice from Borrower of the amounts to be paid and to whom such payments should be made, to pay any Bank Product Obligations that are Secured Obligations as cash collateral in an amount up to the amount

determined by the applicable Bank Product Provider, in its reasonable discretion, as the amount necessary to secure Borrower's or its Subsidiaries' Bank Product Obligations that remain outstanding, until paid in full,

(C) third, to pay any fees and Lender Group Expenses then due to the Lenders (other than Defaulting Lenders) under the Loan Documents, on a ratable basis, until paid in full,

(D) fourth, ratably to pay interest due to the Lenders (other than Defaulting Lenders) in respect of the Loans until paid in full,

(E) fifth, to pay the principal of all Loans then due to the Lenders (other than Defaulting Lenders) until paid in full,

(F) sixth, to pay any other Obligations owed to Lenders (other than Defaulting Lenders), until paid in full,

(G) seventh, to pay any Obligations owed to Defaulting Lenders until paid in full, and

(H) eighth, to the Borrower (to be wired to the Designated Account) or such other Person entitled thereto under applicable law.

(iii) the Administrative Agent promptly shall distribute to each Lender, pursuant to the applicable wire instructions received from each Lender in writing, such funds as it may be entitled to receive.

(iv) For purposes of the foregoing, "paid in full" means payment of all amounts owing under the Loan Documents according to the terms thereof, including loan fees, service fees, professional fees, interest (and specifically including interest accrued after the commencement of any Insolvency Proceeding), default interest, interest on interest, and expense reimbursements, whether or not any of the foregoing would be or is allowed or disallowed in whole or in part in any Insolvency Proceeding, other than contingent indemnification Obligations as to which no claim has been asserted or is anticipated and other than any Bank Product Obligations that, at such time, are allowed by the applicable Bank Product Provider to remain outstanding and that are not required by the provisions of this Agreement to be repaid or cash collateralized.

(v) In the event of a direct conflict between the priority provisions of this Section 2.3 and other provisions contained in any other Loan Document, it is the intention of the parties hereto that such priority provisions in such documents shall be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of any actual, irreconcilable conflict that cannot be resolved as aforesaid, the terms and provisions of this Section 2.3 shall control and govern.

(b) Each Loan shall bear interest upon the unpaid principal balance thereof, from the date advanced or continued, at a rate, per annum, calculated daily, equal to the lesser of (i) Interest Rate and (ii) the Highest Lawful Rate. Interest due with respect to each Loan shall be due and payable, in arrears, on each Interest Payment Date applicable to that Loan and on the Maturity Date. .

(c) Unless prepaid in accordance with the terms hereof, the outstanding principal balance of all Loans, together with accrued and unpaid interest thereon, shall be due and payable, in full, on the Maturity Date.

(d) Any Lender by written notice to the Borrower (with a copy to the Agents) may request that Loans made by it be evidenced by a promissory note. In such event, the Borrower shall execute and deliver to such Lender a promissory note, substantially in the form of Exhibit A-2 payable to such Lender (or, if requested by such Lender, to such Lender and its registered assigns). Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 9.1) be represented by one or more promissory notes in such form payable to the payee named therein (or to such payee and its registered assigns). For the avoidance of doubt, assignments of any Loans by Lenders (irrespective of whether promissory notes are issued hereunder) shall be in accordance with the provisions of Section 9.1 of this Agreement.

2.4 Computation of Interest and Fees; Maximum Interest Rate.

(a) All computations of interest with respect to the Loans and computations of the fees due hereunder for any period shall be calculated on the basis of a year of 360 days for the actual number of days elapsed in such period. Interest shall accrue from the first day of the making of a Loan (or the date on which interest or fees or other payments are due hereunder, if applicable) to (but not including) the date of repayment of such Loan (or the date of the payment of interest or fees or other payments, if applicable) in accordance with the provisions hereof.

(b) Anything to the contrary contained in this Agreement notwithstanding, the Borrower shall not be obligated to pay, and the Agents shall not be entitled to charge, collect, receive, reserve, or take interest (it being understood that interest shall be calculated as the aggregate of all charges which constitute interest under applicable law that are contracted for, charged, reserved, received, or paid) in excess of the Highest Lawful Rate. During any period of time in which the interest rates specified herein exceed the Highest Lawful Rate, interest shall accrue and be payable at such Highest Lawful Rate; provided, however, that, if the interest rate otherwise applicable hereunder declines below the Highest Lawful Rate, interest shall continue to accrue and be payable at the Highest Lawful Rate (so long as there remains any unpaid principal with respect to the Loans) until the interest that has been paid hereunder equals the amount of interest that would have been paid if interest had at all times accrued and been payable at the applicable interest rates otherwise specified in this Agreement. For purposes of this Section 2.4, the term “applicable law” shall mean that law in effect from time to time and applicable to this loan transaction which lawfully permits the charging and collection of the highest permissible, lawful, non-usurious rate of interest on such loan

transaction and this Agreement, including laws of the State of New York and, to the extent controlling or the laws of the United States of America.

2.5 Request for Borrowing.

(a) Each Loan shall be made on a Business Day.

(b) Each Loan that is proposed to be made after the A&R Effective Date shall be made upon written notice, by way of a Request for Borrowing, which Request for Borrowing shall be irrevocable and shall be given by telefacsimile, mail, electronic mail (in a format bearing a copy of the signature(s) required thereon), or personal service, and delivered to the Administrative Agent at the address provided in Exhibit 11.3, by the Borrower giving the Administrative Agent notice at least ten (10) Business Days before the date the Loan is to be made, and such notice shall specify that a Loan is requested and state the amount and Interest Period thereof (subject to the provisions of this Article II).

(c) If the notice provided for in clause (b) of this Section 2.5 with respect to a Loan is received by the Administrative Agent not later than 1:00 p.m. (Eastern Time), on a Business Day, such day shall be treated as the first Business Day of the required notice period. In any other event, such notice will be treated as having been received immediately before 1:00 p.m. (Eastern Time) of the next Business Day and such day shall be treated as the first Business Day of the required notice period.

(d) Promptly after receipt of a Request for Borrowing pursuant to Section 2.5(b), the Administrative Agent shall notify the Lenders, not later than 4:00 p.m. (Eastern Time) on the tenth Business Day preceding the Funding Date, by telecopy, electronic mail (in a format bearing a copy of the signature(s) required thereon) or other similar form of transmission, of the requested Loan. Each Lender shall make the amount of such Lender's Pro Rata Share of the requested Loan available to the Administrative Agent in immediately available funds, to Agent's Account, not later than 1:00 p.m. (Eastern Time) on the Funding Date applicable thereto. After the Administrative Agent's receipt of all the proceeds of such Loans, the Administrative Agent shall make the proceeds thereof available to the Borrower on the applicable Funding Date by transferring to the Designated Account immediately available funds equal to the proceeds that are requested by the Borrower to be sent to the Borrower in the applicable Request for Borrowing or apply such proceeds (after the deduction of the OID Amount) as directed by the Borrower.

(e) Unless the Administrative Agent receives notice from a Lender, prior to 12:00 p.m. (Eastern Time) on the date of such Loan, that such Lender will not make available as and when required hereunder to the Administrative Agent for the account of the Borrower the amount of that Lender's Pro Rata Share of the Loan, the Administrative Agent may assume that each Lender has made or will make such amount available to the Administrative Agent in immediately available funds on the Funding Date and the Administrative Agent may (but shall not be so required), in reliance upon such assumption, make available to the Borrower on such date a corresponding amount. If and to the extent any Lender (other than the Administrative Agent) shall not have made its full amount available to the Administrative Agent

in immediately available funds and the Administrative Agent in such circumstances has made available to the Borrower such amount, that Lender shall on the Business Day following such Funding Date make such amount available to the Administrative Agent, together with interest at the Defaulting Lender Rate for each day during such period. A notice submitted by the Administrative Agent to any Lender with respect to amounts owing under this subsection shall be conclusive, absent manifest error. If such amount is so made available, such payment to the Administrative Agent shall constitute such Lender's Loan on the date of such Loan for all purposes of this Agreement. If such amount is not made available to the Administrative Agent on the Business Day following the Funding Date, the Administrative Agent will notify Borrower of such failure to fund and, upon demand by the Administrative Agent, the Borrower shall pay such amount to the Administrative Agent for the Administrative Agent's account, together with interest thereon for each day elapsed since the date of such Loan, at a rate per annum equal to the interest rate applicable at the time to the Loans composing such Loan, without in any way prejudicing the rights and remedies of the Borrower against the Defaulting Lender.

(f) Notwithstanding the provisions of Section 2.3(a)(ii), the Administrative Agent shall not be obligated to transfer to a Defaulting Lender any payments made by the Borrower to the Administrative Agent for the Defaulting Lender's benefit or any Proceeds of Collateral that would otherwise be remitted hereunder to the Defaulting Lender, and, in the absence of such transfer to the Defaulting Lender, the Administrative Agent shall transfer any such payments (i) first, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder, (ii) second, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Required Agents, (iii) third, if so determined by the Required Agents and the Borrower, to be held in a deposit account and released pro rata in order to satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement, (iv) fourth, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement, (v) fifth, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement, and (vi) sixth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made at a time when the conditions set forth in Section 3.2 were satisfied or waived, such payment shall be applied solely to pay the Loans of all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of such Defaulting Lender until such time as all Loans are held by the Lenders in accordance with their Pro Rata Share. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender pursuant to this Section 2.5(f) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto. Solely for the purposes of voting or consenting to matters with respect to the Loan Documents (including the calculation of Pro Rata

Share in connection therewith) and for the purpose of calculating the fee payable under Section 2.9(b), such Defaulting Lender shall be deemed not to be a "Lender", such Lender's Delayed Draw Term Loan Commitment shall be deemed to be zero and such Lender's Incremental Term Commitment shall be deemed to be zero; provided, that the foregoing shall not apply to any of the matters governed by Section 11.2(a) through (c). This Section shall remain effective with respect to such Defaulting Lender until the earlier of (y) the date on which all of the non-Defaulting Lenders, the Required Agents and the Borrower shall have waived, in writing, the application of this Section 2.5(f) to such Defaulting Lender, or (z) the date on which such Defaulting Lender makes payment of all amounts that it was obligated to fund hereunder, pays to the Administrative Agent all amounts owing by Defaulting Lender in respect of the amounts that it was obligated to fund hereunder, and, if requested by the Required Agents, provides adequate assurance of its ability to perform its future obligations hereunder (on which earlier date, so long as no Event of Default has occurred and is continuing, any remaining cash collateral held by the Collateral Agent pursuant to Section 2.5(f)(ii) shall be released to the Borrower). The operation of this Section shall not be construed to increase or otherwise affect the Delayed Draw Term Loan Commitment or the Incremental Term Commitment of any Lender, if any, to relieve or excuse the performance by such Defaulting Lender or any other Lender of its duties and obligations hereunder, or to relieve or excuse the performance by the Borrower of its duties and obligations hereunder to the Agents or to the Lenders other than such Defaulting Lender. Any failure by any Defaulting Lender to fund amounts that it was obligated to fund hereunder shall constitute a material breach by such Defaulting Lender of this Agreement and shall entitle the Borrower at its option, upon written notice to the Agents, to arrange for a substitute Lender to assume the duties and obligations of such Defaulting Lender, such substitute Lender to be reasonably acceptable to the Required Agents. In connection with the arrangement of such a substitute Lender, the Defaulting Lender shall have no right to refuse to be replaced hereunder, and agrees to execute and deliver a completed form of Assignment and Acceptance in favor of the substitute Lender (and agrees that it shall be deemed to have executed and delivered such document if it fails to do so) subject only to being repaid its share of the outstanding Obligations (other than Bank Product Obligations, but including all interest, fees, and other amounts that may be due and payable in respect thereof); provided, that any such assumption of the duties and obligations of such Defaulting Lender shall not be deemed to constitute a waiver of any of the Lender Groups' or the Borrower's rights or remedies against any such Defaulting Lender arising out of or in relation to such failure to fund, including Borrower's right to require Defaulting Lender to reimburse the Borrower for any fees, charges or expenses incurred by the Borrower under this Section 2.5(f) as a result of the failure by any Defaulting Lender to fund amounts that it was obligated to fund hereunder. In the event of a direct conflict between the priority provisions of this Section 2.5(f) and any other provision contained in this Agreement or any other Loan Document, it is the intention of the parties hereto that such provisions be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of any actual, irreconcilable conflict that cannot be resolved as aforesaid, the terms and provisions of this Section 2.5(f) shall control and govern.

(g) All Loans shall be made by the Lenders contemporaneously and in accordance with their Pro Rata Shares. It is understood that (i) no Lender shall be responsible for any failure by any other Lender to perform its obligation to make any Loan (or other

extension of credit) hereunder, nor shall any Commitment of any Lender be increased or decreased as a result of any failure by any other Lender to perform its obligations hereunder, and (ii) no failure by any Lender to perform its obligations hereunder shall excuse any other Lender from its obligations hereunder.

2.6 [Reserved].

2.7 Repayment of Borrowings.

(a) The Borrower shall pay to the Administrative Agent in full and without notice or demand for the account of the Lenders, on the Maturity Date, all amounts of the Loans then outstanding, in each case, together with accrued and unpaid interest on the principal amount to be paid to but excluding the date of such payment.

(b) All repayments of the Loans made pursuant to this Section 2.7 shall be applied in the manner set forth in Section 2.3(a)(ii).

2.8 Prepayments.

(a) Subject to Section 2.8(c), the Borrower shall have the right to prepay the Loans. The Borrower shall give the Administrative Agent written notice no later than 1:00 p.m. (Eastern Time) not less than three (3) Business Day prior to any such prepayment. In each case, such notice shall specify the date on which such prepayment is to be made (which shall be a Business Day), and the amount of such prepayment. Each such prepayment shall be in an aggregate minimum amount of $500,000 and shall include the Prepayment Premium, if applicable, as well as interest accrued on the principal amount prepaid to, but not including, the date of payment in accordance with the terms hereof (or, in each case, such lesser amount constituting the amount of all Loans then outstanding). Any prepayment made by the Borrower to satisfy the Targeted Principal Amount as of any date shall be deemed to be a voluntary prepayment.

(b) Within three (3) Business Days after the occurrence of a Borrowing Base Deficiency, the Borrower shall prepay the outstanding principal amount of the Loans in an amount equal to (x) the aggregate amount necessary to eliminate such Borrowing Base Deficiency *plus* (y) the Prepayment Premium applicable to the principal amount of the Loan prepaid on such prepayment date, if any.

(c) Voluntary prepayments of Loans shall be applied first, to reduce any outstanding Lender Group Expenses and, second, in such order as the Borrower may direct. The Borrower may prepay the Loans subject to the payment of any accrued interest *plus* the Prepayment Premium applicable to such prepayment.

(d) [Reserved]

(e) If a Change of Manager Event occurs, the Borrower will, at the Lenders' option (as provided by Lenders in writing to Borrower and Agents), prepay the Loans,

plus accrued interest *plus* the Prepayment Premium applicable to the principal amount of the Loan prepaid on such prepayment date, if any.

(f) If a Change of Control Event occurs, the Borrower will, at the Lenders' option (as provided by Lenders in writing to Borrower and Agents), prepay the Loans *plus* accrued interest *plus* the Prepayment Premium applicable to the principal amount of the Loan prepaid on such prepayment date, if any.

2.9 Fees.

(a) [Reserved].

(b) Agent Fees. The Borrower agrees to pay to the Agents for their own benefit the fees in the amount and at the times set forth in the Agent Fee Letter. Such fees shall be fully earned when paid and shall be non-refundable for any reason whatsoever.

(c) Trustee Fees. For so long as the Lenders under this Agreement are entities managed by J.P. Morgan Investment Management, Inc., and to the extent applicable, the Borrower agrees to pay to the Trustee, the Trustee Fee as required under the fee letter, dated as of December 15, 2017, between ACRC TL 2017 LLC and the Trustee.

2.10 Maintenance of Loan Account; Statements of Obligations. The Administrative Agent shall maintain an account on its books in the name of the Borrower (the "Loan Account") on which the Borrower will be charged with all Loans made by the Lenders (or the Administrative Agent on behalf thereof) to the Borrower or for the Borrower's account and all interest, fees, and expenses (in each case, as and when payable hereunder or under the other Loan Documents (which shall exclude Bank Product Obligations)). The Administrative Agent shall render statements regarding the Loan Account to the Borrower, including principal, interest, fees, and including an itemization of all expenses owing, and, subject to the entries in the Register, which shall be controlling absent manifest error, such statements shall be conclusively presumed to be correct and accurate (absent manifest error) and constitute an account stated between the Borrower and the Administrative Agent unless, within 90 days after receipt thereof by the Borrower, the Borrower shall deliver to the Administrative Agent written objection thereto describing the error or errors contained in any such statements.

2.11 Increased Costs.

(a) If any change in, or the introduction, adoption, effectiveness, interpretation or reinterpretation or phase-in, in each case after the date hereof, of any law or regulation, directive, guideline, decision or request (whether or not having the force of law) of any court, central bank, regulator or other Governmental Authority (a "Regulatory Change") affects the amount of capital required to be maintained by any Lender and such Lender determines (in its good faith discretion) that the rate of return on its capital as a consequence of the Loans or other advances of funds made by such Lender pursuant to this Agreement or any of the Loan Documents relating to fundings or commitments under this Agreement is reduced to a level below that which such Lender would have achieved but for the occurrence of any such

circumstance, then, in any such case within thirty (30) days after written notice (which may be by email) from time to time by such Lender to the Borrower, the Borrower shall pay to such Lender compensation sufficient to compensate such Lender for such reduction in rate of return; provided, that such Lender shall provide the Borrower with such notice within a reasonable period of time following such Lender's discovery of such increased costs or reductions. A statement of such Lender as to any such additional amount or amounts (including calculations thereof in reasonable detail), in the absence of manifest error, shall be conclusive and binding on the Borrower and such Lender. Notwithstanding the forgoing, (a) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith, and (b) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign Governmental Authorities, in each case pursuant to Basel III, shall, in the case of clause (a) and clause (b), be deemed to be introduced, adopted, implemented and/or effective after the date hereof (regardless of the date enacted, adopted, issued, implemented and/or effective). Notwithstanding anything to the contrary in this Section 2.11(a), the Borrower shall not be required to compensate any Lender pursuant to this Section 2.11(a) for any amounts incurred more than nine months prior to the date that such Lender notifies the Borrower of such Lender's intention to claim compensation therefor; provided that, if the circumstances giving rise to such claim have a retroactive effect, then such nine month period shall be extended to include the period of such retroactive effect.

(b) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender;

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by such Lender or any participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender or such other Recipient of making, converting to, continuing or maintaining any Loan or of maintaining its obligation to make any such Loan or to reduce the amount of any sum received or receivable by such Lender or other Recipient hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or other Recipient, the Borrower will pay to such Lender or other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender or other Recipient, as the case may be, for such additional costs incurred or reduction suffered.

2.12 Delayed Draw Term Loans.

(a) The Borrower may, by submission of a Request for Borrowing to the Administrative Agent from time to time after the A&R Effective Date and prior to the end of the Delayed Draw Availability Period, but no more than two (2) times within any 60-day period, request a borrowing of Delayed Draw Term Loans to be made prior to the end of the Delayed Draw Availability Period, so long as, at the time any such borrowing (such borrowing, a "Delayed Draw Term Loan") is requested and at the time such Delayed Draw Term Loans are incurred (giving pro forma effect to the incurrence of such Delayed Draw Term Loans), (x) the aggregate principal amount of such Delayed Draw Term Loans, taken together with all other Delayed Draw Term Loans and unused Delayed Draw Term Loan Commitments then outstanding, does not exceed $50,000,000 and (y) the Borrower is in compliance with the covenants set forth in Section 6.12 and no Default or Event of Default has occurred and is continuing. The Borrower shall notify the Administrative Agent of such request by delivering the Request for Borrowing, not later than 1:00 p.m. (Eastern Time), at least ten (10) Business Days prior to the requested date of a proposed Loan. Each such Request for Borrowing shall be irrevocable, and shall specify the following information: (i) the date of such Delayed Draw Term Loan (which shall be a Business Day) (the "Delayed Draw Funding Date"); (ii) the number and location of the account to which funds are to be disbursed; (iii) the amount of such Delayed Draw Term Loan (which shall be in minimum increments of $5,000,000 or such other amounts as the Required Agents may agree to); (iv) the Interest Period with respect thereto; and (v) a general statement as to the proposed use of proceeds of the draw; provided, however, that, notwithstanding any contrary specification in any Request for Borrowing, each requested Delayed Draw Term Loan shall comply with the requirements set forth in Section 2.1(b). The Administrative Agent shall promptly advise the applicable Lenders of any notice given pursuant to this Section 2.12 (and the contents thereof), and of each Lender's portion of the requested borrowing.

(b) Notwithstanding the foregoing, no Delayed Draw Term Loans shall be made (and no Delayed Draw Term Loan Lender would be required to fund such Delayed Draw Term Loans) unless on the date of such Delayed Draw Term Loan, (i) the conditions set forth in Section 2.12(a) above shall be satisfied, (ii) after giving effect to such Delayed Draw Term Loan, the conditions of Section 3.2 are satisfied, (iii) the Agents shall have received a certificate, executed by a Responsible Officer of the Borrower, as to the matters set forth in the foregoing.

2.13 Funding Sources. Nothing herein shall be deemed to obligate the Lenders (or the Agents on behalf thereof) to obtain the funds to make any Loan in any particular place or manner and nothing herein shall be deemed to constitute representation by the Agents or any Lender that it has obtained or will obtain such funds in any particular place or manner.

2.14 Place of Loans. All Loans made hereunder shall be disbursed by credit to the Designated Account or as may otherwise be agreed to between Borrower and the Agents.

2.15 Incremental Term Loans.

(a) Incremental Term Commitments. The Borrower may at any time or from time to time after the A&R Effective Date, by written notice to the Agents (whereupon the Administrative Agent shall promptly deliver a copy to each of the Lenders) (an "Incremental Term Loan Request"), request the establishment of one or more new commitments which shall be in the same Credit Facility as any outstanding Initial Term Loans and any outstanding A&R Effective Date Term Loan (a "Term Loan Increase" and, collectively with any Term Loan Increase, the "Incremental Term Commitments") in an aggregate principal amount not to exceed, $150,000,000.

(b) Incremental Term Loan Request. Each Incremental Term Loan Request from the Borrower pursuant to this Section 2.15 shall set forth the requested amount and proposed terms of the relevant Incremental Term Loans. Incremental Term Loans may be made by any existing Lender (but no existing Lender will have an obligation to make any Incremental Term Commitment) or by any other bank or other financial institution (any such other bank or other financial institution being called an "Additional Lender") (each such existing Lender or Additional Lender providing such, an "Incremental Lender"); provided that (i) the Required Lenders shall have consented in writing (not to be unreasonably withheld or delayed) to such Lender's or Additional Lender's making such Term Loan Increase; and (ii) Borrower shall only be permitted to request all or a portion (as applicable) of the Term Loan Increase from Additional Lenders if the Borrower has offered each of the existing Lenders an opportunity to provide such Term Loan Increase and the existing Lenders have declined to provide all or a portion of the Term Loan Increase (or have not responded in writing to the Borrower within ten (10) Business Days of any such offer); provided, further, that each Additional Lender, prior to becoming an Incremental Lender hereunder, shall have provided the Agents with a duly executed IRS From W-9, or such other applicable IRS Form, a fully completed Administrative Agent Questionnaire, and all "know your customer" documentation requested by the Agents.

(c) Incremental Term Loans. On any Incremental Facility Closing Date on which any Incremental Term Commitments are effected, subject to the satisfaction of the terms and conditions in this Section 2.15, (i) each Incremental Lender shall make a loan to the Borrower (an "Incremental Term Loan") in an amount equal to its Incremental Term Commitment and (ii) each Incremental Lender shall become a Lender hereunder with respect to the Incremental Term Commitment and the Incremental Term Loans made pursuant thereto.

(d) Effectiveness of Incremental Amendment. The effectiveness of any Incremental Amendment, and the Incremental Term Commitments thereunder, shall be subject to the satisfaction on the date thereof (the "Incremental Facility Closing Date") of each of the following conditions:

(i) no Default or Event of Default has occurred and is continuing or would result from the Incremental Term Loan; provided that, solely with respect to any Incremental Term Loans incurred in connection with an acquisition that is permitted under this Agreement, no Default or Event of Default shall exist at the time the definitive documentation for such acquisition is executed;

(ii) after giving effect to such Incremental Term Commitments, the conditions of Section 3.2(a) shall be satisfied (it being understood that all references to "such date" or similar language in such Section 3.2(a) shall be deemed to refer to the effective date of such Incremental Amendment); provided that, if the proceeds of any Incremental Term Commitments are being used to finance an acquisition permitted hereunder, (x) the reference in Section 3.2(a) to the accuracy of the representations and warranties shall refer to the accuracy of the representations and warranties that would constitute "specified representations" and the representations and warranties in the relevant acquisition agreement the breach of which would permit the buyer to terminate its obligations thereunder or decline to consummate such acquisition and (y) the reference to "Material Adverse Effect" in the "specified representations" shall be understood for this purpose to refer to "Material Adverse Effect" or similar definition as defined in the main transaction agreement governing such acquisition permitted hereunder;

(iii) after giving effect to such Incremental Term Commitments, the Borrower is in compliance with the financial covenants set forth in Section 6.12; provided that, solely with respect to any Incremental Term Loans incurred in connection with an acquisition that is permitted under this Agreement, compliance with the financial covenants set forth in Section 6.12 shall exist at the time the definitive documentation for such acquisition is executed; and

(iv) to the extent reasonably requested by the Agents, the Agents shall have received (A) customary legal opinions addressed to the Agents and the Lenders, board resolutions and officers' certificates consistent with those delivered on the Original Closing Date other than changes to such legal opinion resulting from a change in law, change in fact or change to counsel's form of opinion reasonably satisfactory to the Agents and (B) reaffirmation agreements and/or such amendments to the Security Agreement, as may be reasonably requested by the Agents in order to ensure that the enforceability of the Security Agreement and the perfection and priority of the Liens thereunder are preserved and maintained.

(e) Required Terms. The terms, provisions and documentation of the Incremental Term Loans and Incremental Term Commitments shall be as agreed between the Borrower and the applicable Incremental Lenders providing such Incremental Term Commitments, and except (x) to the extent otherwise permitted under this Section 2.15, (y) to the extent more restrictive on the Borrower or the Guarantors (when taken as a whole) in any material respect than those with respect to the Initial Term Loans or the A&R Effective Date Term Loans existing on the Incremental Facility Closing Date (but excluding any terms or conditions applicable after the Maturity Date) or (z) to the extent relating only to provisions of a mechanical or administrative nature, shall be reasonably satisfactory to the Agents. In any event:

(i) the Incremental Term Loans:

(A) shall rank *pari passu* in right of payment and in respect of the Collateral with the Initial Term Loans and the A&R Effective Date Term Loans;

(B) shall not mature earlier than the Maturity Date of any Initial Term Loans or any A&R Effective Date Term Loans outstanding at the time of incurrence of such Incremental Term Loans;

(C) shall have a Weighted Average Life to Maturity no shorter than the remaining Weighted Average Life to Maturity of any Initial Term Loans or any A&R Effective Date Term Loans outstanding at the time of incurrence of such Incremental Term Loans;

(D) subject to Section 2.15(f) below, shall have an applicable rate and amortization determined by the Borrower and the applicable Incremental Lenders; and

(E) may participate on a pro rata basis or less than pro rata basis (but not on a greater than pro rata basis) in any voluntary or mandatory prepayments of Initial Term Loans or A&R Effective Date Term Loans hereunder, as specified in the applicable Incremental Amendment;

(ii) subject to the foregoing, the amortization schedule applicable to any Incremental Term Loans and the All-In Yield applicable to the Incremental Term Loans shall be determined by the Borrower and the applicable Incremental Lenders and shall be set forth in each applicable Incremental Amendment; provided, however, that with respect to any Loans under Incremental Term Commitments, if the All-In Yield applicable to such Incremental Term Loans shall be greater than the applicable All-In Yield payable pursuant to the terms of this Agreement as amended through the date of such calculation with respect to Initial Term Loans or the A&R Effective Date Term Loans by more than 50 basis points *per annum* (the amount of such excess, the "Yield Differential"), then the interest rate with respect to the Initial Term Loans or the A&R Effective Date Term Loans shall be increased by the applicable Yield Differential, as applicable; and

(iii) the proceeds, if any of the Incremental Term Loans, will be used for general corporate purposes of the Borrower and its Subsidiaries including, without limitation, for capital expenditures, permitted acquisitions and other permitted investments, restricted payments, refinancing of indebtedness and any other transaction not prohibited by this Agreement.

(f) Incremental Amendment.

(i) Incremental Term Commitments shall become Commitments under this Agreement pursuant to an amendment (an "Incremental Amendment") to this Agreement and, as appropriate, amendments to the other Loan Documents, executed by the Borrower, each Incremental Lender providing such Commitments and the Agents, as applicable. The Incremental Amendment may, without the consent of any other Loan Party or, Lender, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Agents and the Borrower, to effect the provisions of this Section 2.15.

(ii) The Lenders hereby irrevocably authorize the Agents to enter into amendments to this Agreement and the other Loan Documents with the Loan Parties as may be necessary in order to establish new Loans or commitments made or established pursuant to this Section 2.15 and such technical amendments as may be necessary or appropriate in the reasonable opinion of the Agents and the Borrower in connection with the establishment of such new Loans, in each case on terms consistent with this Section 2.15, including any amendments that are not adverse to the interests of any Lender that are made to effectuate changes necessary to enable any Incremental Term Loans to be fungible for United States federal income tax purposes with the Initial Term Loans and the A&R Effective Date Term Loans, which shall include any amendments that do not reduce the ratable amortization received by each Lender thereunder.

(g) This Section 2.15 shall supersede any provisions in Section 9.1 or Section 11.2 to the contrary.

2.16 Mitigation of Obligations. If any Lender requests compensation under Section 2.11, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 10.11, then such Lender shall use reasonable efforts to designate a different one of its lending offices or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if (i) in the reasonable judgment of such Lender, such designation or assignment would eliminate or reduce amounts payable pursuant to Sections 2.11, or 10.11, as applicable, and (ii) in the reasonable judgment of such Lender, such designation or assignment would not subject such Lender to any material unreimbursed cost or expense and would not otherwise be materially disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

2.17 Pro Rata Treatment.

(a) Each Loan shall be allocated among the Lenders in accordance with their respective Pro Rata Share.

(b) Except for prepayments contemplated by Section 2.8(d)(y), each repayment by the Borrower in respect of principal or interest on the Initial Term Loans or the A&R Effective Date Term Loans and each payment in respect of fees or expenses payable hereunder shall be applied to the amounts of such obligations owing to the Lenders entitled thereto in accordance with their respective Pro Rata Share. Each voluntary prepayment by the Borrower of Initial Term Loans or the A&R Effective Date Term Loans shall be applied to the amounts of such obligations owing to the Lenders in accordance with their respective Pro Rata Share (unless such payment is made in accordance with Section 9.1(f), in which case it shall be made in accordance with such Section). Except for prepayments contemplated by Section 2.8(d), each repayment by the Borrower in respect of principal or interest on the Delayed Draw Term Loans and each payment in respect of fees or expenses payable hereunder shall be applied to the amounts of such obligations owing to the Lenders entitled thereto in accordance with their respective Pro Rata Share. Each voluntary prepayment by the Borrower of Delayed Draw Term Loans shall be applied to the amounts of such obligations owing to the Delayed Draw Term Loan

Lenders in accordance with their respective Pro Rata Share (unless such payment is made in accordance with Section 9.1(f), in which case it shall be made in accordance with such Section).

ARTICLE III

CONDITIONS TO LOANS

3.1 Conditions Precedent to the Initial Term Loan and the A&R Effective Date Term Loan

(a) Conditions Precedent to the Initial Term Loans. The effectiveness of the Original Credit Agreement, including the Lenders' obligation to make the Initial Term Loans, was subject to the fulfillment, to the reasonable satisfaction of Agents and each Lender and its counsel, of the conditions precedent set forth in Section 3.1 of the Original Credit Agreement, in addition to the conditions set forth in Section 3.2 hereof.

(b) Conditions Precedent to the A&R Effective Date Term Loans. The obligation of each Lender to make the A&R Effective Date Term Loans hereunder on or after the date hereof is, in addition to the conditions set forth in Section 3.2 hereof, subject to the fulfillment, to the reasonable satisfaction of Agents and each Lender and its counsel, of each of the following conditions on or before the A&R Effective Date:

(i) The Agents shall have received the results of a recent lien, tax lien, judgment and litigation search in each of the jurisdictions or offices in which UCC financing statement or other filings or recordations should be made to evidence or perfect security interests in all assets of the Loan Parties (or would have been made at any time during the five years immediately preceding the A&R Effective Date to evidence or perfect Liens on any assets of the Loan Parties), and such search shall reveal no Liens or judgments on any of the assets of the Loan Parties, except for Permitted Liens or Liens and judgments to be terminated on the A&R Effective Date pursuant to documentation satisfactory to the Agents;

(ii) The Agents shall have received this Agreement and the Reaffirmation Agreement, each duly executed and delivered by each party thereto, each in form and substance reasonably satisfactory to the Agents;

(iii) The Agents shall have received the written opinions, dated the date of this Agreement, of counsel to the Loan Parties and the grantors party to the Negative Pledge Agreement, with respect to this Agreement and the other Loan Documents, which written opinions shall be in form and substance reasonably satisfactory to the Agents and their counsel;

(iv) The Agents shall have received a certificate of status with respect to each Loan Party dated within 30 days of the date of this Agreement, or confirmed by

telefacsimile, if telefacsimile confirmation is available, such certificate to be issued by the Secretary of State of the jurisdiction of organization of each Loan Party, which certificate shall indicate that such Loan Party is in good standing in such State;

(v) The Agents shall have received a copy of each Loan Party's Governing Documents, certified by a Responsible Officer with respect to such Loan Party;

(vi) The Agents shall have received a copy of the resolutions or the unanimous written consent with respect to each Loan Party, certified as of the A&R Effective Date by a Responsible Officer of such Loan Party, authorizing (A) the execution, delivery and performance by such Loan Party of this Agreement, the Fee Letter and the Reaffirmation Agreement to which such Loan Party is or will be a party and (B) the execution and delivery of the other documents to be delivered by such Loan Party in connection herewith and therewith;

(vii) The Agents shall have received a signature and incumbency certificate of the Responsible Officer with respect to each Loan Party executing this Agreement, the Fee Letter, the Reaffirmation Agreement and the other Loan Documents not previously delivered to each Agent to which each Loan Party is a party, certified by a Responsible Officer with respect to each Loan Party;

(viii) Since December 31, 2020, no Material Adverse Effect has occurred;

(ix) the Borrower shall have paid all fees incurred in connection with the transactions evidenced by this Agreement on the A&R Effective Date and, in each case subject to the Expenses Cap (unless, at any Lender's reasonable request, the Borrower consents to reimburse the Lenders for any out-of-pocket costs and expenses incurred on or before the A&R Effective Date that exceed the Expenses Cap, which if not reimbursed, the Lenders may elect not to proceed with the transactions evidenced by this Agreement), all Lender Group Expenses incurred in connection with the transactions evidenced by this Agreement for which the Borrower received an invoice at least 3 Business Days prior to the A&R Effective Date; and

(x) all other documents and legal matters in connection with the transactions contemplated by this Agreement shall have been delivered or executed or recorded and shall be in form and substance reasonably satisfactory to Agents and their counsel.

3.2 Conditions Precedent to All Loans. The obligation of the Lenders to make any Loan hereunder (or to extend any other credit hereunder) is subject to the fulfillment, at or prior to the time of the making of such Loan, of each of the following conditions:

(a) The representations and warranties of the Borrower contained in this Agreement and the other Loan Documents shall be true and correct on the A&R Effective Date or, with respect to any Loans made after the A&R Effective Date, in all material respects (except that such materiality qualifier shall not be applicable to any representation or warranty to the extent that such representation or warranty is qualified or modified by materiality) on and as of the date of such Loan as though made on and as of such date (except to the extent that such

representations and warranties solely relate to an earlier date) (subject in the case of Incremental Term Loans to Section 2.15(d)(ii));

(b) No Event of Default or Default shall have occurred and be continuing on the date of such Loan, nor shall either result from the making of such Loan (subject in the case of Incremental Term Loans to Section 2.15(d)(i));

(c) The Borrower is in compliance with the covenants set forth in Section 6.12 both before and after giving effect to such Loan (subject in the case of Incremental Term Loans to Section 2.15(d)(iii));

(d) The Borrower shall have delivered to the Administrative Agent a Request for Borrowing pursuant to the terms of Section 2.1(b), Section 2.5 and Section 2.15 hereof, as applicable;

(e) The Borrower shall have delivered a Borrowing Base Certificate to the Agents at least three (3) Business Days prior to the date of any such Loan, including a general statement as to the proposed use of proceeds of the draw; and

(f) The aggregate principal amount of all Incremental Term Loans under this Agreement, irrespective of whether such Incremental Term Loans have been repaid or prepaid, shall not exceed (a) $150,000,000 plus (b) the amount of Incremental Term Loans incurred pursuant to Section 6.1(x) (subject to Section 2.15).

3.3 Maturity Date.

(a) This Agreement shall continue in full force and effect for a term ending on the earlier of (the "Maturity Date"): (a) the five year anniversary of the A&R Effective Date and (b) such earlier date on which the Loans shall become due and payable in accordance with the terms of this Agreement and the other Loan Documents.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF THE BORROWER

Each Loan Party makes the following representations and warranties as of the A&R Effective Date and on and as of the date of each Loan as though made on and as of the date of the making of such Loan (except to the extent that such representations and warranties relate solely to an earlier date) and such representations and warranties shall survive the execution and delivery of this Agreement and the making of the Loans:

4.1 Due Organization. Each of the Borrower and its Subsidiaries is a duly organized and validly existing limited liability company in good standing under the laws of the jurisdiction of its incorporation or organization and is duly qualified to conduct business in all other jurisdictions where its failure to do so could reasonably be expected to have a Material Adverse Effect.

4.2 Securities and Subsidiaries. Schedule 4.2 sets forth (i) each Loan Party and its jurisdiction of incorporation or organization as of the A&R Effective Date and (ii) the number of each class of its Securities authorized, and the number outstanding, on the A&R Effective Date and the number of Securities covered by all outstanding options, warrants, rights of conversion or purchase and similar rights on the A&R Effective Date. All Securities of each Loan Party are duly and validly issued and are fully paid and non-assessable, and, other than the Securities of the Borrower, are owned by the Borrower, directly or indirectly. Each Loan Party is the record and beneficial owner of, and has good and marketable title to, the Securities pledged by (or purported to be pledged by) it under the Security Agreement, to the knowledge of each Loan Party, free of any and all Permitted Collateral Liens (other than in respect to Liens arising pursuant to clause (d) of the definition thereof), and, as of the A&R Effective Date, there are no outstanding warrants, options or other rights (including derivatives) to purchase, or shareholder, voting trust or similar agreements outstanding with respect to, or property that is convertible into, or that requires the issuance or sale of, any such Securities (or any economic or voting interests therein).

4.3 Requisite Power and Authorization. Each Loan Party has all requisite power and authority to execute and deliver this Agreement and the other Loan Documents to which it is a party, and, if applicable, to borrow the sums provided for in this Agreement. Each of the Borrower and its Subsidiaries has all governmental licenses, authorizations, consents, and approvals necessary to own and operate its Assets and to carry on its businesses as now conducted and as proposed to be conducted, other than licenses, authorizations, consents, and approvals that are not currently required or the failure to obtain which could not reasonably be expected to be materially adverse to any Lender. The execution, delivery, and performance of this Agreement and the other Loan Documents have been duly authorized by each Loan Party and all necessary limited liability company or corporate action in respect thereof has been taken, and, other than as set forth on Schedule 4.3, the execution, delivery, and performance thereof do not require any other material consent or approval of any other Person that has not been obtained.

4.4 Binding Agreements. This Agreement and the other Loan Documents to which any Loan Party is a party, when executed and delivered by such Loan Party, will constitute the legal, valid, and binding obligations of such Loan Party, enforceable against such Loan Party in accordance with their terms except as the enforceability hereof or thereof may be affected by: (a) bankruptcy, insolvency, reorganization, moratorium, or other similar laws affecting the enforcement of creditors' rights generally, and (b) equitable principles of general applicability (whether considered in a proceeding in equity or law).

4.5 Other Agreements. The execution, delivery, and performance by each Loan Party of this Agreement and the other Loan Documents to which any Loan Party is a party, do not and will not: (a) violate (i) in any material respect any provision of any federal (including the Exchange Act), state or local law, rule, or regulation (including Regulations T, U, and X of the Federal Reserve Board) binding on any Loan Party, (ii) in any material respect any order of any Governmental Authority, court, arbitration board or tribunal binding on any Loan Party or (iii) the Governing Documents of any Loan Party, or (b) contravene any provisions of, result in a breach of, constitute (with the giving of notice or the lapse of time) a default under, or result in

the creation of any Lien (other than Liens granted by the Loan Parties to the Collateral Agent, for the benefit of the Secured Parties, to secure the Obligations under this Agreement) upon any of the Assets of any Loan Party pursuant to any Material Agreement, or (c) require termination of any Material Agreement, or (d) constitute a tortious interference with any material Contractual Obligation of the Borrower or its Subsidiaries.

4.6 Litigation: Adverse Facts and Compliance with Laws.

(a) There is no action, suit, proceeding, or arbitration (irrespective of whether purportedly on behalf of any Loan Party) at law or in equity, or before or by any federal, state, municipal, or other governmental department, commission, board, bureau, agency, or instrumentality, domestic or foreign, pending or threatened in writing against or affecting the Borrower and any of its Subsidiaries, that could reasonably be expected to have a Material Adverse Effect, or could reasonably be expected to materially and adversely affect any Loan Party's ability to perform its obligations under the Loan Documents to which it is a party (including Borrower's or the Guarantor's ability to repay any or all of the Loans when due);

(b) Neither the Borrower nor any of its Subsidiaries is subject to or in default with respect to any order, final judgment, writ, injunction, decree, rule, or regulation of any Governmental Authority in a manner that could reasonably be expected to have a Material Adverse Effect or could reasonably be expected to materially and adversely affect any Loan Party's ability to perform its obligations under the Loan Documents to which it is a party (including Borrower's or the Guarantor's ability to repay any or all of the Loans when due);

(c) Neither the Borrower nor any of its Subsidiaries (i) has failed to comply with Environmental Laws or to obtain, maintain and comply with any permit, license or other approval required to be obtained by the Borrower or any of its Subsidiaries under any Environmental Law, (ii) is subject to any material liability under Environmental Law, (iii) has received written notice of any claim alleging that it is in violation of Environmental Law or has liability under Environmental Law or (iv) has actual knowledge of existing facts or circumstances that would reasonably be expected to form the basis of a claim that it has liability under Environmental Law, except, in the case of each of items (i) through (iv) above, would not reasonably be expected to have a Material Adverse Effect; and

(d) (i) there is no action, suit, proceeding or investigation pending or, to the best of the Borrower's knowledge, threatened in writing against or affecting the Borrower or any of its Subsidiaries that questions the validity or the enforceability of this Agreement or other the Loan Documents, and (ii) there is no action, suit, or proceeding pending against or affecting any Loan Party pursuant to which, on the date of the making of any Loan hereunder, there is not in effect a binding injunction that could reasonably be expected to materially and adversely affect the validity or enforceability of this Agreement or the other Loan Documents.

4.7 Government Consents. Other than such as may have previously been obtained, filed, or given, as applicable, no consent, license, permit, approval, or authorization of, exemption by, notice to, report to or registration, filing, or declaration with, any Governmental Authority is required in connection with the execution, delivery, and performance

by the Loan Parties of the Loan Documents to which they are a party, in each case, except as could not reasonably be expected to have a Material Adverse Effect.

4.8 Title to Assets; Liens. Except for Permitted Liens, all of the Assets held by the Borrower and its Subsidiaries are free from all Liens of any nature whatsoever. Except for Permitted Liens, the Borrower and its Subsidiaries have good and sufficient title to all of the Assets held by the Borrower and its Subsidiaries.

4.9 ERISA. Except as could not reasonably expected to have a Material Adverse Effect, each Plan is in compliance with the applicable provisions of ERISA, the Code and other Federal and state laws. Except as could not reasonably be expected to have a Material Adverse Effect, (i) no ERISA Event has occurred or is reasonably expected to occur; (ii) no Loan Party has incurred, or reasonably expects to incur, any liability (including liability as an ERISA Affiliate of another Person) under Title IV of ERISA with respect to any Single Employer Plan (other than premiums due and not delinquent under Section 4007 of ERISA); (iii) no Loan Party has incurred or reasonably expects to incur any liability (including liability as an ERISA Affiliate of another Person), and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability, under Section 4201 or 4243 of ERISA with respect to a Multiemployer Plan; and (iv) no Loan Party and, to the knowledge of any Loan Party, no ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or 4212(c) of ERISA.

4.10 Payment of Taxes. All material tax returns and reports of the Loan Parties (and all parent entities of such Loan Parties with which any Loan Party is or has been consolidated or combined) required to be filed by it have been timely filed (inclusive of any permitted extensions), and all material Taxes, governmental assessments, fees, and amounts required to be withheld and paid to a Governmental Authority and all other governmental charges imposed upon the Loan Parties, and upon their Collateral, income, and franchises, that are due and payable have been paid except for any claims for Taxes that are being contested, in good faith, by appropriate proceedings promptly instituted and diligently conducted, and with respect to which an adequate reserve or other appropriate provision, if any, shall have been made in order to be in conformity with GAAP.

4.11 Governmental Regulation.

(a) The Loan Parties are not, nor immediately after the application by the Borrower of the proceeds of the Loans will they be, required to be registered as an "investment company" under the Investment Company Act of 1940, as amended.

(b) No Loan Party holds any interest in any Margin Securities. No part of the proceeds of the loans made to the Borrower will be used to purchase or carry any Margin Stock or to extend credit to others for the purpose of purchasing or carrying any Margin Stock or for any purpose that violates the provisions of Regulation T, U or X of the Board of Governors.

(c) No Loan Party is subject to regulation under any federal, state, or local law, rule, or regulation generally limiting its ability to incur Debt.

4.12 Disclosure. No representation or warranty of any Loan Party contained in this Agreement or any other document, certificate, or written statement furnished to any Agent or any Lender with respect to the business, operations, Collateral, or condition (financial or otherwise) of the Loan Parties in connection with the transactions contemplated by this Agreement (other than projections, pro forma financial statements and budgets and information of a general economic or industry-wide nature) contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein or therein, in light of the circumstances under which they were made, not materially misleading. There is no fact known to any Loan Party (other than matters of a general economic industry-wide nature) that any Loan Party believes reasonably could be expected to have a Material Adverse Effect, that has not been disclosed herein or in such other documents, certificates, and statements furnished to any Agent or any Lender for use in connection with the transactions contemplated hereby.

4.13 Debt. The Borrower and its Subsidiaries do not have any Debt outstanding other than Debt permitted by Section 6.1 hereof.

4.14 Existing Defaults. Neither the Borrower nor any of its Subsidiaries is in default in the performance, observance or fulfillment of any of the obligations contained in any Contractual Obligation applicable to it, and no condition exists which, with or without the giving of notice or the lapse of time, would constitute a default under any such Contractual Obligation, except, in any such case, where the consequences, direct or indirect, of such default or defaults, if any, could not reasonably be expected to have a Material Adverse Effect.

4.15 No Material Adverse Effect. No event or development has occurred which could reasonably be expected to result in a Material Adverse Effect.

4.16 Security Documents. The Security Agreement is effective to create in favor of the Collateral Agent, for the benefit of the Secured Parties, a legal, valid, binding and enforceable first-priority security interest in the Collateral described herein and therein and in proceeds and products thereof as set forth herein and therein (subject to Permitted Collateral Liens). In the case of (i) Pledged Securities represented by certificates, (x) when such certificates are delivered to the Collateral Agent or (y) when financing statements in appropriate form are filed in the offices specified on Schedule 4.16, and (ii) the other Collateral described in the Security Agreement, when financing statements in appropriate form are filed in the offices specified on Schedule 4.16 and such other filings as are specified on Schedule 2 to the Security Agreement have been completed, the Lien created by the Security Agreement shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties in such Collateral and the proceeds and products thereof, as security for the Secured Obligations (as defined in the Security Agreement), in each case, prior and superior in right to any other Person (subject to Permitted Collateral Liens).

4.17 Solvency. The Borrower is, each Loan Party and ACRC Lender are, and the other Subsidiaries of the Borrower are taken as a whole, both immediately before and immediately following the making of each Loan and after giving effect to the application of

the proceeds of each Loan, the pledge of Collateral and the guarantee in favor of the Agents and the Lenders, as applicable, Solvent.

4.18 Use of Proceeds.

(a) The proceeds of the Loans shall be used (i) to refinance existing Debt of the Borrower and its Subsidiaries, (ii) to permit the Borrower and its Subsidiaries to purchase or originate and hold Borrowing Base Eligible Assets, (iii) for any general other corporate purposes of the Borrower and its Subsidiaries (including for capital expenditures, permitted acquisitions and other permitted investments, restricted payments, refinancing of indebtedness and any other transaction not prohibited by the Loan Documents) and (iv) to pay fees and expenses related to the transactions contemplated by the Loan Documents.

(b) No part of the proceeds of the Loans will be used, directly or indirectly, for any payment to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

4.19 Anti-Corruption and Anti-Money Laundering Laws and Sanctions. Each Loan Party has implemented and maintains in effect policies and procedures reasonably designed to ensure compliance by each Loan Party, their Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws, Anti-Money Laundering Laws and Sanctions, and each Loan Party and its Subsidiaries and their respective directors, officers and employees are, to the knowledge of each Loan Party, its directors and agents, in compliance with Anti-Corruption Laws, Anti-Money Laundering Laws, and Sanctions in all material respects. None of (i) the Loan Parties or, to the knowledge of each Loan Party, their Subsidiaries, or to the knowledge of the Loan Parties or such Subsidiaries, any of their respective directors, officers or employees, or (ii) to the knowledge of the Loan Parties, any agent of the Loan Parties or any Subsidiary that will act in any capacity in connection with or benefit from the credit facility established hereby, is a Sanctioned Person. No Loan, use of proceeds from this Agreement or other transaction contemplated by this Agreement will violate Anti-Corruption Laws, Anti-Money Laundering Laws or Sanctions.

ARTICLE V

AFFIRMATIVE COVENANTS OF THE BORROWER

The Borrower covenants and agrees that until payment, in full, of the Loans, with interest accrued and unpaid thereon, the Borrower will, and will cause its Subsidiaries to, do each and all of the following:

5.1 Accounting Records and Inspection.

(a) Maintain adequate financial and accounting books and records in accordance with sound business practices and GAAP consistently applied; and

(b) permit any representative of the Agents (and after the occurrence and during the continuance of an Event of Default, any representatives of each Lender) upon reasonable notice to the Borrower, at any time during usual business hours, to inspect, audit, and examine the Borrower's financial and accounting books and records and to make copies and take extracts therefrom, and to discuss its affairs, financing, and accounts with the Borrower's or the Guarantors' officers and independent public accountants (provided that the Borrower shall have the opportunity to be present at any meeting with its independent public accountants); provided that unless an Event of Default has occurred and is continuing, no more than one inspection per year may be made at the Borrower's expense.

5.2 Financial Statements. Furnish to the Agents:

(a) As soon as publicly available (including, pursuant to any filing under the Exchange Act or with any national securities exchange), but in any event within 90 days after the end of each fiscal year of the Borrower (commencing with the fiscal year ended December 31, 2015), a copy of the consolidated balance sheet of the Borrower as at the end of such fiscal year and the related consolidated statements of income or operations, changes in stockholders' equity and cash flows for such fiscal year, all in reasonable detail and prepared in accordance with GAAP, audited and accompanied by a customary report and opinion of an independent certified public accounting firm of nationally recognized standing (including without limitation Ernst & Young, PricewaterhouseCoopers LLP, Deloitte and KPMG) which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit (other than a "going concern" qualification resulting solely from an upcoming maturity date under the Credit Facilities occurring within one year from the time such opinion is delivered); and

(b) As soon as publicly available (including, pursuant to any filing under the Exchange Act or with any national securities exchange), but in any event within 40 days after the end of each of the first three fiscal quarters of each fiscal year of the Borrower (commencing with the fiscal quarter ended September 30, 2015), a copy of the unaudited consolidated balance sheet of the Borrower as at the end of such fiscal quarter and the related unaudited consolidated statements of income or operations, changes in stockholders' equity and cash flows for such fiscal quarter and the portion of the fiscal year through the end of such fiscal quarter, all in reasonable detail (subject only to normal year-end audit adjustments).

5.3 Certificates; Other Information. Furnish to the Agents:

(a) concurrently with the delivery of the financial statements pursuant to Section 5.2(a) and (b), (i) a completed Compliance Certificate duly executed by a Responsible Office of the Borrower containing all information and calculations necessary (in reasonable

detail) for determining (A) that no Event of Default or any Default has occurred or is continuing, (B) if an Default has occurred, a statement as to the nature thereof and the action which is proposed to be taken in respect thereto and (C) compliance by the Borrower with Section 6.12, in each case, as of the last day of the fiscal quarter or fiscal year of the Borrower, (ii) an updated Collateral Detail Report, (iii) a duly completed Borrowing Base Certificate setting forth the Borrowing Base based on the most recent Borrowing Base Value and (iv) notice of any event giving rise to the occurrence of a VAE;

(b) promptly (but in any event within five (5) Business Days unless otherwise specified), after a Responsible Officer of the Borrower or any Guarantor has knowledge thereof, written notice of:

(i) the occurrence of any Event of Default or any Default;

(ii) any Material Modification that occurs and, in any such event, the Borrower shall also supply the Agents with copies of any modifications, waivers or forbearances allowed by the Borrower pursuant thereto within five (5) Business Days following the occurrence thereof;

(iii) the occurrence of a VAE in respect of any Borrowing Base Eligible Asset within ten (10) Business Days following the occurrence thereof;

(iv) [Reserved]

(v) a judgment by any competent court against the Borrower or any of its Subsidiaries for the payment of money in an amount greater than $15,000,000;

(vi) any default or event of default as defined in any Contractual Obligation relating to Debt, in each case in an amount not less than $15,000,000 and irrespective of whether such Debt is accelerated or such default waived;

(c) as soon as practicable, written notice of any condition or event which has resulted or could reasonably be expected to result in a Material Adverse Effect.

(d) such other information as any Agent may reasonably request from time to time in connection with the Collateral or other business or financial information of the Borrower and its Subsidiaries; and

(e) If requested by any Agent from time to time, promptly deliver to the Agents copies of any annual report to be filed in connection with each Plan.

5.4 Existence. Preserve and maintain its legal existence and all of its material rights, privileges, licenses and franchises.

5.5 Payment of Taxes and Claims. File all material Tax returns including income Tax returns required to be filed by or on behalf of the Loan Parties. Pay all (a) material Taxes, governmental assessments, and other governmental charges imposed on any of

the Loan Parties or upon any of the Borrowing Base Eligible Assets or the Collateral or in respect of any of its businesses, incomes, Collateral, or Borrowing Base Eligible Assets before any penalty or interest accrues thereon, and (b) all claims in excess of $100,000 in the aggregate (including claims for labor, services, materials, and supplies) for sums which have become due and payable and which by law have or may become a Lien upon any of the Collateral or Borrowing Base Eligible Assets, prior to the time when any penalty or fine shall be incurred with respect thereto; provided, however, that, unless such Taxes, assessments, charges, or claims have become a federal tax Lien on any of the Collateral or the Borrowing Base Eligible Assets, no such Tax, assessment, charge, or claim need be paid if the same is being diligently contested, in good faith, by appropriate proceedings promptly instituted and diligently conducted and if an adequate reserve or other appropriate provision, if any, shall have been made therefor as required in order to be in conformity with GAAP.

5.6 Compliance with Laws and Material Contractual Obligations. (a) Comply in all material respects with the requirements of all applicable laws, rules, regulations (including Regulations T, U and X of the Federal Reserve Board), and orders of any Governmental Authority, noncompliance with which could reasonably be expected to have a Material Adverse Effect and (b) perform in all material respects its obligations under Material Agreements to which it is a party.

5.7 Further Assurances. At any time or from time to time upon the request of the Agents, execute and deliver such further documents and do such other acts and things as the Agents may reasonably request in order to effect fully the purposes of this Agreement or the other Loan Documents and to provide for payment of the Loans made hereunder, with interest thereon, in accordance with the terms of this Agreement.

5.8 Payment of Obligations. Pay, discharge or otherwise satisfy as the same shall become due and payable in the normal conduct of its business all its material obligations and liabilities including, without limitation, any such material obligations pursuant to any agreement by which it or any of its properties is bound.

5.9 Maintenance of Insurance. Maintain with financially sound and reputable insurance companies not Affiliates of the Borrower insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or a similar business of such types and in such amounts (after giving effect to any self-insurance compatible with the following standards) as are customarily carried under similar circumstances by such other Persons.

5.10 Maintenance of Property and Licenses. In addition to the requirements of the Security Agreement, (a) protect and preserve all property necessary in and material to their business then being conducted, including copyrights, patents, real estate, trade names, service marks and trademarks, (b) maintain in good working order and condition, ordinary wear and tear and casualty excepted, all buildings, equipment and other tangible real and personal property necessary and material to its business as then being conducted and (c) from time to time make or cause to be made all repairs, renewals and replacements thereof and additions to such property necessary and material for the conduct of its business as then being

conducted, so that the business carried on in connection therewith may be conducted in a commercially reasonable manner.

5.11 Covenant to Guarantee Obligations and Give Security. Execute any and all further documents, financing statements, agreements and instruments, and take all further action (including filing Uniform Commercial Code and other financing statements) that may be required under applicable requirements of law, or that the Required Lenders or the Agents may reasonably request, in order to effectuate the transactions contemplated by the Loan Documents and in order to grant, preserve, protect and perfect the validity and priority of the security interests created or intended to be created by the Loan Documents. Notwithstanding anything to the contrary set forth herein, in no event shall this Section 5.11 require the granting of any Lien on any Excluded Assets.

5.12 ERISA. (a) Make, or cause to be made, timely payment of contributions required to meet the requirements of the Pension Funding Rules with respect to each Single Employer Plan; (b) notify the Agents as soon as practicable (but in any event within five (5) Business Days) of any ERISA Event; and (c) furnish to the Agents, promptly upon Agent's request therefor, such additional information concerning any Single Employer Plan as may be reasonably requested by the Agents from time to time.

5.13 Post-Closing Items. Within the time periods specified on Schedule 5.13 (or such later date to which the Agents consent in writing), comply with the provisions set forth in Schedule 5.13.

ARTICLE VI

NEGATIVE COVENANTS OF THE BORROWER

The Borrower covenants and agrees that, until payment, in full, of the Loans, with interest accrued and unpaid thereon, the Borrower will not and will not permit any of its Subsidiaries to do any of the following:

6.1 Debt. Create, incur, assume, permit, guarantee, or otherwise become or remain, directly or indirectly, liable with respect to any Debt, except:

(a) Debt evidenced by this Agreement and the other Loan Documents;

(b) Debt or amounts available under Debt facilities (whether or not drawn) existing on the A&R Effective Date and listed on Schedule 6.1 and any draws, refinancings, renewals or extensions thereof so long as: (i) such draws, refinancings, renewals, replacements or extensions do not result in an increase in the aggregate maximum principal amount of the Debt permitted under such Debt facilities so drawn, refinanced, renewed, or extended (other than for accrued interest and premiums and fees), (ii) such draws, refinancings, renewals, replacements, or extensions do not result in a shortening of the average weighted maturity of the Debt so drawn, refinanced, renewed, , replaced, or extended, nor are they on

terms or conditions that, taken as a whole, are materially more burdensome or restrictive to the Borrower or any of its Subsidiaries, and (iii) the Debt that is drawn, refinanced, renewed, , replaced, or extended is not recourse to any Person that is liable on account of the Loans other than those Persons which were obligated with respect to the Debt that was drawn, refinanced, renewed, replaced, or extended; provided that, ACRC Lender (or its replacement, successor or permitted assign) may, to the extent the Borrower is in pro forma compliance with the covenants set forth in Section 6.12, increase the maximum commitments and amounts drawn by ACRC Lender (or its replacement, successor or permitted assign) under the City National Bank Facility in a proportionate amount equal to the aggregate amount of the proceeds of any Post-A&R Effective Date Equity Issuance (as defined below) divided by Tangible Net Worth as of the most recent Test Date so long as the increase in the maximum commitments and amounts drawn under the City National Bank Facility, when added together with unsecured Debt incurred by the Borrower in reliance on clause (t) below, does not exceed $200 million;

(c) Warehousing Debt;

(d) Securitization Indebtedness;

(e) Debt in respect of Capitalized Lease Obligations and Purchase Money Obligations financing an acquisition, construction, repair, replacement, lease or improvement of a fixed or capital asset incurred by the Borrower or any of its Subsidiaries within 270 days after the acquisition, construction, repair, replacement, lease or improvement of the applicable asset in an aggregate principal amount not to exceed $10,000,000;

(f) Contingent Obligations resulting from the endorsement of instruments for collection in the ordinary course of business;

(g) Debt between the Borrower and any of its Subsidiaries and so long as such Debt is evidenced by a promissory note and, to the extent such note constitutes Collateral, it is delivered to the Collateral Agent and subordinated pursuant to an Intercompany Subordination Agreement to the extent requested by the Lenders;

(h) Debt which may be deemed to exist pursuant to any performance bonds, surety bonds, statutory bonds, appeal bonds or similar obligations incurred in the ordinary course of business;

(i) Debt in respect of netting services, overdraft protections and otherwise in connection with deposit accounts incurred in the ordinary course of business;

(j) guaranties in the ordinary course of business of the obligations of suppliers, customers, franchisees and licensees of the Borrower and its Subsidiaries;

(k) Debt of the Borrower or any of its Subsidiaries in respect of letters of credit, bank guarantees, bankers' acceptances, warehouse receipts or similar instruments created or issued in the ordinary course of business in connection with workers' compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or

self-insurance or other Debt with respect to reimbursement-type obligations regarding workers' compensation claims;

(l) Debt owing to any insurance company in connection with the financing of any insurance premiums permitted by such insurance company in the ordinary course of business in an amount not exceed $1,000,000 at any time outstanding;

(m) (i) Debt representing deferred compensation or stock-based compensation incurred in the ordinary course of business and (ii) Debt issued by the Borrower or any Subsidiary to current or former officers, directors, employees, managers and consultants, and their respective personnel, estates, spouses or former spouses, of any the Borrower or any Subsidiary, in lieu of or combined with cash payments, to finance the purchase or redemption by any such Person of Securities of the Borrower or any Subsidiary, in each case, to the extent such purchase or redemption is permitted by Section 6.4;

(n) for the avoidance of doubt, any amounts payable by the Borrower or any of its Subsidiaries with respect to declared and unpaid dividends that were permitted by Section 6.4 at the time of declaration;

(o) Debt of the Borrower or any of its Subsidiaries under any Swap Agreements so long as such Swap Agreements are used solely as a part of its normal business operations as a risk management strategy or a hedge against changes resulting from market operations and not as a means to speculate for investment purposes on trends and shifts in financial or commodities markets;

(p) Debt incurred in the ordinary course of business under incentive, non-compete, consulting, deferred compensation, or other similar arrangements incurred by the Borrower or any of its Subsidiaries;

(q) Debt in respect of Taxes, governmental assessments or governmental charges to the extent that payment thereof shall not at the time be required to be made hereunder;

(r) unsecured Debt of the Borrower or any A&R Effective Date Subsidiary that (1) is fully and expressly subordinated to the Borrower's obligations under this Agreement and which cannot be paid prior to payments due under this Agreement following the occurrence and continuation of an Event of Default and (2) has a final maturity no earlier than 91 days following the Maturity Date and (3) has an All-In Yield that will not be more than 2.0% higher than the corresponding All-In Yield (after giving effect to interest rate margins, OID (with OID being equated to interest based on an assumed life to maturity) and upfront fees (which shall be deemed to constitute like amounts of OID), but excluding any arrangement, structuring or other fees payable in connection therewith that are not shared with all lenders providing such unsecured indebtedness) for the existing Credit Facilities;

(s) [Reserved]

(t) unsecured Debt of the Borrower or any A&R Effective Date Subsidiary in an amount not to exceed three times any amounts of common or preferred equity capital raised by the Borrower since the A&R Effective Date ("Post-A&R Effective Date Equity Issuance") consisting of the issuance of unsecured senior or subordinated notes or loans, in each case issued in a public offering or private placement or bridge in lieu of the foregoing; provided that (x) any such Debt shall not, when added together with any increase in the maximum commitments and amounts drawn by ACRC Lender under the City National Bank Facility in reliance on clause (b) above, exceed $200 million, (y) after giving pro forma effect to the incurrence of the unsecured Debt (and after giving effect to all customary pro forma events and adjustments) and the Post-A&R Effective Date Equity Issuance, the Borrower would not be in breach of the financial covenants under Section 6.12, and (z) such unsecured Debt (i) will have a final maturity no earlier than 91 days following the Maturity Date, (ii) shall have a weighted average life to maturity that is no shorter than the weighted average life to maturity of the Loans and (iii) shall have an All-In Yield that will not be more than 2.0% higher than the corresponding All-In Yield (after giving effect to interest rate margins, OID (with OID being equated to interest based on an assumed life to maturity) and upfront fees (which shall be deemed to constitute like amounts of OID), but excluding any arrangement, structuring or other fees payable in connection therewith that are not shared with all lenders providing such unsecured Debt) for the existing Loans;

(u) Debt assumed or incurred by any Subsidiary with respect to any Asset acquired by such Subsidiary as a result of a foreclosure, deed-in-lieu or other similar proceeding or transactions in connection with the ownership by such Subsidiary of any Senior Commercial Real Estate Loans, Senior Commercial Real Estate Construction Loans, Mezzanine Loans, Subordinated Commercial Real Estate Loans or Preferred Equity Investment so long as, with respect to any new Debt that is incurred, the loan-to-value ratio of such Debt does not exceed 70% at the time incurred (it being understood that any such Debt shall be non-recourse to the Borrower and the documents governing such Debt may include customary carve-outs to limit recourse such as recourse to the Borrower for environmental matters, fraud, misrepresentation or voluntary and involuntary bankruptcy filings);

(v) Debt of any Subsidiary on any Asset of such Subsidiary which is a Triple Net Leased Property (so long as the loan-to-value ratio of such Debt does not exceed 70% at the time incurred) in an aggregate amount not to exceed $50,000,000 at any time outstanding (it being understood that any such Debt shall be non-recourse to the Borrower and the documents governing such Debt may include customary carve-outs to limit recourse such as recourse to the Borrower for environmental matters, fraud, misrepresentation or voluntary and involuntary bankruptcy filings);

(w) other unsecured Debt of the Borrower or any of its Subsidiaries, including guarantee obligations, in an aggregate principal amount not to exceed $10,000,000; and

(x) Debt in an amount not to exceed $25,000,000 which Debt may (but is not required to) be incurred in the form of Incremental Term Loans under and in accordance

with Section 2.15; provided that such Debt is incurred in the form of Incremental Term Loans or is otherwise secured on a pari passu basis with the Loans, the Borrower shall first offer to the then existing Lenders the opportunity to provide such Debt a pro rata basis in accordance with their Pro Rata Shares (and on a non-pro rata basis, pursuant to terms acceptable to the Agents, with respect to the then existing Lenders that elect to cover declining Lenders' declined amounts) and may be made at the election of each such existing Lender (it being understood that no existing Lender will have any obligation to provide any portion of such Debt unless it so agrees in writing), and then, to the extent any amounts remain uncommitted to by the then existing Lenders; provided that, to the extent such Lenders have not provided a non-binding indication of interest to provide such commitment within 5 Business Days following the date of such offer and a written commitment on terms and conditions satisfactory to the Borrower within 5 Business Days following the date of such offer or have otherwise rejected such offer, after being provided such opportunity to do so, then the Borrower may offer to any other Eligible Assignee (which may include existing Lenders) to provide such Debt.

For the avoidance of doubt, Post-A&R Effective Date Equity Issuances shall not include any Cash Cure Amounts.

6.2 Liens. Create, incur, assume, or permit to exist, directly or indirectly, any Lien on or with respect to any of its Assets, of any kind, whether now owned or hereafter acquired, or any income or profits therefrom, except:

(a) Permitted Collateral Liens;

(b) Liens on the Securities of any Securitization Entity (or Securities of a direct holding company of any Securitization Entity) to the extent such Liens are permitted to be incurred by such Securitization Entity;

(c) Liens on Assets securing Debt permitted under Sections 6.1(a), (c), (d), (e), (k), (o), (t) and (v) (subject to the express limitations set forth in clause (b) above and clauses (d) and (e) below); provided that, with respect to any Liens securing Debt permitted under Section 6.1(o), such Liens shall be permitted to the extent they are created, incurred, or exist on or with respect to cash, Cash Equivalents and/or letters of credit (and proceeds thereof) in an aggregate amount not to exceed 10% of the Tangible Net Worth of the Borrower and its Subsidiaries;

(d) Liens on Senior Commercial Real Estate Loans and Senior Commercial Real Estate Construction Loans to the extent securing Debt permitted under Section 6.1(b), (c) and (d) and Liens on Mezzanine Loans, Subordinated Commercial Real Estate Loans and Preferred Equity Investments to the extent securing Debt permitted under Sections 6.1(c) and (d); and

(e) Liens on Mezzanine Loans, Subordinated Commercial Real Estate Loans and Preferred Equity Investments to the extent securing the City National Bank Facility described in clause (i) of the definition thereof in an amount not to exceed a minimum aggregate principal amount of Mezzanine Loans, Subordinated Commercial Real Estate Loans and

Preferred Equity Investments that would be required to satisfy the borrowing base requirement applicable to the maximum facility amount permitted under such City National Bank Facility (including, without limitation, any increases in the City National Bank Facility described in clause (i) of the definition thereof pursuant to Section 6.1(b));

(f) Liens securing Debt or amounts available under Debt facilities (whether or not drawn) existing on the A&R Effective Date and listed on Schedule 6.2; and

(g) other Liens with respect to obligations that do not exceed $10,000,000 in the aggregate at any time outstanding.

6.3 Debt Prepayments. Make or offer to make (or give any notice in respect thereof) any optional or voluntary payment, prepayment, repurchase or redemption of, or voluntarily or optionally defease, or otherwise satisfy prior to the scheduled maturity thereof in any manner, any Debt (other than the Loans and, for the avoidance of doubt, any revolving credit facilities, overdraft lines of credit or other similar revolving obligations); except that (a) the Borrower or any of its Subsidiaries may make such voluntary payments, repayments, repurchases or redemptions of, or voluntary or optional defeasements, or otherwise satisfy prior to the scheduled maturity thereof in any manner (other than payments, repayments, repurchases, redemptions or defeasements constituting Extraordinary Restricted Payments), any Debt so long as (i) no Event of Default or Default has occurred and is continuing or would result therefrom and (ii) the Borrower is in pro forma compliance with the financial covenants set forth in Section 6.12 immediately before and after giving effect to such payments and (b) the Borrower shall be permitted to make Extraordinary Restricted Payments so long as, after giving effect to such Extraordinary Restricted Payment, (i) no Event of Default or Default has occurred and is continuing or would result therefrom, (ii) the Total Net Leverage Ratio as tested on a pro forma basis for the most recently ended fiscal quarter is not greater than 4.50:1.00 and (iii) the Asset Coverage Ratio as tested on a pro forma basis for the most recently ended fiscal quarter is at least 115%. For the avoidance of doubt, notwithstanding any other provision in any Loan Document, ACRC Lender shall be permitted at all times to repay and/or reborrow any Debt under the City National Bank Facility so long as the aggregate principal amount of commitments thereunder are not terminated in full,.

6.4 Dividends. The Borrower shall not make or declare, directly or indirectly, any dividend or other payment or distribution on account of any interest of any class of equity securities in Borrower, whether now or hereafter outstanding (collectively, a "Distribution"); except (a) the Borrower may make Distributions (other than Extraordinary Restricted Payments) so long as (i) no Event of Default or Default has occurred and is continuing or would result therefrom and (ii) the Borrower is in pro forma compliance with the financial covenants set forth in Section 6.12 immediately before and after giving effect to such Distribution; (b) notwithstanding anything to the contrary, the Borrower may make Distributions at any time to its shareholders in an amount necessary to maintain its status as a "real estate investment trust" as defined in Section 856 the Code ("REIT") and avoid the imposition of income and excise tax on the Borrower and (c) the Borrower shall be permitted to make Extraordinary Restricted Payments so long as, after giving effect to such Extraordinary

Restricted Payment, (i) the Total Net Leverage Ratio as tested on a pro forma basis for the most recently ended fiscal quarter is not greater than 4.50:1.00 and (ii) the Asset Coverage Ratio as tested on a pro forma basis for the most recently ended fiscal quarter is at least 115%.

6.5 Restriction on Fundamental Changes. Change its name, change the nature of its business, enter into any merger, consolidation, reorganization, or recapitalization, or reclassify its partnership interests (whether limited or general) or membership interests, as applicable, or convey, sell, assign, lease, transfer, or otherwise dispose of, in one transaction or a series of transactions, all or any substantial part of its business or Assets, whether now owned or hereafter acquired (each, a "Fundamental Change") except:

(a) Borrower or any of its Subsidiaries may sell Assets in accordance with the provisions of Section 6.6;

(b) Borrower or any of its Subsidiaries may change its name or corporate, partnership or limited liability structure so long as (i) the Loan Parties provide written notice thereof (together with copies of any documents evidencing any such change) to the Agents on or before the date that is 10 Business Days prior to the date when such name or structure change occurs and (ii) any other Subsidiaries of the Borrower provide written notice thereof (together with copies of any documents evidencing any such change) to the Agents on or before the date that is 30 days after the date when such name or structure change occurs; and

(c) the conveyance, sale, assignment, lease, transfer, or other disposal of all or any substantial part of its business or Collateral, merger, consolidation or reorganization of any Person, on the one hand, with and into the Borrower or any of its Subsidiaries, provided that (i) the Lender Group's rights in any Assets, including, without limitation, the existence, perfection and priority of any Lien thereon, are not adversely affected by such merger, consolidation or reorganization, (ii) upon the consummation of such conveyance, sale, assignment, lease, transfer, or other disposal of all or any substantial part of its business or Assets, merger, consolidation or reorganization, the Borrower and any applicable Subsidiary expressly reaffirms its Obligations to the Lender Group under this Agreement and the other Loan Documents to which it is a party and (iii) such acts do not result in a Change of Control Event.

6.6 Sale of Assets. Sell, assign, transfer, convey, or otherwise dispose of its Assets (any such transaction, a "Sale"), whether now owned or hereafter acquired, except for (a) any Sale of obsolete, worn out or surplus tangible property, (b) any Sale of Assets for the liquidation, dissolution or winding up of a wholly-owned Subsidiary of the Borrower (i) if from a non-Loan Party Subsidiary, to any another Subsidiary and (ii) if from a Loan Party, to another Loan Party, (c) any transaction permitted by Sections 6.4 or 6.5 of this Agreement; (d) any Sale pursuant to, or in connection with, any Securitization Transaction or Warehousing Debt; or (e) any other Sale of Assets of the Borrower and the Subsidiaries so long as (i) the Borrower is in compliance with the financial covenants set forth in Section 6.12 immediately before such Sale of Assets, and immediately after giving effect thereto, (ii) any such Sale of Assets shall be for fair market value consideration (as determined by the Borrower in good faith and consistent with the Assigned Value given such Asset for purposes of this Agreement in the most recent Borrowing Base Certificate delivered to the Agents) and of which at least 75% of such

consideration shall be comprised of cash or Cash Equivalents and (iii) no Default or Event of Default has occurred and is continuing or would result therefrom, in each case, immediately prior to and after giving effect to such Sale for fair market value.

6.7 Transactions with Shareholders and Affiliates. Enter into or permit to exist, directly or indirectly, any transaction (including the purchase, sale, lease, or exchange of any Asset or the rendering of any service) with any holder of 10% or more of any class of Securities of the Borrower or any of its Subsidiaries or Affiliates, or with any Affiliate of the Borrower or of any such holder, in each case other than (x) a Loan Party or (y) any Subsidiary of the Borrower, on terms that are less favorable to such Subsidiary, than those terms that might be obtained at the time from Persons who are not such a holder, Subsidiary, or Affiliate, or, if such transaction is not one in which terms could be obtained from such other Person, on terms that are no less favorable than terms negotiated in good faith on an arm's length basis. Prior to the Borrower or any of its Subsidiaries engaging in any such transaction described in this Section 6.7, other than transactions in de minimis amounts, the Borrower shall determine that such transaction has been negotiated in good faith and on an arm's length basis. In no event shall the foregoing restrictive covenant apply to (a) any transaction permitted by Section 6.4, or (b) transactions involving the use, transfer, or other disposition of any Asset, to the extent that (i) the Distribution by the Borrower of such Asset would not have violated this Agreement and (ii) such use, transfer, or other disposition would not otherwise result in an Event of Default or an Default.

6.8 Conduct of Business. Engage in any business other than the business to which it is engaged as of the A&R Effective Date and any related businesses or activities substantially similar or related thereto or reasonable extensions of any such business or activities including, without limitation, the commercial real estate mortgage business, commercial real estate brokerage business, commercial real estate business, commercial real estate-related securities acquisitions and acquisitions of MSRs.

6.9 Amendments or Waivers of Certain Documents; Actions Requiring the Consent of the Agents. Agree to any amendment to or waiver of the terms or provisions of its Governing Documents except for amendments or waivers which would not, either individually or collectively, be materially adverse to the interests of the Lender Group.

6.10 Limitation on Negative Pledges. Enter into or suffer to exist or become effective any agreement or other arrangement that prohibits, restricts or imposes any condition upon the ability of the Borrower or any of its Subsidiaries to create, incur, assume or suffer to exist any Lien upon any Collateral (other than Securities in Securitization Entities), whether now owned or hereafter acquired, to secure the Obligations, except for any restrictions that:

(a) exist under this Agreement and the other Loan Documents;

(b) exist on the date hereof and (to the extent not otherwise permitted by this Section 6.10) are listed on Schedule 6.10 hereto;

(c) are binding on a Subsidiary or its Assets at the time such Subsidiary or its Assets first becomes a Subsidiary or owned by a Subsidiary, as applicable, so long as such restrictions were not entered into solely in contemplation of such Person becoming a Subsidiary;

(d) are customary restrictions and conditions contained in any agreement relating to any transaction permitted by Section 6.6 pending the consummation of such transaction; *provided* that such restrictions and conditions apply only to the property that is the subject of such transaction and not to the proceeds to be received by the Borrower or any of its Subsidiaries in connection with such transaction;

(e) are customary restrictions in leases, subleases, licenses or asset sale agreements otherwise permitted hereby so long as such restrictions relate solely to the assets subject thereto;

(f) are customary provisions restricting subletting or assignment of any lease governing a leasehold interest of the Borrower or any Subsidiary;

(g) are customary provisions restricting assignment or transfer of any agreement entered into in the ordinary course of business; and

(h) are amendments, modifications, restatements, refinancings or renewals of the agreements, contracts or instruments referred to in Section 6.10(b) through (g) above; provided that such amendments, modifications, restatements, refinancings or renewals, taken as a whole, are not materially more restrictive with respect to such encumbrances and restrictions than those contained in such predecessor agreements, contracts or instruments.

6.11 Margin Regulation. Use any portion of the proceeds of any of the Loans in any manner which could reasonably be expected to cause the Loans, the application of such proceeds, or the Transactions to violate Regulations T, U or X of the Federal Reserve Board, or any other regulation of such board, or to violate the Exchange Act, or to violate the Investment Company Act of 1940.

6.12 Financial Covenants. The Borrower shall not:

(a) Minimum Asset Coverage Ratio. Commencing with the fiscal quarter ending December 31, 2021, permit the Asset Coverage Ratio on each Test Date, be less than 115%.

(b) Minimum Unencumbered Asset Ratio. Commencing with the fiscal quarter ending December 31, 2021, permit the Unencumbered Asset Ratio on each Test Date, be less than 145%.

(c) Maximum Total Net Leverage Ratio. Commencing with the fiscal quarter ending December 31, 2021, permit the Total Net Leverage Ratio on each Test Date to exceed 4.25:1.00

(d) Minimum Tangible Net Worth. Permit its Tangible Net Worth on each Test Date (commencing with the fiscal quarter ending December 31, 2021), to be less than the Minimum Tangible Net Worth Amount for such day.

(e) Loan Concentration. Permit less than 80.0% of loans held for investment (as defined in the consolidated balance sheet of the Borrower) by the Borrower to be comprised of Senior Commercial Real Estate Loans, as measured by the average daily outstanding principal balance of all loans held for investment (as defined in the consolidated balance sheet of the Borrower) during a fiscal quarter and as adjusted for non-controlling interests.

(f) Minimum Interest Coverage Ratio. Commencing with the fiscal quarter ending December 31, 2021, permit the Interest Coverage Ratio on each Test Date to be less than 1.10:1.00.

(g) Facilities with Other Lenders. In the event that the Borrower shall enter into, or shall amend or modify, any other agreement for pari passu Debt (for the avoidance of doubt, excluding any guarantee made by the Borrower with respect to any commercial real estate loan revolving repurchase agreement or commercial real estate loan revolving secured warehouse facility) with any other lender (each as in effect after giving effect to all amendments thereof, a "Third Party Agreement") which Third Party Agreement includes any financial covenant that is comparable to any of the financial covenants set forth in this Agreement or in any other Loan Document, and such comparable financial covenant is more restrictive to the Borrower or otherwise more favorable to the related lender or buyer thereunder than any financial covenant set forth in this Agreement or in any other Loan Document, or is in addition to any financial covenant set forth in this Agreement or in any other Loan Document (each, a "Third Party Financial Covenant"), then such Third Party Financial Covenant shall, for so long as such other facility remains outstanding, with no further action required on the part of the Borrower or the Agents, automatically become a part of this Agreement or any other Loan Document and be incorporated herein and/or therein, and the Borrower hereby covenants to maintain compliance with such Third Party Financial Covenant as required under such Third Party Agreement at all times throughout the remaining term of this Agreement to the extent that, and for so long as, such Third Party Agreement (and related Third Party Financial Covenant) remains in effect. In connection herewith, the Borrower agrees to promptly notify (in writing) Agents of the execution of any agreement or other document that would cause the provisions of this Section 6.12(g) to become effective. Each party agrees to execute and deliver any new guaranties, agreements or amendments to this Agreement or any other Loan Document necessary to evidence all such new or modified provisions, provided that the execution of such amendment shall not be a precondition to the effectiveness of such amendment, but shall merely be for the convenience of the parties hereto and thereto.

6.13 Plans. No Loan Party shall become a party to any Multiemployer Plan or Single Employer Plan other than any such plan to which the Loan Party as a party on the date of this Agreement without first notifying the Agents, or fail to meet all of the requirements of the Pension Funding Rules with respect to a Single Employer Plan. No Loan Party shall, or

shall cause or permit any ERISA Affiliate to (a) cause or permit to occur any event that could result in the imposition of a Lien against a Loan Party under the Pension Funding Rules or (b) cause or permit to occur an ERISA Event which could reasonably be expected to have a Material Adverse Effect.

ARTICLE VII

EVENTS OF DEFAULT AND REMEDIES

7.1 Events of Default. The occurrence of any one or more of the following events, acts, or occurrences shall constitute an event of default ("Event of Default") hereunder:

(a) Failure to Make Payments When Due.

(i) Any Loan Party shall (A) fail to pay any amount owing hereunder with respect to the principal of any of the Loans when such amount is due, whether at stated maturity, by acceleration, or otherwise or (B) fail to comply with Section 2.8(b); or

(ii) Any Loan Party shall fail to pay, within three (3) Business Days of the date when due, any amount owing hereunder with respect to interest on any of the Loans or with respect to any other amounts (including fees, costs, or expenses) other than the amounts specified in clause (i) above, payable in connection herewith.

(b) Breach of Certain Covenants.

(i) Any Loan Party shall fail to perform or comply with any covenant, term, or condition contained in Article VI of this Agreement; provided that an Event of Default with respect to Section 6.12 shall not occur until the Cure Expiration Date; and

(ii) Any Loan Party shall fail to perform or comply with any other covenant, term, or condition contained in this Agreement or other Loan Documents to which it is a party and such failure shall not have been remedied or waived within 20 days after the earlier of (x) knowledge of the occurrence thereof by the Borrower or (y) receipt of notice from any Agent of the occurrence thereof; provided, however, that this clause (ii) shall not apply to: (1) the covenants, terms, or conditions referred to in subsections (a) and (c) of this Section 7.1; or (2) the covenants, terms, or conditions referred to in clause (i) above of this subsection (b).

(c) Breach of Representation or Warranty. Any financial statement, representation, warranty, or certification made or furnished by the Borrower or any other Loan Party under this Agreement or in any document, letter, or other writing or instrument furnished or delivered by the Borrower to any Agent or any Lender pursuant to or in connection with this Agreement or any other Loan Document to which it is a party shall have been false, incorrect, or incomplete in any material respect (except that such materiality qualifier shall not be applicable

to any representation or warranty to the extent that such representation or warranty is qualified or modified by materiality or "Material Adverse Effect") when made, deemed made or reaffirmed, as the case may be.

(d) Involuntary Bankruptcy.

(i) If an involuntary case seeking the liquidation or reorganization of any of the Borrower or any of its Subsidiaries (other than Immaterial Subsidiaries) under Chapter 7 or Chapter 11, respectively, of the Bankruptcy Code or any similar proceeding shall be commenced against the Borrower or any of its Subsidiaries (other than Immaterial Subsidiaries) under any other applicable law and any of the following events occur: (1) such Person consents to the institution of the involuntary case or similar proceeding; (2) the petition commencing the involuntary case or similar proceeding is not timely controverted; (3) the petition commencing the involuntary case or similar proceeding is not dismissed within 60 days of the date of the filing thereof; provided, however, that, during the pendency of such period, the Lender Group shall be relieved of its obligation to make additional Loans; (4) an interim trustee is appointed to take possession of all or a substantial portion of the Collateral of the Borrower or any of its Subsidiaries (other than Immaterial Subsidiaries); or (5) an order for relief shall have been issued or entered therein.

(ii) A decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, custodian, trustee, or other officer having similar powers over the Borrower or any of its Subsidiaries (other than Immaterial Subsidiaries) to take possession of all or a substantial portion of its Collateral shall have been entered and, within 60 days from the date of entry, is not vacated, discharged, or bonded against, provided, however, that, during the pendency of such period, the Lender Group shall be relieved of its obligations to make additional Loans.

(e) Voluntary Bankruptcy. The Borrower or any of its Subsidiaries (other than Immaterial Subsidiaries) shall institute a voluntary case seeking liquidation or reorganization under Chapter 7 or Chapter 11, respectively, of the Bankruptcy Code; the Borrower or any of its Subsidiaries (other than Immaterial Subsidiaries) shall file a petition, answer, or complaint or shall otherwise institute any similar proceeding under any other applicable law, or shall consent thereto; the Borrower or any of its Subsidiaries (other than Immaterial Subsidiaries) shall consent to the conversion of an involuntary case to a voluntary case; or the Borrower or any of its Subsidiaries (other than Immaterial Subsidiaries) shall consent or acquiesce to the appointment of a receiver, liquidator, sequestrator, custodian, trustee, or other officer with similar powers to take possession of all or a substantial portion of its Collateral; the Borrower or any of its Subsidiaries (other than Immaterial Subsidiaries) shall generally fail to pay debts as such debts become due or shall admit in writing its inability to pay its debts generally; or the Borrower or any of its Subsidiaries (other than Immaterial Subsidiaries) shall make a general assignment for the benefit of creditors.

(f) Dissolution. Any order, judgment, or decree shall be entered decreeing the dissolution of the Borrower or any of its Subsidiaries (other than Immaterial

Subsidiaries), and such order, judgment or decree shall remain undischarged or unstayed for a period in excess of 60 days.

(g) Change of Control. A Change of Control Event shall occur.

(h) Judgments and Attachments. The Borrower or any of its Subsidiaries shall suffer any money judgment, writ, or warrant of attachment, or similar process involving payment of money in an amount, net of any portion thereof that is covered by or recoverable by the Borrower or such Subsidiary under applicable insurance policies (if any) in excess of $15,000,000 and shall not discharge, vacate, bond, or stay the same within a period of 60 days.

(i) Guaranty. (1) If the obligation of any Guarantor under the Guaranty is limited or terminated by operation of law or such Guarantor thereunder, (2) if any Guarantor shall fail to perform or comply with any covenant, term, or condition contained in the Guaranty or (3) any financial statement, representation, warranty, or certification made or furnished by any Guarantor under this Agreement, the Guaranty or in any document, letter, or other writing or instrument furnished or delivered by such Guarantor to any Agent or any Lender pursuant to or in connection with this Agreement, the Guaranty or any other Loan Document to which it is a party, or as an inducement to the Lender Group to enter into this Agreement or any other Loan Document shall have been false, incorrect, or incomplete in any material respect (except that such materiality qualifier shall not be applicable to any representation or warranty to the extent that such representation or warranty is qualified or modified by materiality or "Material Adverse Effect") when made, deemed made or reaffirmed, as the case may be.

(j) Cross-Default. The Borrower or any of its Subsidiaries shall be in default relating to Debt (other than Debt evidenced by this Agreement) which is outstanding in excess of a principal amount of $15,000,000, individually or in the aggregate, and such default shall continue beyond any and all applicable grace, cure and notice periods relating to such Debt (as such periods may be extended with the approval of the applicable counterparties to such Debt and by the Required Lenders).

(k) ERISA. There occurs one or more other ERISA Events which has resulted or could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

(l) Agent's Liens. If any Loan Document that purports to create a Lien shall fail or cease to create, except to the extent permitted by the terms of any such Loan Document, a valid and perfected Lien on the Collateral; and

(m) Loan Documents. Any provision of any Loan Document shall at any time for any reason be declared to be null and void, or the validity or enforceability thereof shall be diligently contested by any Loan Party or the Negative Pledgor Subsidiary, or a proceeding shall be commenced by any Loan Party, or the Negative Pledgor Subsidiary or by any Governmental Authority having jurisdiction over any Loan Party or the Negative Pledgor Subsidiary, seeking to establish the invalidity or unenforceability thereof, or any Loan Party or

the Negative Pledgor Subsidiary shall deny in writing that any Loan Party or the Negative Pledgor Subsidiary has any liability or obligation purported to be created under any Loan Document.

7.2 Remedies. Upon the occurrence of an Event of Default:

(a) If such Event of Default arises under subsections (d) or (e) of Section 7.1 hereof, then the Delayed Draw Term Loan Commitments (if any) hereunder immediately shall terminate and all of the Obligations owing hereunder or under the other Loan Documents automatically shall become immediately due and payable, without presentment, demand, protest, notice, or other requirements of any kind, all of which are hereby expressly waived by the Borrower; and

(b) In the case of any other Event of Default that has occurred and is continuing, the Required Agents may declare the Delayed Draw Term Loan Commitments hereunder terminated and all of the Obligations owing hereunder or under the Loan Documents to be, and the same immediately shall become due and payable, without presentment, demand, protest, further notice, or other requirements of any kind, all of which are hereby expressly waived by the Borrower.

Upon any exercise of rights pursuant to Sections 7.2(a) and (b) above, the Agents (without notice to or demand upon the Borrower, which are expressly waived by the Borrower to the fullest extent permitted by law), shall be entitled to proceed to protect, exercise, and enforce the Lender Group's rights and remedies hereunder or under the other Loan Documents, or any other rights and remedies as are provided by law or equity. The Agents may determine, in their sole discretion, the order and manner in which the Lender Group's rights and remedies are to be exercised. All payments received by the Agents shall be applied in accordance with Section 2.3(a)(ii).

7.3 Borrower's Right to Cure.

(a) Notwithstanding anything to the contrary contained in Section 7.1, for purposes of determining whether an Event of Default has occurred under any financial covenant set forth in Sections 6.12, any cash received by the Borrower after the last day of the fiscal quarter in respect of which such Event of Default has occurred and on or prior to the date that is five (5) Business Days after the date on which financial statements are required to be delivered for such fiscal quarter (the "Cure Expiration Date") will, at the request of the Borrower, be included in the calculation of Borrowing Base or the Borrowing Base Eligible Assets solely for the purposes of determining compliance with the financial covenants set forth in Sections 6.12 at the end of such fiscal quarter and any subsequent period that includes such fiscal quarter (a "Cash Cure Amount"); provided that (a) the amount of any Cash Cure Amount and the use of proceeds therefrom will be no greater than the amount required to cause the Borrower to be in compliance with the financial covenants set forth in Section 6.12 and (b) the proceeds of all Cash Cure Amounts shall be applied to prepay the Loans and accompanied by the applicable Prepayment Premium required by Section 2.8(d) (if any). Upon the delivery of the Cash Cure Amount to the Borrower prior to the Cure Expiration Date, any Event of Default that

has occurred pursuant to Section 6.12 shall be deemed to not have occurred and, for the avoidance of doubt, neither any Agent nor any Lender shall exercise the right to accelerate the Loans or terminate the Delayed Draw Term Loan Commitments and none of any Agent, any Lender or any Secured Party shall exercise any right to foreclose on or take possession of the Collateral or exercise any other remedy pursuant to Section 7.2, the other Loan Documents or applicable law prior to the Cure Expiration Date solely on the basis of an Event of Default having occurred and continuing under Section 6.12 (except to the extent that the Borrower has confirmed that in writing that it does not intend to provide a Cash Cure Amount). For the avoidance of doubt, the Borrower shall not be able to obtain any Loan hereunder until receipt by the Agents of the Cash Cure Amount; and

(b) Notwithstanding anything to the contrary herein, the Borrower shall (to the extent capable of cure) have five (5) Business Days to cure any event that would give rise to a reduction in value of any Borrowing Base Eligible Asset, including, for the avoidance of doubt, a VAE and any event described in Section 11.5.

ARTICLE VIII

EXPENSES AND INDEMNITIES

8.1 Expenses. The Borrower shall pay without duplication, (i) all reasonable and documented out-of-pocket costs and expenses (except allocated costs of in-house counsel) reasonably incurred by the Agents and the Lenders in connection with the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents, or any amendments, modifications or waivers of the provisions hereof or thereof, including the reasonable and documented fees, charges and disbursements of counsel (but limited to (A) one primary counsel for the Agents, (B) one primary counsel for the Lenders and (C) if necessary, one local counsel in each relevant jurisdiction (which may include a single special counsel acting in multiple jurisdictions) and in the case of an actual or perceived conflict of interest, where the party affected by such conflict, informs the Borrower of such conflict and thereafter retains its own counsel, of another firm of counsel for each such affected person); provided, however, that the Borrower is not obligated to reimburse the Lenders for out-of-pocket costs and expenses incurred on or before the A&R Effective Date in connection with the preparation of this Agreement and the other Loan Documents to the extent that such out-of-pocket costs and expenses exceed $300,000 (the "Expenses Cap") unless, at any Lender's reasonable request from time to time, the Borrower consents (such consent not to be unreasonably, withheld, conditioned or delayed) to reimburse the Lenders for any out-of-pocket costs and expenses incurred on or before the A&R Effective Date that exceed the Expenses Cap, (ii) all out-of-pocket costs and expenses incurred by each Agent or each Lender (including the fees, charges and disbursements of any counsel for any Agent or any Lender) in connection with the development, preparation, negotiation and execution of any amendment, waiver, consent or other modification of the provisions of this Agreement or any other Loan Document and the enforcement or protection of any rights and remedies under this Agreement (including, without limitation, with respect to the Collateral) and the other Loan Documents, including all such costs

and expenses incurred during any legal proceeding, including any proceeding under any Debtor Relief Law, and including in connection with any workout, restructuring or negotiations in respect of the Credit Facilities and the Loan Documents, including the customary and reasonable fees, charges and disbursements of counsel and (iii) all out-of-pocket costs and expenses incurred by each Agent or each Lender (including the customary and reasonable fees, charges and disbursements of any counsel, third party pricing agent, trustee, tax administrator and other professionals indicated in writing by the Agent or any Lender) in connection with the day-to-day operation of the Lender as a trust; provided, that such expenses under this clause (iii) shall not exceed $45,000 per annum (collectively, the expenses set forth in clauses (i), (ii) and (iii), the "Lender Group Expenses").

8.2 Indemnity. In addition to the payment of expenses pursuant to Section 8.1 hereof, the Borrower agrees to indemnify, exonerate, defend, pay, and hold harmless the Agent-Related Persons and the Lender-Related Persons (collectively the "Indemnitees" and individually as "Indemnitee") from and against any and all liabilities, obligations, losses, damages, penalties, actions, causes of action, judgments, suits, claims, costs, expenses, and disbursements of any kind or nature whatsoever (including the reasonable and documented fees and disbursements of (A) one primary counsel for the Agent-Related Persons, taken as a whole, (B) one primary counsel for the Lender-Related Persons, taken as a whole, and (C) if reasonably necessary, one local counsel in each relevant jurisdiction for the Agent-Related Persons and Lender-Related Persons (which may include a single special counsel acting in multiple jurisdictions) and in the case of an actual or perceived conflict of interest, where the party affected by such conflict informs the Borrower of such conflict and thereafter retains its own counsel, of another firm of counsel for each such affected person) in connection with any investigation, administrative, or judicial proceeding, whether such Indemnitee shall be designated a party thereto), that may be imposed on, incurred by, or asserted against such Indemnitee, in any manner relating to or arising out of the execution a, delivery, enforcement, performance, syndication or administration of any Loan Document or any other agreement, letter or instrument delivered in connection with the transactions contemplated thereby, the business or Assets of any Loan Party (to include, without limitation, any actual or alleged presence or release of Hazardous Material on or from any property currently or formerly owned or operated by Borrower, any Subsidiary or any other Loan Party, or any violation of any Environmental Law related in any way to the Borrower, and any Subsidiary or any other Loan Party), the Commitments, the use or intended use of the proceeds of the Loans or the consummation of the transactions contemplated by this Agreement, including any matter relating to or arising out of the filing or recordation of any of the Loan Documents which filing or recordation is done based upon information supplied by the Borrower to the Agents and its counsel (the "Indemnified Liabilities"); provided, that the Borrower shall have no obligation hereunder to any Indemnitee to the extent (x) that such Indemnified Liabilities are found in a final non-appealable judgment by a court of competent jurisdiction to have resulted from the gross negligence, bad faith, or willful misconduct of such Indemnitee or (y) any dispute solely among Indemnitees (other than any claims against an Indemnitee in its capacity or in fulfilling its role as an agent or arranger or any similar role hereunder or under any other Loan Document and other than any claims arising out of any act or omission of the Borrower). The obligations of the Borrower under this Section 8.2 shall survive the termination of this Agreement and the discharge of the Borrower's

other obligations hereunder. This Section 8.2 shall not apply with respect to Taxes, which shall be governed by Section 10.11, other than any Taxes that represent liabilities, obligations, losses or damages, arising from a non-Tax claim.

ARTICLE IX

ASSIGNMENT AND PARTICIPATIONS

9.1 Successors and Assigns Generally. (a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that, subject to Section 9.1(f), neither the Borrower nor any other Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Agents and each Lender, and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of Section 9.1(b), (ii) by way of participation in accordance with the provisions of Section 9.1(d), or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 9.1(e) (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in Section 9.1(d) and, to the extent expressly contemplated hereby, the Agent-Related Persons of each of the Agents and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(a) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it); provided that (in each case with respect to any Credit Facility) any such assignment shall be subject to the following conditions:

(i) Minimum Amounts. Except in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Administrative Agent) shall not be less than $5,000,000, unless the Required Agents and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents in writing (each such consent not to be unreasonably withheld or delayed).

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loan or the Commitment assigned, except that this clause (ii) shall not prohibit any Lender from assigning all or a portion of its rights and

obligations among Delayed Draw Term Loan Commitments and Initial Term Loans on a non-pro rata basis.

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by Section 9.1(b)(i) and, in addition:

(A) the written consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (x) a Default (after expiry of any grace, cure and notice periods or as further extended with the approval of the Required Lenders) or an Event of Default has occurred and is continuing at the time of such assignment or (y) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; provided that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Agents within ten (10) Business Days after having received notice thereof (which notice shall provide, in bold type face, that if the Borrower does not object in writing to such assignment within ten Business Days, the Borrower's consent shall have been deemed to have been provided); and

(B) the consent of the Agents (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of (i) any unfunded Commitments with respect to the Delayed Draw Term Loan Facility if such assignment is to a Person that is not a Lender with a Commitment in respect of such Term Loan Facility, an Affiliate of such Lender or an Approved Fund with respect to such Lender, or any Loans to a Person who is not a Lender, an Affiliate of a Lender or an Approved Fund.

(iv) Assignment and Acceptance. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Acceptance, together with a processing and recordation fee of $3,500; provided that the Required Agents may, in their sole discretion, elect to waive such processing and recordation fee in the case of any assignment**.** The assignee, if it is not a Lender, shall deliver to the Agents an Administrative Questionnaire, a duly executed IRAS Form W-9, or such other IRS Form as applicable, and all "know your customer" documentation requested by the Administrative Agent.

(v) No Assignment to Certain Persons. No such assignment shall be made to the Borrower or any of the Borrower's Affiliates or Subsidiaries except as permitted by Section 9.1(f).

(vi) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Required Agents, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Agents and each

other Lender hereunder (and interest accrued thereon), in accordance with its applicable percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to Section 9.1(c), and receipt of all requirements under Section 9.1(b)(iv) by the Administrative Agent, from and after the Administrative Agent has recorded such Assignment and Acceptance in the Register, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Section 2.11, Section 8.1 and Section 8.2 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 9.1(d).

(a) Register. The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at one of its offices in Chicago, Illinois a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior written notice.

(a) Participations.

(i) Any Lender may at any time, sell participations to any Person (other than a natural Person, or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person, or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for

the performance of such obligations and (iii) the Borrower, the Administrative Agent and Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement.

(ii) Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in Sections 11.2(a)-(h) that affects such Participant. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.11, 2.16, and 10.11 (subject to the requirements and limitations therein, including the requirements under Section 10.11 (it being understood that the documentation required under Section 10.11 shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section; provided that such Participant (A) agrees to be subject to the provisions of Section 2.16 as if it were an assignee under paragraph (b) of this Section; and (B) shall not be entitled to receive any greater payment under Sections 2.11 or 10.11, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.13 as though it were a Lender; provided that such Participant agrees to be subject to Section 10.13 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(iii) No consent shall be required for any participation except that the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (x) a Default (after expiry of any grace, cure and notice periods or as further extended with the approval of the Required Lenders) or an Event of Default has occurred and is continuing at the time of such participation or (y) such participation is to a Lender, an Affiliate of a Lender or an Approved Fund; provided that the Borrower shall be deemed to have consented to any such participation unless it shall object thereto by written notice to the Agents within ten

(10) Business Days after having received notice thereof (which notice shall provide, in bold type face, that if the Borrower does not object in writing to such participation within ten Business Days, the Borrower's consent shall have been deemed to have been provided).

(b) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(c) Assignments to Borrower and Borrower Affiliates. Notwithstanding anything in this Agreement to the contrary, any Lender may, at any time, assign all or a portion of its Loans on a pro rata basis to the Borrower or any Borrower Affiliate, subject to the following limitations:

(i) immediately and automatically, without any further action on the part of the Borrower, any Lender, any Agent or any other Person, upon the effectiveness of such assignment of Loans from a Lender to the Borrower, such Loans and all rights and obligations as a Lender related thereto shall, for all purposes under this Agreement, the other Loan Documents and otherwise, be deemed to be irrevocably prepaid, terminated, extinguished, cancelled and of no further force and effect (and which, for the avoidance of doubt, shall not constitute voluntary or mandatory payments or prepayments for purposes of Section 2.8 hereof) and the Borrower shall neither obtain nor have any rights as a Lender hereunder or under the other Loan Documents by virtue of such assignment such purchases (and the payments made by the Borrower and the cancellation of the purchased Loans, in each case in connection therewith);

(ii) any Borrower Affiliate may, with the consent of the Borrower, including without limitation, in exchange for Debt or Securities permitted to be issued, contribute, directly or indirectly, the principal amount of such Loans or any portion thereof, plus all accrued and unpaid interest thereon, to the Borrower for the purpose of cancelling and extinguishing such Loans; provided that, upon the date of such contribution, assignment or transfer, (x) the aggregate outstanding principal amount of Loans shall reflect such cancellation and extinguishing of the Loans then held by the Borrower and (y) the Borrower shall promptly provide notice to the Agents of such contribution of such Loans, and the Administrative Agent, upon receipt of such notice, shall reflect the cancellation of the applicable Loans in the Register;

(iii) (A) for purposes of any consent to any amendment, waiver or modification of, or any action under, and for the purpose of any direction to any Agent or any Lender to undertake any action (or refrain from taking any action) under, this Agreement or any other Loan Document, each applicable Borrower Affiliate will be deemed to have consented in the same proportion as the Lenders that are not Borrower Affiliate consented to such matter, unless such matter requires the consent of all or all affected Lenders and adversely affects such Borrower Affiliate more than other Lenders in any material respect, (B) for purposes of voting on any plan of reorganization or plan of liquidation pursuant to any Debtor Relief Laws (a

"Bankruptcy Plan"), each Borrower Affiliate hereby agrees (x) not to vote on such Bankruptcy Plan, (y) if such Borrower Affiliate does vote on such Bankruptcy Plan notwithstanding the restriction in the foregoing clause (x), such vote will be deemed not to be in good faith and shall be "designated" pursuant to Section 1126(e) of the Bankruptcy Code (or any similar provision in any other Debtor Relief Laws), and such vote shall not be counted in determining whether the applicable class has accepted or rejected such Bankruptcy Plan in accordance with Section 1126(c) of the Bankruptcy Code (or any similar provision in any other Debtor Relief Laws) and (z) not to contest any request by any party for a determination by a court of competent jurisdiction effectuating the foregoing clause (y), in each case under this clause (B) unless such Bankruptcy Plan adversely affects such Borrower Affiliate more than other Lenders in any material respect and (C) each Borrower Affiliate hereby irrevocably appoints the Agents (such appointment being coupled with an interest) as such Borrower Affiliate's attorney-in-fact, with full authority in the place and stead of such Borrower Affiliate and in the name of such Borrower Affiliate (solely in respect of Loans held by such Borrower Affiliate and not in respect of any other claim or status such Borrower Affiliate may otherwise have), from time to time in either Agent's discretion to take any action and to execute any instrument that the Agents may deem reasonably necessary or appropriate to carry out the provisions of this Section 9.1(f)(iv), including to ensure that any vote of such Borrower Affiliate on any Bankruptcy Plan is withdrawn or otherwise not counted;

(iv) the Borrower and any Borrower Affiliate shall represent and warrant, on the date of any such assignment, that neither it, its Affiliates nor any of its respective directors or officers has any Excluded Information that has not been disclosed to the Lenders generally (other than to the extent any such Lender does not wish to receive material non-public information with respect to the Borrower or its Subsidiaries or any of their respective securities) prior to such date;

(v) all parties to the relevant transactions shall render customary "big boy" disclaimer letters; and

(vi) no Event of Default shall have occurred and be continuing before or immediately after giving effect to such assignment.

ARTICLE X

AGENT; THE LENDER GROUP

10.1 Appointment and Authorization of Agent. Each Lender under the Existing Credit Agreement has designated and appointed (and each Lender hereby reaffirms such designation and appointment) Cortland as the Administrative Agent and Collateral Agent as their representatives under this Agreement and the other Loan Documents and each Lender has irrevocably authorized (and each Lender hereby reaffirms such authorization) (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to designate, appoint, and authorize) each Agent to execute and deliver each of the other Loan Documents on its behalf and to take such other action on its behalf under the provisions of this Agreement and

each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to each Agent by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto. The Agents agree in their respective capacities as Administrative Agent and Collateral Agent, as applicable, to act as agent for and on behalf of the Lenders (and the Bank Product Providers) on the express conditions contained in this Article X. The provisions of this Article X (other than Section 10.9 and Section 10.11) are solely for the benefit of the Agents, and the Lenders, and the Borrower and its Subsidiaries shall have no rights as a third party beneficiary of any of the provisions contained herein. The Agents shall not have any duties or responsibilities, except those expressly set forth herein, nor shall the Agents have or be deemed to have any fiduciary relationship with any Lender (or Bank Product Provider), and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against the Agents; it being expressly understood and agreed that the use of the word "Agent" is for convenience only, that the Agents are merely the representative of the Lenders, and only has the contractual duties set forth herein. Without limiting the generality of the foregoing, the use of the term "agent" in this Agreement or the other Loan Documents with reference to Agents is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only a representative relationship between independent contracting parties. Each Lender hereby further authorizes (and by its entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to authorize) the Collateral Agent to act as the secured party under each of the Loan Documents that create a Lien on any item of Collateral. Except as expressly otherwise provided in this Agreement, the Agents shall have and may use their sole discretion with respect to exercising or refraining from exercising any discretionary rights or taking or refraining from taking any actions that the Agents expressly are entitled to take or assert under or pursuant to this Agreement and the other Loan Documents. Without limiting the generality of the foregoing, or of any other provision of the Loan Documents that provides rights or powers to the Agents, the Lenders agree that the Agents shall have the right to exercise the following powers as long as this Agreement remains in effect: (a) maintain, in accordance with its customary business practices, ledgers and records reflecting the status of the Obligations, the Collateral, the Collections of the Borrower and its Subsidiaries, and related matters, (b) execute or file any and all financing or similar statements or notices, amendments, renewals, supplements, documents, instruments, proofs of claim, notices and other written agreements with respect to the Loan Documents, (c) make Loans, for itself (to the extent such Agent is also a Lender) or on behalf of Lenders as provided in the Loan Documents, (d) exclusively receive, apply, and distribute the Collections of the Borrower and its Subsidiaries as provided in the Loan Documents, (e) open and maintain such bank accounts and cash management arrangements as the Agents deem necessary and appropriate in accordance with the Loan Documents for the foregoing purposes with respect to the Collateral and the Collections of the Borrower and its Subsidiaries, (f) perform, exercise, and enforce any and all other rights and remedies of the Lender Group with respect to the Borrower, the Obligations, the Collateral, the Collections of the Borrower and its Subsidiaries, or otherwise related to any of same as provided in the Loan Documents, and (g) incur and pay such Lender Group Expenses as the Agents may deem necessary or appropriate for the performance and fulfillment of its functions and powers pursuant to the Loan Documents. At least three Business Days prior to any Interest Payment

Date and with respect to any other payment in respect of the Loans hereunder, promptly upon receipt of a prepayment notice from the Borrowers, the Administrative Agent shall provide the Lenders with a Payment Date Statement relating to such payment to Lenders.

10.2 Delegation of Duties. The Agents may execute any of its duties under this Agreement or any other Loan Document by or through agents, employees or attorneys in fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. The Agents shall not be responsible for the negligence or misconduct of any agent or attorney in fact selected by it with reasonable care except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that the such Agent acted with gross negligence or willful misconduct in the selection of such sub-agents. In connection with perfecting its security interest in any Collateral which constitutes Instruments or certificated Pledged Securities, for so long as Cortland is the Collateral Agent under this Agreement, it shall appoint (and maintain an agreement with) a sub-agent who has secure and fire resistant facilities in accordance with customary standards for custody of Instruments and certificated Pledged Securities, who shall take possession of the related Collateral and maintain it in such location for purposes of custodial safe keeping.

10.3 General Immunity.

(a) No Responsibility for Certain Matters. No Agent shall be responsible to any Lender (or any other Secured Party) for the execution, effectiveness, genuineness, validity, enforceability, collectability or sufficiency hereof or any other Loan Document or for any representations, warranties, recitals or statements made herein or therein or made in any written or oral statements or in any financial or other statements, instruments, reports or certificates or any other documents furnished or made by any Agent to the Lenders (or any other Secured Party) or by or on behalf of any Loan Party to any Agent or any Lender (or any other Secured Party) in connection with the Loan Documents and the transactions contemplated thereby or for the financial condition or business affairs of any Loan Party or any other Person liable for the payment of any Obligations, nor shall any Agent be required to ascertain or inquire as to the performance or observance of any of the terms, conditions, provisions, covenants or agreements contained in any of the Loan Documents or as to the use of the proceeds of the Loans or as to the existence or possible existence of any Default or Event of Default or to make any disclosures with respect to the foregoing. Anything contained herein to the contrary notwithstanding, the Agents shall not have any liability arising from confirmations of the amount of outstanding Loans or the component amounts thereof.

(b) Exculpatory Provisions. No Agent-Related Person shall be liable for any action taken or omitted by any Agent under or in connection with any of the Loan Documents except to the extent caused by such Agent's gross negligence or willful misconduct, as determined by a court of competent jurisdiction in a final, non-appealable order; provided, that any action taken or omitted by any Agent at the direction of the Required lenders (or such other Lenders as the case may be) shall not constitute gross negligence or willful misconduct on the part of such Agent. Each Agent shall be entitled to refrain from any act or the taking of any action (including the failure to take an action) in connection herewith or any of the other Loan

Documents or from the exercise of any power, discretion or authority vested in it hereunder or thereunder unless and until such Agent shall have received instructions in respect thereof from Required Lenders (or such other Lenders as may be required to give such instructions under Section 11.2) and, upon receipt of such instructions from Required Lenders (or such other Lenders, as the case may be), such Agent shall be entitled to act or (where so instructed) refrain from acting, or to exercise such power, discretion or authority, in accordance with such instructions. Without prejudice to the generality of the foregoing, (i) each Agent shall be entitled to rely, and shall be fully protected in relying, upon any communication, instrument or document believed by it to be genuine and correct and to have been signed or sent by the proper Person or Persons, and shall be entitled to rely and shall be protected in relying on opinions and judgments of attorneys (who may be attorneys for the Loan Parties), accountants, experts and other professional advisors selected by it; and (ii) no party hereto shall have any right of action whatsoever against any Agent in such capacity as a result of such Agent in such capacity acting or (where so instructed) refraining from acting hereunder or any of the other Loan Documents in accordance with the instructions of Required Lenders (or such other Lenders as may be required to give such instructions under Section 11.2).

10.4 Reliance by Agent. The Agents shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless Agent shall first receive such advice or concurrence of the Lenders as it deems appropriate and until such instructions are received, the Agents shall act, or refrain from acting, as it deems advisable. If an Agent so requests, it shall first be indemnified to its reasonable satisfaction by the Lenders against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. The Agents shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Loan Document in accordance with a request or consent of the requisite Lenders and such request or consent and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

10.5 Knowledge of Defaults/Events of Default. The Agents shall not be deemed to have knowledge or notice of the occurrence of any Default and/or Event of Default, unless the Agents shall have received written notice from a Lender or the Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default." The Administrative Agent will notify the Lenders of its receipt of any such notice. The Agents shall take such action with respect to such Default and/or Event of Default in accordance with Article VII; provided that, unless and until the Agents have received any such direction, the Agents (but shall not be obligated to) take any action, or refrain from taking any action, with respect to such Default and/or Event of Default as it shall deem advisable or in the best interest of the Lenders.

10.6 Credit Decision. Each Lender acknowledges that none of the Agent-Related Persons has made any representation or warranty to it, and that no act by any Agent hereinafter taken, including any review of the affairs of the Borrower and its Subsidiaries or Affiliates, shall be deemed to constitute any representation or warranty by any Agent-Related Person to any Lender. Each Lender represents (and by its entering into a Bank Product

Agreement, each Bank Product Provider shall be deemed to represent) to the Agents that it has, independently and without reliance upon any Agent-Related Person and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, prospects, operations, property, financial and other condition and creditworthiness of the Borrower and any other Person party to a Loan Document, and all applicable bank regulatory laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to the Borrower. Each Lender also represents (and by its entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to represent) that it will, independently and without reliance upon any Agent-Related Person and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of the Borrower and any other Person party to a Loan Document. Except for notices, reports, and other documents expressly herein required to be furnished to the Lenders by the Agents, the Agents shall not have any duty or responsibility to provide any Lender (or any Bank Product Provider) with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of the Borrower and any other Person party to a Loan Document that may come into the possession of any of the Agent-Related Persons.

10.7 Costs and Expenses; Indemnification. The Agents may incur and pay Lender Group Expenses to the extent such Agent reasonably deems necessary or appropriate for the performance and fulfillment of its functions, powers, and obligations pursuant to the Loan Documents, including court costs, attorneys' fees and expenses, fees and expenses of financial accountants, advisors, consultants, and appraisers, costs of collection by outside collection agencies, auctioneer fees and expenses, and costs of security guards or insurance premiums paid to maintain the Collateral, whether or not Borrower is obligated to reimburse the Agents or Lenders for such expenses pursuant to this Agreement or otherwise. The Agents are authorized and directed to deduct and retain sufficient amounts from the Collections of the Borrower and its Subsidiaries received by the Agents to reimburse the Agents for such out-of-pocket costs and expenses prior to the distribution of any amounts to Lenders. In the event the Agents are not reimbursed for such costs and expenses by the Borrower or from the Collections of the Borrower and its Subsidiaries received by the Agents, each Lender hereby agrees that it is and shall be obligated to pay to or reimburse the Agents for the amount of such Lender's Pro Rata Share thereof. Whether or not the transactions contemplated hereby are consummated, the Lenders shall indemnify upon demand the Agent-Related Persons (to the extent not reimbursed by or on behalf of the Borrower and without limiting the obligation of the Borrower to do so), according to their Pro Rata Shares, from and against any and all Indemnified Liabilities; provided, however, that no Lender shall be liable for the payment to any Agent-Related Person of any portion of such Indemnified Liabilities resulting solely from such Person's gross negligence or willful misconduct nor shall any Lender be liable for the obligations of any Defaulting Lender in failing to make a Loan or other extension of credit hereunder. Without limitation of the foregoing, each Lender shall reimburse the Agents upon demand for such Lender's Pro Rata Share of any costs or out of pocket expenses (including attorneys, accountants, advisors, and

consultants fees and expenses) incurred by any Agent in connection with the preparation, execution, delivery, administration, modification, amendment, or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Loan Document, or any document contemplated by or referred to herein, to the extent that any Agent is not reimbursed for such expenses by or on behalf of the Borrower; provided, however, that following the occurrence and continuance of an Event of Default, to the extent the Agents seek to take an action which will cause them to incur a cost or expense in excess of $10,000, the Agents shall promptly seek prior written consent of the Required Lenders with respect to such action. The undertaking in this Section shall survive the payment of all Obligations hereunder and the resignation or replacement of any Agent.

10.8 Agent in Individual Capacity. The Agents and their Affiliates may make loans to, accept deposits from, acquire Securities in, and generally engage in any kind of banking, trust, financial advisory, underwriting, or other business with Borrower and its Subsidiaries and Affiliates and any other Person party to any Loan Documents as though the Agents were not Agents hereunder, and, in each case, without notice to or consent of the other members of the Lender Group. The other members of the Lender Group acknowledge (and by its entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that, pursuant to such activities, the Agents or their Affiliates may receive information regarding Borrower or its Affiliates and any other Person party to any Loan Documents that is subject to confidentiality obligations in favor of the Borrower or such other Person and that prohibit the disclosure of such information to the Lenders, and the Lenders acknowledge (and by its entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that, in such circumstances (and in the absence of a waiver of such confidentiality obligations, which waiver the Agents will use commercially reasonable efforts to obtain), the Agents shall not be under any obligation to provide such information to them. The terms "Lender" and "Lenders" include each Agent in its individual capacity.

10.9 Successor Agent.

(a) Any Agent may at any time give notice of its resignation to the Lenders and the Borrower. At any time, the Agent may be removed by the Required Lenders or the Borrower, upon thirty days' prior written notice to such Agent, the Lenders and the Borrower. Upon receipt of any such notice of resignation or removal, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor Agent for the Lenders. In connection with a resignation, if no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Agent gives notice of its resignation (or such earlier date as may be agreed by the Required Lenders) (the "Resignation Effective Date"), then the retiring Agent may (but shall not be obligated to), on behalf of the Lenders, appoint a successor Agent meeting the qualifications set forth above; provided that in no event shall any such successor Agent be a Defaulting Lender. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date. Upon the occurrence of a Removal Event, an Agent may be removed upon five (5) Business Days' prior written notice by

the Required Lenders or the Borrower, delivered to such Agent, the Lenders and the Borrower; provided, however, that, such removal shall not be effective until a successor Agent acceptable to the Required Lenders has been selected; provided, further, that if no such successor Agent has been appointed within thirty (30) days of such removal, the Required Lenders or the Borrower may petition any court of competent jurisdiction for the appointment of a successor Agent.

(b) If the Person serving as Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof**,** the Required Lenders may, to the extent permitted by applicable law, by notice in writing to the Borrower and such Person remove such Person as Agent and, in consultation with the Borrower, appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days (or such earlier day as shall be agreed by the Required Lenders) (the "Removal Effective Date"), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (i) the retiring or removed Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Collateral Agent on behalf of the Lenders under any of the Loan Documents, the retiring or removed Collateral Agent shall continue to hold such collateral security until such time as a successor Collateral Agent is appointed) and (ii) except for any indemnity payments owed to the retiring or removed Agent, all payments, communications and determinations provided to be made by, to or through the Agent shall instead be made by or to each Lender directly, until such time, if any, as the Required Lenders appoint a successor Agent as provided for above. Upon the acceptance of a successor's appointment as an Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring or removed Agent (other than any rights to indemnity payments owed to the retiring or removed Agent), and the retiring or removed Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents. The fees payable by the Borrower to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring or removed Agent's resignation or removal hereunder and under the other Loan Documents, the provisions of this Article X and Section 8.1 shall continue in effect for the benefit of such retiring or removed Agent, its sub-agents and their respective Agent-Related Persons in respect of any actions taken or omitted to be taken by any of them while the retiring or removed Agent was acting as Agent.

10.10 Lender in Individual Capacity. Any Lender and its respective Affiliates may make loans to, accept deposits from, acquire Securities in and generally engage in any kind of banking, trust, financial advisory, underwriting, or other business with Borrower and its Subsidiaries and Affiliates and any other Person party to any Loan Documents as though such Lender were not a Lender hereunder without notice to or consent of the other members of the Lender Group. The other members of the Lender Group acknowledge (and by its entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that, pursuant to such activities, such Lender and its respective Affiliates may receive information

regarding Borrower or its Affiliates and any other Person party to any Loan Documents that is subject to confidentiality obligations in favor of the Borrower or such other Person and that prohibit the disclosure of such information to the Lenders, and the Lenders acknowledge (and by its entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that, in such circumstances (and in the absence of a waiver of such confidentiality obligations, which waiver such Lender will use commercially reasonable efforts to obtain), such Lender shall not be under any obligation to provide such information to them.

10.11 Withholding Taxes.

(a) Any and all payments made by the Borrower hereunder or under any note or other Loan Document will be made free and clear of, and without deduction or withholding for, any present or future Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the Borrower shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made. The Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for the payment of any Other Taxes. The Borrower will furnish to the Administrative Agent as promptly as possible after the date the payment of any Tax is due pursuant to applicable law certified copies of tax receipts issued by the applicable Governmental Authority evidencing such payment of such Tax by the Borrower, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent. The Borrower shall indemnify each Recipient, within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to an amount payable under this Section 10.11, payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the an Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error. For purposes of this Section 10.11, the term “applicable law” includes FATCA.

(b) Each Agent shall deliver to the Borrower a properly completed and executed IRS Form W-9 on or prior to the date it becomes an Agent under this Agreement and at any other time reasonably requested by the Administrative Agent or the Borrower. If a Lender is entitled to claim an exemption from, or reduction of, United States withholding tax, Lender agrees with and in favor of the Administrative Agent and the Borrower, to deliver to the Administrative Agent whichever of the following is applicable:

(i) if such Lender claims an exemption from United States federal withholding tax pursuant to the portfolio interest exception under Section 881(c) of the Code, (A) a statement of the Lender, signed under penalty of perjury, that it is not (I) a "bank" as described in Section 881(c)(3)(A) of the Code, (II) a 10.0% shareholder of the Borrower (within the meaning of Section 881(c)(3)(B) of the Code), or (III) a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code, and (B) a properly completed and executed IRS Form W-8BEN or W-8BEN-E (or successor form), as applicable, on or prior to the date it becomes a Lender under this Agreement and at any other time reasonably requested by Administrative Agent or the Borrower;

(ii) if such Lender claims an exemption from, or a reduction of, withholding tax under an income tax treaty to which the United States is a party, two properly completed and executed copies of IRS Form W-8BEN or W-8BEN-E (or successor form), as applicable, on or prior to the date it becomes a Lender under this Agreement and at any other time reasonably requested by the Administrative Agent or the Borrower;

(iii) if such Lender claims that interest paid under this Agreement is exempt from United States withholding tax because it is effectively connected with a United States trade or business of such Lender, two properly completed and executed copies of IRS Form W-8ECI (or successor form) (together with applicable attachments) on or prior to the date it becomes a Lender under this Agreement and at any other time reasonably requested by the Administrative Agent or the Borrower;

(iv) two properly completed and executed copies of IRS Form W-8IMY (or successor form) (together with the relevant documentation under this Section 10.11(b) and/or any other certification documents from each beneficial owner, as applicable) on or prior to the date it becomes a Lender under this Agreement and at any other time reasonably requested by the Administrative Agent or the Borrower; or

(v) such other form or forms, including IRS Form W-9 (or successor form), as may be required under the Code or other laws of the United States as a condition to exemption from, or reduction of, United States withholding or backup withholding tax on or prior to the date it becomes a Lender under this Agreement and at any other time reasonably requested by the Administrative Agent or the Borrower.

Each Agent and each such Lender agree to promptly notify, in writing, the Administrative Agent and the Borrower of any change in circumstances which would modify or render invalid any claimed exemption or reduction. Each Agent and each such Lender agree to update any expired, obsolete or inaccurate form provided pursuant to Section 10.11(b), (c) or (g) or to promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(c) If an Agent or a Lender is entitled to an exemption from, or reduction of, withholding tax in a jurisdiction other than the United States or backup withholding, such Agent or such Lender agrees with and in favor of the Administrative Agent and the Borrower to deliver to the Administrative Agent any such form or forms as may be

required as a condition to exemption from, or reduction of, foreign withholding or backup withholding tax on or prior to the date it becomes an Agent or a Lender under this Agreement and at any other time reasonably requested by the Administrative Agent or the Borrower.

Each Agent and each such Lender agrees promptly to notify, in writing, the Administrative Agent and the Borrower of any change in circumstances which would modify or render invalid any claimed exemption or reduction.

(d) If any Lender claims exemption from, or reduction of, withholding tax and such Lender sells, assigns, grants a participation in, or otherwise transfers all or part of the Obligations of the Borrower, such Lender agrees to notify the Administrative Agent and the Borrower of the percentage amount in which it is no longer the beneficial owner of Obligations of the Borrower. To the extent of such percentage amount, the Administrative Agent and the Borrower will treat such Lender's documentation provided pursuant to Sections 10.11(b), 10.11(c) or 10.11(g) as no longer valid. With respect to such percentage amount, such Lender may provide new documentation, pursuant to Sections 10.11(b), 10.11(c) or 10.11(g), if applicable.

(e) If any Lender is entitled to a reduction in the applicable withholding tax, the Administrative Agent may withhold from any payment to such Lender an amount equivalent to the applicable withholding tax after taking into account such reduction. If the forms or other documentation required by subsection (b), (c) or (g) of this Section 10.11 are not delivered to the Administrative Agent, then the Administrative Agent may withhold from any payment to such Lender not providing such forms or other documentation an amount equivalent to the applicable withholding tax.

(f) If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 10.11 (including by the payment of additional amounts pursuant to this Section 10.11), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 10.11 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (f) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (f), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (f) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make

available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(g) If a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this Section 10.11(g), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(h) Each party's obligations under this Section 10.11 shall survive the resignation or replacement of the Agents or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

10.12 Collateral and Guarantor Matters.

(a) The Lenders hereby irrevocably authorize (and by its entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to authorize) the Collateral Agent to, and the Collateral Agent shall:

(i) release any Lien and/or negative pledge granted pursuant to the Negative Pledge Agreement, as applicable, on any Asset (including, for the avoidance of doubt, the Proceeds of such Asset) upon the termination of the Commitments and payment and satisfaction in full by the Borrower of all Obligations;

(ii) release any Lien and/or negative pledge granted pursuant to the Negative Pledge Agreement, as applicable, on any Asset (including, for the avoidance of doubt, the Proceeds of such Asset), including any Subsidiary of the Borrower:

(A) (x) in contemplation of the incurrence, assumption or purchase of Debt pursuant to Section 6.1 (and the imposition of a Permitted Lien pursuant to Section 6.2) if the Borrower certifies to the Collateral Agent that such Debt is contemplated to be incurred within 15 days of the delivery of such certificate (the "Permitted Debt Certificate") or (y) in connection with the incurrence, assumption or purchase of Debt pursuant to Section 6.1 (and the imposition of a Permitted Lien pursuant to Section 6.2), in each case on such terms (including, for the avoidance of doubt, in respect to the priority of such Liens granted, in each case in connection with the incurrence, assumption or purchase of such Debt) as is reasonably satisfactory to the party incurring, assuming or acquiring such Debt and the lender of any such

Debt; provided however, if, in the event the Borrower or any of its Subsidiaries does not incur Debt contemplated by subclause (x) of this clause (A) within 15 days of the delivery of the Permitted Debt Certificate, any Lien and/or negative pledge that was released by the Collateral Agent in connection with such Permitted Debt Certificate shall be reinstated with respect to such released Collateral and such Grantor shall deliver such additional pledge and security documents as the Collateral Agent may reasonably request in order to give effect to such reinstatement; or

(B) that is being sold by any Loan Party, any Grantor or any Negative Pledgor if the Borrower certifies to the Collateral Agent that the Sale is permitted under Section 6.6 of this Agreement or the other Loan Documents (and the Collateral Agent may rely conclusively on any such certificate, without further inquiry); or

(iii) release any Guarantor, Negative Pledgor or Grantor from its obligations hereunder if the Borrower certifies to the Collateral Agent that such Guarantor, Negative Pledgor or Grantor is being sold pursuant to a Sale that is permitted under Section 6.6 of this Agreement or the other Loan Documents (and the Collateral Agent may rely conclusively on any such certificate, without further inquiry).

(b) Upon the occurrence of any event set forth in clause (a) above, (i) each applicable Asset (including, for the avoidance of doubt, the Proceeds of such Asset) shall automatically, and without further action, be released as Collateral for all purposes under the Loan Documents; provided however, if, in the event the Borrower or any of its Subsidiaries does not incur Debt contemplated by clause (a)(ii)(A)(x) above within 15 days of the delivery of the Permitted Debt Certificate, any Collateral that was released shall be reinstated with respect to such released Collateral and such Grantor shall deliver such additional pledge and security documents as the Collateral Agent may reasonably request in order to give effect to such reinstatement and (ii) upon the request, and at the expense of the Borrower, the Agents agree, as applicable, to execute and deliver such release documents and take such other actions to acknowledge, evidence or complete any such release of such Asset or Person as may be reasonably requested by the Borrower or any of its Subsidiaries; provided, however, that upon request by the Collateral Agent or the Borrower or any of its Subsidiaries at any time, the Lenders will confirm in writing the Collateral Agent's authority to release any such Liens and/or negative pledges granted pursuant to the Negative Pledge Agreement, as applicable, on particular types or items of Assets (including, for the avoidance of doubt, the Proceeds of such Asset) pursuant to this Section 10.12; provided, further, that (1) the Collateral Agent shall not be required to execute any document necessary to evidence such release on terms that, in the Collateral Agent's opinion, would expose the Collateral Agent to liability or create any obligation or entail any consequence other than the release of such Lien without recourse, representation, or warranty, and (2) such release shall not in any manner discharge, affect, or impair the Obligations or any Liens (other than those expressly being released) upon (or obligations of the Borrower or any of its Subsidiaries in respect of) all interests retained by the Borrower or any of its Subsidiaries, including, the proceeds of any sale, all of which shall continue to constitute part of the Collateral.

(c) The Agents shall have no obligation whatsoever to any of the Lenders (or the Bank Product Providers) to assure that the Collateral exists or is owned by the Borrower or is cared for, protected, or insured or has been encumbered, or that the Collateral Agent's Liens have been properly or sufficiently or lawfully created, perfected, protected, or enforced or are entitled to any particular priority, or to exercise at all or in any particular manner or under any duty of care, disclosure or fidelity, or to continue exercising, any of the rights, authorities and powers granted or available to the Agents pursuant to any of the Loan Documents, it being understood and agreed that in respect of the Collateral, or any act, omission, or event related thereto, subject to the terms and conditions contained herein, the Agents may act in any manner it may deem appropriate, in its sole discretion given the Collateral Agent's own interest in the Collateral in its capacity as a Secured Party and that the Agents shall have no other duty or liability whatsoever to any Lender (or to any Bank Product Provider) as to any of the foregoing, except as otherwise provided herein.

10.13 Restrictions on Actions by Lenders; Sharing of Payments.

(a) Each of the Lenders agrees that it shall not, until an Event of Default has occurred and is continuing, without the express written consent of the Agents, and that it shall, to the extent it is lawfully entitled to do so, upon the written request of the Agents, set off against the Obligations, any amounts owing by such Lender to the Borrower or any deposit accounts of the Borrower now or hereafter maintained with such Lender. Each of the Lenders further agrees that it shall not, unless specifically requested to do so in writing by the Agents (which request shall not be made by the Agents unless an Event of Default has occurred and is continuing), take or cause to be taken any action, including, the commencement of any legal or equitable proceedings, to foreclose any Lien on, or otherwise enforce any security interest in, any of the Collateral.

(b) If, at any time or times any Lender shall receive (i) by payment, foreclosure, setoff, or otherwise, any Proceeds of Collateral or any payments with respect to the Obligations, except for any such proceeds or payments received by such Lender from the Agents pursuant to the terms of this Agreement, or (ii) payments from the Agents in excess of such Lender's ratable portion of all such distributions by the Agents, such Lender promptly shall (1) turn the same over to the Agents, in kind, and with such endorsements as may be required to negotiate the same to the Agents, or in immediately available funds, as applicable, for the account of all of the Lenders and for application to the Obligations in accordance with the applicable provisions of this Agreement, or (2) purchase, without recourse or warranty, an undivided interest and participation in the Obligations owed to the other Lenders so that such excess payment received shall be applied ratably as among the Lenders in accordance with their Pro Rata Shares; provided, however, that to the extent that such excess payment received by the purchasing party is thereafter recovered from it, those purchases of participations shall be rescinded in whole or in part, as applicable, and the applicable portion of the purchase price paid therefor shall be returned to such purchasing party, but without interest except to the extent that such purchasing party is required to pay interest in connection with the recovery of the excess payment.

10.14 Agency for Perfection. The Collateral Agent hereby appoints the Administrative Agent and each other Lender (and each Bank Product Provider) as its agent (and the Administrative Agent and each Lender hereby accepts (and by its entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to accept) such appointment) for the purpose of perfecting the Collateral Agent's Liens in assets which, in accordance with Article 8 or Article 9, as applicable, of the Uniform Commercial Code can be perfected only by possession or control. Should any Lender obtain possession or control of any such Collateral, such Lender shall notify the Agents thereof, and, promptly upon either Agent's request therefor shall deliver possession or control of such Collateral to the Collateral Agent or in accordance with either Agent's instructions.

10.15 Payments by Agent to the Lenders. All payments to be made by the Agents to the Lenders shall be made by bank wire transfer of immediately available funds pursuant to such wire transfer instructions as each party may designate for itself by written notice to the Agents.

10.16 Concerning the Collateral and Related Loan Documents. Each member of the Lender Group authorizes and directs the Agents to enter into this Agreement and the other Loan Documents. Each member of the Lender Group agrees (and by its entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to agree) that any action taken by the Agents in accordance with the terms of this Agreement or the other Loan Documents relating to the Collateral and the exercise by the Agents of their powers set forth therein or herein, together with such other powers that are reasonably incidental thereto, shall be binding upon all of the Lenders (and such Bank Product Provider).

10.17 Field Examinations and Examination Reports; Confidentiality; Disclaimers by Lenders; Other Reports and Information. By becoming a party to this Agreement, each Lender:

(a) is deemed to have requested that the Agents furnish such Lender, promptly after it becomes available, (i) a copy of each field examination or examination report prepared by the Agents, and (ii) a copy of each document delivered to the Agents pursuant to Sections 5.3(a), (b) and (c) (each a "Report" and collectively, "Reports"), and the Agents shall so furnish each Lender with such Reports,

(b) expressly agrees and acknowledges that the Agents do not (i) make any representation or warranty as to the accuracy of any Report, and (ii) shall not be liable for any information contained in any Report,

(c) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that the Agents or other party performing any examination will inspect only specific information regarding Borrower and will rely significantly upon the books of the Borrower and the other Loan Parties, as well as on representations of the Borrower's personnel,

(d) agrees to keep all Reports and other material, non-public information regarding Borrower and its Subsidiaries and their operations, assets, and existing and contemplated business plans in a confidential manner in accordance with Section 11.12, and

(e) without limiting the generality of any other indemnification provision contained in this Agreement, agrees: (i) to hold any Agent and any other Lender preparing a Report harmless from any action the indemnifying Lender may take or fail to take or any conclusion the indemnifying Lender may reach or draw from any Report in connection with any loans or other credit accommodations that the indemnifying Lender has made or may make to the Borrower, or the indemnifying Lender's participation in, or the indemnifying Lender's purchase of, a loan or loans of the Borrower, and (ii) to pay and protect, and indemnify, defend and hold any Agent, and any such other Lender preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including, attorneys' fees and costs) incurred by any Agent and any such other Lender preparing a Report as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

In addition to the foregoing: (x) any Lender may from time to time request of the Agent in writing that the Agents provide to such Lender a copy of any report or document provided by the Borrower to the Agents that has not been contemporaneously provided by the Borrower to such Lender, and, upon receipt of such request, the Agents promptly shall provide a copy of same to such Lender, (y) to the extent that the Agents are entitled, under any provision of the Loan Documents, to request additional reports or information from Borrower, any Lender may, from time to time, reasonably request the Agents to exercise such right as specified in such Lender's notice to the Agents, whereupon the Agents promptly shall request of the Borrower the additional reports or information reasonably specified by such Lender, and, upon receipt thereof from Borrower, the Agents promptly shall provide a copy of same to such Lender, and (z) any time that the Administrative Agent renders to the Borrower a statement regarding the Loan Account, the Administrative Agent shall send a copy of such statement to each Lender.

10.18 Several Obligations; No Liability. Notwithstanding that certain of the Loan Documents now or hereafter may have been or will be executed only by or in favor of the Agents in its capacity as such, and not by or in favor of the Lenders, any and all obligations on the part of any Agent to make any credit available hereunder shall constitute the several (and not joint) obligations of the respective Lenders on a ratable basis, according to their respective Commitments, to make an amount of such credit not to exceed, in principal amount, at any one time outstanding, the amount of their respective Commitments. Nothing contained herein shall confer upon any Lender any interest in, or subject any Lender to any liability for, or in respect of, the business, assets, profits, losses, or liabilities of any other Lender. Each Lender shall be solely responsible for notifying its Participants of any matters relating to the Loan Documents to the extent any such notice may be required, and no Lender shall have any obligation, duty, or liability to any Participant of any other Lender. Except as provided in Section 10.7, no member of the Lender Group shall have any liability for the acts of any other member of the Lender Group. No Lender shall be responsible to the Borrower or any other Person for any failure by

any other Lender to fulfill its obligations to make credit available hereunder, nor to take any other action on its behalf hereunder or in connection with the financing contemplated herein.

10.19 Bank Product Providers. Each Bank Product Provider shall be deemed a third party beneficiary hereof and of the provisions of the other Loan Documents for purposes of any reference in a Loan Document to the parties for whom an Agent is acting. The Collateral Agent hereby agrees to act as agent for such Bank Product Providers in respect of the Collateral and the Liens granted therein and, by virtue of entering into a Bank Product Agreement, the applicable Bank Product Provider shall be automatically deemed to have appointed the Collateral Agent as its agent (in respect of the Collateral and the Liens granted therein) and to have accepted the benefits of the Loan Documents; it being understood and agreed that the rights and benefits of each Bank Product Provider under the Loan Documents consist exclusively of such Bank Product Provider's being a beneficiary of the Liens and security interests (and, if applicable, guarantees) granted to the Collateral Agent and the right to share in payments and collections out of the Collateral as more fully set forth herein. In addition, each Bank Product Provider, by virtue of entering into a Bank Product Agreement, shall be automatically deemed to have agreed that the Collateral Agent shall have the right, but shall have no obligation, to establish, maintain, relax, or release reserves in respect of the Bank Product Obligations and that if reserves are established there is no obligation on the part of the Agents to determine or insure whether the amount of any such reserve is appropriate or not. In connection with any such distribution of payments or Proceeds of Collateral, the Collateral Agent shall be entitled to assume no amounts are due or owing to any Bank Product Provider unless such Bank Product Provider has provided a written certification (setting forth a reasonably detailed calculation) to the Agents as to the amounts that are due and owing to it and such written certification is received by the Agents a reasonable period of time prior to the making of such distribution. The Agents shall have no obligation to calculate the amount due and payable with respect to any Bank Products, but may rely upon the written certification of the amount due and payable from the relevant Bank Product Provider. In the absence of an updated certification, the Agents shall be entitled to assume that the amount due and payable to the relevant Bank Product Provider is the amount last certified to the Agents by such Bank Product Provider as being due and payable (less any distributions made to such Bank Product Provider on account thereof). The Borrower or any of its Subsidiaries may obtain Bank Products from any Bank Product Provider, although neither the Borrower nor its Subsidiaries is required to do so. The Borrower acknowledges and agrees that no Bank Product Provider has committed to provide any Bank Products and that the providing of Bank Products by any Bank Product Provider is in the sole and absolute discretion of such Bank Product Provider. Notwithstanding anything to the contrary in this Agreement or any other Loan Document, no provider or holder of any Bank Product shall have any voting or approval rights hereunder (or be deemed a Lender) solely by virtue of its status as the provider or holder of such agreements or products or the Obligations owing thereunder, nor shall the consent of any such provider or holder be required (other than in their capacities as Lenders, to the extent applicable) for any matter hereunder or under any of the other Loan Documents, including as to any matter relating to the Collateral or the release of Collateral or Guarantor.

10.20 Representations and Warranties of each Agent. Each Agent makes the following representations and warranties as of the A&R Effective Date:

(a) It is duly organized and existing under the laws of the jurisdiction of its organization with full power and authority to execute and deliver this Agreement and to perform all of the duties and obligations to be performed by it hereunder;

(b) This Agreement will be, legally and validly entered into by such Agent, does not, and will not, violate any ordinance, charter, by-law, rule or statute applicable to it, and is enforceable against such Agent in accordance with its terms, except as may be limited by bankruptcy, insolvency or similar laws, or by equitable principles relating to or limiting creditors' rights generally; and

(c) The person executing this Agreement on such Agent's behalf has been duly and properly authorized to do so.

10.21 Erroneous Payments.

(a) Each Lender hereby agrees that (i) if the Administrative Agent or the Collateral Agent notifies such Lender that the Administrative Agent or the Collateral Agent has determined in its sole discretion that any funds received by such Lender from the Administrative Agent or any of its Affiliates or the Collateral Agent or any of its Affiliates were erroneously or mistakenly transmitted to, or otherwise erroneously or mistakenly received by, such Lender (whether or not known to such Lender) (whether as a payment, prepayment or repayment of principal, interest, fees or otherwise; individually and collectively, an "Erroneous Payment") and demands the return of such Erroneous Payment (or a portion thereof), such Lender shall promptly, but in no event later than fifteen (15) Business Days thereafter, return to the Administrative Agent or the Collateral Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received), together with interest thereon in respect of each day from and including such fifteenth (15^{th}) Business Day (assuming such Erroneous Payment (or any remaining portion thereof) shall be unpaid as of such date) to the date such amount is repaid to the Administrative Agent or the Collateral Agent in same day funds at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent or the Collateral Agent in accordance with banking industry rules on interbank compensation from time to time in effect and (ii) to the extent permitted by applicable law, such Lender shall not assert any right or claim to the Erroneous Payment, and hereby waives any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent or the Collateral Agent for the return of any Erroneous Payments received, including, without limitation, waiver of any defense based on "discharge for value" or any similar theory or doctrine. A notice of the Administrative Agent or the Collateral Agent to any Lender under this clause (a) shall be conclusive, absent manifest error.

(b) The Borrower and each other Loan Party hereby agrees that (x) in the event an Erroneous Payment (or portion thereof) is not recovered from any Lender that has received such Erroneous Payment (or portion thereof) for any reason (and without limiting the

Administrative Agent's or the Collateral Agent's rights and remedies under this Section 10.21), the Administrative Agent or the Collateral Agent shall be subrogated to all the rights of such Lender with respect to such amount and (y) an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower or any other Loan Party.

(c) In addition to any rights and remedies of the Administrative Agent or the Collateral Agent provided by law, Administrative Agent or the Collateral Agent shall have the right, without prior notice to any Lender, any such notice being expressly waived by such Lender to the extent permitted by applicable law, with respect to any Erroneous Payment for which a demand has been made in accordance with this Section 10.21 and which has not been returned to the Administrative Agent or the Collateral Agent, to set off and appropriate and apply against such amount any and all deposits (general or special, time or demand, provisional or final but excluding trust accounts), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by Administrative Agent or the Collateral Agent or any of their Affiliate, branch or agency thereof to or for the credit or the account of such Lender. Administrative Agent and the Collateral Agent agrees promptly to notify the Lender after any such setoff and application made by Administrative Agent or the Collateral Agent, as applicable; provided, that the failure to give such notice shall not affect the validity of such setoff and application.

(d) Each party's obligations under this Section 10.21 shall survive the resignation or replacement of the Administrative Agent or the Collateral Agent, the termination of the Commitments or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

ARTICLE XI

MISCELLANEOUS

11.1 No Waivers, Remedies. No failure or delay on the part of any Agent or any Lender, or the holder of any interest in this Agreement in exercising any right, power, privilege, or remedy under this Agreement or any of the other Loan Documents shall impair or operate as a waiver thereof, nor shall any single or partial exercise of any such right, power, privilege, or remedy preclude any other or further exercise thereof or the exercise of any other right, power, privilege, or remedy. The waiver of any such right, power, privilege, or remedy with respect to particular facts and circumstances shall not be deemed to be a waiver with respect to other facts and circumstances. The remedies provided for under this Agreement or the other Loan Documents are cumulative and are not exclusive of any remedies that may be available to any Agent or any Lender, or the holder of any interest in this Agreement at law, in equity, or otherwise.

11.2 Waivers and Amendments. No amendment or waiver of any provision of this Agreement or any other Loan Document (other than Bank Product Agreements), and no consent with respect to any departure by the Borrower therefrom, shall be

effective unless the same shall be in writing and signed by the Administrative Agent, Required Lenders (or by the Agents at the written request of the Required Lenders) and the Borrower and then any such waiver or consent shall be effective, but only in the specific instance and for the specific purpose for which given; provided, however, that no such waiver, amendment, or consent shall:

(a) increase or extend any Delayed Draw Term Loan Commitment of any Lender; provided that no amendment, modification or waiver of any condition precedent, covenant, Event of Default or Default shall constitute an increase in any Delayed Draw Term Loan Commitment of any Lender, without the written consent of each Lender directly and adversely affected thereby,

(b) postpone or delay any date fixed by this Agreement or any other Loan Document for any payment of principal, interest, fees, or other amounts due hereunder or under any other Loan Document, without the written consent of each Lender directly and adversely affected thereby,

(c) reduce the principal of, or the rate of interest on, or the Prepayment Premium, if any, any Loan or other extension of credit hereunder, or reduce any fees or other amounts payable hereunder or under any other Loan Document, without the written consent of each Lender directly and adversely affected thereby,

(d) change the Pro Rata Share that is required to take any action hereunder, without the written consent of each Lender,

(e) amend or modify this Section or any provision of the Agreement providing for consent or other action by all Lenders, without the written consent of each Lender,

(f) other than as permitted by Section 10.12, release the Collateral Agent's Lien in and to any of the Collateral, without the written consent of each Lender,

(g) change the definition of "Required Lenders" or "Pro Rata Share", without the written consent of each Lender,

(h) other than as permitted by Section 10.12, release any Loan Party from any obligation for the payment of money, without the written consent of each Lender, or

(i) amend any of the provisions of Article X, without the written consent of each Lender.

and, provided further, however, that no amendment, waiver or consent shall, unless in writing and signed by the Agents, affect the rights or duties of the Agents under this Agreement or any other Loan Document.

Notwithstanding the foregoing, no amendment, termination or waiver of any provision of the Loan Documents, or consent to any departure by any Loan Party therefrom, shall be made other than by a solicitation of all Lenders, in a manner that treats all Lenders in the same

manner, and that requires that any consent fee or other consideration payable in connection therewith be payable ratably to all Lenders who consent to the requested amendment, termination, waiver or consent.

If, in connection with any proposed amendment, waiver or consent requiring the consent of "each Lender" or "each Lender directly affected thereby," the consent of the Required Lenders is obtained, but the consent of other necessary Lenders is not obtained (any such Lender whose consent is necessary but not obtained being referred to herein as a "Non-Consenting Lender"), then the Borrower may at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 9.1), all of its interests, rights (other than its existing rights to payments pursuant to Section 2.11 or Section 10.11) and obligations under this Agreement and the related Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that:

(i) the Borrower shall have paid to the Administrative Agent the assignment fee (if any) specified in Section 9.1(b)(iv);

(ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(iii) in the case of any such assignment resulting from a claim for compensation under Section 2.11 or payments required to be made pursuant to Section 10.11, such assignment will result in a reduction in such compensation or payments thereafter;

(iv) such assignment does not conflict with applicable law; and

(v) in the case of any assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

11.3 Notices. Except as otherwise provided herein, all notices, demands, instructions, requests, and other communications required or permitted to be given to, or made upon, any party hereto shall be in writing and shall be delivered or sent by registered or certified mail, postage prepaid, return receipt requested, or by courier, electronic mail (at such e-mail addresses as a party may designate in accordance herewith), or telefacsimile and shall be deemed to be given for purposes of this Agreement on the day that such writing is received by the Person to whom it is to be sent pursuant to the provisions of this Agreement. Unless otherwise specified

in a notice sent or delivered in accordance with the foregoing provisions of this Section 11.3, notices, demands, requests, instructions, and other communications in writing shall be given to or made upon the respective parties hereto at their respective addresses (or to their respective telefacsimile numbers) indicated on Exhibit 11.3 attached hereto.

11.4 Release of Borrowing Base Eligible Assets. Upon receipt by the Agents of a notice from the Borrower at least five (5) Business Days prior to the date that the Borrower wishes to remove an Asset from the pool of Borrowing Base Eligible Assets (including but not limited to pursuant to Section 10.12 hereof), for all purposes herein, such Asset shall be removed from the pool of Borrowing Base Eligible Assets for all purposes hereunder upon satisfaction of the following:

(a) the Borrower shall deliver to the Agents a description of the relevant Asset to be removed;

(b) the Borrower shall deliver to the Agents a certificate of a Responsible Officer certifying that on a pro forma basis after giving effect to such removal, the Borrower is in compliance with the financial covenants set forth in Section 6.12; and

(c) no Default or Event of Default shall exist or would be caused by releasing such Asset.

11.5 Valuation Confirmation Process. Notwithstanding the foregoing, the Borrower may, at any time retain the Initial Valuation Agent to undertake a valuation report (the "Valuation Report") with respect to any Borrowing Base Eligible Asset (the Assigned Value in such Valuation Report, the "Initial Valuation").

(a) Following the receipt by the Borrower of a Valuation Report (and delivery of a copy thereof to the Agents), the Assigned Value in respect of the relevant Borrowing Base Eligible Asset for the purposes of clause (b) of the definition of "Assigned Value" shall be the amount of the Initial Valuation unless the Required Agents notify the Borrower in writing (the "Initial Dispute Notice") within five (5) Business Days following receipt of such Valuation Report that the Required Agents dispute the Initial Valuation.

(b) If the Required Lenders dispute the Initial Valuation as set forth in Section 11.5(a) above, the Borrower and the Required Lenders shall enter into good faith negotiations for two (2) Business Days to agree upon an amount that shall be used as the Assigned Value for the relevant Borrowing Base Eligible Asset.

(c) If the Borrower and the Required Lenders cannot agree upon such amount, the Borrower shall then have the right to retain the Second Valuation Agent to undertake a valuation report with respect to the Borrowing Base Eligible Asset (the Assigned Value in such additional valuation report, the "Second Valuation"). Following the receipt by the Borrower of such additional valuation report (and delivery of a copy thereof to the Agents) and if the amount of the Second Valuation is no more than 10.0% greater or lesser than the amount of the Initial Valuation, the Assigned Value in respect of the relevant Borrowing Base Eligible Asset for the

purposes of clause (b) of the definition of "Assigned Value" shall be the amount equal to the average of the Initial Valuation and the Second Valuation.

(d) If the Second Valuation is more than 10.0% greater or lesser than the amount of the Initial Valuation and either (i) the Required Agents notify the Borrower in writing within five (5) Business Days following receipt of such additional valuation report that the Required Lenders dispute the Second Valuation or (ii) the Borrower notifies the Agents in writing within five (5) Business Days following receipt of such additional valuation report that it disputes the Second Valuation, the Borrower shall retain the Third Valuation Agent that is reasonably acceptable to the Required Lenders to undertake a valuation report with respect to the Borrowing Base Eligible Asset (the Assigned Value in such additional valuation report, the "Third Valuation"). If the amount of the Third Valuation falls within the range of the Initial Valuation and the Second Valuation, the Assigned Value for such Borrowing Base Eligible Asset for the purposes of clause (b) above shall be the amount of the Third Valuation. If the amount of the Third Valuation falls outside the range of the Initial Valuation and the Second Valuation, the Assigned Value in respect of the relevant Borrowing Base Eligible Asset for purposes of clause (b) of the definition of "Assigned Value" shall be the average of the Initial Valuation, the Second Valuation and the Third Valuation. The "Determined Valuation" shall mean the valuation of any Borrowing Base Eligible Asset pursuant to the process referred to above in these clauses (a)-(d) (such process, the "Valuation Confirmation Process").

It is understood and agreed that, if a Valuation Confirmation Process is commenced, (i) the Valuation Confirmation Process shall be completed within 30 days of the delivery of the Initial Dispute Notice, (ii) the Initial Valuation shall apply for all purposes until the completion of the Valuation Confirmation Process and (iii) after the completion of the Valuation Confirmation Process, the Determined Valuation shall apply to such Borrowing Base Eligible Asset unless (a) the applicable VAE is continuing for a period of 90 days or more (other than pursuant to clause (vi) of the definition thereof) or (b) a new VAE has occurred, in which instance the Borrower shall retain the valuation agent that conducted the Determined Valuation to undertake an updated valuation (the "Updated Valuation") for such Borrowing Base Eligible Asset every 90 days; the value of such Borrowing Base Eligible Asset shall be as determined in the Updated Valuation, provided, however, that the Required Lenders shall be entitled to dispute the Updated Valuation, in which case the Borrower and the Required Lenders shall follow the procedures set forth in the Valuation Confirmation Process in respect of the Updated Valuation.

At the time of origination or purchase by the Borrower or its Subsidiaries of any Borrowing Base Eligible Asset, the outstanding principal balance of any single property underlying any Borrowing Base Eligible Asset shall not exceed 10.0% of the aggregate outstanding principal balance of the value of all properties underlying all Borrowing Base Eligible Assets.

11.6 Headings. Article and Section headings used in this Agreement and the table of contents preceding this Agreement are for convenience of reference only and shall neither constitute a part of this Agreement for any other purpose nor affect the construction of this Agreement. The foregoing shall apply to each other Loan Document *mutatis mutandis*.

11.7 Execution in Counterparts; Effectiveness. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Agreement. Delivery of an executed counterpart of this Agreement by telefacsimile or other electronic method of transmission shall be equally as effective as delivery of an original executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by telefacsimile or other electronic method of transmission also shall deliver an original executed counterpart of this Agreement but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement. The foregoing shall apply to each other Loan Document *mutatis mutandis*.

11.8 GOVERNING LAW**. EXCEPT AS SPECIFICALLY SET FORTH IN ANY OTHER LOAN DOCUMENT: (A) THIS** AGREEMENT **AND THE OTHER LOAN DOCUMENTS SHALL BE DEEMED TO HAVE BEEN MADE IN THE STATE OF NEW YORK; AND (B) THE VALIDITY OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, AND THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF AND THEREOF, AND THE RIGHTS OF THE PARTIES THERETO SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF NEW YORK.**

11.9 JURISDICTION AND VENUE**. TO THE EXTENT THEY MAY LEGALLY DO SO, THE PARTIES HERETO AGREE THAT ALL ACTIONS, SUITS, OR PROCEEDINGS ARISING BETWEEN ANY MEMBER OF THE LENDER GROUP OR THE BORROWER AND ITS SUBSIDIARIES IN CONNECTION WITH THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS SHALL BE TRIED AND LITIGATED ONLY IN THE STATE OR FEDERAL COURTS LOCATED IN THE COUNTY OF NEW YORK, STATE OF NEW YORK; PROVIDED HOWEVER THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT AT ANY AGENT'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE ANY AGENT ELECTS TO BRING SUCH ACTION TO THE EXTENT SUCH COURTS HAVE IN PERSONAM JURISDICTION OVER THE RELEVANT OBLIGOR OR IN REM JURISDICTION OVER SUCH COLLATERAL OR OTHER PROPERTY. THE BORROWER AND ITS SUBSIDIARIES AND EACH MEMBER OF THE LENDER GROUP, TO THE EXTENT THEY MAY LEGALLY DO SO, HEREBY WAIVE ANY RIGHT EACH MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION 11.9 AND STIPULATE THAT THE STATE AND FEDERAL COURTS LOCATED IN THE COUNTY OF NEW YORK, STATE OF NEW YORK SHALL HAVE IN PERSONAM JURISDICTION AND VENUE OVER SUCH PERSON FOR THE PURPOSE OF LITIGATING ANY SUCH DISPUTE, CONTROVERSY, OR PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS. TO THE EXTENT PERMITTED BY LAW, SERVICE OF PROCESS SUFFICIENT FOR PERSONAL JURISDICTION IN ANY ACTION AGAINST**

BORROWER OR ANY MEMBER OF THE LENDER GROUP MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO ITS ADDRESS INDICATED ON EXHIBIT 11.3 ATTACHED HERETO.

11.10 WAIVER OF TRIAL BY JURY**. THE BORROWER AND ITS SUBSIDIARIES AND EACH MEMBER OF THE LENDER GROUP, TO THE EXTENT THEY MAY LEGALLY DO SO, HEREBY EXPRESSLY WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION, CAUSE OF ACTION, OR PROCEEDING ARISING UNDER OR WITH RESPECT TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS, OR IN ANY WAY CONNECTED WITH, OR RELATED TO, OR INCIDENTAL TO, THE DEALINGS OF THE PARTIES HERETO WITH RESPECT TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND IRRESPECTIVE OF WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE. TO THE EXTENT THEY MAY LEGALLY DO SO, THE BORROWER AND ITS SUBSIDIARIES AND EACH MEMBER OF THE LENDER GROUP HEREBY AGREE THAT ANY SUCH CLAIM, DEMAND, ACTION, CAUSE OF ACTION, OR PROCEEDING SHALL BE DECIDED BY A COURT TRIAL WITHOUT A JURY AND THAT ANY PARTY HERETO MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION 11.10 WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE OTHER PARTY OR PARTIES HERETO TO WAIVER OF ITS OR THEIR RIGHT TO TRIAL BY JURY.**

11.11 Independence of Covenants. All covenants under this Agreement and other Loan Documents shall be given independent effect so that if a particular action or condition is not permitted by any one covenant, the fact that it would be permitted by another covenant shall not avoid the occurrence of an Event of Default or Default if such action is taken or condition exists.

11.12 Confidentiality. Each of the Agents and the Lenders agree to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its Agent-Related Persons (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential); (b) to the extent required or requested by any regulatory authority purporting to have jurisdiction over such Person or its Agent-Related Persons (including any self-regulatory authority, such as the National Association of Insurance Commissioners); (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process (in which case such Person shall notify the Borrower (except in the case of a non-targeted, routine audit or review) as soon as practicable in the event of such disclosure by such Person unless such notification is prohibited by law, rule or regulation; provided that, such Person shall not have any liability for failure to provide such notice); (d) to any other party hereto; (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder;

(f) subject to an agreement containing provisions substantially the same as those of this Section 11.12, to (i) any Eligible Assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights and obligations under this Agreement, or (ii) any actual or prospective party (or its Agent-Related Persons) to any swap, derivative or other transaction under which payments are to be made by reference to the Borrower and its obligations, this Agreement or payments hereunder; (g) on a confidential basis to (i) any rating agency in connection with rating the Borrower or its Subsidiaries or the Facilities or (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the Facilities; (h) with the consent of the Borrower; or (i) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section 11.12 or (y) becomes available to the Agents, any Lender or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower. In addition, the Agents and the Lenders may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry and service providers to the Agents and the Lenders in connection with the administration of this Agreement, the other Loan Documents, and the Commitments.

For purposes of this Section, "Information" means all information received from the Borrower or any of its Subsidiaries relating to the Borrower or any of its Subsidiaries or any of their respective businesses, other than any such information that is available to the Agents or any Lender prior to disclosure by the Borrower or any of its Subsidiaries. Any of the Lenders on the A&R Effective Date shall be considered to have complied with its obligation to maintain the confidentiality of Information as provided in this Section if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

11.13 Complete Agreement. This Agreement, together with the schedules and exhibits hereto and the other Loan Documents is intended by the parties hereto as a final expression of their agreement and is intended as a complete statement of the terms and conditions of their agreement with respect to the subject matter of this Agreement and shall not be contradicted or qualified by any other agreement, oral or written, before the date hereof. The foregoing to the contrary notwithstanding, all Bank Product Agreements, if any, are independent agreements governed by the written provisions of such Bank Product Agreements, which will remain in full force and effect, unaffected by any repayment, prepayments, acceleration, reduction, increase, or change in the terms of any credit extended hereunder, except as otherwise expressly provided in such Bank Product Agreement.

11.14 USA Patriot Act Notice. Each Lender hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56) signed into law October 26, 2001 (the "USA Patriot Act"), it may be required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender to identify the Borrower in accordance with the USA Patriot Act.

ARTICLE XII

THE GUARANTY

12.1 The Guarantee.

(a) The Guarantors hereby, jointly and severally, guarantee to each Secured Party as hereinafter provided, as primary obligor and not merely as surety, the payment of the Secured Obligations in full in cash when due (whether at stated maturity, as a mandatory prepayment, by acceleration, as a mandatory cash collateralization or otherwise) strictly in accordance with the terms thereof. Each Guarantor hereby further jointly and severally agrees that if any of the Secured Obligations are not paid in full in cash when due (whether at stated maturity, as a mandatory prepayment, by acceleration, as a mandatory cash collateralization or otherwise), each Guarantor will promptly pay the same, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Secured Obligations, the same will be promptly paid in full in cash when due (whether at extended maturity, as a mandatory prepayment, by acceleration, as a mandatory cash collateralization or otherwise) in accordance with the terms of such extension or renewal.

(b) Each Guarantor, and by its acceptance of this Guaranty, the Agents and each other Secured Party, hereby confirms that it is the intention of all such Persons that this Guaranty and the Obligations of each Guarantor hereunder not constitute a fraudulent transfer or conveyance for purposes of any debtor relief law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar foreign, federal or state law to the extent applicable to this Guaranty and the Obligations of each Guarantor hereunder. To effectuate the foregoing intention, the Agents, the other Secured Parties and the Guarantors hereby irrevocably agree that the Obligations of each Guarantor under this Guaranty at any time shall be limited to the maximum amount as will result in the Obligations of such Guarantor under this Guaranty not constituting a fraudulent transfer or conveyance under applicable law after giving full effect to such Guarantor's contribution rights but before taking into account any liabilities of such Guarantor under any other guarantee of such Guarantor other than any other guarantee of any obligations that are secured on a *pari passu* basis with the Obligations.

12.2 Obligations Unconditional.

(a) The obligations of the Guarantors under Section 12.1 are absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of any of the Loan Documents or other documents relating to the Secured Obligations, or any substitution, release, impairment or exchange of any other guarantee of or security for any of the Secured Obligations, and, to the fullest extent permitted by applicable law, irrespective of any other circumstance whatsoever which might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor (other than payment in full in cash of the Secured Obligations, other than Obligations (or any portion thereof) that are contingent in nature and for which no claim has been made ("Unliquidated Obligations")), it being the intent of this Section 12.2 that the obligations of the Guarantors hereunder shall be absolute and unconditional under any and all

circumstances. Each Guarantor agrees that it shall have no right of subrogation, indemnity, reimbursement or contribution against any other Guarantor for amounts paid under this Article XII until such time as the Secured Obligations (other than Unliquidated Obligations) have been indefeasibly paid in full in cash and the Commitments have expired or terminated.

Without limiting the generality of the foregoing, it is agreed that, to the fullest extent permitted by law, the occurrence of any one or more of the following shall not alter or impair the liability of any Guarantor hereunder, which shall remain absolute and unconditional as described above:

(b) at any time or from time to time, without notice to any Guarantor, the time for any performance of or compliance with any of the Secured Obligations shall be extended, or such performance or compliance shall be waived;

(c) the maturity of any of the Secured Obligations shall be accelerated, or any of the Secured Obligations shall be modified, supplemented or amended in any respect, or any right under any of the Loan Documents or other documents relating to the Secured Obligations shall be waived or any other guarantee of any of the Secured Obligations or any security therefor shall be released, impaired or exchanged in whole or in part or otherwise dealt with;

(d) any Lien granted to, or in favor of, the Collateral Agent or any other holder of the Secured Obligations as security for any of the Secured Obligations shall fail to attach or be perfected; or

(e) any of the Secured Obligations shall be determined to be void or voidable (including, without limitation, for the benefit of any creditor of any Guarantor) or shall be subordinated to the claims of any Person (including, without limitation, any creditor of Guarantor).

(f) any failure or omission to assert or enforce or agreement or election not to assert or enforce, delay in enforcement, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under any Loan Document, any Swap Agreement or any Bank Product Agreement, at law, in equity or otherwise) with respect to the Secured Obligations or any agreement relating thereto, or with respect to any other guaranty of or security for the payment of the Secured Obligations;

(g) any exercise of remedies with respect to any security for the Secured Obligations (including, without limitation, any collateral, including the Collateral, securing or purporting to secure any of the Secured Obligations) at such time and in such order and in such manner as the Agents and the Secured Parties may decide and whether or not every aspect thereof is commercially reasonable and whether or not such action constitutes an election of remedies and even if such action operates to impair or extinguish any right of reimbursement or subrogation or other right or remedy that any Guarantor would otherwise have, and without limiting the generality of the foregoing or any other provisions hereof, each Guarantor hereby

expressly waives any and all benefits which might otherwise be available to such Guarantor under applicable law, including without limitation, California Civil Code Sections 2809, 2810, 2819, 2939, 2845, 2848, 2849, 2850, 2855, 2899 and 3433;

(h) any other circumstance whatsoever which may or might in any manner or to any extent vary the risk of any Guarantor as an obligor in respect of the Secured Obligations or which constitutes, or might be construed to constitute, an equitable or legal discharge of the Borrower or any other Guarantor for the Secured Obligations, or of such Guarantor under the guarantee contained in this Article XII or of any security interest granted by any Guarantor, whether in an Insolvency Proceeding or in any other instance; or

(i) with respect to its obligations hereunder, each Guarantor hereby expressly waives diligence, presentment, demand of payment, protest and all notices whatsoever, and any requirement that the Agents or any other holder of the Secured Obligations exhaust any right, power or remedy or proceed against any Person under any of the Loan Documents or other documents relating to the Secured Obligations, or against any other Person under any other guarantee of, or security for, any of the Secured Obligations.

12.3 Reinstatement. The obligations of each Guarantor under this Article XII shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of any Person in respect of the Secured Obligations is rescinded or must be otherwise restored by any holder of any of the Secured Obligations, whether as a result of any proceedings under any debtor relief law, and each Guarantor agrees that it will jointly and severally indemnify the Agents and each holder of the Secured Obligations on demand for all reasonable costs and expenses (including, without limitation, the fees, charges and disbursements of one counsel for the Agents, taken as a whole, and one counsel for the holders of any Secured Obligations, taken as a whole) incurred by the Agents or such holders of the Secured Obligations in connection with such rescission or restoration, including any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any proceedings under any debtor relief law.

12.4 Certain Additional Waivers. Each Guarantor further agrees that it shall have no right of recourse to security for the Secured Obligations, except through the exercise of rights of subrogation pursuant to Section 12.2 and through the exercise of rights of contribution pursuant to Section 12.6.

12.5 Remedies. Each Guarantor agrees that, to the fullest extent permitted by law, as between the Guarantors, on the one hand, and the Agents and the other holders of the Secured Obligations, on the other hand, the Secured Obligations may be declared to be forthwith due and payable as provided in Article VII (and shall be deemed to have become automatically due and payable in the circumstances provided in said Article VII) for purposes of Section 12.1 notwithstanding any stay, injunction or other prohibition preventing such declaration (or preventing the Secured Obligations from becoming automatically due and payable) as against any other Person and that, in the event of such declaration (or the Secured Obligations being deemed to have become automatically due and payable), the Secured Obligations (whether or not due and payable by any other Person) shall forthwith become due

and payable by each Guarantor for purposes of Section 12.1. Each Guarantor acknowledges and agrees that its respective obligations hereunder are secured in accordance with the terms of the Loan Documents and that the holders of the Secured Obligations may exercise their remedies thereunder in accordance with the terms thereof.

12.6 Rights of Contribution. Each Guarantor agrees that, in connection with payments made hereunder, each Guarantor shall have contribution rights against the other Guarantors as permitted under applicable law. Such contribution rights shall be subordinate and subject in right of payment to the obligations of such Guarantors under the Loan Documents and no Guarantor shall exercise such rights of contribution until all Secured Obligations (other than Unliquidated Obligations) have been indefeasibly paid in full in cash and the Commitments have terminated.

12.7 Guaranty of Payment; Continuing Guarantee. The guarantee given by each Guarantor in this Article XII is a guaranty of payment and not of collection, is a continuing guarantee, and shall apply to all Secured Obligations whenever arising.

12.8 Amendment and Restatement . This Agreement amends and restates in its entirety the Existing Credit Agreement. The parties hereto acknowledge and agree that (i) this Agreement and the other documents entered into in connection herewith do not constitute a novation, payment and reborrowing, or termination of the outstanding "Loans" or "Obligations" (each as defined in the Existing Credit Agreement) under the Existing Credit Agreement, as in effect prior to the A&R Effective Date and (ii) such outstanding "Loans" and "Obligations" are in all respects continuing (as amended and restated hereby) as indebtedness and obligations outstanding under this Agreement.

12.9 Grantor Trust Trustee. It is expressly understood and agreed by the parties hereto that, (a) this Agreement is executed and delivered by Wilmington Trust, National Association, not individually or personally but solely as Trustee under the Trust Agreement (in such capacity, the "Grantor Trust Trustee"), in the exercise of the powers and authority conferred upon and vested in it under the Trust Agreement, (b) each of the representations, undertakings and agreements herein made on the part of the Grantor Trust Trustee as a Lender is made and intended not as the personal representation, undertaking or agreement of Wilmington Trust, National Association but is made and intended for the purpose of binding only the trust estate created pursuant to the Trust Agreement, (c) nothing herein contained shall be construed as creating any liability on the part of Wilmington Trust, National Association individually or personally, to perform any covenant or obligation of the Grantor Trust Trustee as a Lender, either expressed or implied, contained herein, all such liability, if any, being expressly waived by the parties hereto and by any Person claiming by, through or under the parties hereto, (d) Wilmington Trust, National Association has not made any investigation as to the accuracy of any representations, warranties or other obligations of the Grantor Trust Trustee as a Lender under this Agreement or any other related documents and (e) under no circumstances shall Wilmington Trust, National Association be personally liable for the payment of any indebtedness or expenses of the Grantor Trust Trustee as a Lender or be liable for the breach or failure of any obligation, representation, warranty or covenant made or undertaken by

the Grantor Trust Trustee as a Lender under this Agreement or any other related documents. Notwithstanding the foregoing, if the Grantor Trust Trustee is no longer a Lender under this Agreement, this Section 12.9 shall have no applicability to any Lender succeeding to the Grantor Trust Trustee's interests as Lender under this Agreement.

[Signature pages to follow.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first set forth above.

ARES COMMERCIAL REAL ESTATE CORPORATION,
a Maryland corporation, as Borrower

By: __
Name:__
Title:__

ACRC HOLDINGS LLC,
a Delaware limited liability company, as Guarantor

By: __
Name:__
Title:__

ACRC WAREHOUSE HOLDINGS LLC,
a Delaware limited liability company, as Guarantor

By: __
Name:__
Title:__

ACRC MEZZ HOLDINGS LLC,
a Delaware limited liability company, as Guarantor

By: __
Name:__
Title:__

WILMINGTON TRUST, NATIONAL ASSOCIATION, not in its individual capacity but solely as Trustee under the Trust Agreement

By:
Name:
Title:

CORTLAND CAPITAL MARKET SERVICES LLC,
as Administrative Agent and Collateral Agent,

By: __
Name:__
Title:__

ANNEXES, EXHIBITS AND SCHEDULES

Annex A-1 Lender Commitments

Annex A-2 Delayed Draw Lender Commitments

Exhibit A-1 Form of Assignment and Acceptance

Exhibit A-2 Form of Secured Promissory Note for Loans

Exhibit B-2 Form of Borrowing Base Certificate

Exhibit P-1 Form of Compliance Certificate

Exhibit R-1 Persons Authorized to Request a Loan

Exhibit R-2 Form of Request for Borrowing

Exhibit R-3 Collateral Detail Report

Exhibit 11.3 Addresses and Information for Notices

Schedule A-1 Agent's Account

Schedule A-2 Demand Deposit Accounts

Schedule C-1 A&R Effective Date Borrowing Base Eligible Assets

Schedule C-2 Borrowing Base Debt Subsidiaries

Schedule 4.2 Securities and Subsidiaries

Schedule 4.3 Consents

Schedule 4.16 Locations of UCC Filings

Schedule 5.13 Post-Closing Items

Schedule 6.1 Debt Outstanding on A&R Effective Date

Schedule 6.2 Liens Securing Debt Outstanding on A&R Effective Date

Schedule 6.10 Negative Pledges