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 September 30, 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 November 5, 2024**
Common stock, $0.01 par value	54,542,178

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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 in the Middle East;
- 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	
	September 30, 2024	December 31, 2023
	(unaudited)	
ASSETS		
Cash and cash equivalents	$ 68,881	$ 110,459
Restricted cash ($3,466 related to consolidated VIEs as of September 30, 2024)	3,466	—
Loans held for investment ($658,956 and $892,166 related to consolidated VIEs, respectively)	1,812,773	2,126,524
Current expected credit loss reserve	(144,068)	(159,885)
Loans held for investment, net of current expected credit loss reserve	1,668,705	1,966,639
Loans held for sale ($38,981 related to consolidated VIEs as of December 31, 2023)	—	38,981
Investment in available-for-sale debt securities, at fair value	27,005	28,060
Real estate owned held for investment, net ($59,953 related to consolidated VIEs as of September 30, 2024)	140,912	83,284
Real estate owned held for sale ($14,509 related to consolidated VIEs as of September 30, 2024)	14,509	—
Other assets ($2,094 and $3,690 of interest receivable related to consolidated VIEs, respectively; $32,002 of other receivables related to consolidated VIEs as of December 31, 2023)	17,125	52,354
Total assets	$ 1,940,603	$ 2,279,777
LIABILITIES AND STOCKHOLDERS' EQUITY		
LIABILITIES		
Secured funding agreements	$ 640,610	$ 639,817
Notes payable	—	104,662
Secured term loan	127,828	149,393
Collateralized loan obligation securitization debt (consolidated VIEs)	574,896	723,117
Due to affiliate	4,106	4,135
Dividends payable	13,809	18,220
Other liabilities ($1,686 and $2,263 of interest payable related to consolidated VIEs, respectively)	15,601	14,584
Total liabilities	1,376,850	1,653,928
Commitments and contingencies (Note 8)		
STOCKHOLDERS' EQUITY		
Common stock, par value $0.01 per share, 450,000,000 shares authorized at September 30, 2024 and December 31, 2023 and 54,532,393 and 54,149,225 shares issued and outstanding at September 30, 2024 and December 31, 2023, respectively	532	532
Additional paid-in capital	815,802	812,184
Accumulated other comprehensive income	190	153
Accumulated earnings (deficit)	(252,771)	(187,020)
Total stockholders' equity	563,753	625,849
Total liabilities and stockholders' equity	$ 1,940,603	$ 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 September 30,		For the Nine Months Ended September 30,	
	2024	2023	2024	2023
Revenue:				
Interest income	$ 39,345	$ 52,819	$ 124,225	$ 154,260
Interest expense	(27,401)	(29,745)	(83,703)	(79,695)
Net interest margin	11,944	23,074	40,522	74,565
Revenue from real estate owned	4,709	809	11,619	809
Total revenue	16,653	23,883	52,141	75,374
Expenses:				
Management and incentive fees to affiliate	2,654	2,974	8,114	9,317
Professional fees	681	682	1,971	2,080
General and administrative expenses	1,939	1,691	5,978	5,414
General and administrative expenses reimbursed to affiliate	871	775	3,280	2,617
Expenses from real estate owned	3,164	480	7,426	480
Total expenses	9,309	6,602	26,769	19,908
Provision for current expected credit losses	7,461	3,227	(17,182)	44,373
Realized losses on loans	5,766	4,886	67,879	10,499
Change in unrealized losses on loans held for sale	—	—	(995)	—
Income (loss) before income taxes	(5,883)	9,168	(24,330)	594
Income tax expense (benefit), including excise tax	(3)	(16)	(1)	48
Net income (loss) attributable to common stockholders	$ (5,880)	$ 9,184	$ (24,329)	$ 546
Earnings (loss) per common share:				
Basic earnings (loss) per common share	$ (0.11)	$ 0.17	$ (0.45)	$ 0.01
Diluted earnings (loss) per common share	$ (0.11)	$ 0.17	$ (0.45)	$ 0.01
Weighted average number of common shares outstanding:				
Basic weighted average shares of common stock outstanding	54,464,147	54,085,035	54,429,014	54,339,441
Diluted weighted average shares of common stock outstanding	54,464,147	54,796,413	54,429,014	55,043,206
Dividends declared per share of common stock	$ 0.25	$ 0.33	$ 0.75	$ 1.03

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 September 30,		For the Nine Months Ended September 30,	
	2024	2023	2024	2023
Net income (loss) attributable to common stockholders	$ (5,880)	$ 9,184	$ (24,329)	$ 546
Other comprehensive income (loss):				
Realized and unrealized gains (losses) on derivative financial instruments	—	(480)	—	(7,056)
Unrealized gains (losses) on available-for-sale debt securities	(3)	159	37	181
Comprehensive income (loss)	$ (5,883)	$ 8,863	$ (24,292)	$ (6,329)

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 income (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 income (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 (loss)	—	—	—	—	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 income (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 income (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
Stock-based compensation	96,114	—	1,152	—	—	1,152
Other comprehensive loss	—	—	—	(41)	—	(41)
Net income (loss)	—	—	—	—	(6,125)	(6,125)
Dividends declared	—	—	—	—	(13,812)	(13,812)
Balance at June 30, 2024	54,518,727	$ 532	$ 814,620	$ 193	$ (233,082)	$ 582,263
Stock-based compensation	13,666	—	1,182	—	—	1,182
Other comprehensive loss	—	—	—	(3)	—	(3)
Net income (loss)	—	—	—	—	(5,880)	(5,880)
Dividends declared	—	—	—	—	(13,809)	(13,809)
Balance at September 30, 2024	54,532,393	$ 532	$ 815,802	$ 190	$ (252,771)	$ 563,753

See accompanying notes to consolidated financial statements.

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

	For the Nine Months Ended September 30,	
	2024	2023
Operating activities:		
Net income (loss)	$ (24,329)	$ 546
Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities:		
Amortization of deferred financing costs	3,950	2,851
Accretion of discounts, deferred loan origination fees and costs	(3,688)	(4,865)
Stock-based compensation	3,617	2,950
Depreciation and amortization of real estate owned	2,521	206
Provision for current expected credit losses	(17,182)	44,373
Realized losses on loans	67,879	10,499
Change in unrealized losses on loans held for sale	(995)	—
Amortization of derivative financial instruments	—	(816)
Changes in operating assets and liabilities:		
Other assets	(1,645)	(18,896)
Due to affiliate	(29)	(1,488)
Other liabilities	(1,622)	1,342
Net cash provided by (used in) operating activities	28,477	36,702
Investing activities:		
Issuance of and fundings on loans held for investment	(34,362)	(181,280)
Principal collections and cost-recovery proceeds on loans held for investment	244,909	184,457
Proceeds from sale of loans held for sale	38,981	37,200
Receipt of origination and other loan fees	993	1,236
Principal repayment of available-for-sale debt securities	1,111	—
Restricted cash assumed from acquisition of real estate owned	3,614	—
Net cash provided by (used in) investing activities	255,246	41,613
Financing activities:		
Proceeds from secured funding agreements	114,464	43,327
Repayments of secured funding agreements	(113,671)	(94,051)
Repayments of notes payable	(105,000)	—
Repayments of secured term loan	(20,000)	—
Payment of secured funding costs	(3,087)	(2,359)
Repayments of debt of consolidated VIEs	(148,710)	(43,020)
Dividends paid	(45,831)	(57,873)
Repurchase of common stock	—	(4,600)
Net cash provided by (used in) financing activities	(321,835)	(158,576)
Change in cash, cash equivalents and restricted cash	(38,112)	(80,261)
Cash, cash equivalents and restricted cash, beginning of period	110,459	141,278
Cash, cash equivalents and restricted cash, end of period	$ 72,347	$ 61,017
Reconciliation of cash, cash equivalents and restricted cash:		
Cash and cash equivalents	$ 68,881	$ 61,017
Restricted cash	3,466	—
Total cash, cash equivalents and restricted cash shown in the Consolidated Statements of Cash Flows	$ 72,347	$ 61,017
Supplemental disclosure of noncash investing and financing activities:		
Dividends declared, but not yet paid	$ 13,809	$ 18,082

Other receivables related to consolidated VIEs	$	—	$	99,418
Assumption of real estate owned	$	74,659	$	—
Assumption of other assets related to real estate owned	$	397	$	—
Assumption of other liabilities related to real estate owned	$	4,280	$	—
Transfer of senior mortgage loans to real estate owned	$	96,543	$	—

See accompanying notes to consolidated financial statements.

ARES COMMERCIAL REAL ESTATE CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
As of September 30, 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 September 30, 2024, however, uncertainty over the global economy and the Company's business, makes any estimates and assumptions as of September 30, 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.

Restricted Cash

Restricted cash includes funds on deposit with financial institutions related to real estate owned properties that are held in the Company's consolidated VIEs.

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 if there is an intent to sell the investment prior to maturity or payoff. Investments held for sale are carried at the lower of carrying value or fair value within loans held for sale in the Company's consolidated balance sheets, with changes in fair value recorded through earnings.

Real Estate Owned Held for Investment

Real estate assets held for investment 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 held for investment 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 held for investment 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 held for investment 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 held for investment 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.

Real Estate Owned Held for Sale

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, in accordance with FASB ASC Topic 360, *Property, Plant and Equipment*, 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 acquired in September 2023, and two office properties acquired in June 2024 and September 2024, respectively, which are all classified as real estate owned.

Revenue from the operation of the mixed-use and office properties 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 and office 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 and nine months ended September 30, 2024 and 2023, interest expense is comprised of the following ($ in thousands):

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2024	2023	2024	2023
Secured funding agreements	$ 12,670	$ 13,157	$ 38,290	$ 38,549
Notes payable	1,830	1,998	5,826	5,661
Securitization debt	10,902	13,304	33,986	37,338
Secured term loan	1,999	1,774	5,601	5,262
Other (1)	—	(488)	—	(7,115)
Interest expense	$ 27,401	$ 29,745	$ 83,703	$ 79,695

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

Comprehensive Income (Loss)

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

Recently Issued Accounting Pronouncements

In November 2024, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") No. 2024-03 *Disaggregation of Income Statement Expenses*, which intends to improve the disclosures about a public business entity's expenses and address requests from investors for more detailed information about the types of expenses (including purchases of inventory, employee compensation, depreciation, intangible asset amortization, and depletion) included in expense captions on the statement of operations. ASU No. 2024-03 is effective for fiscal years beginning after December 15, 2026. The Company is currently assessing this guidance and determining the impact on the Company's consolidated financial statements.

3. LOANS HELD FOR INVESTMENT

As of September 30, 2024, the Company's portfolio included 40 loans held for investment, excluding 174 loans that were repaid, sold or converted to real estate owned since inception. The aggregate originated commitment under these loans at closing was approximately $2.0 billion and outstanding principal was $1.8 billion as of September 30, 2024. During the nine months ended September 30, 2024, the Company funded approximately $36.8 million of outstanding principal, received repayments of $202.8 million of outstanding principal and converted two loans with outstanding principal of $101.8 million to real estate owned. As of September 30, 2024, 66.1% of the Company's loans have Secured Overnight Financing Rate ("SOFR") floors, with a weighted average floor of 1.08%, 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 September 30, 2024 and December 31, 2023 ($ in thousands):

	As of September 30, 2024				
	Carrying Amount (1)	Outstanding Principal (1)	Weighted Average Unleveraged Effective Yield		Weighted Average Remaining Life (Years)
Senior mortgage loans	$ 1,768,984	$ 1,799,286	7.5 % (2)	9.0 % (3)	0.9
Subordinated debt and preferred equity investments	43,789	49,130	6.2 % (2)	14.8 % (3)	1.4
Total loans held for investment portfolio	$ 1,812,773	$ 1,848,416	7.5 % (2)	9.0 % (3)	0.9

	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 September 30, 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 September 30, 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 September 30, 2024 and December 31, 2023).

A more detailed listing of the Company's loans held for investment portfolio based on information available as of September 30, 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	$162.6	$152.1	(5)	—%	(5)	Mar 2025		I/O	
Multifamily	NY	132.2	131.8	S+3.90%	9.2%		Jun 2025		I/O	
Residential/Condo	NY	109.5	94.1	S+8.95%	—%	(7)	Dec 2025	(7)	I/O	
Industrial	IL	100.7	100.7	S+4.65%	11.1%		Nov 2024	(8)	I/O	
Office	Diversified	88.9	88.8	S+3.75%	8.9%		Jan 2025		P/I	(6)
Mixed-use	NY	77.2	77.0	S+3.75%	8.9%		Jul 2025	(9)	I/O	
Residential/Condo	FL	75.0	75.0	S+5.35%	10.2%		Jul 2025	(10)	I/O	
Office	AZ	74.5	74.5	S+3.61%	8.9%		Oct 2024		I/O	
Office	NC	70.6	70.5	S+3.65%	8.5%		Aug 2028	(11)	I/O	
Multifamily	TX	68.5	68.5	S+2.95%	8.2%		Dec 2024		I/O	
Multifamily/Office	SC	67.0	67.0	S+3.00%	8.1%		Nov 2024		I/O	
Office	NY	59.0	59.0	S+2.65%	7.5%	(12)	Jul 2027	(12)	I/O	
Hotel	CA	58.6	58.5	S+4.20%	9.5%		Mar 2025		I/O	
Multifamily	OH	57.3	56.9	S+3.05%	8.3%		Oct 2026		I/O	
Office	IL	55.9	55.9	S+4.25%	9.6%		Jan 2025		P/I	(6)
Hotel	NY	55.5	55.3	S+4.40%	9.6%		Mar 2026		I/O	
Office (Life Sciences)	MA	51.5	51.0	S+3.75%	9.2%		Apr 2026	(13)	I/O	
Office	GA	48.2	48.2	S+3.15%	8.3%		Dec 2024		P/I	(6)
Industrial	MA	47.5	47.3	S+2.90%	7.9%		Jun 2028		I/O	
Mixed-use	TX	35.3	35.3	S+3.85%	9.5%		Dec 2024	(14)	I/O	
Multifamily	CA	31.7	31.6	S+3.00%	8.1%		Dec 2025		I/O	
Multifamily	PA	28.2	28.2	S+2.50%	7.3%		Dec 2025		I/O	
Industrial	NJ	27.8	27.8	S+3.85%	10.8%		Nov 2024	(15)	I/O	
Industrial	FL	25.5	25.4	S+3.00%	8.1%		Dec 2025		I/O	
Multifamily	WA	23.1	23.1	S+3.00%	8.0%		Nov 2025		I/O	
Multifamily	TX	23.1	23.1	S+2.60%	7.8%		Oct 2024		I/O	
Office	CA	20.3	20.2	S+3.50%	8.6%		Nov 2025		P/I	(6)
Industrial	CA	19.6	17.9	S+3.85%	—%	(16)	Nov 2024	(16)	I/O	
Student Housing	AL	19.5	19.4	S+3.95%	10.1%		Dec 2024	(17)	P/I	(6)
Self Storage	PA	18.2	18.1	S+3.00%	8.1%		Dec 2025		I/O	
Self Storage	NJ	17.6	17.5	S+2.90%	8.5%		Apr 2025		I/O	
Self Storage	WA	11.5	11.5	S+2.90%	8.5%		Mar 2025		I/O	
Self Storage	IN	10.9	10.9	S+3.60%	8.6%		Jun 2026		I/O	
Self Storage	MA	7.7	7.7	S+3.00%	8.1%		Nov 2024		I/O	
Self Storage	MA	6.8	6.8	S+3.00%	8.1%		Oct 2024		I/O	
Industrial	TN	6.4	6.4	S+5.60%	10.8%		Nov 2024		I/O	
Self Storage	NJ	5.9	5.9	S+3.00%	8.1%		Jul 2025	(18)	I/O	
Subordinated Debt and Preferred Equity Investments:										
Multifamily	SC	20.6	20.6	S+9.53%	14.8%		Sep 2025	(19)	I/O	
Office	NJ	18.5	15.7	12.00%	—%	(20)	Jan 2026		I/O	
Office	NY	10.0	7.6	5.50%	—%	(12)	Jul 2027	(12)	I/O	
Total/Weighted Average		$1,848.4	$1,812.8		7.5%					

(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 September 30, 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 September 30, 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 senior and mezzanine loans were both on non-accrual status as of September 30, 2024 and the Unleveraged Effective Yield is not applicable. For both the three and nine months ended September 30, 2024, the Company received $1.8 million of interest payments in cash on the senior loan that was recognized as a reduction to the carrying value of the loan and the borrower is current on all contractual interest payments.

(6) In January 2023, amortization began on the senior Georgia loan, which had an outstanding principal balance of $48.2 million as of September 30, 2024. In February 2023, amortization began on the senior diversified loan, which had an outstanding principal balance of $88.9 million as of September 30, 2024. In December 2023, amortization began on the senior California loan, which had an outstanding principal balance of $20.3 million as of September 30, 2024. In June 2024, amortization began on the senior Alabama loan, which had an outstanding principal balance of $19.5 million as of September 30, 2024. In August 2024, amortization began on the senior Illinois loan, which had an outstanding principal balance of $55.9 million as of September 30, 2024. The remainder of the loans in the Company's portfolio are non-amortizing through their primary terms.

(7) 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 September 30, 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.

(8) In May 2024, the Company and the borrower entered into a modification and extension agreement to, among other things, extend the maturity date on the senior Illinois loan from May 2024 to November 2024.

(9) In July 2024, the Company and the borrower entered into a modification and extension agreement to, among other things, extend the maturity date on the senior New York loan from July 2024 to July 2025.

(10) In July 2024, the borrower exercised a 12-month extension option in accordance with the loan agreement, which extended the maturity date on the senior Florida loan to July 2025.

(11) In June 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 August 2024 to August 2028.

(12) 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 nine months ended September 30, 2024, the senior A-Note, which had an outstanding principal balance of $59.0 million as of September 30, 2024, was restored to accrual status. As of September 30, 2024, the subordinated B-Note, which had an outstanding principal balance of $10.0 million, was on non-accrual status and therefore, the Unleveraged Effective Yield is not applicable. As of September 30, 2024, the borrower is current on all contractual interest payments for the senior A-Note and the subordinated B-Note.

(13) In June 2024, the Company and the borrower entered into a modification and extension agreement to, among other things, extend the maturity date on the senior Massachusetts loan from April 2025 to April 2026.

(14) In September 2024, the Company and the borrower entered into a modification and extension agreement to, among other things, extend the maturity date on the senior Texas loan from September 2024 to December 2024.

(15) In May 2024, the Company and the borrower entered into a modification and extension agreement to, among other things, extend the maturity date on the senior New Jersey loan from May 2024 to August 2024. In addition, in July 2024, the borrower exercised a three-month extension option in accordance with the modification and extension agreement, which extended the maturity date on the senior New Jersey loan from August 2024 to November 2024.

(16) Loan was on non-accrual status as of September 30, 2024 and the Unleveraged Effective Yield is not applicable. The Company and the borrower entered into a modification and extension agreement that was effective in September 2024 to, among other things, extend the maturity date on the senior California loan from September 2024 to November 2024. For the three and nine months ended September 30, 2024, the Company received $0.3 million and $1.2 million, respectively, 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.

(17) In May 2024, the Company and the borrower entered into a modification and extension agreement to, among other things, extend the maturity date on the senior Alabama loan from May 2024 to December 2024.

(18) In May 2024, the borrower exercised a 12-month extension option in accordance with the loan agreement, which extended the maturity date on the senior New Jersey loan to July 2025.

(19) As of June 30, 2024, the Company intended to sell the mezzanine South Carolina loan to a third party and the loan was classified as held for sale and was carried at its carrying value, which was equal to fair value, in the Company's consolidated balance sheets. As of September 30, 2024, the Company no longer had plans to sell the mezzanine South Carolina loan and it was reclassified to held for investment. The Company did not recognize any gain or loss upon reclassifying the loan to held for investment as the carrying value was equal to fair value.

(20) Loan was on non-accrual status as of September 30, 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 nine months ended September 30, 2024, the Company received $222 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. There were no payments received during the three months ended September 30, 2024.

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 nine months ended September 30, 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		(1,083)
Additional funding		36,824
Amortizing payments		(11,423)
Loan payoffs (1)		(246,215)
Loans converted to real estate owned (see Note 5)		(95,522)
Origination and other loan fees and discount accretion		3,668
Balance at September 30, 2024	$	1,812,773

(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 nine months ended September 30, 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 nine months ended September 30, 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 September 30, 2024, all loans held for investment were paying in accordance with their contractual terms. As of September 30, 2024, the Company had five loans held for investment on non-accrual status with a carrying value of $287.4 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 forecasts and inputs that reflected a blend of a stable and a weaker economic outlook in the near term; 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 September 30, 2024 increased compared to the current estimate of expected credit losses as of June 30, 2024 primarily due to an increase in the CECL Reserves for risk rated "5" loans in the portfolio as a result of the impact of the current macroeconomic environment, including high inflation and interest rates, and more particularly, volatility and reduced liquidity in the office sector and other loan-specific factors during the three months ended September 30, 2024. These factors were partially offset by a realized loss on a risk rated "5" loan, resulting in a reversal of the associated CECL Reserve, shorter average remaining loan term and loan repayments during the three months ended September 30, 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 September 30, 2024, the Company's CECL Reserve for its loans held for investment portfolio is $146.0 million or 757 basis points of the Company's total loans held for investment commitment balance of $1.9 billion and is bifurcated between the CECL Reserve (contra-asset) related to outstanding balances on loans held for investment of $144.1 million and a liability for unfunded commitments of $1.9 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 September 30, 2024, the mezzanine loan on an office property located in New Jersey with a principal balance of $18.5 million, the senior mortgage loan on an industrial property located in California with a principal balance of $19.6 million and the senior mortgage loan on an office property located in Illinois with a principal balance of $162.6 million each had a risk rating of "5." As of September 30, 2024, each of these loans were assessed individually and the Company elected to assign CECL Reserves of $15.7 million on the New Jersey office loan, $10.5 million on the California industrial loan and $60.4 million on the Illinois office loan. The CECL Reserves for each 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 and nine months ended September 30, 2024 was as follows ($ in thousands):

Balance at June 30, 2024 (1)	$	137,403
Provision for current expected credit losses		6,665
Write-offs		—
Recoveries		—
Balance at September 30, 2024 (1)	$	144,068
Balance at December 31, 2023 (1)	$	159,885
Provision for current expected credit losses		(15,817)
Write-offs		—
Recoveries		—
Balance at September 30, 2024 (1)	$	144,068

(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 and nine months ended September 30, 2024 was as follows ($ in thousands):

Balance at June 30, 2024 (1)	$	1,087
Provision for current expected credit losses		796
Write-offs		—
Recoveries		—
Balance at September 30, 2024 (1)	$	1,883
Balance at December 31, 2023 (1)	$	3,248
Provision for current expected credit losses		(1,365)
Write-offs		—
Recoveries		—
Balance at September 30, 2024 (1)	$	1,883

(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 September 30, 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	$ —	$ —	$ 20,339	$ —	$ —	$ —	$ 20,339
2	—	104,152	29,020	164,162	—	20,196	317,530
3	—	10,929	391,169	584,935	88,812	111,657	1,187,502
4	—	—	94,106	7,586	—	—	101,692
5	—	—	—	—	152,128	33,582	185,710
Total	$ —	$ 115,081	$ 534,634	$ 756,683	$ 240,940	$ 165,435	$ 1,812,773

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 September 30, 2024 and December 31, 2023, interest receivable of $9.7 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 19, 2024, the Company acquired legal title to an office property located in North Carolina through a deed in lieu of foreclosure. Prior to September 19, 2024, the office property collateralized a $68.6 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 May 2024 maturity date. In conjunction with the deed in lieu of foreclosure, the Company derecognized the $68.6 million senior mortgage loan and recognized the office property as real estate owned. As the Company does not expect to complete a sale of the office property within the next twelve months, the office property is considered held for investment, and is carried at its estimated fair value at acquisition and is presented net of accumulated depreciation or amortization and impairment charges. For both the three and nine months ended September 30, 2024, the Company recognized a realized loss of $5.8 million on the derecognition of the senior mortgage loan as the fair value of the office property at acquisition of $60.2 million and the net operating assets and liabilities held at the office property of $(201) thousand at acquisition was less than the $65.8 million cost basis of the senior mortgage loan. Certain operating assets and liabilities of the office 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.

On June 12, 2024, the Company acquired legal title to an office property located in California through a foreclosure. Prior to June 12, 2024, the office property collateralized a $33.2 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 December 2023 maturity date. In conjunction with the foreclosure, the Company derecognized the $33.2 million senior mortgage loan and recognized the office property as real estate owned. As the Company expects to complete a sale of the office property within the next twelve months, the office property is classified as real estate owned held for sale and is carried at its estimated fair value at acquisition less costs to sell. As the office property is classified as real estate owned held for sale, the Company is not depreciating or amortizing the carrying value of the office property. For the nine months ended September 30, 2024, the Company recognized a realized loss of $16.4 million on the derecognition of the senior mortgage loan as the estimated fair value less costs to sell of the office property at acquisition of $14.5 million and the net operating assets and liabilities held at the

office property of $(67) thousand at acquisition was less than the $30.8 million cost basis of the senior mortgage loan. Certain operating assets and liabilities of the office 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. As of September 30, 2024, $781 thousand of operating assets and $1.0 million of operating liabilities related to the office property that is held for sale are included in other assets and other liabilities, respectively, in the Company's consolidated balance sheets. In addition, $748 thousand of cash related to the office property that is held for sale is included in restricted cash in the Company's consolidated balance sheets.

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 investment, 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 operating assets and liabilities 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 held for investment as of September 30, 2024 and December 31, 2023 ($ in thousands):

	As of	
	September 30, 2024	December 31, 2023
Land	$ 35,019	$ 21,337
Buildings and improvements	81,164	52,224
In-place lease intangibles	34,738	21,276
Above-market lease intangibles	4,634	547
Below-market lease intangibles	(11,105)	(11,084)
Total real estate owned held for investment	144,450	84,300
Less: Accumulated depreciation and amortization	(3,538)	(1,016)
Real estate owned held for investment, net	$ 140,912	$ 83,284

As of September 30, 2024 and December 31, 2023, no impairment charges have been recognized for real estate owned held for investment.

For the three and nine months ended September 30, 2024, the Company incurred net depreciation and amortization expense of $967 thousand and $2.5 million, respectively. 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

The weighted average amortization period for the intangible lease assets and liabilities acquired in connection with the Company's real estate owned held for investment during the three and nine months ended September 30, 2024 was 5.0 years as of the acquisition date. The weighted average amortization period for the intangible lease assets and liabilities acquired in connection with the Company's real estate owned held for investment 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 held for investment as of September 30, 2024 and December 31, 2023 ($ in thousands):

	As of September 30, 2024			As of December 31, 2023		
	Gross	Accumulated Amortization	Net	Gross	Accumulated Amortization	Net
Assets:						
In-place lease intangibles	$ 34,738	$ (2,635)	$ 32,103	$ 21,276	$ (767)	$ 20,509
Above-market lease intangibles	4,634	(150)	4,484	547	(35)	512
Liabilities:						
Below-market lease intangibles	(11,105)	1,094	(10,011)	(11,084)	322	(10,762)

The following table summarizes the amortization of intangible lease assets and liabilities related to real estate owned held for investment for the three and nine months ended September 30, 2024 and 2023 ($ in thousands):

	Consolidated Statement of Operations Location	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
		2024	2023	2024	2023
Assets:					
In-place lease intangibles	Expenses from real estate owned	$ 708	$ 156	$ 1,868	$ 156
Above-market lease intangibles	Revenue from real estate owned	(60)	7	(115)	7
Liabilities:					
Below-market lease intangibles	Revenue from real estate owned	258	66	772	66

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 held for investment as of September 30, 2024 ($ in thousands):

	In-Place Lease Intangibles	Above-Market Lease Intangibles	Below-Market Lease Intangibles
Remainder of 2024	$ 1,586	$ 272	$ (262)
2025	5,633	1,066	(1,043)
2026	4,731	975	(618)
2027	3,762	705	(571)
2028	3,037	490	(542)
Thereafter	13,354	976	(6,975)
Total	$ 32,103	$ 4,484	$ (10,011)

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 related to real estate owned held for investment, excluding tenant reimbursements of expenses and variable lease payments, as of September 30, 2024 ($ in thousands):

Remainder of 2024	$ 4,932
2025	19,172
2026	18,875
2027	17,268
2028	15,842
Thereafter	46,643
Total	$ 122,732

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 September 30, 2024 and December 31, 2023, the outstanding balances and total commitments under the Financing Agreements consisted of the following ($ in thousands):

	September 30, 2024		December 31, 2023	
	Outstanding Balance	Total Commitment	Outstanding Balance	Total Commitment
Secured Funding Agreements:				
Wells Fargo Facility	$ 212,506	$ 450,000 (1)	$ 208,540	$ 450,000 (1)
Citibank Facility	228,727	325,000	221,604	325,000
CNB Facility	—	75,000 (2)	—	75,000
MetLife Facility	—	— (3)	—	180,000
Morgan Stanley Facility	199,377	250,000	209,673	250,000
Subtotal	$ 640,610	$ 1,100,000	$ 639,817	$ 1,280,000
Notes Payable	$ —	$ — (4)	$ 105,000	$ 105,000
Secured Term Loan	$ 130,000	$ 130,000 (5)	$ 150,000	$ 150,000
Total	$ 770,610	$ 1,230,000	$ 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.

(2) Amount immediately available under the CNB Facility at any given time can fluctuate based on the fair value of the collateral in the borrowing base that secures the CNB Facility. As of September 30, 2024, there was approximately $49.0 million immediately available under the CNB Facility based on the fair value of the collateral in the borrowing base at such time. The amount immediately available under the CNB Facility may be increased to up to $75.0 million by the pledge of additional collateral into the borrowing base in accordance with the CNB Facility agreement.

(3) In May 2024, the Company elected to terminate the MetLife Facility prior to its scheduled maturity in August 2024 as the facility had no outstanding balance.

(4) In September 2024, the Company elected to repay in full through refinancing under the Citibank Facility and terminate the $105.0 million recourse note prior to its scheduled maturity in July 2025.

(5) In May 2024, the Company entered into an amendment to the Secured Term Loan (defined below) and concurrently therewith, repaid $10.0 million of outstanding principal on the Secured Term Loan at par prior to the scheduled maturity as permitted by the contractual terms of the Secured Term Loan amendment. In addition, in each of August 2024 and September 2024, the Company elected to repay $5.0 million of outstanding principal on the Secured Term Loan at par prior to the scheduled maturity as permitted by the contractual terms of the Secured Term Loan amendment. As of September 30, 2024, the Secured Term Loan has a total outstanding principal balance of $130.0 million.

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, (iii) interests in wholly-owned entity subsidiaries that hold the Company's loans held for investment, or (iv) available-for-sale debt securities. 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.

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 and nine months ended September 30, 2024 and 2023, the Company did not incur a non-utilization fee.

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. The amount immediately available under the CNB Facility at any given time can fluctuate based on the fair value of the collateral in the borrowing base that secures the CNB Facility. As of September 30, 2024, there was approximately $49.0 million immediately available under the CNB Facility based on the fair value of the collateral in the borrowing base at such time, which may be increased to up to $75.0 million by the pledge of additional collateral into the borrowing base in accordance with the CNB Facility agreement. 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 and nine months ended September 30, 2024, the Company incurred a non-utilization fee of $72 thousand and $214 thousand, respectively. For the three and nine months ended September 30, 2023, the Company incurred a non-utilization fee of $72 thousand and $213 thousand, respectively. The non-utilization fee is included within interest expense in the Company's consolidated statements of operations.

MetLife Facility

The Company was party to a $180.0 million revolving master repurchase facility with Metropolitan Life Insurance Company ("MetLife") (the "MetLife Facility"), pursuant to which the Company was permitted to sell, and later repurchase, commercial mortgage loans meeting defined eligibility criteria which were approved by MetLife in its sole discretion. The maturity date of the MetLife Facility was August 13, 2024. 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. There were no prepayment penalties in connection with the early termination of the facility. Advances under the MetLife Facility accrued 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 was utilized, unused commitments under the MetLife Facility accrued non-utilization fees at the rate of 0.25% per annum on the average daily available balance. For the three months ended September 30, 2024, the Company did not incur a non-utilization fee. For the nine months ended September 30, 2024, the Company incurred a non-utilization fee of $104 thousand. For the three and nine months ended September 30, 2023, the Company incurred a non-utilization fee of $75 thousand and $222 thousand, respectively. The non-utilization fee is included within interest expense in the Company's consolidated statements of operations.

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.

Notes Payable

ACRC Lender CO LLC, a wholly owned subsidiary of the Company, was 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 provided for a $105.0 million recourse note (the "Notes Payable"). The $105.0 million note was secured by a $133.0 million senior mortgage loan held by the Company on a multifamily property located in New York and was 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 was July 28, 2025, subject to two 12-month extensions, each of which may have been 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 have extended the maturity date to July 28, 2027. On September 13, 2024, the Company elected to repay in full and terminate the $105.0 million note prior to its scheduled maturity on July 28, 2025. There were no prepayment penalties in connection with the early termination of the $105.0 million note. The $105.0 million note accrued interest at a per annum rate equal to the sum of one-month SOFR plus a spread of 2.00%.

Secured Term Loan

The Company and certain of its subsidiaries are party to a $130.0 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. In May 2024, the Company amended the Secured Term Loan to, among other things, (1) change the schedule of interest rate increases on advances under the Secured Term Loan to the following fixed rates: (i) 4.50% per annum until May 1, 2025 and (ii) after May 1, 2025 through November 12, 2026, the interest rate increases 0.25% every three months, (2) add a contingent interest rate increase of 4.00% if the outstanding principal amount of the Secured Term Loan is not paid down to the following amounts on specific dates as follows: (i) $135.0 million as of August 1, 2024, (ii) $130.0 million as of November 1, 2024, (iii) $120.0 million as of February 1, 2025, (iv) $110.0 million as of May 1, 2025, (v) $100.0 million as of August 1, 2025 and (vi) $90.0 million as of November 1, 2025 and (3) 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 $10.0 million of outstanding principal on the Secured Term Loan at par. In addition, on each of August 1, 2024 and September 30, 2024, the Company elected to repay $5.0 million of outstanding principal on the Secured Term Loan at par. As of September 30, 2024, the total outstanding principal balance of the Secured Term Loan was $130.0 million.

The total original issue discount and the modification fee on the Secured Term Loan 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 the three and nine months ended September 30, 2024, 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 5.7% and 5.1%, respectively. For both the three and nine months ended September 30, 2023, the per annum effective interest rate of the Secured Term Loan was 4.6%.

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 September 30, 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 and nine months ended September 30, 2023, the Company recognized a realized gain of $93 thousand and $816 thousand, respectively, 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 September 30, 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 September 30, 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	
	September 30, 2024	December 31, 2023
Total commitments	$ 1,927,321	$ 2,274,584
Less: funded commitments	(1,848,416)	(2,158,045)
Total unfunded commitments	$ 78,905	$ 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 September 30, 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 was expected to be in effect until July 31, 2024, or until the approved dollar amount had been used to repurchase shares. On July 31, 2024, the Company's board of directors further renewed the Repurchase Program of up to $50.0 million, which is expected to be in effect until July 31, 2025, 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 both the three and nine months ended September 30, 2024, the Company did not repurchase any shares through the Repurchase Program. During the three months ended September 30, 2023, the Company did not repurchase any shares through the Repurchase Program. During the nine months ended September 30, 2023, the Company repurchased a total of 535,965 shares of the Company's common stock in the open market for an aggregate purchase price of approximately $4.6 million, including expenses paid. The shares were repurchased at an average price of $8.58 per share, including expenses paid.

Common Stock

There were no shares of the Company's common stock issued in public or private offerings for the three and nine months ended September 30, 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 and further amended in May 2022 (as further amended, the "Amended and Restated 2012 Equity Incentive Plan"). In April 2024, the Company's board of directors approved, and in May 2024, the Company's stockholders approved, the second amendment to the Amended and Restated 2012 Equity Incentive Plan, which increased the total number of shares of common stock the Company may grant thereunder to 5,015,000 shares. Pursuant to the Amended and Restated 2012 Equity Incentive Plan, as amended by the second 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 September 30, 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	83,052	—	83,052
Vested	(54,153)	(300,116)	(354,269)
Forfeited	—	(60,830)	(60,830)
Balance at September 30, 2024	63,114	702,420	765,534

Future Anticipated Vesting Schedule

	Restricted Stock Grants —Directors	RSUs—Officers and Employees of the Manager	Total
Remainder of 2024	21,177	4,285	25,462
2025	41,937	320,966	362,903
2026	—	248,032	248,032
2027	—	129,137	129,137
2028	—	—	—
Total	63,114	702,420	765,534

10. EARNINGS PER SHARE

The following information sets forth the computations of basic and diluted earnings (loss) per common share for the three and nine months ended September 30, 2024 and 2023 ($ in thousands, except share and per share data):

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2024	2023	2024	2023
Net income (loss) attributable to common stockholders	$ (5,880)	$ 9,184	$ (24,329)	$ 546
Divided by:				
Basic weighted average shares of common stock outstanding:	54,464,147	54,085,035	54,429,014	54,339,441
Weighted average non-vested restricted stock and RSUs (1)	—	711,378	—	703,765
Diluted weighted average shares of common stock outstanding:	54,464,147	54,796,413	54,429,014	55,043,206
Basic earnings (loss) per common share	$ (0.11)	$ 0.17	$ (0.45)	$ 0.01
Diluted earnings (loss) per common share	$ (0.11)	$ 0.17	$ (0.45)	$ 0.01

(1) For the three and nine months ended September 30, 2024, the weighted average non-vested restricted stock and RSUs of 775,927 and 797,430 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 and nine months ended September 30, 2024 and 2023 ($ in thousands):

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2024	2023	2024	2023
Current	$ (5)	$ 12	$ (5)	$ 31
Deferred	2	—	4	—
Excise tax	—	(28)	—	17
Total income tax expense (benefit), including excise tax	$ (3)	$ (16)	$ (1)	$ 48

For the three and nine months ended September 30, 2024, the Company did not incur any expense for U.S. federal excise tax. For the three and nine months ended September 30, 2023, the Company incurred an expense (benefit) of $(28) thousand and $17 thousand, respectively, 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 September 30, 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

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 September 30, 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 September 30, 2024 and December 31, 2023 ($ in thousands):

	As of September 30, 2024			
	Face Amount	Amortized Cost	Unamortized Discount	Unrealized Gain (Loss), Net
Available-for-sale debt securities	$ 26,889	$ 26,815	$ 74	$ 190

	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 September 30, 2024 and December 31, 2023 ($ in thousands):

	As of September 30, 2024			
	Level 1	Level 2	Level 3	Total
Financial assets:				
Available-for-sale debt securities	$ —	$ 27,005	$ —	$ 27,005

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

As of September 30, 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

Loans Held for Sale

The Company is required to record loans held for sale, a financial asset, at the lower of carrying value or fair value on a nonrecurring basis in accordance with GAAP. If the fair value of a loan held for sale is determined to be less than its carrying value, a nonrecurring fair value adjustment may be recorded in earnings through an unrealized loss on loans held for sale. As of September 30, 2024, the Company did not have any loans held for sale. As of December 31, 2023, the Company had one loan held for sale. The Company determined the fair value of the loan held for sale based on the anticipated transaction price to be received from the third party that was expected to purchase the loan.

Real Estate Owned

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 two office properties and a mixed-use property that were acquired by the Company on September 19, 2024, June 12, 2024 and September 8, 2023, respectively, through either a foreclosure or a deed in lieu of 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 office property acquired on September 19, 2024 is classified as real estate owned held for investment in the Company's consolidated balance sheets as of the acquisition date and is carried at its estimated fair value at acquisition and is presented net of accumulated depreciation or amortization and impairment charges. The fair value of the office 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 office 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 office 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 office property was estimated using significant unobservable inputs, which considered various comparable properties that were valued using capitalization rates ranging from 6.4% to 11.0% and discount rates ranging from 14.0% to 16.0%. No impairment charges have been recognized for the office property as of September 30, 2024.

The office property acquired on June 12, 2024 is classified as real estate owned held for sale in the Company's consolidated balance sheets as of the acquisition date and is carried at fair value less costs to sell. The fair value of the office property at acquisition was determined using the estimated net proceeds available from a potential sale of the property. The valuation utilized standard industry valuation techniques such as the income and market approach. When determining the fair value of the office 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 office 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 office property was estimated using significant unobservable inputs, which considered various comparable properties that were valued using capitalization rates ranging from 10.0% to 15.0% and discount rates ranging from 10.0% to 20.0%. No impairment charges have been recognized for the office property as of September 30, 2024.

The mixed-use property acquired on September 8, 2023 is classified as real estate owned held for investment in the Company's consolidated balance sheets as of the acquisition date and is carried at its estimated fair value at acquisition and is presented net of accumulated depreciation or amortization and impairment charges. 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, which considered various comparable properties that were valued using capitalization rates ranging from 6.4% to 8.3% and discount rates ranging from 8.0% to 9.5%. No impairment charges have been recognized for the mixed-use property as of September 30, 2024.

As of September 30, 2024 and December 31, 2023, the Company did not have any financial 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 September 30, 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			
		September 30, 2024		December 31, 2023	
	Level in Fair Value Hierarchy	Carrying Value	Fair Value	Carrying Value	Fair Value
Financial assets:					
Loans held for investment	3	$ 1,812,773	$ 1,662,425	$ 2,126,524	$ 1,944,718
Financial liabilities:					
Secured funding agreements	2	$ 640,610	$ 640,610	$ 639,817	$ 639,817
Notes payable	2	—	—	104,662	105,000
Secured term loan	3	127,828	122,796	149,393	134,024
Collateralized loan obligation securitization debt (consolidated VIEs)	2	574,896	565,389	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 both the three and nine months ended September 30, 2024, the Company did not incur any incentive fees. For the three months ended September 30, 2023, the Company did not incur any incentive fees. For the nine months ended September 30, 2023, the Company incurred incentive fees of $334 thousand.

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 and nine months ended September 30, 2024 and 2023, and amounts payable to the Company's Manager as of September 30, 2024 and December 31, 2023 ($ in thousands):

	Incurred				Payable	
	For the Three Months Ended September 30,		For the Nine Months Ended September 30,		As of	
	2024	2023	2024	2023	September 30, 2024	December 31, 2023
Affiliate Payments						
Management fees	$ 2,654	$ 2,974	$ 8,114	$ 8,983	$ 2,654	$ 2,946
Incentive fees	—	—	—	334	—	—
General and administrative expenses	871	775	3,280	2,617	1,395	1,154
Direct costs (1)	60	38	175	78	57	35
Total	$ 3,585	$ 3,787	$ 11,569	$ 12,012	$ 4,106	$ 4,135

(1) For the three and nine months ended September 30, 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 September 30, 2024 and December 31, 2023, the total outstanding principal balance for co-investments held by the Company was $257.2 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 and nine months ended September 30, 2024 and 2023.

14. DIVIDENDS AND DISTRIBUTIONS

The following table summarizes the Company's dividends declared during the nine months ended September 30, 2024 and 2023 ($ in thousands, except per share data):

Date Declared	Record Date	Payment Date	Per Share Amount	Total Amount
August 6, 2024	September 30, 2024	October 15, 2024	$ 0.25	$ 13,809
May 9, 2024	June 28, 2024	July 16, 2024	0.25	13,812
February 22, 2024	March 28, 2024	April 16, 2024	0.25	13,802
Total cash dividends declared for the nine months ended September 30, 2024			$ 0.75	$ 41,423
August 2, 2023	September 29, 2023	October 17, 2023	$ 0.33	$ 18,082
May 2, 2023	June 30, 2023	July 18, 2023	0.35 (1)	19,180
February 15, 2023	March 31, 2023	April 18, 2023	0.35 (1)	19,345
Total cash dividends declared for the nine months ended September 30, 2023			$ 1.03	$ 56,607

(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 September 30, 2024, the FL3 Notes were collateralized by interests in a pool of 15 mortgage assets having a total principal balance of $468.8 million (the "FL3 Mortgage Assets") that were closed by a wholly-owned subsidiary of the Company. 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 and nine months ended September 30, 2024, the Company paid down $190 thousand and $38.1 million, respectively, of the FL3 Offered Notes. During the three and nine months ended September 30, 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 September 30, 2024, the FL4 Notes were collateralized by interests in a pool of four mortgage assets having a total principal balance of $190.1 million (the "FL4 Mortgage Assets") that were closed by a wholly-owned subsidiary of the Company and $74.3 million of real estate owned related to two office properties, which had collateralized two previous mortgage assets, and were acquired in September 2024 through a deed in lieu of foreclosure and June 2024 through a foreclosure, respectively. 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 that ended in April 2024 (the "Companion Participation Acquisition Period"), the FL4 Issuer was able to use certain principal proceeds from the FL4 Mortgage Assets to acquire additional funded pari-passu participations related to the FL4 Mortgage Assets that met certain acquisition criteria. The Companion Participation Acquisition Period expired in April 2024 and was not renewed.

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 and nine months ended September 30, 2024, the Company paid down $13.5 million and $110.7 million of the FL4 Offered Notes, respectively. During the three and nine months ended September 30, 2023, the Company paid down $155 thousand and $43.0 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 September 30, 2024, the Company's maximum risk of loss was $158.1 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 September 30, 2024, the Company's maximum risk of loss was $94.1 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 September 30, 2024, except as disclosed below.

The Company's board of directors declared a regular cash dividend of $0.25 per common share for the fourth quarter of 2024. The fourth quarter 2024 dividend will be payable on January 15, 2025 to common stockholders of record as of December 31, 2024.

The Company and certain of its subsidiaries entered into an amendment dated as of October 22, 2024 to the Morgan Stanley Facility and amendments dated as of November 4, 2024 to the Citibank Facility and Wells Fargo Facility to effectuate an internal transfer resulting in a change of the pledgor under each facility.

On November 6, 2024, the Company, as guarantor, and its wholly-owned subsidiary, ACRC Lender LLC, entered into an amendment to the CNB Facility. The amendment updates the definition of borrowing base to generally provide that investment grade pledged investments will result in a borrowing base equal to 90% of the fair value of such pledged investments in addition to the existing 55% of the fair value of other types of pledged investments. The amendment also updates other related provisions.

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 Third Quarter of 2024:

- We received a discounted payoff of the $97.5 million senior mortgage loan, which was collateralized by a multifamily property in Texas, 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 on non-accrual status. For the three and nine months ended September 30, 2024, the Company received $2.1 million and $3.8 million, respectively, of interest payments in cash on the senior Texas loan that was recognized as a reduction to the carrying value of the loan and the borrower was current on all contractual interest payments. We did not recognize any gain or loss on the discounted payoff as the carrying value of the senior mortgage loan, not including the current expected credit losses ("CECL") reserve, was equal to the net proceeds from the payoff of the loan.

- We acquired legal title to an office property located in North Carolina through a deed in lieu of foreclosure. The office property previously collateralized a $68.6 million senior mortgage loan held by us that was in maturity default due to the failure of the borrower to repay the outstanding principal balance of the loan by the May 2024 maturity date. In conjunction with the deed in lieu of foreclosure, we derecognized the $68.6 million senior mortgage loan and recognized the office property as real estate owned and also recognized the associated assets and liabilities held at the office property. We recognized a realized loss of $5.8 million on the derecognition of the senior mortgage loan as the fair value of the office property at acquisition of $60.2 million and the net operating assets and liabilities held at the office property of $(0.2) million at acquisition was less than the $65.8 million cost basis of the senior mortgage loan.

- We elected to repay in full and terminate the $105.0 million note (as defined below) prior to its scheduled maturity in July 2025.

Trends Affecting Our Business

The U.S. macroeconomic environment continues to be steady, underpinned by GDP growth of 3% in the second quarter of 2024, while exhibiting moderating inflation, cooling growth in the labor market and year-over-year increases in the unemployment rate. With easing inflationary pressures, the Federal Reserve has shifted its monetary policies in support of its goals to maximize employment and lowered the federal funds rate by 50 basis points in September 2024. The publicly traded equity and credit markets delivered positive returns for most asset classes in the third quarter of 2024, as expectation of lower future market rates and overall stability in the economy supported healthy investor demand and generally reduced risk premiums in the quarter, especially for liquid commercial real estate transactions.

While lower market rates and increased capital markets liquidity supports commercial real estate property transactions and values, regulated lending institutions are adjusting their business models to increase capital requirements for direct loans to real estate and thus continue to be constrained in providing capital for commercial real estate properties. Additionally, rising operating costs, such as property insurance and raw material costs for property development and improvements, have further pressured cash flow performance across many real estate property types. Although the Federal Reserve has signaled further decreases in interest rates in 2024 and 2025, there is no certainty that there will be a decrease in interest rates 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 challenges 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 challenges is the significant 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 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 was expected to be in effect until July 31, 2024, or until the approved dollar amount had been used to repurchase shares. On July 31, 2024, our board of directors further renewed the Repurchase Program of up to $50.0 million, which is expected to be in effect until July 31, 2025, 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 and nine months ended September 30, 2024, we did not repurchase any shares through the Repurchase Program.

Loans Held for Investment Portfolio

As of September 30, 2024, our portfolio included 40 loans held for investment, excluding 174 loans that were repaid, sold or converted to real estate owned since inception. As of September 30, 2024, the aggregate originated commitment under these loans at closing was approximately $2.0 billion and outstanding principal was $1.8 billion. During the nine months ended September 30, 2024, we funded approximately $36.8 million of outstanding principal, received repayments of $202.8 million of outstanding principal and converted two loans with outstanding principal of $101.8 million to real estate owned. As of September 30, 2024, 66.1% of our loans have SOFR floors, with a weighted average floor of 1.08%, 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 September 30, 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 September 30, 2024 ($ in thousands):

	As of September 30, 2024				
	Carrying Amount (1)	Outstanding Principal (1)	Weighted Average Unleveraged Effective Yield		Weighted Average Remaining Life (Years)
Senior mortgage loans	$ 1,768,984	$ 1,799,286	7.5 % (2)	9.0 % (3)	0.9
Subordinated debt and preferred equity investments	43,789	49,130	6.2 % (2)	14.8 % (3)	1.4
Total loans held for investment portfolio	$ 1,812,773	$ 1,848,416	7.5 % (2)	9.0 % (3)	0.9

(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.

(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 September 30, 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 September 30, 2024 as weighted by the total outstanding principal balance of each interest accruing loan (excludes loans on non-accrual status as of September 30, 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 fourth quarter of 2024. The fourth quarter 2024 dividend will be payable on January 15, 2025 to common stockholders of record as of December 31, 2024.

We and certain of our subsidiaries entered into an amendment dated as of October 22, 2024 to the Morgan Stanley Facility and amendments dated as of November 4, 2024 to the Citibank Facility and Wells Fargo Facility to effectuate an internal transfer resulting in a change of the pledgor under each facility.

On November 6, 2024, we, as guarantor, and our wholly-owned subsidiary, ACRC Lender LLC, entered into an amendment to the CNB Facility. The amendment updates the definition of borrowing base to generally provide that investment grade pledged investments will result in a borrowing base equal to 90% of the fair value of such pledged investments in addition to the existing 55% of the fair value of other types of pledged investments. The amendment also updates other related provisions.

RESULTS OF OPERATIONS

The following table sets forth a summary of our consolidated results of operations for the three and nine months ended September 30, 2024 and 2023 ($ in thousands):

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2024	2023	2024	2023
Total revenue	$ 16,653	$ 23,883	$ 52,141	$ 75,374
Total expenses	9,309	6,602	26,769	19,908
Provision for current expected credit losses	7,461	3,227	(17,182)	44,373
Realized losses on loans	5,766	4,886	67,879	10,499
Change in unrealized losses on loans held for sale	—	—	(995)	—
Income (loss) before income taxes	(5,883)	9,168	(24,330)	594
Income tax expense (benefit), including excise tax	(3)	(16)	(1)	48
Net income (loss) attributable to common stockholders	$ (5,880)	$ 9,184	$ (24,329)	$ 546

The following tables set forth select details of our consolidated results of operations for the three and nine months ended September 30, 2024 and 2023 ($ in thousands):

Net Interest Margin

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2024	2023	2024	2023
Interest income	$ 39,345	$ 52,819	$ 124,225	$ 154,260
Interest expense	(27,401)	(29,745)	(83,703)	(79,695)
Net interest margin	$ 11,944	$ 23,074	$ 40,522	$ 74,565

For the three months ended September 30, 2024 and 2023, net interest margin was approximately $11.9 million and $23.1 million, respectively. For the three months ended September 30, 2024 and 2023, interest income of $39.3 million and $52.8 million, respectively, was generated by weighted average earning assets of $2.0 billion and $2.3 billion, respectively, offset by $27.4 million and $29.7 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 $1.4 billion for the three months ended September 30, 2024 and $1.7 billion for the three months ended September 30, 2023. The decrease in net interest margin for the three months ended September 30, 2024 compared to the three months ended September 30, 2023 relates to a decrease in our weighted average earning assets and weighted average borrowings for the three months ended September 30, 2024 as compared to the three months ended September 30, 2023, no benefit received from our interest rate hedging derivative contracts for the three months ended September 30, 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 September 30, 2024 as compared to the three months ended September 30, 2023.

For the nine months ended September 30, 2024 and 2023, net interest margin was approximately $40.5 million and $74.6 million, respectively. For the nine months ended September 30, 2024 and 2023, interest income of $124.2 million and $154.3 million, respectively, was generated by weighted average earning assets of $2.1 billion and $2.3 billion, respectively, offset by $83.7 million and $79.7 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, Secured Borrowings and securitization debt were $1.5 billion for the nine months ended September 30, 2024 and $1.7 billion for the nine months ended September 30, 2023. The decrease in net interest margin for the nine months ended September 30, 2024 compared to the nine months ended September 30, 2023 relates to a decrease in our weighted average earning assets and weighted average borrowings for the nine months ended September 30, 2024, no benefit received from our interest rate hedging derivative contracts for the nine months ended September 30, 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 nine months ended September 30, 2024 as compared to the nine months ended September 30, 2023. This decrease was partially offset by the benefit received from the

increase in SOFR rates on our loans held for investment for the nine months ended September 30, 2024 as compared to the nine months ended September 30, 2023.

Revenue From Real Estate Owned

On September 19, 2024, we acquired legal title to an office property located in North Carolina through a deed in lieu of foreclosure. Prior to September 19, 2024, the office property collateralized a $68.6 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 May 2024 maturity date. In conjunction with the deed in lieu of foreclosure, we derecognized the $68.6 million senior mortgage loan and recognized the office property as real estate owned. Revenues from this property consist primarily of rental revenue from operating leases. For both the three and nine months ended September 30, 2024, revenue from real estate owned related to this property was $0.3 million. For both the three and nine months ended September 30, 2023, we received no revenue from real estate owned related to this property as we acquired legal title to the property on September 19, 2024.

On June 12, 2024, we acquired legal title to an office property located in California through a foreclosure. Prior to June 12, 2024, the office property collateralized a $33.2 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 December 2023 maturity date. In conjunction with the foreclosure, we derecognized the $33.2 million senior mortgage loan and recognized the office property as real estate owned. Revenues from this property consist primarily of rental revenue from operating leases. For the three and nine months ended September 30, 2024, revenue from real estate owned related to this property was $1.1 million and $1.4 million, respectively. For both the three and nine months ended September 30, 2023, we received no revenue from real estate owned related to this property as we acquired legal title to the property on June 12, 2024.

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. Revenues from this property consist primarily of rental revenue from operating leases. For the three and nine months ended September 30, 2024, revenue from real estate owned related to this property was $3.3 million and $9.9 million, respectively. For both the three and nine months ended September 30, 2023, revenue from real estate owned related to this property was $0.8 million.

Operating Expenses

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2024	2023	2024	2023
Management and incentive fees to affiliate	$ 2,654	$ 2,974	$ 8,114	$ 9,317
Professional fees	681	682	1,971	2,080
General and administrative expenses	1,939	1,691	5,978	5,414
General and administrative expenses reimbursed to affiliate	871	775	3,280	2,617
Expenses from real estate owned	3,164	480	7,426	480
Total expenses	$ 9,309	$ 6,602	$ 26,769	$ 19,908

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 September 30, 2024 compared to the three months ended September 30, 2023 and the cause of the increase in operating expenses for the nine months ended September 30, 2024 compared to the nine months ended September 30, 2023.

Related Party Expenses

For the three months ended September 30, 2024, related party expenses included $2.7 million in management fees due to our Manager pursuant to the Management Agreement. No incentive fees were incurred for the three months ended September 30, 2024. For the three months ended September 30, 2024, related party expenses also included $0.9 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 September 30, 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 September 30, 2023. For the three months ended September 30, 2023, related party expenses also included $0.8 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 September 30, 2024

compared to the three months ended September 30, 2023 primarily relates to a decrease in our weighted average stockholders' equity for the three months ended September 30, 2024 as a result of realized losses on loans. The increase in allocable general and administrative expenses due to our Manager for the three months ended September 30, 2024 compared to the three months ended September 30, 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.

For the nine months ended September 30, 2024, related party expenses included $8.1 million in management fees due to our Manager pursuant to the Management Agreement. No incentive fees were incurred for the nine months ended September 30, 2024. For the nine months ended September 30, 2024, related party expenses also included $3.3 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 nine months ended September 30, 2023, related party expenses included $9.3 million in management and incentive fees due to our Manager pursuant to the Management Agreement, which consisted of $9.0 million in management fees and $0.3 million in incentive fees. For the nine months ended September 30, 2023, related party expenses also included $2.6 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 nine months ended September 30, 2024 compared to the nine months ended September 30, 2023 primarily relates to a decrease in our weighted average stockholders' equity for the nine months ended September 30, 2024 as a result of realized losses on loans. The decrease in incentive fees for the nine months ended September 30, 2024 compared to the nine months ended September 30, 2023 primarily relates to our Core Earnings (defined below) for the twelve months ended September 30, 2024 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 our target investments are structured as debt and we foreclose 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 our independent directors and after approval by a majority of our independent directors. The increase in allocable general and administrative expenses due to our Manager for the nine months ended September 30, 2024 compared to the nine months ended September 30, 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 both the three months ended September 30, 2024 and 2023, professional fees were $0.7 million. For the three months ended September 30, 2024 and 2023, general and administrative expenses were $1.9 million and $1.7 million, respectively. The increase in general and administrative expenses for the three months ended September 30, 2024 compared to the three months ended September 30, 2023 relates to an increase in stock-based compensation expense due to restricted stock and restricted stock unit awards granted after September 30, 2023.

For the nine months ended September 30, 2024 and 2023, professional fees were $2.0 million and $2.1 million, respectively, which was relatively consistent year over year. For the nine months ended September 30, 2024 and 2023, general and administrative expenses were $6.0 million and $5.4 million, respectively. The increase in general and administrative expenses for the nine months ended September 30, 2024 compared to the nine months ended September 30, 2023 relates to an increase in stock-based compensation expense due to restricted stock and restricted stock unit awards granted after September 30, 2023.

Expenses From Real Estate Owned

For the three and nine months ended September 30, 2024 and 2023, expenses from real estate owned was comprised of the following ($ in thousands):

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2024	2023	2024	2023
Mixed-use property operating expenses	$ 1,246	$ 215	$ 3,386	$ 215
Office property operating expenses	754	—	862	—
Depreciation and amortization expense	1,164	265	3,178	265
Expenses from real estate owned	$ 3,164	$ 480	$ 7,426	$ 480

For the three and nine months ended September 30, 2024, mixed-use property operating expenses were $1.2 million and $3.4 million, respectively. For both the three and nine months ended September 30, 2023, mixed-use property operating expenses were $0.2 million. 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 and nine months ended September 30, 2024, office property operating expenses were $0.8 million and $0.9 million, respectively, which consists of operating expenses for two office properties, which were acquired on June 12, 2024 and September 19, 2024, respectively. For both the three and nine months ended September 30, 2023, there were no office property operating expenses incurred as we did not acquire legal title to the two office properties until June 12, 2024 and September 19, 2024, respectively. Office property operating expenses consisted primarily of expenses incurred in the day-to-day operation of our two office properties, 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 and nine months ended September 30, 2024, depreciation and amortization expense was $1.2 million and $3.2 million, respectively, and relates primarily to our mixed-use property that was acquired on September 8, 2023 and our office property acquired on September 19, 2024. As the office property acquired on June 12, 2024 is classified as real estate owned held for sale, we are not depreciating or amortizing the carrying value of the office property. For both the three and nine months ended September 30, 2023, depreciation and amortization expense was $0.3 million and related primarily to our mixed-use property that was acquired on September 8, 2023.

Provision for Current Expected Credit Losses

For the three months ended September 30, 2024 and 2023, the provision for current expected credit losses was $7.5 million and $3.2 million, respectively. The increase in the provision for current expected credit losses for the three months ended September 30, 2024 is primarily due to an increase in the CECL Reserves for risk rated “5” loans in the portfolio as a result of the impact of the current macroeconomic environment, including high inflation and interest rates, and more particularly, volatility and reduced liquidity in the office sector and other loan-specific factors during the three months ended September 30, 2024. These factors were partially offset by a realized loss on a risk rated “5” loan, resulting in a reversal of the associated CECL Reserve, shorter average remaining loan term and loan repayments during the three months ended September 30, 2024. The increase in the provision for current expected credit losses for the three months ended September 30, 2023 was primarily due 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, partially offset by shorter average remaining loan term and loan repayments during the three months ended September 30, 2023.

For the nine months ended September 30, 2024 and 2023, the provision for current expected credit losses was $(17.2) million and $44.4 million, respectively. The decrease in the provision for current expected credit losses for the nine months ended September 30, 2024 is primarily due to realized losses on four risk rated “5” loans, resulting in a reversal of associated CECL Reserves, shorter average remaining loan term and loan repayments during the nine months ended September 30, 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, and more particularly, volatility and reduced liquidity in the office sector and other loan-specific factors during the nine months ended September 30, 2024. The increase in the provision for current expected credit losses for the nine months ended September 30, 2023 was primarily due to 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 partially offset by shorter average remaining loan term and loan repayments during the nine months ended September 30, 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 the lower of carrying value or fair value in our consolidated balance sheets. We recognized an unrealized loss of $1.0 million 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 $1.0 million unrealized loss was realized during the nine months ended September 30, 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 nine months ended September 30, 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 nine months ended September 30, 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 June 2024, we acquired legal title to an office property located in California through a foreclosure. The office property previously collateralized a $33.2 million senior mortgage loan held by us that was 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. In conjunction with the foreclosure, we derecognized the $33.2 million senior mortgage loan and recognized the office property as real estate owned. As we expect to complete a sale of the office property within the next twelve months, the office property is classified as real estate owned held for sale and is carried at its estimated fair value at acquisition, less costs to sell. For the nine months ended September 30, 2024, we recognized a realized loss of $16.4 million in our consolidated statements of operations on the derecognition of the senior mortgage loan as the estimated fair value less costs to sell of the office property of $14.5 million and the net operating assets and liabilities held at the office property of $(0.1) million at acquisition was less than the $30.8 million cost basis of the senior mortgage loan.

On September 19, 2024, we acquired legal title to an office property located in North Carolina through a deed in lieu of foreclosure. The office property previously collateralized a $68.6 million senior mortgage loan held by us that was in maturity default due to the failure of the borrower to repay the outstanding principal balance of the loan by the May 2024 maturity date. In conjunction with the deed in lieu of foreclosure, we derecognized the $68.6 million senior mortgage loan and recognized the office property as real estate owned. As we do not expect to complete a sale of the office property within the next twelve months, the office property is classified as held for investment, and is carried at its estimated fair value at acquisition and is presented net of accumulated depreciation or amortization and impairment charges. For both the three and nine months ended September 30, 2024, we recognized a realized loss of $5.8 million in our consolidated statements of operations on the derecognition of the senior mortgage loan as the fair value of the office property at acquisition of $60.2 million and the net operating assets and liabilities held at the office property of $(0.2) million at acquisition was less than the $65.8 million cost basis of the senior mortgage 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 nine months ended September 30, 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 $1.0 million unrealized loss related to this senior mortgage loan for the year ended December 31, 2023 was realized during the nine months ended September 30, 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 increase our CECL Reserve from time to time, as necessary, 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 November 5, 2024, we had approximately $134 million in liquidity including $92 million of unrestricted cash and $42 million of availability under our Secured Funding Agreements.

Cash Flows

The following table sets forth changes in cash, cash equivalents and restricted cash for the nine months ended September 30, 2024 and 2023 ($ in thousands):

	For the Nine Months Ended September 30,	
	2024	2023
Net income (loss)	$ (24,329)	$ 546
Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities	52,806	36,156
Net cash provided by (used in) operating activities	28,477	36,702
Net cash provided by (used in) investing activities	255,246	41,613
Net cash provided by (used in) financing activities	(321,835)	(158,576)
Change in cash, cash equivalents and restricted cash	$ (38,112)	$ (80,261)

During the nine months ended September 30, 2024 and 2023, cash, cash equivalents and restricted cash decreased by $38.1 million and $80.3 million, respectively.

Operating Activities

For the nine months ended September 30, 2024 and 2023, net cash provided by operating activities totaled $28.5 million and $36.7 million, respectively. For the nine months ended September 30, 2024, adjustments to net loss related to operating activities included the provision for current expected credit losses of $17.2 million, accretion of discounts, deferred loan origination fees and costs of $3.7 million, amortization of deferred financing costs of $4.0 million, change in other assets of $1.6 million and realized losses on loans of $67.9 million. For the nine months ended September 30, 2023, adjustments to net income related to operating activities primarily included the provision for current expected credit losses of $44.4 million, accretion of discounts, deferred loan origination fees and costs of $4.9 million, amortization of deferred financing costs of $2.9 million, change in other assets of $18.9 million and realized losses on loans of $10.5 million.

Investing Activities

For the nine months ended September 30, 2024 and 2023, net cash provided by investing activities totaled $255.2 million and $41.6 million, respectively. This change in net cash provided by investing activities was primarily 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 nine months ended September 30, 2024.

Financing Activities

For the nine months ended September 30, 2024, net cash used in financing activities totaled $321.8 million and was related to repayments of our Secured Funding Agreements of $113.7 million, repayments of our Notes Payable of $105.0 million, repayments of debt of consolidated VIEs of $148.7 million, repayments of our Secured Term Loan of $20.0 million and dividends paid of $45.8 million, partially offset by proceeds from our Secured Funding Agreements of $114.5 million. For the nine months ended September 30, 2023, net cash used in financing activities totaled $158.6 million and related to repayments of our Secured Funding Agreements of $94.1 million, repayments of debt of consolidated VIEs of $43.0 million,

dividends paid of $57.9 million and repurchases of our common stock of $4.6 million, partially offset by proceeds from our Secured Funding Agreements of $43.3 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									
	September 30, 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	$ 212,506	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	228,727	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	—	—	—	—	(4)	180,000	—	SOFR+2.50%	August 13, 2024	
Morgan Stanley Facility	250,000	199,377	SOFR+1.60 to 3.10%	July 16, 2025	(5)	250,000	209,673	SOFR+1.60 to 3.10%	July 16, 2025	(5)
Subtotal	$ 1,100,000	$ 640,610				$ 1,280,000	$ 639,817			
Notes Payable	$ —	$ —	—	—	(6)	$ 105,000	$ 105,000	SOFR+2.00%	July 28, 2025	(6)
Secured Term Loan	$ 130,000	$ 130,000	4.50%	November 12, 2026	(7)	$ 150,000	$ 150,000	4.50%	November 12, 2026	(7)
Total	$ 1,230,000	$ 770,610				$ 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. Amount immediately available under the CNB Facility at any given time can fluctuate based on the fair value of the collateral in the borrowing base that secures the CNB Facility. As of September 30, 2024, there was approximately $49.0 million immediately available under the CNB Facility based on the fair value of the collateral in the borrowing base at such time. The amount immediately available under the CNB Facility may be increased to up to $75.0 million by the pledge of additional collateral into the borrowing base in accordance with the CNB Facility agreement.

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

(5) 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.

(6) A wholly owned subsidiary of ours was party to a Credit and Security Agreement with the lender referred to therein, which provided for a $105.0 million note (the "Notes Payable"). The $105.0 million note was subject to two 12-month extensions, each of which may have been exercised at our option provided that certain conditions were met and applicable extension fees were paid. In September 2024, we elected to repay in full and terminate the $105.0 million note prior to its scheduled maturity on July 28, 2025.

(7) 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. In May 2024, we amended the Secured Term Loan to, among other things: (1) change the schedule of interest rate increases on advances under the Secured Term Loan to the following fixed rates: (i) 4.50% per annum until May 1, 2025 and (ii) after May 1, 2025 through November 12, 2026, the interest rate increases 0.25% every three months and (2) add a contingent interest rate increase of 4.00% if the outstanding principal amount of the Secured Term Loan is not paid down to the following amounts on specific dates as follows: (i) $135.0 million as of August 1, 2024, (ii) $130.0 million as of November 1, 2024, (iii) $120.0 million as of February 1, 2025, (iv) $110.0 million as of May 1, 2025, (v) $100.0 million as of August 1, 2025 and (vi) $90.0 million as of November 1, 2025. In connection with the amendment and concurrently therewith, we paid down $10.0 million of outstanding principal on the Secured Term Loan at par. In addition, in each of August 2024 and September 2024, we elected to repay $5.0 million of outstanding principal on the Secured Term Loan at par and thus, the total commitment of the Secured Term Loan was reduced to $130.0 million.

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 September 30, 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 September 30, 2024, the carrying amount and outstanding principal of our CLO Securitizations was $574.9 million and $575.2 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 September 30, 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 September 30, 2024 ($ in millions):

Change in 30-Day SOFR	Increase/(Decrease) in Net Income
Up 100 basis points	$3.4
Up 50 basis points	$1.7
Down 50 basis points	$(1.7)
Down 100 basis points	$(3.4)
SOFR at 0 basis points	$(5.9)

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. In addition, a decrease in interest rates or tightening credit spreads increases the likelihood that certain of our investments will be refinanced at lower rates. 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 September 30, 2024. Based upon that evaluation and subject to the foregoing, our principal executive officer and principal financial officer concluded that, as of September 30, 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 September 30, 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 September 30, 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 may 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)
July 1, 2024 - July 31, 2024	—	—	—	$50,000
August 1, 2024 - August 31, 2024	—	—	—	50,000
September 1, 2024 - September 30, 2024	—	—	—	50,000
Total	—		—	

(1) On July 25, 2023, our board of directors renewed the Repurchase Program of up to $50.0 million, which was expected to be in effect until July 31, 2024, or until the approved dollar amount had been used to repurchase shares. On July 31, 2024, our board of directors further renewed the Repurchase Program of up to $50.0 million, which is expected to be in effect until July 31, 2025, or until the approved dollar amount has been used to repurchase shares. As of September 30, 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 September 30, 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."

Amendment to the CNB Facility

On November 6, 2024, we, as guarantor, and our wholly-owned subsidiary, ACRC Lender LLC, entered into an amendment to the CNB Facility. The amendment updates the definition of borrowing base to generally provide that, investment grade pledged investments will result in a borrowing base equal to 90% of the fair value of such pledged investments in addition to the existing 55% of the fair value of other types of pledged investments. The amendment also updates other related provisions. The foregoing description of the amendment to the CNB Facility 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 10.1, and by this reference incorporated herein.

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 Eleven to Credit Agreement, dated as of November 6, 2024, by and among the Lenders, City National Bank, a national banking association, as agent, ACRC Lender LLC, as borrower, and Ares Commercial Real Estate Corporation, as guarantor.
10.2	Omnibus Amendment to Transaction Documents, dated as of November 4, 2024, by and among ACRC Lender C LLC, as Seller, ACRC 2017-FL3 Holder REIT LLC, as Pledgor, Ares Commercial Real Estate Corporation, as Guarantor, and Citibank, N.A., a national banking association, as Buyer.
10.3	Omnibus Amendment to Repurchase Documents, dated as of November 4, 2024, by and among ACRC Lender W LLC and ACRC Lender W TRS LLC, as Sellers, ACRC 2017-FL3 Holder REIT LLC, as Pledgor, Ares Commercial Real Estate Corporation, as Guarantor, and Wells Fargo Bank, National Association, a national banking association, as Buyer.
10.4	Fifth Amendment to Master Repurchase and Securities Contract, dated as of October 22, 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.
10.5*	Fourth Amendment to Second Amended and Restated Substitute Guaranty Agreement, dated as of August 2, 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. (3)
10.6*	Third Amendment to Parent Guaranty and Indemnity, dated as of August 2, 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. (4)
10.7*	Amendment Number Ten to Credit Agreement and Amendment Number Four to General Continuing Guaranty, dated as of August 2, 2024, by and among the Lenders, City National Bank, a national banking association, as Agent, ACRC Lender LLC, as Borrower, and Ares Commercial Real Estate Corporation, as Guarantor. (5)
10.8*	Amendment No. 2 to Second Amended and Restated Guarantee Agreement, dated as of August 2, 2024, by and among ACRC Lender W, LLC, as ACRC Seller, ACRC Lender W TRS LLC, as TRS Seller, Ares Commercial Real Estate Corporation, as Guarantor, and Wells Fargo Bank, National Association, a national banking association, as Buyer. (6)
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 10-Q (File No. 001-35517), filed on August 6, 2024.

(4) Incorporated by reference to Exhibit 10.2 to the Company's Form 10-Q (File No. 001-35517), filed on August 6, 2024.

(5) Incorporated by reference to Exhibit 10.3 to the Company's Form 10-Q (File No. 001-35517), filed on August 6, 2024.

(6) Incorporated by reference to Exhibit 10.4 to the Company's Form 10-Q (File No. 001-35517), filed on August 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: November 7, 2024

By: /s/ Bryan Donohoe
Bryan Donohoe
Chief Executive Officer
(Principal Executive Officer)

Date: November 7, 2024

By: /s/ Jeffrey Gonzales
Jeffrey Gonzales
Chief Financial Officer and Treasurer
(Principal Financial and Accounting Officer)

AMENDMENT NUMBER ELEVEN TO CREDIT AGREEMENT

THIS AMENDMENT NUMBER ELEVEN TO CREDIT AGREEMENT(this "Amendment"), dated as of November 6, 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, **ACRC LENDER LLC**, a Delaware limited liability company (the "Borrower"), and in light of the following:

W I T N E S S E T H

WHEREAS, 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, Borrower has requested that Agent and Lenders make certain amendments to the Credit Agreement and Security Agreement;

WHEREAS, upon the terms and conditions set forth herein, Agent and Lenders are willing to make certain amendments to the Credit Agreement.

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 Credit Agreement.

2. Amendments to the Credit Agreement. Borrower, Lenders and Agent agree that on the Eleventh Amendment Effective Date (as defined below):

(a) the Credit Agreement shall be 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; and

(b) Exhibit 11.3 to the Credit Agreement shall be replaced in its entirety by the revised Exhibit 11.3 reflected on Exhibit B hereto.

3. Conditions Precedent to Amendment. The satisfaction of each of the following shall constitute conditions precedent to the effectiveness of the Amendment (such date being the "Eleventh Amendment Effective Date"):

(a) Agent shall have received this Amendment, duly executed by the parties hereto, and the same shall be in full force and effect.

(b) Agent shall have received the reaffirmation and consent of Guarantor attached hereto as Exhibit C, duly executed and delivered by an authorized officer of Guarantor.

(c) After giving effect to this Amendment, the representations and warranties herein and in the Credit Agreement 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).

(d) 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 Borrower's knowledge, overtly threatened that could reasonably be expected to have: (i) a material adverse effect on Borrower's ability to repay the Loans or (ii) a Material Adverse Effect on Borrower.

(e) 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. Borrower hereby represents and warrants to Agent and the Lenders as follows:

(a) It a duly organized and validly existing limited liability company in good standing under the law of the State of Delaware 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 Borrower.

(b) It has all requisite limited liability company power to execute and deliver this Amendment and the other Loan Documents to which it is a party, and to borrow the sums provided for in the Credit Agreement. Borrower 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 have a Material Adverse Effect on the Loan Parties, taken as a whole. The execution, delivery, and performance of this Amendment and the other Loan Documents to which it is a party have been duly authorized by Borrower and all necessary limited liability company action in respect thereof has been taken, and the execution, delivery, and performance thereof do 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) The execution, delivery, and performance by Borrower of this Amendment and the other Loan Documents to which it is a party, do not and will not: (i) violate (A) 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, (B) any order of any domestic Governmental Authority, court, arbitration board, or tribunal binding on any Loan Party, or (C) the Governing Documents of any Loan Party, or (ii) 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 a Permitted Lien) upon any of the Assets of any Loan Party pursuant to, any Contractual Obligation of any Loan Party, or (iii) require termination of any Contractual Obligation of any Loan Party, or (iv) constitute

a tortious interference with any Contractual Obligation of any Loan Party, in each case, except as could not reasonably be expected to have a Material Adverse Effect on the Loan Parties, taken as a whole.

(d) 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 this Amendment or 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 on the Loan Parties, taken as a whole.

(e) This Amendment and the other Loan Documents to which Borrower is a party, when executed and delivered by Borrower, will constitute the legal, valid, and binding obligations of Borrower, enforceable against Borrower in accordance with their terms except as the enforceability hereof or thereof 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).

(f) 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 Borrower's knowledge, overtly threatened that could reasonably be expected to have: (i) a material adverse effect on Borrower's ability to repay the Loans or (ii) a Material Adverse Effect on Borrower.

(g) No Event of Default or Unmatured Event of Default has occurred and is continuing as of the date of the effectiveness of this Amendment.

(h) No event or development has occurred as of the date of the effectiveness of this Amendment which could reasonably be expected to result in a Material Adverse Effect with respect to any Loan Party.

(i) The representations and warranties set forth in this Amendment, in the Credit Agreement, as amended by this Amendment and after giving effect to this Amendment, and the other Loan Documents to which Borrower is a party are true, correct and complete in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) on and as of the date hereof, as though made on such date (except to the extent that such representations and warranties relate solely to an earlier date).

(j) This Amendment has been entered into without force or duress, of the free will of Borrower, and the decision of Borrower to enter into this Amendment is a fully informed decision and Borrower is aware of all legal and other ramifications of each such decision.

(k) It has read and understands this Amendment, has consulted with and been represented by independent legal counsel of its own choosing in negotiations for and the preparation of this Amendment, has read this Amendment in full and final form, and has been advised by its counsel of its rights and obligations hereunder.

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 Credit Agreement, 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 Credit Agreement or any other Loan Document. Except for the amendments to the Credit Agreement expressly set forth herein, the Credit Agreement 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 Credit Agreement will be agreed to, it being understood that the granting or denying of any waiver or amendment which may hereafter be requested by Borrower 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 Credit Agreement 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 Credit Agreement, and each reference in the other Loan Documents to "the Credit Agreement", "the Guaranty", "thereunder", "therein", "thereof" or words of like import referring to the Credit Agreement, shall mean and be a reference to the Credit Agreement as 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 Credit Agreement, 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 Credit Agreement 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 Credit Agreement 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. Borrower hereby reaffirms its obligations under each Loan Document to which it is a party. Borrower hereby further ratifies and reaffirms the validity and enforceability of all of the liens and security interests heretofore granted, pursuant to and in connection with the Security Agreement or any other Loan Document to Agent, on behalf and for the benefit of each member of the Lender Group, as collateral security for the obligations under the Loan Documents in accordance with their respective terms, and acknowledges that all of such liens and security interests, and all collateral heretofore pledged as security for such obligations, continues to be and remain collateral for such obligations from and after the date hereof. Borrower hereby further does grant to Agent, a security interest in the Collateral (as defined in the Security Agreement) in order to secure all of its present and future Obligations.

11. Ratification. Borrower hereby restates, ratifies and reaffirms each and every term and condition set forth in the Credit Agreement 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.

ACRC LENDER LLC,
a Delaware limited liability company, as Borrower

By: /s/ Elaine McKay
Name: Elaine McKay
Title: Vice President

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 ELEVEN TO CREDIT AGREEMENT]

Exhibit A

Conformed Credit Agreement

[see attached]

CREDIT AGREEMENT

by and among

ACRC LENDER LLC,

as Borrower,

THE LENDERS PARTIES HERETO FROM TIME TO TIME

as the Lenders,

and

CITY NATIONAL BANK,

together with its successors and assigns

as the Arranger and Administrative Agent

Dated as of March 12, 2014

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CREDIT AGREEMENT

THIS CREDIT AGREEMENT, dated as of March 12, 2014, is entered into by and among, on the one hand, the lenders identified on the signature pages hereof (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 ("CNB"), as the arranger and administrative agent for the Lenders (in such capacity, together with its successors and permitted assigns in such capacity, "Agent"), and, on the other hand, **ACRC LENDER LLC**, a Delaware limited liability company ("Borrower").

The parties agree as follows:

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:

"Acceptable Credit Entity" has the meaning set forth in the Credit Support Side Letter.

"ACRC Pledge and Account Control Agreement" means that certain Pledge and Account Control Agreement, dated as of November 19, 2013, by and among Borrower, U.S. Bank National Association, as trustee on behalf of certain certificate holders, and U.S. Bank National Association, as amended, restatement or otherwise modified from time to time.

"Advances" has the meaning set forth in Section 2.1(a).

"Affiliate" means, as applied to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with, that Person. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlling," "controlled by," and "under common control with"), as applied to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of that 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.

"Agent" has the meaning set forth in the preamble to this Agreement.

"Agent-Related Persons" means Agent, together with its Affiliates, officers, directors, employees, attorneys, and agents.

"Agent's Account" means the Deposit Account of Agent identified on Schedule A-1.

"Agent's Liens" means the Liens granted by any Loan Party to Agent under the Loan Documents.

"Agreement" means this Credit Agreement among Borrower, the Lenders, and Agent, together with all exhibits and schedules hereto, including the Disclosure Statement.

"Application Event" means the occurrence of (a) a failure by Borrower to repay in full all of the Obligations on the Maturity Date, or (b) an Event of Default and the election by Agent or 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.

"Applicable Percentage" means, as of any date (a) with respect to any Pledged Investment that is an Investment Grade Pledged Investment on such date, 90% or (b) with respect to any other Pledged Investment, 55%.

"Ares Management LLC" means Ares Management LLC, a Delaware limited liability company.

"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.

"Assignee" has the meaning set forth in Section 9.1(a).

"Assignment and Acceptance" means an Assignment and Acceptance Agreement substantially in the form of Exhibit A-1.

"Availability" means, as of any date of determination, the amount that Borrower is entitled to borrow as Advances hereunder (after giving effect to all then outstanding Advances and Letters of Credit).

"Bank Product" means any financial accommodation extended to a Loan Party by a Bank Product Provider in connection with Hedging 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 a Bank Product Agreement if such counterparty was a Lender or an Affiliate of a Lender on the date of entering into such Bank Product Agreement; provided, however, that no such Person (other than CNB) shall constitute a Bank Product Provider with respect to a Bank Product unless and until Agent shall have received a Bank Product Provider Letter Agreement from such Person and with respect to the applicable Bank Product within such reasonable period agreed to by Agent after the provision of such Bank Product to any Loan Party.

"Bank Product Provider Letter Agreement" means a letter agreement in substantially the form attached hereto as Exhibit B-1, in form and substance reasonably satisfactory to Agent, duly executed by the applicable Bank Product Provider, Borrower, and Agent.

"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.

"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.

"Base LIBOR Rate" means the ICE Benchmark Administration definition of the London InterBank Offered Rates as made available by Bloomberg LP (or, if such service is not available, such other successor to or substitute for such definition or such service as may be designated by Agent in accordance with customary practice in the syndicated loan market), for the applicable monthly period upon which the Interest Period is based for the LIBOR Rate Loan selected by Borrower and as quoted by Agent pursuant to the terms hereof, in the case of an initial LIBOR Rate Loan or a conversion of a Base Rate Loan to a LIBOR Rate Loan, on the date that is two (2) Eurodollar Business Days prior to the Funding Date for such LIBOR Rate Loan or, in the case of a continuation of an existing LIBOR Rate Loan, on the date that is two (2) Eurodollar Business Days before the last Eurodollar Business Day of an expiring Interest Period.

"Base Rate" means the greatest of (a) the Federal Funds Rate plus 0.50%, (b) the rate most recently announced by Agent at its principal office in Los Angeles, California as its "Prime Rate" and (c) the Daily Simple SOFR plus 1.00 percentage point.

"Base Rate Loan" means each portion of the Advances bearing interest at the Base Rate.

"Benchmark" has the meaning set forth in Section 2.18(a).

"Benchmark Replacement" has the meaning set forth in Section 2.18(a).

"Benchmark Replacement Date" has the meaning set forth in Section 2.18(a).

"Benchmark Transition Event" has the meaning set forth in Section 2.18(b).

"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).

"Borrower" has the meaning set forth in the introduction to this Agreement.

"Borrowing Base" means:

(a) if on such date there are four (or such lesser number as otherwise agreed to by Agent) or more Pledged Investments (the "Minimum Investment Condition") has been satisfied,

(i) except as otherwise set forth below in clause (a)(iii)**,** the Borrowing Base shall be ~~55%~~**the Applicable Percentage** of the Fair Market Value of ~~the~~**such** then extant Pledged Investments if the Total Reserves are less than the sum of $300,000,000 plus the Capital Amount; or

(ii) except as otherwise set forth below in clause (a)(iii) the Borrowing Base shall be 35% of the Fair Market Value of ~~the~~**such** then extant Pledged Investments, if the Total Reserves are greater than or equal to the sum of $300,000,000 plus the Capital Amount and less than the sum of $400,000,000 plus the Capital Amount; or

(iii) during any Temporary Increase Period, and so long as the Total Reserves are less than the sum of $300,000,000 plus the Capital Amount, the Borrowing Base shall be 70% of the Fair Market Value of ~~the~~**such** then extant Pledged Investments **that are not Investment Grade Pledged Investments on such date**; or

(b) if on such date either (i) the Minimum Investment Condition has not been satisfied or (ii) Total Reserves are greater than or equal to the sum of $400,000,000 plus the Capital Amount, then the Borrowing Base shall be $0.

"Business Day" means a day when major commercial banks are open for business in California and New York, New York, other than Saturdays or Sundays; provided that, when used in connection with a SOFR Loan, or any other calculation or determination involving SOFR, the term "Business Day" means any such day that is also a U.S. Government Securities Business Day.

"Capital Amount" means, as of any date of determination, the sum of (i) cumulative net proceeds of all common or preferred equity capital raised by any Loan Party after January 31, 2024 through to such date and (ii) the amount of Credit Support available as of such date.

"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.

"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 Agent, (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 upon reasonably prompt written notice to the Agent following the establishment of such an account), 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 of Control Event" means 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 membership interests of the Borrower; (c) Ares Commercial Real Estate Management LLC shall cease to be one-hundred percent (100%) owned and controlled, of record and beneficially, by Ares Management LLC or one or more of its Affiliates or (d) neither Ares Commercial Real Estate Management LLC nor any Affiliate of Ares Management LLC is actively involved on an ongoing basis in the investment decisions of Guarantor and its Subsidiaries.

"Closing Date" means the March 12, 2014.

"CNB" has the meaning set forth in the preamble to this Agreement.

"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.

"Collateral Account" has the meaning ascribed thereto in the Security Agreement.

"Collections" means all cash, checks, notes, instruments, and other items of payment.

"Compensated Lender" has the meaning set forth in Section 11.2.

"Conforming Changes" means, with respect to either the use or administration of any SOFR-Based Rate or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of "Business Day", the definition of "Interest Period," or any similar or analogous definition, if applicable, the addition of a concept of "interest period", if applicable, timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, length of lookback periods, the applicability of any breakage costs and other technical, administrative or operational matters) to this Agreement and the other Loan Documents that Agent decides may be appropriate to reflect the adoption and implementation of any such rate and to permit the administration thereof by Agent in a manner Agent determines in connection with the administration of this Agreement and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such changes will become effective without any further action or consent of any Borrower.

"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 material provision of any material 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.

"Credit Support" means any guarantee, equity contribution agreement, equity call agreement, demand note, letter of credit, surety bond, swap agreement, put or call option or other obligation, right or asset intended to support the repayment of Advances when due hereunder, in each case, to the extent provided by an Acceptable Credit Entity and mutually acceptable to the Borrower and the Lenders.

"Credit Support Side Letter" means that certain letter agreement between the Borrower and the Agent, dated as of ~~July 11~~**August 2**, 2024.

"Daily Balance" means, as of any date of determination and with respect to any Obligation, the amount of such Obligation owed at the end of such day.

"Daily Simple SOFR" means, for any day (a "SOFR Interest Day"), a rate per annum (rounded upward to the next one-sixteenth ($1/16^{th}$) of one percentage (0.0625%), if necessary) equal to the greater of (a) SOFR for the day that is two (2) Business Days prior to (i) if such SOFR Interest Day is a Business Day, such SOFR Interest Day or (ii) if such SOFR Interest Day is not a Business Day, the Business Day immediately preceding such SOFR Interest Day and (b) 0.35% ; provided, that if the Agent decides that any such convention is not administratively feasible for the Agent, then the Agent may establish another convention in its reasonable discretion.

"Daily Simple SOFR Loan" means each portion of the Advances bearing interest based upon Daily Simple SOFR.

"Debt" with respect to any Person, means: (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, (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, in respect of, or to purchase or otherwise acquire, indebtedness of others, 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 such Person under Accounting Standards Codification Section 810, as amended, modified or supplemented from time to time, or otherwise under GAAP.

"Defaulting Lender" means any Lender that (a) has failed to fund any amounts required to be funded by it under this Agreement on the date that it is required to do so under this Agreement, (b) notified Borrower, Agent, or any Lender in writing that it does not intend to comply with all or any portion of its funding obligations under this Agreement, (c) has made a public statement to the effect that it does not intend to comply with its funding obligations under this Agreement or under other agreements generally (as reasonably determined by Agent) under which it has committed to extend credit, (d) failed, within one Business Day after written request by Agent, to confirm that it will comply with the terms of this Agreement relating to its

obligations to fund any amounts required to be funded by it under this Agreement, (e) otherwise failed to pay over to Agent or any other Lender any other amount required to be paid by it under this Agreement within one Business Day of the date that it is required to do so under this Agreement, unless the subject of a good faith dispute, or (f) (i) becomes or is insolvent or has a parent company that has become or is insolvent, or (ii) becomes the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, or custodian appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment or has a parent company that has become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, or custodian appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment.

"Defaulting Lender Rate" means (a) for the first 3 days from and after the date the relevant payment is due, the Federal Funds Rate, and (b) thereafter, the interest rate then applicable to Advances that are Base Rate Loans.

"Deficiency Amount" has the meaning set forth in Section 6.5.

"Deposit Account" means any "deposit account" (as that term is defined in the UCC).

"Designated Account" means account number 8188090603 of Ares Commercial Real Estate Corporation maintained with Bank of America, or such other deposit account of Borrower (located within the United States) designated, in writing, from time to time, by Borrower to Agent.

"Direct Competitor" means any Person who is a direct competitor of Borrower if Agent or the assigning Lender have actual knowledge of the foregoing (including, upon notification by Borrower); provided, that in connection with any assignment or participation, the assignee with respect to such proposed assignment that is an investment bank, a commercial bank, a finance company, a fund or other entity which merely has an economic interest in any such Person, and is not itself such a direct competitor of Borrower, shall be deemed not to be a Direct Competitor for the purposes of this definition so long as it does not exercise direct control over, or is controlled directly by or under common control with, such Person that is a direct competitor of Borrower.

"Disclosure Statement" means that certain statement, executed and delivered by a Responsible Officer of Borrower, that sets forth information regarding or exceptions to the representations, warranties, and covenants made by Borrower herein, as amended from time to time in accordance with this Agreement.

"Distribution" has the meaning set forth in Section 6.5.

"Dollars" or "$" means United States dollars.

"Eligible Transferee" means (a) a commercial bank organized under the laws of the United States, or any state thereof, and having total assets in excess of $250,000,000, (b) a

commercial bank organized under the laws of any other country which is a member of the Organization for Economic Cooperation and Development or a political subdivision of any such country and which has total assets in excess of $250,000,000, provided that such bank is acting through a branch or agency located in the United States, (c) a finance company, insurance company, financial institution, or fund that is engaged in making, purchasing, or otherwise investing in commercial loans in the ordinary course of its business and having (together with its Affiliates) total assets in excess of $250,000,000, (d) any Lender, (e) any Affiliate (other than individuals) of a Lender, (f) so long as no Event of Default has occurred and is continuing, any other Person approved by Agent and Borrower (which approval of Borrower, except in the case of a proposed assignment to a Direct Competitor, and Agent shall not be unreasonably withheld, delayed, or conditioned), and (g) during the continuation of (i) a Payment Default or an Insolvency Default or (ii) any other Event of Default that has been continuing for a period of at least 30 days, any other Person approved by Agent which approval shall not be unreasonably withheld, delayed or conditioned; provided that in no event shall a Loan Party or an Affiliate of a Loan Party constitute an Eligible Transferee.

"Environmental Law" means any applicable 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 judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree or judgment, in each case, to the extent binding on Borrower or 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.

"Eurocurrency Reserve Requirement" means the sum (without duplication) of the rates (expressed as a decimal) of reserves (including, without limitation, any basic, marginal, supplemental, or emergency reserves) that are required to be maintained by banks during the Interest Period under any regulations of the Federal Reserve Board, or any other governmental authority having jurisdiction with respect thereto, applicable to funding based on so-called "Eurocurrency Liabilities", including Regulation D (12 CFR 224).

"Eurodollar Business Day" means any Business Day on which major commercial banks are open for international business (including dealings in Dollar deposits) in New York, New York and London, England.

"Event of Default" has the meaning set forth in Article VII 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 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) withholding Taxes imposed on amounts payable to or for the account of such Recipient with respect to an applicable interest in a Loan or Revolver Commitment pursuant to a law in effect on the date on which (i) such Recipient acquires such interest in the Loan or Revolver Commitment (other than pursuant to an assignment request by Borrower under Section 11.2) or (ii) in the case of a Lender, such Lender 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 Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient's failure to comply with Section 10.11(b), (c) or (j) and (d) any Taxes imposed under FATCA.

"Extended Maturity Date" has the meaning set forth in Section 3.3.

"Fair Market Value" shall mean, **(a) with respect to any Investment Grade Pledged Investment, the Investment Grade Investment Fair Market Value, or (b)** with respect to any Pledged Investment at any time, (~~i~~**i**) the sum of (~~i~~**A**) the outstanding principal amount of such Pledged Investment plus (~~ii~~**B**) any proceeds of such Pledged Investment consisting of Cash and Cash Equivalents held in the Collateral Account minus (~~b~~**ii**) the amount of any impairment charge or other reduction in value determined by Borrower in its sole discretion with respect to such Pledged Investment (such impairment charge or other reduction in value to be reasonably determined by Borrower in a manner that is consistent with the calculations of impairment charges or other reductions in value with respect to such Pledged Investments reported by Guarantor to the holders of its Securities or on the Borrower's or Guarantor's financial statements) and that has been designated as such by the Borrower in a Pledged Investments Certificate delivered in accordance with Section 5.2 (provided that Borrower may reverse or reduce the amount of any such charge by delivery of a subsequent Pledged Investments Certificate).

"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.

"Federal Funds Rate" shall mean, 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 arranged by Federal funds brokers, 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 Agent from three Federal funds brokers of recognized standing selected by the Agent.

"Federal Reserve Board" means the Board of Governors of the Federal Reserve System or any successor thereto.

"Fee Letter" means that certain fee letter, dated contemporaneously herewith, between Borrower and Agent.

"FINRA" means the Financial Industry Regulatory Authority.

"FL3 Entity" means any of FL3 Holder, FL3 LLC or FL3 Ltd.

"FL3 Holder" means ACRC 2017-FL3 Holder LLC, a Delaware limited liability company.

"FL3 Indenture" means that certain Indenture, dated on or about Match 2, 2017, among FL3 Ltd, as issuer, FL3 LLC, as co-issuer, Wells Fargo Bank, National Association, as advance agent and note administrator, and Wilmington Trust, National Association, as trustee, as amended, restated, supplemented or otherwise modified from time to time.

"FL3 LLC" means ACRE Commercial Mortgage 2017-FL3 LLC, a Delaware limited liability company.

"FL3 Ltd" means ACRE Commercial Mortgage 2017-FL3 Ltd., a Cayman Limited Liability Company.

"Funding Date" means the date on which any Advance is made by the Lenders.

"Funding Losses" has the meaning set forth in Section 2.6(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 any federal, state, local, or other governmental department, commission, board, bureau, agency, central bank, court, tribunal, or other instrumentality, domestic or foreign.

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

"Guaranty" means that certain general continuing guaranty, dated contemporaneously herewith, by the Guarantor in favor of Agent, for the benefit of the Lender Group and the Bank Product Providers.

"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, reproductive 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 or electrical equipment that contains any oil or dielectric fluid containing levels of polychlorinated biphenyls in excess of 50 parts per million.

"Hedging Agreement" means any interest rate, foreign currency, commodity or equity swap, collar, cap, floor or forward rate agreement, or other agreement or arrangement designed to protect against fluctuations in interest rates or currency, commodity or equity values (including any option with respect to any of the foregoing and any combination of the foregoing agreements or arrangements), and any confirmation executed in connection with any such agreement or arrangement.

"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.

"Holdout Lender" has the meaning set forth in Section 11.2.

"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 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.

"Initial Maturity Date" has the meaning set forth in Section 3.3.

"Insolvency Default" means an Event of Default described in Sections 7.1(d), (e) or (f) hereof.

"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, dated as of even date with this Agreement, executed and delivered by Borrower, Guarantor, and Agent, the form and substance of which is reasonably satisfactory to Agent.

"Interest Payment Date" means the first day of each month.

"Interest Period" means (a) with respect to any Term SOFR Loan, the period commencing on the date such Term SOFR Loan is made (including the date a Base Rate Loan or Daily Simple SOFR Loan is converted to a Term SOFR Loan or a Term SOFR Loan is continued) and ending on the numerically corresponding day of the calendar month that is one, three or six months thereafter, as specified in the Request for Borrowing (in each case subject to the availability thereof); provided that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day, and (ii) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period, and (b) with respect to any LIBOR Rate Loan, the period commencing on the date such LIBOR Rate Loan is made (including the date a Base Rate Loan is converted to a LIBOR Rate Loan, or a LIBOR Rate Loan is renewed as a LIBOR Rate Loan, which, in the latter case, will be the last day of the expiring Interest Period) and ending on the date which is one (1), three (3), six (6) months, or, if available to all Lenders, twelve (12) months thereafter, as selected by Borrower; provided, however, that no Interest Period may extend beyond the Maturity Date.

"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).

"Investment Grade Investment Fair Market Value" shall mean, with respect to any Investment Grade Pledged Investment at any time, (a) the sum of (i) the outstanding principal amount of such Pledged Investment plus (ii) any proceeds of such Investment Grade Pledged Investment consisting of Cash and Cash Equivalents held in the Collateral Account minus (b) the amount of any impairment charge or other reduction in value reasonably determined by Borrower by reference to the then current Pricing Sources with respect to such Investment Grade Pledged Investment (such impairment charge or other reduction in value to be reasonably determined by Borrower by reference to the then current Pricing Sources in a manner that is consistent with the calculations of impairment charges or other reductions in value with respect to such Investment Grade Pledged Investments reported by Guarantor to the holders of its Securities or on the Borrower's or Guarantor's financial statements) and that has been designated as such by the Borrower in

a Pledged Investments Certificate delivered in accordance with Section 5.2 (provided that Borrower may reverse or reduce the amount of any such charge by reference to the then Pricing Sources by delivery of a subsequent Pledged Investments Certificate).

"Investment Grade Pledged Investment" means, as of any date of determination, a Pledged Investment that, (i) has a rating of at least AA- from any of S&P, Moody's or Kroll Bond Rating Agency, LLC, in each case, as of such date and (ii) with respect to which a copy of each of the current Pricing Sources related thereto has been delivered to the Administrative Agent within 30 days prior to such date.

"Issuing Lender" means CNB or any other Lender that, at the request of Borrower and with the consent of Agent, agrees, in such Lender's sole discretion, to become an Issuing Lender for the purpose of issuing Letters of Credit pursuant to Section 2.10.

"July 2014 Credit Agreement" means that certain Credit Agreement, dated as of July 30, 2014, by and among Borrower, the lenders party thereto, and CNB, as arranger and administrative agent as amended, supplemented, or otherwise modified as permitted hereunder.

"July 2014 Loan Documents" means the July 2014 Credit Agreement and the other "Loan Documents" as such term is defined in the July 2014 Credit Agreement and any documents, instruments and agreements entered into in connection with any amendment, supplement, restatement, replacement or refinancing thereof, as amended, modified, supplemented or restated from time to time in accordance with the terms of the July 2014 Credit Agreement.

"L/C Disbursement" means a payment made by the Issuing Lender to a beneficiary of a Letter of Credit pursuant to such Letter of Credit.

"Lender" and "Lenders" have the respective meanings set forth in the preamble to this Agreement, and shall include any other Person made a party to this Agreement in accordance with the provisions of Section 9.1.

"Lender Group" means, individually and collectively, each of the Lenders (including the Issuing Lender) and Agent.

"Lender Group Expenses" means all (a) reasonable and documented costs or expenses (including taxes, and insurance premiums) required to be paid by Borrower or any other Loan Party under any of the Loan Documents that are paid, advanced, or incurred by Agent, (b) reasonable and documented fees or charges paid or incurred by Agent in connection with the Lender Group's transactions with Borrower or any other Loan Party, including, fees or charges for photocopying, notarization, couriers and messengers, telecommunication, public record searches (including tax lien, litigation, and UCC searches and, if required, including searches with the United States Patent and Trademark Office, or the United States Copyright Office, the department of motor vehicles), filing, recording, publication, appraisal (including periodic collateral appraisals or business valuations to the extent of the fees and charges (and up to the amount of any limitation) contained in this Agreement or the Fee Letter), and if reasonably requested by the Agent, real estate surveys, real estate title policies and endorsements, and

environmental examinations, but excluding, for the avoidance of doubt, any Taxes of Agent, (c) reasonable and documented costs and expenses incurred by Agent in the disbursement of funds to Borrower or other members of the Lender Group (by wire transfer or otherwise), (d) reasonable and documented costs and expenses paid or incurred by Agent or any Lender to correct any default or enforce any provision of the Loan Documents, or in gaining possession of, maintaining, handling, preserving, storing, shipping, selling, preparing for sale, or advertising to sell the Collateral, or any portion thereof, irrespective of whether a sale is consummated, (e) reasonable and documented fees and expenses of Agent (including internal allocations of costs) related to collateral examinations of the books of the Loan Parties to the extent of the fees and charges (and up to the amount of any limitation) contained in this Agreement or the Fee Letter, (f) reasonable and documented costs and expenses of third party claims or any other suit paid or incurred by the Agent or any Lender in enforcing or defending the Loan Documents or in connection with the transactions contemplated by the Loan Documents or the Lender Group's relationship with any Loan Party, (g) Agent's reasonable and documented costs and expenses (including reasonable and documented attorneys fees of one counsel) incurred in structuring, drafting, reviewing, administering, syndicating, or amending the Loan Documents, and (h) Agent's and each Lender's reasonable and documented costs and expenses (including attorneys, accountants, consultants, and other advisors reasonable and documented fees and expenses) incurred in terminating, enforcing (including attorneys, accountants, consultants, and other advisors reasonable and documented fees and expenses incurred in connection with a "workout," a "restructuring," or an Insolvency Proceeding concerning Borrower or any other Loan Party or in exercising rights or remedies under the Loan Documents), or defending the Loan Documents, irrespective of whether suit is brought, or in taking any Remedial Action concerning the Collateral.

"Lender-Related Person" means, with respect to any Lender, such Lender, together with such Lender's Affiliates, officers, directors, employees, attorneys, and agents.

"Letter of Credit" has the meaning set forth in Section 2.10(a).

"Letter of Credit Fee" has the meaning set forth in Section 2.3(d).

"Letter of Credit Usage" means, as of any date of determination, the aggregate undrawn amount of all outstanding Letters of Credit.

"LIBOR Rate" means the rate per year (rounded upward to the next one-thousandth (1/1000th) of one percent (0.001%), if necessary) determined by Agent to be the quotient of (a) the Base LIBOR Rate divided by (b) one minus the Eurocurrency Reserve Requirement for the Interest Period; which is expressed by the following formula:

Base LIBOR Rate divided by (1 - Eurocurrency Reserve Requirement).

"LIBOR Rate Loan" means each portion of an Advance bearing interest at the LIBOR Rate.

"Lien" means any lien, hypothecation, mortgage, pledge, assignment (including any assignment of rights to receive payments of money) for security, security interest, charge, or 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" means an Advance made by the Lenders (or Agent on behalf thereof) to Borrower pursuant to Section 2.1 of this Agreement, and "Loans" means all such Advances.

"Loan Account" has the meaning set forth in Section 2.12.

"Loan Documents" means this Agreement, the Guaranty, the Letters of Credit, the Fee Letter, the Security Agreement, the Intercompany Subordination Agreement, and any and all other documents, agreements, or instruments that have been or are entered into by Borrower or Guarantor, on the one hand, and Agent, 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, Borrower and the Guarantor.

"Margin Securities" means "margin stock" as that term is defined in Regulation U of the Federal Reserve Board.

"Material Adverse Effect" means, with respect to a specified Person, a material and adverse effect on the business, operations, Assets, or condition (financial or otherwise) of such Person and its Subsidiaries, taken as a whole.

"Maturity Date" means (a) the Extended Maturity Date if the One Year Extension Option is available to, and exercised, by Borrower in accordance with the terms and conditions of Section 3.3, (b) the Second Extended Maturity Date if the Second Year Extension Option is available to, and exercised, by Borrower in accordance with the terms and conditions of Section 3.3 and (c) at all other times, the Initial Maturity Date.

"Maximum Revolver Amount" means $75,000,000.

"Obligations" means (a) all loans (including the Advances), 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 Borrower's Loan Account pursuant hereto), contingent reimbursement obligations with respect to outstanding Letters of Credit, obligations (including indemnification obligations), fees (including the Letter of Credit Fee and the fees provided for in the Fee Letter), 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 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 Borrower is required to pay or reimburse by the Loan Documents, by law, or otherwise, and (b) all Bank Product 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.

"One Year Extension Option" has the meaning set forth in Section 3.3.

"Originating Lender" has the meaning set forth in Section 9.1(e).

"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(e).

"Payment Default" means an Event of Default described in Section 7.1(a) hereof.

"Performing Obligations" means, with respect to any Investment of Borrower, all covenants and obligations set forth in the agreements governing such Investments and instruments (if any) evidencing such Investments, including but not limited to payment obligations, are complied with in all material respects by the parties thereto in accordance with the terms thereof (giving effect to any grace period or cure periods therein).

"Permitted Discretion" means a determination made in the exercise of reasonable (from the perspective of a secured lender) business judgment.

"Permitted Liens" means: (a) Liens for taxes, assessments, or governmental charges or claims the payment of which is not, at such time, required by Section 5.4 hereof, (b) any attachment or judgment Lien either in existence less than 30 calendar days after the entry thereof, or with respect to which execution has been stayed, or with respect to which payment in full above any applicable deductible is covered by insurance (so long as no reservation of rights has been made by the insurer in connection with such coverage), 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 Borrower, (d) Liens granted by Borrower to Agent 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 Borrower and its Subsidiaries, (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 contested in good faith, (g) Liens described in the Disclosure Statement with respect to Section 4.8 hereof, if any, but not the extension of coverage thereof to other property or assets, (h) 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, (i) leases or subleases granted to other Persons not materially interfering with the conduct of the business of the Borrower or any of its Subsidiaries, (j) Liens in connection with the financing of insurance premiums in the ordinary course of business which attach solely to the proceeds thereof or any premium refund, (k) Liens in favor of any escrow agent solely on and in respect of any cash earnest money deposits made by Borrower 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), (l) 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, (m) 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, (n) Liens in favor of collecting banks arising under Section 4-210 of the UCC, (o) Liens on the equity Securities of any Subsidiary of the Borrower and the proceeds thereof securing Debt of such Subsidiary and any guaranty by Borrower of any such Debt, (p) Liens granted under the ACRC Pledge and Account Control Agreement (as in effect on the Closing Date), to the extent that such Liens solely secure the Debt described in the ACRC Pledge and Account Control Agreement (as in effect on the Closing Date) as being secured by such Liens, (q) Liens granted by Guarantor to Ares Management LLC in and to the Securities of ACRC Holdings LLC pursuant to the terms of the Pledge Agreement (as defined in the July 2014 Credit Agreement), and (r) other Liens granted by Borrower in the ordinary course of its business with respect to obligations that do not exceed $100,000 in the aggregate.

"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.

~~**"PH" means Paul Hastings LLP.**~~

"Pledged Investments" means Borrower's or a Guarantor's now owned or hereafter acquired right, title, and interest in and to the Investments set forth on Schedule B-1 (as such Schedule may be updated from time to time in accordance with Section 5.2(a)) and the proceeds and products, whether tangible or intangible, of any of the foregoing so long as such Investments

(a) are subject to a valid and perfected first priority Agent's Lien, (b) are owned by Borrower or a Guarantor free and clear of all other Liens (other than Liens in favor of Agent), and (c) constitute Performing Obligations (or in the case of Stock issued by FL3 Holder that constitutes an Investment, such securities issued by FL3 LLC and FL3 Ltd that are held by FL3 Holder shall constitute Performing Obligations). Unless otherwise agreed by Agent in writing, an Investment shall not be included as nor constitute a Pledged Investment if:

(a) (i) such Investment (the "Designated Investment") does not constitute a Performing Obligation (or in the case of Stock issued by FL3 Holder that constitutes an Investment, such securities issued by FL3 LLC and FL3 Ltd that are held by FL3 Holder does not constitute a Performing Obligations) or does not constitute secured Debt held directly by Borrower or a Guarantor or, in the case of a Designated Investment consisting of Stock issued by FL3 Holder that constitutes an Investment, securities issued by FL3 LLC and FL3 Ltd and are held by FL3 Holder so long as 100% of the Stock issued by FL3 Holder is held by Borrower or a Guarantor, (ii) the following fraction (expressed as a percentage): (A) the sum of the aggregate principal balance of such secured Debt evidenced by the Designated Investment (or in the case of a Designated Investment consisting of Stock issued by FL3 Holder, such secured Debt issued by FL3 LLC and FL3 Ltd that are held by FL3 Holder) plus the aggregate principal amount of all other Debt secured by a Lien on the collateral securing the Debt evidenced by the Designated Investment (or in the case of a Designated Investment consisting of Stock issued by FL3 Holder, the aggregate principal amount of all other Debt secured by a Lien on the collateral securing the Debt issued by FL3 LLC and FL3 Ltd) divided by (B) the applicable "as is" appraised value (as of the date of origination of the Designated Investment, but subject to and reductions in the value thereof on Borrower's books and records thereafter) for the collateral for the Debt evidenced by such Designated Investment, is greater than 90%, ~~or~~(iii) the secured Debt evidenced by the Designated Investment (other than a Designated Investment in FL3 Holder, but without limiting the provisions of clause (b) below with respect thereto) is pari passu or junior in priority (whether pursuant to the waterfall applicable to the Designated Investment, an intercreditor agreement or otherwise) to other Debt secured by a Lien on the collateral securing the Debt evidenced by the Designated Investment~~; or~~**, or (iv) such Designated Investment previously was an Investment Grade Pledged Investment, but either (A) no longer has a rating of at least AA- from any of S&P, Moody's or Kroll Bond Rating Agency, LLC, in each case, as of such date, or (B) with respect to which a copy of each of the current Pricing Sources related thereto has not been delivered to the Administrative Agent within 30 days prior to such date; or**

(c) in the case of a Designated Investment consisting of Stock issued by FL3 Holder that constitutes an Investment (it being understood that the individual Investments that make up such securitization will be treated as separate Investments for determining the Minimum Investment Condition), (i) such securities issued by FL3 LLC and FL3 Ltd that are held by FL3 Holder fail to constitute Performing Obligations, (ii) 100% of the Stock issued by FL3 Holder does not constitute an Investment held by Borrower or a Guarantor that is subject to an Agent's Lien, (iii) FL3 Holder does not hold 100% of the Stock issued by each of FL3 LLC and FL3 Ltd, (iv) any Lien (other than Permitted Liens on the Assets of any Subsidiary of Borrower or Liens securing Debt evidenced by, or Liens permitted under, the FL3 Indenture)

exists with respect to any of the Assets of any FL3 Entity, whether then owned or thereafter acquired by such FL3 Entity, or any income or profits therefrom, (v) any FL3 Entity has any Debt outstanding other than Debt evidenced by or permitted under the FL3 Indenture or (vi) the conditions in the waterfall in the FL3 Indenture (or in any documentation evidencing Debt held by any FL3 Entity) for the payments or proceeds of collateral securing the Debt issued by FL3 LLC and FL3 Ltd that are held by FL3 Holder to be applied to the payment of such Debt are not then satisfied or such payments and/or proceeds of collateral are not applied to such Debt. For the avoidance of doubt, the Fair Market Value of the Stock issued by FL3 Holder and held by Borrower shall equal the Fair Market Value of the securities issued by FL3 LLC, FL3 Ltd or any other Subsidiary of FL3 Holder, that are held by FL3 Holder.

"Pledged Investments Certificate" means a certificate in the form of Exhibit P-1 or any other form agreed to by Agent and Borrower.

"Pricing Sources" means, as of any date of determination, the current editions of each of JPMorgan Pricing Direct and Wells Fargo Commercial Electronic Office (CEO).

"Pro Rata Share" means, as of any date of determination:

(a) with respect to a Lender's obligation to make Advances and receive payments of principal, interest, fees, costs, and expenses with respect thereto, (i) prior to the Revolver Commitments being terminated or reduced to zero, the percentage obtained by dividing (y) such Lender's Revolver Commitment, by (z) the aggregate Revolver Commitments of all Lenders, and (ii) from and after the time that the Revolver Commitments have been terminated or reduced to zero, the percentage obtained by dividing (y) the aggregate outstanding principal amount of such Lender's Advances by (z) the aggregate outstanding principal amount of all Advances,

(d) with respect to a Lender's obligation to participate in Letters of Credit, to reimburse the Issuing Lender, and to receive payments of fees with respect thereto, (i) prior to the Revolver Commitments being terminated or reduced to zero, the percentage obtained by dividing (y) such Lender's Revolver Commitment, by (z) the aggregate Revolver Commitments of all Lenders, and (ii) from and after the time that the Revolver Commitments have been terminated or reduced to zero, the percentage obtained by dividing (y) the aggregate outstanding principal amount of such Lender's Advances by (z) the aggregate outstanding principal amount of all Advances, and

(e) with respect to all other matters as to a particular Lender (including the indemnification obligations arising under Section 10.7), (i) prior to the Revolver Commitments being terminated or reduced to zero, the percentage obtained by dividing (y) such Lender's Revolver Commitment, by (z) the aggregate amount of Revolver Commitments of all Lenders, and (ii) from and after the time that the Revolver Commitments have been terminated or reduced to zero, the percentage obtained by dividing (y) the outstanding principal amount of such Lender's Advances, by (z) the outstanding principal amount of all Advances; provided, however, that if all of the Advances have been repaid in full and Letters of Credit remain outstanding, Pro

Rata Share under this clause shall be determined based upon subclause (i) of this clause as if the Revolver Commitments had not been terminated or reduced to zero and based upon the Revolver Commitments as they existed immediately prior to their termination or reduction to zero.

"Qualified Purchaser" means "qualified purchaser" within the meaning of Section 2(a)(51) of the Investment Company Act of 1940, as amended, and the rules promulgated thereunder.

"Recipient" means (a) Agent, (b) any Lender and (c) any Issuing Lender, as applicable.

"Regulatory Change" has the meaning set forth in Section 2.13.

"Remedial Action" means all actions taken to (a) clean up, remove, remediate, contain, treat, monitor, assess, evaluate, or in any way address Hazardous Materials in the indoor or outdoor environment, (b) prevent or minimize a release or threatened release of Hazardous Materials so they do not migrate or endanger or threaten to endanger public health or welfare or the indoor or outdoor environment, (c) restore or reclaim natural resources or the environment, (d) perform any pre-remedial studies, investigations, or post-remedial operation and maintenance activities, or (e) conduct any other actions with respect to Hazardous Materials, in each case, as required by applicable Environmental Laws.

"Replacement Lender" has the meaning set forth in Section 11.2.

"Report" has the meaning set forth in Section 10.17.

"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 Agent of Borrower's request for an Advance or for the issuance of a Letter of Credit, which notice shall be substantially in the form of Exhibit R-2 attached hereto.

"Request for Conversion/Continuation" 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 Agent pursuant to the terms of Section 2.7, substantially in the form of Exhibit R-3 attached hereto.

"Required Lenders" means, at any time, Lenders whose aggregate Pro Rata Shares (calculated under clause (c) of the definition of Pro Rata Shares) exceed 50%; provided that, (i) at any time there are 2 or more Lenders (who are not Affiliates of one another), "Required Lenders" must include at least 2 Lenders (who are not Affiliates of one another) and (ii) the Advances and Revolver Commitments of any Defaulting Lender shall be excluded for purposes of determining the Required Lenders.

"Reserves" means, as of any date of determination, any current expected credit loss reserves established by any Loan Party with respect to any Investment, property or other assets of any Loan Party in accordance with GAAP, including the aggregate amount of all current

expected credit loss reserves that are reflected in the Guarantor's most recently filed 10-Q or 10-K, as applicable.

"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 Agent, in each case, to the extent that any such officer is authorized to bind Borrower or the Guarantor (as applicable).

"Revolver Commitment" means, with respect to each Lender, its commitment in respect of the Revolving Credit Facility, and, with respect to all Lenders, their commitments in respect of the Revolving Credit Facility, in each case as such Dollar amounts are set forth beside such Lender's name under the applicable heading on Schedule C-1 or in the Assignment and Acceptance pursuant to which such Lender became a Lender hereunder, as such amounts may be reduced or increased from time to time pursuant to assignments made in accordance with the provisions of Section 9.1.

"Revolving Credit Facility" means the revolving credit facility described in Section 2.1(a) hereof.

"Revolving Credit Facility Usage" means, at the time any determination thereof is to be made, the aggregate Dollar amount of the outstanding Advances at such time.

"Risk Participation Liability" means, as to each Letter of Credit, all reimbursement obligations of Borrower to the Issuing Lender with respect to such Letter of Credit, consisting of (a) the amount available to be drawn or which may become available to be drawn, (b) all amounts that have been paid by the Issuing Lender with respect thereto to the extent not reimbursed by Borrower, whether by the making of an Advance or otherwise, and (c) all accrued and unpaid interest, fees, and expenses payable with respect thereto.

"SEC" means the Securities and Exchange Commission of the United States of America or any successor thereto.

"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.

"Securities Account" means a securities account (as that term is defined in the UCC).

"Security Agreement" means that certain security agreement, dated contemporaneously herewith, between Borrower and Agent.

"Sidley" means Sidley Austin LLP.

"SOFR" means, with respect to any Business Day, a rate per annum equal to the secured overnight financing rate for such Business Day published by the SOFR Administrator on the SOFR Administrator's Website on the immediately succeeding Business Day.

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

"SOFR Administrator's Website" means 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-Based Rate" means Daily Simple SOFR and the Term SOFR Reference Rate, as applicable.

"SOFR Loan" means each portion of the Advances bearing interest at a SOFR-Based Rate.

"Specified Third Party Securitization" means any securitization transaction that was not established or sponsored by Guarantor 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).

"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 Guarantor or any of its Affiliates.

"Taxes" means any tax based upon or measured by net or gross income, gross receipts, sales, use, ad valorem, transfer, franchise, withholding, payroll, employment, excise, occupation, premium or property taxes, or conduct of business, together with any interest and penalties, additions to tax and additional amounts imposed by any federal, state, local, or foreign taxing authority upon any Person.

"Temporary Increase Period" means any period commencing on the date of a payoff of a Pledged Investment, or any other disposition of a Pledged Investment that would cause such Investment to no longer constitute a Pledged Investment in Agent's sole discretion, and

continuing until the earlier of (i) the date a replacement Investment reasonably satisfactory to Agent becomes a Pledged Investment hereunder or (ii) the date that is 45 days after the date of the commencement of such period (as may be extended by Agent in its sole discretion).

"Term SOFR" means, for any Interest Period for a Term SOFR Loan, the greater of (a) the Term SOFR Reference Rate (rounded upward to the next one-sixteenth (1/16th) of one percent (0.0625%), if necessary) for a tenor comparable to the applicable Interest Period on the day that is two (2) U.S. Government Securities Business Days prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator and (b) 0.35%.

"Term SOFR Activation Notice" has the meaning set forth in Section 2.6(j).

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

"Term SOFR Loan" means each portion of the Advances bearing interest based upon Term SOFR.

"Term SOFR Reference Rate" means the rate per annum determined by Agent as the forward-looking term rate based on SOFR.

"Total Reserves" means, as of any date of determination, the sum of (i) cumulative credit losses realized by the Loan Parties after January 31, 2024 through to the last day of the period reflected in the Guarantor's most recently filed 10-Q or 10-K, as applicable, with respect to any Investment of any Loan Party in accordance with GAAP and (ii) the Reserves as reflected in the Guarantor's most recently filed 10-Q or 10-K, as applicable.

"Total Unrestricted Cash" has the meaning set forth in Section 6.5.

"UCC" means the New York Uniform Commercial Code as in effect from time to time.

"Unmatured Event of Default" means an event, act, or occurrence which, with the giving of notice or the passage of time, would become an Event of Default.

"U.S. Government Securities Business Day" means any day except for (a) a Saturday, (b) a Sunday or (c) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

"Withholding Agent" means any Loan Party and Agent.

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 Agent (in the case of quantitative determinations or designations), and beliefs by Agent (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 (or cash collateralization or receipt of a backup letter of credit or other arrangements reasonably satisfactory to the Agent and the Issuing Lender in accordance with the terms hereof) 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.

Article II

AMOUNT AND TERMS OF LOANS

2.1 Credit Facilities.

(a) Revolving Credit Facility.

(i) Subject to the terms and conditions of this Agreement, and during the term of this Agreement:

(A) each Lender with a Revolver Commitment agrees (severally, not jointly or jointly and severally) to make revolving loans ("Advances") to Borrower in Dollars in an aggregate amount at any one time outstanding not to exceed the lesser of (1) such Lender's Pro Rata Share of the Maximum Revolver Amount *less* such Lender's Pro Rata Share of the aggregate Letter of Credit Usage at such time and (2) the Borrowing Base *less* the aggregate Letter of Credit Usage at such time; provided that at no time shall the sum of such Lender's aggregate Advances and such Lender's Pro Rata Share of the aggregate Letter of Credit Usage exceed such Lender's Revolver Commitment, and

(B) amounts borrowed pursuant to this Section 2.1 may be repaid at any time during the term of this Agreement and, subject to the terms and conditions

of this Agreement, reborrowed prior to the Maturity Date. The outstanding principal amount of the Advances, together with interest accrued thereon, shall be due and payable on the Maturity Date or, if earlier, on the date on which they are declared due and payable pursuant to the terms of this Agreement.

(ii) No Lender with a Revolver Commitment shall have an obligation to make any Advance under the Revolving Credit Facility on or after the Maturity Date, other than Advances (if any) which are made pursuant to the provisions of Section 2.10(c) and (d) in respect of L/C Disbursements made in respect of Letters of Credit issued prior to the Maturity Date.

(iii) On the Maturity Date, the then outstanding principal balance of all Advances shall be due and payable in full in immediately available funds. In addition, at least three (3) Business Days prior to the Maturity Date, Borrower shall either (A) provide to Agent, to be held by Agent as cash collateral, for the ratable benefit of the Issuing Lender and the Lenders, immediately available funds in an amount equal to 103% of the Letter of Credit Usage as of such date (which cash collateral shall be used solely to reimburse the Issuing Lender) or (B) make other arrangements (which may include backstop letters of credit) reasonably satisfactory to the Agent and the Issuing Lender. After the Maturity Date, upon the written request therefor by Borrower, as soon as reasonably practicable after receiving such request, Agent shall return to Borrower such amounts held as cash collateral pursuant to the preceding sentence to the extent that the aggregate amount of cash collateral held by Agent exceeds 103% of the then extant Letter of Credit Usage. If at any time after the Maturity Date, the amount of such cash collateral is less than 103% of the then extant Letter of Credit Usage, promptly upon request by Agent, Borrower shall provide additional cash collateral to Agent, to the extent of such deficiency.

(b) [Intentionally Omitted].

2.2 Rate Designation. Borrower shall designate each Loan as a SOFR Loan or a Base Rate Loan in the Request for Borrowing or Request for Conversion/Continuation given to Agent in accordance with Section 2.6 or Section 2.7, as applicable. Each Base Rate Loan under the Revolving Credit Facility shall be in a minimum principal amount of $500,000 and, thereafter, in integral multiples of $100,000, unless such Advance is being made to pay any interest, fees, or expenses then due hereunder, in which case such Advance may be in the amount of such interest, fees, or expenses, and each SOFR Loan under the Revolving Credit Facility shall be in a minimum principal amount of $500,000 and, thereafter, in integral multiples of $100,000.

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 noon (Pacific Time), on the date of payment, for the account of the Lender Group. If Borrower fails to make any such payment in Dollars in immediately

available funds when due, Borrower hereby authorizes Agent to charge such interest, Letter of Credit Fees, and all other fees and expenses provided for in this Agreement or the other Loan Documents (as and when payable hereunder or under the other Loan Documents), to Borrower's Loan Account as an Advance, and if such amounts are charged to Borrower's Loan Account as a an Advance, such amounts thereafter shall accrue interest at the rate then applicable to Base Rate Loans hereunder.

(i) Unless Agent receives notice from Borrower prior to the date on which any payment is due to the Lenders that Borrower will not make such payment in full in Dollars in immediately available funds as and when required, Agent may assume that Borrower has made (or will make) such payment in full to Agent on such date in Dollars in immediately available funds and 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. If and to the extent Borrower does not make such payment in full in Dollars in immediately available funds to Agent on the date when due, each Lender severally shall repay to Agent on demand such amount distributed to such Lender, together with interest thereon at the Defaulting Lender Rate for each day from the date such amount is distributed to such Lender until the date repaid.

(ii) Except as otherwise provided with respect to Defaulting Lenders and except as otherwise provided in the Loan Documents (including agreements between Agent and individual Lenders), aggregate principal and interest payments shall be apportioned ratably among the Lenders (according to the unpaid principal balance of the Obligations to which such payments relate held by each Lender) and applied thereto and payments of fees and expenses (other than fees or expenses that are for Agent's separate account, after giving effect to any agreements between Agent and individual Lenders) shall be apportioned ratably among the Lenders in accordance with their respective Pro Rata Shares. Subject to Section 2.3(a)(iv) below, all payments shall be remitted to Agent and all such payments, and all proceeds of Collateral received by Agent, shall be applied as follows:

(A) first, to pay any fees and Lender Group Expenses then due to Agent under the Loan Documents, until paid in full,

(B) second, 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,

(C) third, ratably to pay interest due to the Lenders (other than Defaulting Lenders) in respect of the Loans until paid in full,

(D) fourth, so long as no Application Event has occurred and is continuing, to pay the principal of all Advances then due to the Lenders (other than Defaulting Lenders) until paid in full,

(E) fifth, if an Application Event has occurred and is continuing, ratably (i) to pay the principal of all Advances then due to the Lenders (other than

Defaulting Lenders) until paid in full, and (ii) to Agent, to be held by Agent, for the ratable benefit of the Issuing Lender and the Lenders, as cash collateral in an amount up to 103% of the Letter of Credit Usage until paid in full,

(F) sixth, if an Application Event has occurred and is continuing, to pay any other Obligations (other than Obligations owed to Defaulting Lenders but including the provision of amounts to the Bank Product Providers, as cash collateral in an amount up to the amount determined by the applicable Bank Product Provider, in its Permitted Discretion, as the amount necessary to secure Borrower's or its Subsidiaries' Bank Product Obligations that remain outstanding), until paid in full,

(G) seventh, to pay any other Obligations owed to Lenders (other than Defaulting Lenders);

(H) eighth, to pay any Obligations owed to Defaulting Lenders until paid in full, and

(I) ninth, to Borrower (to be wired to the Designated Account) or such other Person entitled thereto under applicable law.

(iii) 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) In each instance, so long as no Application Event has occurred and is continuing, Section 2.3(a)(ii) shall not apply to any payment made by Borrower to Agent and specified by Borrower to be for the payment of specific Obligations then due and payable (or prepayable) under any provision of this Agreement.

(v) 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.

(vi) 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) Subject to Section 2.4, each Base Rate Loan shall bear interest upon the unpaid principal balance thereof, from and including the date advanced or converted, to but excluding the date of conversion or repayment thereof, at a fluctuating rate, per annum, equal to the lesser of (i) the greater of (A) the Base Rate plus 2.25 percentage point and (B) 2.65 percentage points, and (ii) the Highest Lawful Rate. Any change in the interest rate resulting from a change in the Base Rate will become effective on the day on which each change in the Base Rate is announced by Agent. Interest due with respect to Base Rate Loans shall be due and payable, in arrears, commencing on the first Interest Payment Date following the Closing Date, and continuing on each Interest Payment Date thereafter up to and including the Interest Payment Date immediately preceding the Maturity Date, and on the Maturity Date.

(c) Subject to Section 2.4, each LIBOR Rate Loan and SOFR Loan shall bear interest upon the unpaid principal balance thereof, from the date advanced, converted, or continued, at a rate, per annum, equal to the lesser of (i) the greater of (A) the LIBOR Rate or the applicable SOFR-Based Rate plus 3.25 percentage points and (B) 3.00 percentage points, and (ii) the Highest Lawful Rate. Interest due with respect to each LIBOR Rate Loan and SOFR Loan shall be due and payable, in arrears, on each Interest Payment Date applicable to that LIBOR Rate Loan or SOFR Loan, as applicable, and on the Maturity Date. Anything to the contrary contained in this Agreement notwithstanding, Borrower may not have a total of more than 8 LIBOR Rate Loans and Term SOFR Loans outstanding at any one time.

(d) Borrower shall pay Agent (for the ratable benefit of the Lenders, subject to any agreements between Agent and individual Lenders), a Letter of Credit fee (in addition to the charges, commissions, fees, and costs set forth in Section 2.10(f)) which shall accrue at a rate equal to 3.65% per annum *times* the Daily Balance of the undrawn amount of all outstanding Letters of Credit (the "Letter of Credit Fee"). The Letter of Credit Fee shall be due and payable in arrears on each Interest Payment Date.

(e) Unless prepaid in accordance with the terms hereof, the outstanding principal balance of all Advances, together with accrued and unpaid interest thereon, shall be due and payable, in full, on the Maturity Date.

(f) The parties acknowledge that public and private sector industry initiatives are currently underway to identify new or alternative reference rates to be used in place of the London InterBank Offered Rates referenced in the definition of Base LIBOR Rate. Each party to this agreement should consult its own advisors to stay informed of any such developments. The interest rate on the Loans may be derived from an interest rate benchmark that is, or may in the future become, the subject of regulatory reform.

(g) Any Lender by written notice to Borrower (with a copy to Agent) 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. In no event shall the delivery of a promissory note pursuant to this Section 2.3(g) constitute a condition precedent to any extension of credit hereunder.

2.4 Default Rate. Upon the occurrence and during the continuance of an Event of Default, (a) all Loans then outstanding shall bear interest at a rate equal to the rate otherwise applicable to such Loan plus 2.0 percentage points, and (b) the Letter of Credit Fee shall be increased to 2.0 percentage points above the per annum rate otherwise applicable thereunder. All amounts payable under this Section 2.4 shall be due and payable on demand by Agent.

2.5 Computation of Interest and Fees Maximum Interest Rate; Letter of Credit Fee.

(a) All computations of interest with respect to the Loans and computations of the fees (including the Letter of Credit Fee) 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 (except in the case of Base Rate Loans, which shall be 365 days (or 366 days in a leap year)). 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, Borrower shall not be obligated to pay, and Agent 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 2.5, 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, laws of California or the laws of the United States of America.

2.6 Request for Borrowing.

(a) Each Base Rate Loan shall be made on a Business Day and each SOFR Loan shall be made on a Business Day.

(b) Each Loan or Letter of Credit that is proposed to be made after the Closing 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 Agent at 555 S. Flower Street, 24th Floor, Los Angeles, CA 90071, telefacsimile number (213) 673-9801, e-mail address brandon.feitelson@cnb.com, as follows:

(i) for a Base Rate Loan, Borrower shall give Agent notice at least one (1) Business Day prior to the date that is the requested Funding Date, and such notice shall specify that a Base Rate Loan is requested and state the amount thereof (subject to the provisions of this Article II).

(ii) on and after November 12, 2021, the Borrower shall no longer be entitled to request additional LIBOR Rate Loans, continue existing LIBOR Rate Loans, and the Lender Group shall be under no obligation to make or continue LIBOR Rate Loans. In connection with each LIBOR Rate Loan, Borrower shall indemnify, defend, and hold Agent and the Lenders harmless against any loss, cost, or expense incurred by Agent or any Lender as a result of (A) the payment of any principal of any LIBOR Rate Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (B) the conversion of any LIBOR Rate Loan other than on the last day of the Interest Period applicable thereto, or (C) the failure to borrow, convert, continue or prepay any LIBOR Rate Loan on the date specified in any Request for Borrowing or Request for Conversion/Continuation delivered pursuant hereto (such losses, costs, and expenses, collectively, "Funding Losses"; provided, that, for the avoidance of doubt, Funding Losses shall not include any losses incurred under Section 2.6(f) or with respect to which Borrower is required to reimburse Agent or any Lender under any other section of this Agreement). Funding Losses shall, with respect to Agent or any Lender, be deemed to equal the amount reasonably determined by Agent or such Lender to be the excess, if any, of (I) the amount of interest that would have accrued on the principal amount of such LIBOR Rate Loan had such event not occurred, at the LIBOR Rate that would have been applicable thereto, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert, or continue, for the period that would have been the Interest Period therefor), *minus* (II) the amount of interest that would accrue on such principal amount for such period at the interest rate which Agent or such Lender would be offered were it to offer, at the commencement of such period, Dollar deposits of a comparable amount and period in the London interbank market. A certificate of Agent or a Lender delivered to Borrower setting forth any amount or amounts that Agent or such Lender is entitled to receive pursuant to this Section 2.6(b)(ii) shall be conclusive absent manifest error.

(iii) for a SOFR Loan, Borrower shall give Agent notice at least three (3) Business Days before the date the SOFR Loan is to be made, and such notice shall specify that a SOFR Loan is requested and state the amount and, in the case of a Term SOFR Loan, the Interest Period thereof (subject to the provisions of this Article II). Each Request for Borrowing shall be deemed to be a request for a SOFR Loan unless such Request for Borrowing expressly requests a Base Rate Loan. At any time that an Event of Default has occurred and is continuing, Agent may convert, and shall convert if so requested by the Required Lenders, the interest rate on all outstanding SOFR Loans to the rate then applicable to Base Rate Loans hereunder.

(c) If the notice provided for in clause (b) of this Section 2.6 with respect to a Base Rate Loan or a SOFR Loan is received by Agent not later than 10 a.m. (Pacific 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 10 a.m. (Pacific Time), of the next Business Day and such day shall be treated as the first Business Day of the required notice period.

(d) Borrower shall give Agent written notice of the commencement of any period the Minimum Investment Condition is not satisfied by telefacsimile, mail, electronic mail (in a format bearing a copy of the signature(s) required thereon), or personal service, and delivered to Agent at 555 S. Flower Street, 24th Floor, Los Angeles, CA 90071, telefacsimile number (213) 673-9801, e-mail address brandon.feitelson@cnb.com, at least three (3) Business Days prior to the date the Minimum Investment Condition is not satisfied.

(e) Promptly after receipt of a Request for Borrowing pursuant to Section 2.6(b), Agent shall notify the Lenders, not later than 1:00 p.m. (Pacific Time) on the Business Day immediately preceding the Funding Date applicable thereto (in the case of a Base Rate Loan), or the third Business Day preceding the Funding Date (in the case of a SOFR Loan), by telecopy, electronic mail (in a format bearing a copy of the signature(s) required thereon), telephone, 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 Agent in immediately available funds, to Agent's Account, not later than 10:00 a.m. (Pacific Time) on the Funding Date applicable thereto. After Agent's receipt of the proceeds of such Loans, Agent shall make the proceeds thereof available to Borrower on the applicable Funding Date by transferring to the Designated Account immediately available funds equal to the proceeds that are requested by Borrower to be sent to Borrower in the applicable Request for Borrowing; provided, however, that Agent shall not request any Lender to make, and no Lender shall have the obligation to make, any Loan if Agent shall have actual knowledge that (1) one or more of the applicable conditions precedent set forth in Article III will not be satisfied on the requested Funding Date for the applicable Loan unless such condition has been waived, or (2) the requested Loan would exceed the Availability on such Funding Date.

(f) Unless Agent receives notice from a Lender, prior to 9:00 a.m. (Pacific Time) on the date of such Loan, that such Lender will not make available as and when required hereunder to Agent for the account of Borrower the amount of that Lender's Pro Rata

Share of the Loan, Agent may assume that each Lender has made or will make such amount available to Agent in immediately available funds on the Funding Date and Agent may (but shall not be so required), in reliance upon such assumption, make available to Borrower on such date a corresponding amount. If and to the extent any Lender (other than CNB) shall not have made its full amount available to Agent in immediately available funds and Agent in such circumstances has made available to Borrower such amount, that Lender shall on the Business Day following such Funding Date make such amount available to Agent, together with interest at the Defaulting Lender Rate for each day during such period. A notice submitted by 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 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 Agent on the Business Day following the Funding Date, Agent will notify Borrower of such failure to fund and, upon demand by Agent, Borrower shall pay such amount to Agent for 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 Borrower against the Defaulting Lender. The failure of any Lender to make any Loan on any Funding Date shall not relieve any other Lender of any obligation hereunder to make a Loan on such Funding Date, but no Lender shall be responsible for the failure of any other Lender to make the Loan to be made by such other Lender on any Funding Date.

(g) (i) Notwithstanding the provisions of Section 2.3(a)(ii), Agent shall not be obligated to transfer to a Defaulting Lender any payments made by Borrower to 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, Agent shall transfer any such payments (i) first, to Issuing Lender to the extent of the portion of any payment made by Issuing Lender pursuant to a Letter of Credit that was required to be, but was not, paid by the Defaulting Lender, (ii) second, to each other non-Defaulting Lender ratably in accordance with their Revolver Commitments (but only to the extent that such Defaulting Lender's Loan was funded by such other non-Defaulting Lender), (iii) third, to a suspense account maintained by Agent, the proceeds of which shall be retained by Agent and may be made available to be re-advanced to or for the benefit of Borrower (upon the request of Borrower and subject to the conditions set forth in Section 3.2) as if such Defaulting Lender had made its portion of Loans (or other funding obligations) hereunder, and (iv) fourth, from and after the date when all other Obligations have been paid in full, to such Defaulting Lender in accordance with tier (H) of Section 2.3(a)(ii). Subject to the foregoing, Agent may hold and, in its Permitted Discretion, re-lend to Borrower for the account of such Defaulting Lender the amount of all such payments received and retained by Agent for the account of such Defaulting Lender. 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 2.11(b), such Defaulting Lender shall be deemed not to be a "Lender" and such Lender's Revolver 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, Agent, Issuing

Lender, and Borrower shall have waived, in writing, the application of this Section 2.6(g) 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 Agent all amounts owing by Defaulting Lender in respect of the amounts that it was obligated to fund hereunder, and, if requested by Agent, 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 Agent pursuant to Section 2.6(g)(ii) shall be released to Borrower). The operation of this Section shall not be construed to increase or otherwise affect the Revolver Commitment of any Lender, 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 Borrower of its duties and obligations hereunder to Agent, Issuing Lender 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 Borrower at its option, upon written notice to Agent, to arrange for a substitute Lender to assume the Revolver Commitment of such Defaulting Lender, such substitute Lender to be reasonably acceptable to Agent. 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 (1) all interest, fees, and other amounts that may be due and payable in respect thereof, and (2) an assumption of its Pro Rata Share of its participation in the Letters of Credit); provided, that any such assumption of the Revolver Commitment of such Defaulting Lender shall not be deemed to constitute a waiver of any of the Lender Groups' or 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 Borrower for any fees, charges or expenses incurred by Borrower under this Section 2.3(g) 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 2.6(g) 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 2.6(g) shall control and govern.

(ii) If any Letter of Credit is outstanding at the time that a Lender becomes a Defaulting Lender then:

(A) such Defaulting Lender's Pro Rata Share of the Letter of Credit Usage ("Letter of Credit Exposure") shall be reallocated among the non-Defaulting Lenders in accordance with their respective Pro Rata Shares but only to the extent (x) the sum of all non-Defaulting Lenders' aggregate Advances plus such Defaulting Lender's Pro Rata Share of the aggregate Letter of Credit Usage does not exceed the total of all non-Defaulting Lenders' Revolver Commitments and (y) the conditions set forth in Section 3.2 are satisfied at such time;

(B) if the reallocation described in clause (A) above cannot, or can only partially, be effected, Borrower shall within one Business Day following notice by the Agent, cash collateralize such Defaulting Lender's Letter of Credit Exposure (after giving effect to any partial reallocation pursuant to clause (A) above), pursuant to a cash collateral agreement to be entered into in form and substance reasonably satisfactory to the Agent, for so long as such Letter of Credit Exposure is outstanding; provided, that Borrower shall not be obligated to cash collateralize any Defaulting Lender's Letter of Credit Exposure if such Defaulting Lender is also the Issuing Lender;

(C) if Borrower cash collateralizes any portion of such Defaulting Lender's Letter of Credit Exposure pursuant to this Section 2.3(g)(ii), Borrower shall not be required to pay any Letter of Credit Fees to Agent for the account of such Defaulting Lender pursuant to Section 2.3(d) with respect to such cash collateralized portion of such Defaulting Lender's Letter of Credit Exposure during the period such Letter of Credit Exposure is cash collateralized;

(D) to the extent the Letter of Credit Exposure of the non-Defaulting Lenders is reallocated pursuant to this Section 2.3(g)(ii), then the Letter of Credit Fees payable to the non-Defaulting Lenders pursuant to Section 2.3(d) shall be adjusted in accordance with such non-Defaulting Lenders' Letter of Credit Exposure;

(E) to the extent any Defaulting Lender's Letter of Credit Exposure is neither cash collateralized nor reallocated pursuant to this Section 2.3(g)(ii), then, without prejudice to any rights or remedies of the Issuing Lender or any Lender hereunder, all Letter of Credit Fees that would have otherwise been payable to such Defaulting Lender under Section 2.3(d) with respect to such portion of such Letter of Credit Exposure shall instead be payable to the Issuing Lender until such portion of such Defaulting Lender's Letter of Credit Exposure is cash collateralized or reallocated;

(F) so long as any Lender is a Defaulting Lender, the Issuing Lender shall not be required to issue, amend, or increase any Letter of Credit, in each case, to the extent (x) the Defaulting Lender's Pro Rata Share of such Letter of Credit cannot be reallocated pursuant to this Section 2.3(g)(ii) or (y) the Issuing Lender has not otherwise entered into arrangements reasonably satisfactory to the Issuing Lender and Borrower to eliminate the Issuing Lender's risk with respect to the Defaulting Lender's participation in Letters of Credit; and

(G) Agent may release any cash collateral provided by Borrower pursuant to this Section 2.3(g)(ii) to the Issuing Lender and the Issuing Lender may apply any such cash collateral to the payment of such Defaulting Lender's Pro Rata Share of any Letter of Credit Disbursement that is not reimbursed by Borrower pursuant to Section 2.10(c).

(h) All Advances 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 Advance (or other extension of credit) hereunder, nor shall any Revolver 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.

(i) In the event that Borrower elects to have a portion of the proceeds of any prepayment of the Loans invested or deposited in a Collateral Account pursuant to the provisions of Section 2.8(g)(iii), Agent may (in its discretion) apply such proceeds that are held in the Collateral Account at any time to the Loans in accordance with Section 2.8(g)(iii) so long as an Event of Default has occurred and is continuing.

(j) Notwithstanding anything in this Agreement to the contrary, the Lender Group shall be under no obligation to make any Term SOFR Loans hereunder, whether made in connection with a Request for Borrowing, Request for Conversion/Continuation or otherwise, until such time as the Agent has provided written notice to the Borrower (which notice may made by email) that the administration of Term SOFR is administratively feasible for the Agent and that the Lender Group are able to make Term SOFR Loans on a go forward basis (such notice, the "Term SOFR Activation Notice"). The Agent shall use commercially reasonable efforts to deliver a Term SOFR Activation Notice as soon as reasonably practical once the administration of Term SOFR is administratively feasible for the Agent and that the Lender Group are able to make Term SOFR Loans on a go forward basis; provided however that the Lender Group shall have no liability to the Loan Parties 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 failure or delay on the part of Agent to deliver a Term SOFR Activation Notice.

2.7 Conversion or Continuation.

(a) Subject to the provisions of clause (d) of this Section 2.7 and the provisions of Section 2.14, Borrower shall have the option to (i) convert all or any portion of the outstanding Base Rate Loans equal to $500,000, and integral multiples of $100,000 in excess of such amount, to a SOFR Loan, and (ii) convert all or any portion of the outstanding SOFR Loans equal to $500,000 and integral multiples of $100,000 in excess of such amount, to a Base Rate Loan.

(b) Borrower shall by telefacsimile, mail, electronic mail (in a format bearing a copy of the signature(s) required thereon), personal service or by telephone (which shall be confirmed by one of the other means of delivery), subject to Section 2.7(a) above, deliver a Request for Conversion/Continuation to Agent (i) no later than 10 a.m. (Pacific Time), one (1) Business Day prior to the proposed conversion date (in the case of a conversion to a Base Rate Loan), and (ii) no later than 10 a.m. (Pacific Time), three (3) Business Days before (in the case of a conversion to, or a continuation of, a SOFR Loan). A Request for Conversion/Continuation shall specify (x) the proposed conversion or continuation date (which shall be a Business Day), (y) the amount and type of the Loan to be converted or continued, and (z) the nature of the proposed conversion or continuation.

(c) Any Request for Conversion/Continuation (or telephonic notice in lieu thereof) shall be irrevocable and Borrower shall be obligated to convert or continue in accordance therewith.

(d) Notwithstanding anything herein to the contrary, upon the expiration of any Interest Period applicable to a LIBOR Rate Loans, such LIBOR Rate Loans shall be converted on the expiration date of the Interest Period applicable thereto to Daily Simple SOFR Loans. After the initial conversions set forth in this Section 2.7(d), such Loans shall thereafter be subject to the other provisions of this Section 2.7.

2.8 Mandatory Repayment.

(a) The Revolver Commitments, including any commitment to issue any Letter of Credit, shall terminate on the Maturity Date and (without limiting Borrower's obligations to either (i) provide to Agent cash collateral in respect of the outstanding Letters of Credit or (ii) make other arrangements (which may include backstop letters of credit) reasonably satisfactory to the Agent and the Issuing Lender, at least three (3) Business Days prior to the Maturity Date or in accordance with the provisions of Section 2.1(a)(iii)) all Loans, all interest that has accrued and remains unpaid thereon, all contingent reimbursement obligations of Borrower with respect to outstanding Letters of Credit, all unpaid fees, costs, or expenses that are payable hereunder or under any other Loan Document, and all other Obligations immediately shall be due and payable in full without notice or demand (including either (i) providing cash collateral to be held by Agent in an amount equal to 103% of the Letter of Credit Usage, (ii) making other arrangements (which may include backstop letters of credit) reasonably satisfactory to the Agent and the Issuing Lender or (iii) causing the original Letters of Credit to be returned to Agent), on the Maturity Date.

(b) In the event that, at any time, the sum of the then outstanding Revolving Credit Facility Usage and the Letter of Credit Usage exceeds the then extant amount of the Maximum Revolver Amount, then, and in each such event, promptly upon obtaining notice of such excess (and in any event within two (2) Business Days of obtaining such notice) Borrower shall repay the amount of such excess to Agent for the benefit of the Lenders.

(c) In the event that, at any time, the sum of the then outstanding Revolving Credit Facility Usage and the Letter of Credit Usage exceeds the then extant Borrowing Base, then, promptly (and in any event, within 1 Business Day of the occurrence of such excess), Borrower shall repay the amount of such excess to Agent for the benefit of the Lenders.

(d) At least once during each 6 consecutive month period, Borrower shall repay to Agent, for the benefit of the Lenders, an amount of outstanding Loans so that the outstanding principal amount of Loans shall remain at $5,000,000 or less for at least ten consecutive days thereafter; provided, that once during the term of this Agreement, at Borrower's election upon Borrower providing written notice to Agent, so long as no Event of Default has

occurred and is continuing and the Total Reserves are less than $300,000,000 plus the Capital Amount, such repayment shall only be required once during a consecutive nine (9) month period.

(e) Within 3 Business Days of the date of the issuance by Borrower of any equity Securities, Borrower shall prepay the outstanding principal amount of the Obligations (as defined in the July 2014 Credit Agreement) under the July 2014 Credit Agreement in an amount equal to 100% of the net cash proceeds (net of reserves for any reasonably expected expenses) received by Borrower in connection with such issuance. Any remaining net cash proceeds from such issuance after prepaying the outstanding principal amount of such "Obligations" under the July 2014 Credit Agreement shall be applied to prepay the Obligations. The provisions of this Section 2.8(e) shall not be deemed to be implied consent to any such issuance otherwise prohibited by the terms of this Agreement.

(f) Within 3 Business Days of the date of incurrence by Borrower of any Debt (other than Debt permitted under Section 6.1), Borrower shall prepay the outstanding principal amount of the Obligations (as defined in the July 2014 Credit Agreement) under the July 2014 Credit Agreement in an amount equal to 100% of the net cash proceeds (net of reserves for any reasonably expected expenses) received by Borrower in connection with such incurrence. Any remaining net cash proceeds from the incurrence of such Debt after prepaying the outstanding principal amount of such "Obligations" under the July 2014 Credit Agreement shall be applied to prepay the Obligations. The provisions of this Section 2.8(f) shall not be deemed to be implied consent to any such incurrence otherwise prohibited by the terms of this Agreement.

(g) All prepayments of the Loans made pursuant to this Section 2.8 shall (i) so long as no Application Event shall have occurred and be continuing, be applied ratably to the outstanding principal amount of the Loans, until paid in full, (ii) if an Application Event shall have occurred and be continuing, be applied in the manner set forth in Section 2.3(a)(ii), and (iii) so long as an Event of Default has not occurred and is not continuing, to the extent that such prepayments are to be applied to the Advances pursuant to Section 2.8(g)(i) above, be applied, *first,* ratably to Advances that are Base Rate Loans, until paid in full, and, *second,* ratably to Advances that are LIBOR Rate Loans or SOFR Loans, until paid in full; provided, however that if Borrower provides Agent with prior written notice of Borrower's election not to apply such proceeds to the principal amount of any such LIBOR Rate Loan or SOFR Loan prior to the last date of the Interest Period with respect to such LIBOR Rate Loans or SOFR Loan, the amount which would otherwise be applied against such LIBOR Rate Loans or SOFR Loans pursuant to this Section 2.8(g)(iii) shall instead be wired to the Collateral Account described by Borrower in such notice, pending its application by Agent pursuant to the provisions of Section 2.6(i).

2.9 Voluntary Prepayments; Termination and Reduction in Commitments.

(a) Subject to the provisions of Section 2.3(a), Borrower shall have the right, at any time and from time to time, to prepay the Loans without penalty or premium. Borrower shall give Agent written notice no later than noon (Pacific Time) on the date of such

prepayment with respect to Base Rate Loans, not less than 1 Eurodollar Business Day prior written notice of any such prepayment with respect to LIBOR Rate Loans, and not less than 1 Business Day prior written notice of any such prepayment with respect to SOFR Loans. In each case, such notice shall specify the date on which such prepayment is to be made (which shall be a Business Day or Eurodollar Business Day, as applicable), and the amount of such prepayment. Each such prepayment shall be in an aggregate minimum amount of $500,000 and shall include 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 voluntary prepayments of principal by Borrower of a LIBOR Rate Loan prior to the end of the applicable Interest Period shall be subject to Section 2.6(b)(ii).

(b) Borrower has the option, at any time upon 3 Business Days prior written notice to Agent, to terminate this Agreement and terminate the Revolver Commitments hereunder without penalty or premium by paying to Agent, in cash, the Obligations (including contingent reimbursement obligations of Borrower with respect to outstanding Letters of Credit and including all Bank Product 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 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) in full (including (x) either (i) providing immediately available funds to be held by Agent for the benefit of the Issuing Lender and the Lenders in an amount equal to 103% of the Letter of Credit Usage, (ii) making other arrangements (which may include backstop letters of credit) reasonably satisfactory to the Agent and the Issuing Lender or (iii) causing the original Letters of Credit to be returned to the Issuing Lender, and (y) providing immediately available funds (in an amount determined by the Bank Product Providers as sufficient to satisfy the reasonably estimated credit exposure) to be delivered to the Bank Product Providers on account of the Bank Product 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 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)); provided that the Revolver Commitments shall not be terminated if after giving effect to any concurrent prepayment of the Loans in accordance with Section 2.9(a), the aggregate amount of the Revolving Credit Facility Usage and Letter of Credit Usage would exceed the aggregate amount of the Revolver Commitments. Promptly following receipt of any notice, Agent shall advise the Lenders of the contents thereof. Each notice delivered by Borrower pursuant to this Section 2.9(b) shall be irrevocable; provided that a notice of termination of the Revolver Commitments delivered by Borrower may state that such notice is conditioned upon the effectiveness of other credit facilities, in which case such notice may be revoked by Borrower (by notice to Agent on or prior to the specified effective date) if such condition is not satisfied. If Borrower has sent a notice of termination pursuant to the provisions of this Section, then (subject to the proviso in the preceding sentence) the Revolver Commitments shall terminate and Borrower shall be obligated to repay the Obligations (including contingent reimbursement obligations of Borrower with respect to outstanding Letters of Credit and including all Bank Product 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 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) in full on the date set forth as the date of termination of this Agreement in such notice (including (X) either (I) providing immediately available funds to be held by Agent for the benefit of the Issuing Lender and the Lenders in an amount equal to 103% of the Letter of Credit Usage, (II) making other arrangements (which may include backstop letters of credit) reasonably satisfactory to the Agent and the Issuing Lender or (III) causing the original Letters of Credit to be returned to the Issuing Lender, and (Y) providing immediately available funds (in an amount determined by the Bank Product Providers as sufficient to satisfy the reasonably estimated credit exposure) to be delivered to the Bank Product Providers on account of the Bank Product 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 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). Any termination of the Revolver Commitments under this clause (b) shall be permanent.

(c) Borrower has the option, at any time upon 3 Business Days prior written notice to Agent, to reduce the Revolver Commitments without penalty or premium to an amount not less than the sum of (A) the Revolving Credit Facility Usage as of such date, plus (B) the principal amount of all Advances not yet made as to which a request has been given by Borrower under Section 2.6(b), plus (C) the amount of all Letters of Credit not yet issued as to which a request has been given by Borrower pursuant to Section 2.10(a) plus (D) the Letter of Credit Usage. Each such reduction shall be in an amount which is not less than $500,000 (unless the Revolver Commitments are being reduced to zero and the amount of the Revolver Commitments in effect immediately prior to such reduction are less than $500,000). Each notice delivered by Borrower pursuant to this Section 2.9(c) shall be irrevocable. Once reduced under this clause (c), the Revolver Commitments may not be increased. Each such reduction of the Revolver Commitments shall reduce the Revolver Commitments of each Lender proportionately in accordance with its Pro Rata Share thereof.

2.10 Letters of Credit.

(a) Subject to the terms and conditions of this Agreement (including without limitation the provisions of Article III and this Section 2.10(a)), upon the request of Borrower made in accordance herewith not later than seven (7) days before the Maturity Date, the Issuing Lender shall issue letters of credit denominated in Dollars for the account of Borrower and, if requested by Borrower, for the benefit of one of its Affiliates (each, a "Letter of Credit"), and, subject to the provisions of Section 2.1(a)(iii), the Issuing Lender shall amend, renew or extend any Letter of Credit. Each request for the issuance of a Letter of Credit, or the amendment, renewal, or extension of any outstanding Letter of Credit, shall be made in writing by 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) and delivered to the Issuing Lender and Agent via hand delivery, telefacsimile, or other electronic method of transmission reasonably in advance of the requested date of issuance, amendment, renewal, or extension. Each such request shall be in form and substance satisfactory to the Issuing Lender in its sole and absolute discretion and shall specify (i) the amount of such Letter of Credit, (ii) the

date of issuance, amendment, renewal, or extension of such Letter of Credit, (iii) the expiration of such Letter of Credit, (iv) the name and address of the beneficiary thereof, (v) the identity of Borrower's Affiliate for whose benefit such Letter of Credit shall be issued in the event that Borrower requests that the issuing Lender issue a Letter of Credit for the benefit of one of its Affiliates, and (vi) such other information (including, in the case of an amendment, renewal, or extension, identification of the outstanding Letter of Credit to be so amended, renewed, or extended) as shall be necessary to prepare, amend, renew, or extend such Letter of Credit. It is hereby acknowledged that the Issuing Lender shall have no obligation to issue a Letter of Credit (A) if, after giving effect to the issuance of such requested Letter of Credit, (1) the Letter of Credit Usage would exceed $25,000,000, (2) the Letter of Credit Usage would exceed the Maximum Revolver Amount less the amount of the Revolving Credit Facility Usage, or (3) the Letter of Credit Usage would exceed the Borrowing Base at such time less the amount of the Revolving Credit Facility Usage, (B) at any time when one or more of the Lenders is a Defaulting Lender, but only until such time as either (1) the Revolver Commitments of the Defaulting Lender or Defaulting Lenders have been assumed by a Lender that is not a Defaulting Lender, (2) the Maximum Revolver Amount has been reduced by the amount of such Defaulting Lender's or Defaulting Lenders' Revolver Commitments or (3) such Defaulting Lender's Letter of Credit exposure has been cash collateralized, (C) if any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the Issuing Lender from issuing such Letter of Credit, or any law applicable to the Issuing Lender or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the Issuing Lender shall prohibit, or request that the Issuing Lender refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon the Issuing Lender with respect to such Letter of Credit any restriction, reserve or capital requirement (for which the Issuing Lender is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon the Issuing Lender any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which the Issuing Lender in good faith deems material to it, or (D) if the issuance of such Letter of Credit would violate one or more policies of the Issuing Lender applicable to letters of credit generally. Agent shall provide a report to each Lender on a quarterly basis setting forth the then current Letter of Credit Usage and Lender's Pro Rata Share thereof.

(b) Each Letter of Credit shall have an expiry date no later than the earlier to occur of (i) one year after the issuance or renewal of such Letter of Credit and (ii) the Maturity Date, and all Letters of Credit shall be in form and substance acceptable to the Issuing Lender in its sole and absolute discretion. Notwithstanding the foregoing, to the extent Borrower so requests with respect to any new Letter of Credit issued hereunder, the Issuing Lender agrees to issue a Letter of Credit that has automatic renewal provisions (each, an "Auto-Renewal Letter of Credit"). Unless otherwise directed by the Issuing Lender, Borrower shall not be required to make a specific request to the Issuing Lender for any such renewal. Once an Auto-Renewal Letter of Credit has been issued, each Lender with a Revolver Commitment shall be deemed to have authorized the Issuing Lender to permit the renewal of such Letter of Credit at any time prior to an expiry date not later than the Maturity Date (subject to the cash collateral requirement of Section 2.1(a)(iii)); *provided* that the Issuing Lender shall not permit any such renewal if (x) the Issuing Lender has determined in its reasonable discretion that it would have no obligation at

such time to issue such Letter of Credit in its renewed form under Section 2.10(a), or (y) it has received notice on or before the day that is seven Business Days before the renewal date from Agent, any Lender or Borrower that one or more of the applicable conditions specified in Section 3.2 (other than 3.2(d)) are not then satisfied. The foregoing to the contrary notwithstanding, any change to the face amount of any Letter of Credit shall only be made pursuant to an amendment thereto in accordance with the provisions of this Agreement, and in no event shall Agent or the Issuing Lender issue a Letter of Credit which provides for an automatic increase, automatic decrease or other automatic change to the face amount of any Letter of Credit.

(c) If the Issuing Lender is obligated to advance funds under a Letter of Credit, Borrower shall reimburse such L/C Disbursement to the Issuing Lender by paying to Agent an amount equal to such L/C Disbursement not later than 1:00 p.m. (Pacific Time) on the date that such L/C Disbursement is made, if Borrower shall have received written or telephonic notice of such L/C Disbursement prior to 9:00 a.m. (Pacific Time) on such date, or, if such notice has not been received by Borrower prior to 9:00 a.m. (Pacific Time) on such date, then not later than 1:00 p.m. (Pacific Time) on the Business Day immediately following the day that Borrower receives such notice. Such reimbursement shall be made in Dollars. In the absence of such reimbursement, the L/C Disbursement immediately and automatically shall be deemed to be an Advance hereunder and, thereafter, shall bear interest at the rate then applicable to Advances that are Base Rate Loans under Section 2.3. To the extent an L/C Disbursement is deemed to be an Advance hereunder, Borrower's obligation to reimburse such L/C Disbursement shall be discharged and replaced by the resulting Advance. To the extent Borrower has provided to Agent cash or Cash Equivalents to cash collateralize outstanding Letters of Credit pursuant to the provisions of this Agreement, and if no other reimbursement obligation for a separate L/C Disbursement exists, then Agent may utilize the cash collateral to reimburse the Issuing Lender for such L/C Disbursement. Promptly following receipt by Agent of any payment from Borrower pursuant to this paragraph, Agent shall distribute such payment to the Issuing Lender or, to the extent that Lenders have made payments pursuant to Section 2.10(d) to reimburse the Issuing Lender, then to such Lenders and the Issuing Lender as their interests may appear.

(d) Promptly following receipt of a notice of L/C Disbursement pursuant to Section 2.10(c) which is deemed to be an Advance hereunder, each Lender agrees to fund in Dollars in immediately available funds its Pro Rata Share of any Advance deemed made pursuant to the foregoing subsection on the same terms and conditions as if Borrower had requested such Advance and Agent shall promptly pay to the Issuing Lender the amounts so received by it from the Lenders. By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount thereof) and without any further action on the part of the Issuing Lender or the Lenders, the Issuing Lender shall be deemed to have granted to each Lender, and each Lender shall be deemed to have purchased, a participation in each Letter of Credit, in an amount equal to its Pro Rata Share of the Risk Participation Liability of such Letter of Credit, and each such Lender agrees to pay to Agent in Dollars in immediately available funds, for the account of the Issuing Lender, such Lender's Pro Rata Share of any payments made by the Issuing Lender under such Letter of Credit. In consideration and in furtherance of the foregoing, each Lender hereby absolutely and unconditionally agrees to pay to Agent in Dollars in immediately available funds, for the account of the Issuing Lender, such Lender's Pro

Rata Share of each L/C Disbursement made by the Issuing Lender and not reimbursed by Borrower on the date due as provided in clause (c) above, or of any reimbursement payment required to be refunded to Borrower for any reason. Each Lender acknowledges and agrees that its obligation to deliver to Agent, for the account of the Issuing Lender, an amount in Dollars in immediately available funds equal to its respective Pro Rata Share of each L/C Disbursement made by the Issuing Lender pursuant to this Section 2.10(d) shall be absolute and unconditional and such remittance shall be made notwithstanding the occurrence or continuation of an Event of Default or Default or the failure to satisfy any condition set forth in Article III hereof. If any such Lender fails to make available to Agent the amount of such Lender's Pro Rata Share of each L/C Disbursement made by the Issuing Lender in respect of such Letter of Credit as provided in this Section, (i) such Lender shall be deemed to be a Defaulting Lender, (ii) Agent (for the account of the Issuing Lender) shall be entitled to recover such amount on demand from such Lender together with interest thereon at the Defaulting Lender Rate until paid in full, and (iii) Agent shall be authorized by Borrower and each Lender to request that the Lenders fund an additional Advance equal to such Defaulting Lender's Pro Rata Share of such L/C Disbursement (subject in any event to the limitation set forth in the proviso in Section 2.1(a)(i)(A)).

(e) Borrower hereby agrees to indemnify, save, defend, and hold the Lender Group harmless from any loss, cost, expense, or liability, and reasonable attorneys fees incurred by the Lender Group arising out of or in connection with any Letter of Credit; provided, however, that Borrower shall not be obligated hereunder to indemnify for any loss, cost, expense, or liability to the extent that it is found in a final non-appealable judgment of a court of competent jurisdiction to have resulted from the gross negligence, willful misconduct or violation of the express terms of this Agreement by the Issuing Lender or any other member of the Lender Group. The indemnity set forth above is in addition to any other indemnity set forth in this Agreement or in any other Loan Document (including the indemnities by Borrower set forth in Section 8.2 hereof), and shall not be deemed to limit the provisions of any other indemnity or any other similar provision set forth herein or therein. Borrower agrees to be bound by the Issuing Lender's good faith interpretations of any Letter of Credit issued by the Issuing Lender to or for Borrower's account, even though this interpretation may be different from Borrower's own, and Borrower understands and agrees that the Lender Group shall not be liable for any error, negligence, or mistake, whether of omission or commission, in following Borrower's instructions or those contained in the Letter of Credit or any modifications, amendments, or supplements thereto. Borrower hereby acknowledges and agrees that neither the Lender Group nor the Issuing Lender shall be responsible for delays, errors, or omissions resulting from the malfunction of equipment in connection with any Letter of Credit.

(f) Any and all charges, commissions, fees, and costs incurred by the Issuing Lender relating to Letters of Credit shall be Lender Group Expenses for purposes of this Agreement and immediately shall be reimbursable by Borrower to Agent for the account of the Issuing Lender; it being acknowledged and agreed by Borrower that the issuance charge imposed by the Issuing Lender is fixed at 0.125% per annum times the undrawn amount of each Letter of Credit, which shall in no event be less than a minimum of $500 and no greater than a maximum of $1,500, and that the Issuing Lender also imposes a schedule of charges for amendments,

extensions, drawings, and renewals, which shall be no more than the rates therefor that have been most recently published by CNB.

(g) If by reason of (i) any change after the Closing Date in any applicable law, treaty, rule, or regulation or any change in the interpretation or application thereof by any Governmental Authority, or (ii) compliance by the Lender Group with any direction, request, or requirement (irrespective of whether having the force of law) of any Governmental Authority or monetary authority including, Regulation D of the Federal Reserve Board as from time to time in effect (and any successor thereto):

(x) any reserve, deposit, or similar requirement is or shall be imposed or modified in respect of any Letter of Credit issued hereunder, or

(y) there shall be imposed on the Lender Group any other condition regarding any Letter of Credit issued pursuant hereto, and the result of the foregoing is to increase, directly or indirectly, the cost to the Lender Group of issuing, making, guaranteeing, or maintaining any Letter of Credit or to reduce the amount receivable in respect thereof by the Lender Group, then, and in any such case, Agent may, at any time within a reasonable period after the additional cost is incurred or the amount received is reduced, notify Borrower, and Borrower shall pay on demand such amounts as Agent may specify to be necessary to compensate the Lender Group for such additional cost or reduced receipt, together with interest on such amount from the date of such demand until payment in full thereof at the rate then applicable to Base Rate Loans hereunder. The determination by Agent of any amount due pursuant to this Section, as set forth in a certificate setting forth the calculation thereof in reasonable detail, shall, in the absence of manifest or demonstrable error, be final and conclusive and binding on all of the parties hereto.

For the avoidance of doubt, Sections 2.10(e)-(g) shall not apply to Taxes, which shall be governed by Section 10.11.

2.11 Fees.

(a) Unused Line Fee. An unused line fee shall be due and payable quarterly in arrears on the first day of each fiscal quarter in an amount equal to 0.375% per annum times the result of (i) $75,000,000, less (ii) the sum of (A) the average Daily Balance of Advances that were outstanding during the immediately preceding fiscal quarter, plus (B) the average Daily Balance of the Letter of Credit Usage during the immediately preceding fiscal quarter; provided that no unused line fee shall be due and payable if the average Daily Balance of Advances that were outstanding during the immediately preceding fiscal quarter was greater than 75% of the Maximum Revolver Amount. Notwithstanding the foregoing, no unused line fee shall accrue or be payable with respect to the unused Revolver Commitments of any Defaulting Lender for the period for which it is a Defaulting Lender.

(b) Fee Letter Fees. Borrower shall pay to Agent, as and when due and payable under the terms of the Fee Letter, the fees set forth in the Fee Letter.

2.12 Maintenance of Loan Account; Statements of Obligations. Agent shall maintain an account on its books in the name of Borrower (the "Loan Account") on which Borrower will be charged with all Loans made by the Lenders (or Agent on behalf thereof) to Borrower or for 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)). Agent shall render statements regarding the Loan Account to 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 Borrower and Agent unless, within 90 days after receipt thereof by Borrower, Borrower shall deliver to Agent written objection thereto describing the error or errors contained in any such statements.

2.13 Increased Costs. If after the Closing Date, the adoption of, or any change in, any applicable law, rule, or regulation, or any change in the interpretation or administration thereof by any Governmental Authority charged with the interpretation or administration thereof, or compliance by Agent or the Lenders (or their Affiliates) with any request, guideline, or directive (irrespective of whether having the force of law) of any Governmental Authority (a "Regulatory Change") shall impose, modify, or deem applicable any reserve, special deposit, or similar requirement (including any such requirement imposed by the Federal Reserve Board, but excluding with respect to any LIBOR Rate Loan any such requirement included in the calculation of the LIBOR Rate, as applicable) against Assets of, deposits with, or for the account of, or credit extended by, Agent or the Lenders (or their Affiliates) or shall impose on Agent or the Lenders (or their Affiliates) the interbank eurodollar market or any other condition affecting its LIBOR Rate Loans or its SOFR Loans, as applicable, or its obligation to make LIBOR Rate Loan or SOFR Loans, as applicable, then, Agent may, by written notice given to Borrower, require Borrower to pay to the Lender Group such additional amounts as shall compensate the Lender Group for any such increased cost, reduction, loss, or expense actually incurred by the Lender Group in connection with the Loans for the 90 day period preceding the date on which such notice is given and during each fiscal quarter thereafter. Any such request for compensation by Agent under this Section 2.13 shall set forth the basis of calculation thereof and shall, in the absence of manifest error, be conclusive and binding for all purposes. Notwithstanding anything to the contrary herein, (a) the Dodd–Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines and directives relating thereto or issued in connection therewith, all interpretations and applications thereof, and (b) all requests, rules, guidelines and 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 regulatory authorities, and in each case pursuant to Basel III, for the purposes of this Agreement be deemed to be adopted subsequent to the date hereof regardless of the dated enacted, adopted or issued.

2.14 Suspension of LIBOR/SOFR Loans.

(a) If Agent, on any Eurodollar Business Day, is unable to determine the Base LIBOR Rate applicable for a new, continued, or converted LIBOR Rate Loan for any

reason, or any law, regulation, or governmental order, rule or determination, makes it unlawful for any Lender to make a LIBOR Rate Loan, Agent shall give notice of such changed circumstances to Administrative Borrower and (i) all LIBOR Rate Loans shall be immediately converted to Base Rate Loans.

(b) If Agent, on any Business Day, is unable to determine the SOFR-Based Rate applicable for a new or converted SOFR Loan for any reason, or any law, regulation, or governmental order, rule or determination, makes it unlawful for any Lender to fund or maintain such Loan or to continue such funding or maintaining, Agent shall give notice of such changed circumstances to Administrative Borrower and (i) all SOFR Loans shall be immediately converted to Base Rate Loans, and (ii) no Borrower shall be entitled to elect the applicable SOFR-Based Rate (whether at the time when the applicable Loan was made, upon conversion from a Base Rate Loan to such Loan, or upon continuation of such Loan) until Agent determines that it would no longer be unable, unlawful or impractical to do so.

(c) If at any time Agent shall notify Administrative Borrower that any applicable SOFR-Based Rate in respect of a Loan will not adequately reflect the cost to Agent and the Lenders of making, maintaining or continuing such Loan, (i) all SOFR Loans shall be immediately converted to Base Rate Loans, and (ii) Borrowers shall not be entitled to elect the applicable SOFR-Based Rate (whether at the time when the applicable Loan was made, upon conversion from a Base Rate Loan to such Loan) until Agent determines that the circumstances causing such suspension no longer exist.

2.15 Funding Sources. Nothing herein shall be deemed to obligate the Lenders (or Agent 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 a representation by Agent or any Lender that it has obtained or will obtain such funds in any particular place or manner.

2.16 Place of Loans. All Loans made hereunder shall be disbursed by credit to (a) with respect to Loans that are requested by Borrower to be sent to Borrower in the applicable Request for Borrowing, to the Designated Account, or (b) as may otherwise be agreed to between Borrower and Agent.

2.17 Survivability. Borrower's obligations under Section 2.13 hereof shall survive repayment of the Loans made hereunder and termination of the Revolver Commitments for a period of 90 days after such repayment and termination.

2.18 Benchmark Replacement Setting.

(a) Notwithstanding anything to the contrary herein or in any other Loan Document (including Section 2.14), upon the occurrence of a Benchmark Transition Event, Agent may at any time thereafter amend this Agreement to replace the then current Benchmark with an alternate benchmark rate selected by Agent, together with any spread or other adjustment to be applied to such alternate benchmark rate (including any mathematical or other adjustments to the benchmark), giving due consideration to any evolving or then existing convention for determining a rate of interest as a replacement to such current Benchmark for U.S. dollar

denominated syndicated Agent-originated loans in the U.S. market (the "Benchmark Replacement") on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to this Agreement or any other Loan Document, or further action or consent of the Borrowers, so long as the Agent has not received, by such time, written notice of objection to such Benchmark Replacement from the Lenders comprising the Required Lenders or the Borrower; provided that upon Agent's receipt of any such notice of objection hereunder, (i) all Loans that bear interest by reference to such Benchmark shall be immediately converted to Base Rate Loans and (ii) the Borrower shall not be entitled to elect such Benchmark (whether at the time when the applicable Loan is made, or upon conversion or the continuation of a Loan) and such Benchmark shall be unavailable until such time as a Benchmark Replacement has occurred, whether pursuant to this Section 2.18(a) or mutual consent pursuant to Section 11.2. During the period referenced in the foregoing sentence, the component of Base Rate based upon the Benchmark will not be used in any determination of Base Rate. If the Benchmark Replacement as so determined would be less than 0.35%, the Benchmark Replacement will be deemed to be 0.35% for the purposes of this Agreement. Any such amendment will become effective at 5:00 p.m. Pacific Time on the effective date specified in such amendment (such date, the "Benchmark Replacement Date").

(b) As used in this Section 2.18: (i) "Benchmark" means, initially, with respect to any SOFR Loan, the SOFR-Based Rate upon which such SOFR Loan is based; provided that if a Benchmark Replacement Date has occurred with respect to any such SOFR-Based Rate or any then current Benchmark, then "Benchmark" means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has become effective pursuant to this Section 2.18; and (ii) "Benchmark Transition Event" means the occurrence of one or more of the following events with respect to a then current Benchmark: (A) a public statement or publication of information by or on behalf of the administrator of the Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide such Benchmark (or such component thereof), 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 such component thereof); (B) a public statement or publication of information by a governmental authority having jurisdiction over Agent, the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide such Benchmark (or such component thereof) 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 such component thereof); (C) a public statement or publication of information by a governmental authority having jurisdiction over Agent or the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such Benchmark is no longer, or as of a specified future date will no longer be, representative or is not in compliance or aligned, or as a specified future date

will be in compliance or aligned, with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks; (D) the circumstances set forth in Section 2.14 have arisen and such circumstances are unlikely to be temporary; or (E) Agent has determined that U.S. dollar denominated syndicated loans in the U.S. market are being executed or amended (as applicable) to incorporate or adopt a new benchmark interest rate to replace the then current Benchmark.

(c) In connection with the implementation of a Benchmark Replacement, Agent will have the right from time to time to make Conforming Changes. Agent will promptly notify Administrative Borrower and the Lenders of the implementation of any Conforming Changes.

(d) Any determination, decision or election that may be made by Agent pursuant to this Section 2.18, 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, will be conclusive and binding absent manifest error and may be made in Agent's sole discretion and without consent from any Borrower, except, in each case, as expressly required pursuant to this Section 2.18.

(e) Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then current Benchmark is a term rate and either (A) the tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by Agent in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that the tenor for such Benchmark is or will be no longer representative, or is not or will no longer be in compliance or aligned with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks, then Agent may modify the definition of "Interest Period" (or any similar or analogous definition, if any) for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if the tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is or will no longer be representative for a Benchmark (including a Benchmark Replacement), then Agent may modify the definition of "Interest Period" (or any similar or analogous definition, if any) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

2.19 Mitigation of Obligations. If any Lender or the Issuing Lender requests compensation under Section 2.10(g) or Section 2.13, 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 or the Issuing Lender shall use reasonable efforts to promptly designate a different one of its lending offices or to assign its rights and obligations hereunder to another of its offices or branches, if (i) in the reasonable judgment of such Lender or the Issuing Lender, such designation or assignment would eliminate or reduce amounts payable pursuant to Sections 2.10(g), 2.13, or 10.11, as applicable, and (ii) in the reasonable

judgment of such Lender or the Issuing Lender, such designation or assignment would not subject such Lender or the Issuing Lender to any material unreimbursed cost or expense and would not otherwise be materially disadvantageous to such Lender or the Issuing Lender. Borrower hereby agrees to pay all reasonable and documented out-of-pocket costs and expenses incurred by any Lender or the Issuing Lender in connection with any such designation or assignment.

2.20 Rates Disclaimer. Agent does not warrant or accept responsibility for, and shall not have any liability with respect to (a) the administration of, submission of, calculation of or any other matter related to any SOFR-Based Rate, any component definition thereof or rates referenced in the definition thereof or any alternative, comparable or successor rate thereto (including any then-current Benchmark or any Benchmark Replacement), including whether the composition or characteristics of any such alternative, comparable or successor rate (including any Benchmark Replacement) will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, any SOFR-Based Rate or any other Benchmark, or (b) the effect, implementation or composition of any Conforming Changes. Agent may select information sources or services in its reasonable discretion to ascertain any SOFR-Based Rate or any component thereof or any other Benchmark, in each case pursuant to the terms of this Agreement, and shall have no liability to the Loan Parties 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. In connection with the use or administration of any SOFR-Based Rate, Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document. Agent will promptly notify Borrower of the effectiveness of any Conforming Changes.

Article III

CONDITIONS TO LOANS

3.1 Conditions Precedent to the Initial Extension of Credit. The obligation of each Lender to make its initial extension of credit hereunder is, in addition to the conditions set forth in Section 3.2 hereof, subject to the fulfillment, to the reasonable satisfaction of Agent and each Lender and its counsel, of each of the following conditions on or before the Closing Date:

(a) Borrower shall have executed and delivered to Agent the Disclosure Statement required under this Agreement. The form and content of the Disclosure Statement shall be reasonably satisfactory to Agent;

(b) Agent shall have received this Agreement, the Fee Letter, the Guaranty, the Security Agreement, the Intercompany Subordination Agreement and each other

Loan Document not previously delivered to it, each duly executed and delivered by each party thereto (other than Agent or any Lender), each in form and substance reasonably satisfactory to Agent;

(c) Agent shall have received the written opinions, dated the date of this Agreement, of counsel to Borrower, with respect to this Agreement, which written opinions shall be in form and substance reasonably satisfactory to Agent and its counsel;

(d) Agent shall have received certified copies of all effective financing statements, if any, which name as debtor Borrower, in each case, none of which statements shall evidence Liens other than Permitted Liens;

(e) Agent 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;

(f) Agent shall have received certificates of status with respect to each Loan Party, each dated within 30 days of the Closing Date, such certificates to be issued by the appropriate officer of the jurisdictions (other than the jurisdiction of organization of such Loan Party) in which such Loan Party's failure to be duly qualified or licensed would constitute a Material Adverse Effect, which certificates shall indicate that such Loan Party is in good standing or duly qualified in such jurisdictions;

(g) Agent shall have received a copy of each Loan Party's Governing Documents, certified by a Responsible Officer with respect to such Loan Party;

(h) Agent shall have received a copy of the resolutions or the unanimous written consent with respect to each Loan Party, certified as of the Closing Date by a Responsible Officer of such Loan Party, authorizing (A) the transactions contemplated by the Loan Documents to which such Loan Party is or will be a party, and (B) the execution, delivery and performance by such Loan Party of each Loan Document to which such Loan Party is or will be a party and the execution and delivery of the other documents to be delivered by such Loan Party in connection herewith and therewith;

(i) Agent shall have received a signature and incumbency certificate of the Responsible Officer with respect to Borrower executing this Agreement, the Fee Letter, the Security Agreement, and the other Loan Documents not previously delivered to Agent to which Borrower is a party, certified by a Responsible Officer with respect to Borrower;

(j) Agent shall have received a signature and incumbency certificate of the Responsible Officer with respect to Guarantor executing the Guaranty and the other Loan Documents not previously delivered to Agent to which Guarantor is a party, certified by a Responsible Officer with respect to Guarantor;

(k) Borrower shall have paid all fees due on the Closing Date pursuant to the Fee Letter;

(l) Agent shall have received a certificate executed by a Responsible Officer with respect to each Loan Party to the effect that such Loan Party has obtained all orders, consents, approvals, and other authorizations and has made all filings and other notifications (governmental or otherwise) required in connection with the Loan Documents, other than orders, consents, approvals, authorizations, filings or notifications the failure to obtain or make, as applicable, which could not reasonably be expected to have a Material Adverse Effect on the Loan Parties, taken as a whole;

(m) Agent shall have received a certificate executed by a Responsible Officer with respect to each Loan Party to the effect that no litigation, inquiry, other action or proceeding (governmental or otherwise), or injunction or other restraining order shall be pending or overtly threatened that could reasonably be expected to have: (i) a material adverse effect on the ability of the Loan Parties, taken as a whole, to repay the Loans and the Letters of Credit, or (ii) a Material Adverse Effect on the Loan Parties, taken as a whole; and

(n) 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 Agent and its counsel.

3.2 Conditions Precedent to All Extensions of Credit. The obligation of the Lender Group (or any member thereof) to make any Advance hereunder (or to extend any other credit hereunder) is subject to the fulfillment, at or prior to the time of the making of such extension of credit, of each of the following conditions:

(a) the representations and warranties of Borrower contained in this Agreement 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 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 extension of credit as though made on and as of such date (except to the extent that such representations and warranties solely relate to an earlier date);

(b) no Event of Default or Unmatured Event of Default shall have occurred and be continuing on the date of such extension of credit, nor shall either result from the making of such extension of credit;

(c) Borrower shall have delivered to Agent a Request for Borrowing pursuant to the terms of Section 2.6 hereof;

(d) the proceeds of such extension of credit shall have been, and shall be (after giving effect to such requested extension of credit), used to (i) fund certain fees, costs and expenses incurred in connection with this Agreement and the other Loan Documents, (ii) finance Investments by Borrower, and (iii) finance general working capital needs and other corporate purposes of the Borrower; and

(e) solely in the case of the first extension of credit hereunder, all Lender Group Expenses incurred in connection with the transactions evidenced by this Agreement for which the Borrower received an invoice at least 2 Business Days prior to the date of such extension of credit.

3.3 Maturity Date. This Agreement shall continue in full force and effect for a term ending on the earlier of (the "Initial Maturity Date"): (a) March 10, 2025, 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; provided, however, that to the extent no Event of Default or Unmatured Event of Default has occurred and is continuing at any time on or after December 31, 2024, Borrower shall have the option at any time prior to the Initial Maturity Date (the "One Year Extension Option") to extend the term of this Agreement for a one (1) year period beyond the Initial Maturity Date (the "Extended Maturity Date") to March 10, 2026, so long as Borrower (i) pays any and all fees that are required to be paid in connection therewith pursuant to the terms of the Fee Letter (ii) provides written notice to Agent of the exercise by Borrower of the One Year Extension Option and (iii) certifies that the Total Reserves as of the date of such certification are less than the sum of $250,000,000 plus the Capital Amount.

Article IV

REPRESENTATIONS AND WARRANTIES OF BORROWER

Borrower makes the following representations and warranties which, except as set forth in the Disclosure Statement with a specific reference to the Section of this Article IV affected thereby, shall be true, correct, and complete 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), as of the Closing Date, on and as of the date of each Loan, and on and as of the date of each issuance of, renewal of, or amendment to any Letter of Credit (other than technical amendments to any Letter of Credit that do not change the maturity date thereof, the face amount thereof, the amount of any fees or other charges with respect thereto, or any other material term set forth therein), as though made on and as of the date of the making of such Loan or on and as of the date of such issuance of, renewal of, or amendment to any Letter of Credit (other than technical amendments to any Letter of Credit that do not change the maturity date thereof, the face amount thereof, the amount of any fees or other charges with respect thereto, or any other material term set forth therein) (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 and the issuance of the Letters of Credit:

4.1 Due Organization. Borrower is a duly organized and validly existing limited liability company in good standing under the laws of the State of Delaware 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 Borrower.

4.2 Interests in Borrower.

(a) As of the Closing Date, all of the equity interests in Borrower are owned by the Persons identified in the Disclosure Statement.

(b) Borrower may amend the Disclosure Statement with respect to this Section 4.2 to reflect changes that would not, individually or in the aggregate, result in a Change of Control Event.

4.3 Requisite Power and Authorization. Borrower has all requisite limited liability company power to execute and deliver this Agreement and the other Loan Documents to which it is a party, and to borrow the sums provided for in this Agreement. Borrower 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 have a Material Adverse Effect on the Loan Parties, taken as a whole. The execution, delivery, and performance of this Agreement and the other Loan Documents have been duly authorized by Borrower and all necessary limited liability company action in respect thereof has been taken, and the execution, delivery, and performance thereof do 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).

4.4 Binding Agreements. This Agreement and the other Loan Documents to which Borrower is a party, when executed and delivered by Borrower, will constitute the legal, valid, and binding obligations of Borrower, enforceable against Borrower 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 Borrower of this Agreement and the other Loan Documents to which it is a party, and the execution, delivery and performance by Guarantor of the Loan Documents to which it is a party, do not and will not: (a) violate (i) 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) any order of any domestic 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 a Permitted Lien) upon any of the Assets of any Loan Party pursuant to, any Contractual Obligation of any Loan Party, or (c) require termination of any Contractual Obligation of any Loan Party, or (d) constitute a tortious interference with any Contractual Obligation of any Loan Party, in each case, except as could not reasonably be expected to have a Material Adverse Effect on the Loan Parties, taken as a whole.

4.6 Litigation: Adverse Facts.

(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, to the actual knowledge of Borrower, threatened in writing against or affecting any Loan Party, that could reasonably be expected to have a Material Adverse Effect on the Loan Parties, taken as a whole, or could reasonably be expected to materially and adversely affect such Person's ability to perform its obligations under the Loan Documents to which it is a party (including Borrower's ability to repay any or all of the Loans when due);

(b) None of the Loan Parties is: (i) in violation of any applicable law in a manner that could reasonably be expected to have a Material Adverse Effect on the Loan Parties, taken as a whole, or (ii) subject to or in default with respect to any final judgment, writ, injunction, decree, rule, or regulation of any court or of any federal, state, municipal, or other governmental department, commission, board, bureau, agency, or instrumentality, domestic or foreign, in a manner that could reasonably be expected to have a Material Adverse Effect on the Loan Parties, taken as a whole, or could reasonably be expected to materially and adversely affect such Person's ability to perform its obligations under the Loan Documents to which it is a party (including Borrower's ability to repay any or all of the Loans when due); and

(c) (i) there is no action, suit, proceeding or, to the best of Borrower's knowledge, investigation pending or, to the best of Borrower's knowledge, threatened in writing against or affecting any Loan Party 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 or on the date of each issuance of, renewal of, or amendment to any Letter of Credit (other than technical amendments to any Letter of Credit that do not change the maturity date thereof, the face amount thereof, the amount of any fees or other charges with respect thereto, or any other material term set forth therein), 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 on the Loan Parties, taken as a whole.

4.8 Title to Assets; Liens. Except for Permitted Liens, all of the Collateral and equity Securities issued by the Loan Parties' Subsidiaries held by the Loan Parties are free from all Liens of any nature whatsoever. Except for Permitted Liens, the Loan Parties have good and sufficient title to all of their Collateral and equity Securities issued by the Loan Parties'

Subsidiaries held by the Loan Parties. Neither this Agreement, nor any of the other Loan Documents, nor any transaction contemplated under any such agreement will affect any right, title, or interest of any Loan Party in and to any of the Collateral in a manner that could reasonably be expected to have a Material Adverse Effect on the Loan Parties, taken as a whole.

4.9 Payment of Taxes. All 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 Taxes, governmental assessments, fees, and amounts required to be withheld and paid to a Governmental Authority and all other governmental charges in excess of $10,000 in the aggregate imposed upon the Loan Parties, and upon their Assets, income, and franchises, that are due and payable have been paid, except to the extent that: (a) the failure to file such returns or reports, or pay such Taxes, assessments, fees, withholdings, or other governmental charges, as applicable, could not reasonably be expected to have a Material Adverse Effect on the Loan Parties, taken as a whole, or (b) other than with respect to Taxes, assessments, fees, withholdings, charges or claims which have become a federal tax Lien upon any of any Loan Party's Assets, such Tax, assessment, fee, withholding, charge, or claim is being contested, in good faith, by appropriate proceedings promptly instituted and diligently conducted, and an adequate reserve or other appropriate provision, if any, shall have been made as required in order to be in conformity with GAAP. Borrower does not know of any proposed, asserted, or assessed tax deficiency against it or Guarantor that, if such deficiency existed and had to be rectified, could reasonably be expected to have a Material Adverse Effect on the Loan Parties, taken as a whole.

4.10 Governmental Regulation.

(a) The Loan Parties are not, nor immediately after the application by 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 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 the Federal Power Act or any federal, state, or local law, rule, or regulation generally limiting its ability to incur Debt.

4.11 Disclosure. No representation or warranty of any Loan Party contained in this Agreement or any other document, certificate, or written statement furnished to Agent or any Lender by or on behalf of Borrower with respect to the business, operations, Assets, or condition (financial or otherwise) of the Loan Parties for use solely 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 actually known to Borrower (other than matters of a general economic industry-wide nature) that Borrower believes reasonably could be expected to have a Material Adverse Effect on the Loan Parties, taken as a whole, that has not been disclosed herein or in such other documents, certificates, and statements furnished to Agent or any Lender for use in connection with the transactions contemplated hereby.

4.12 Debt. Borrower does not have any Debt outstanding other than Debt permitted by Section 6.1 hereof.

4.13 Existing Defaults. No Loan Party 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 on the Loan Parties, taken as a whole.

4.14 No Default; No Material Adverse Effect.

(a) No Event of Default or Unmatured Event of Default has occurred and is continuing or would result from any proposed Loan or Letter of Credit.

(b) No event or development has occurred which could reasonably be expected to result in a Material Adverse Effect with respect to the Loan Parties, taken as a whole.

4.15 Pledged Investments. As to each Investment that is identified by Borrower as a Pledged Investment on the Schedule B-1 or the most recent Pledged Investments Report submitted to Agent, such Pledged Investments (a) are subject to a valid and perfected first priority Agent's Lien, (b) are owned by Borrower free and clear of all other Liens (other than Liens in favor of Agent) and (c) constitute Performing Obligations.

Article V

AFFIRMATIVE COVENANTS OF BORROWER

Borrower covenants and agrees that, so long as any portion of the Revolver Commitment under this Agreement shall be in effect and until payment, in full, of the Loans, with interest accrued and unpaid thereon, all other Obligations (including Obligations in respect of Letters of Credit, unless all such Letters of Credit are cancelled, expire or are cash collateralized or other satisfactory arrangements are made in accordance with the provisions of Section 2.8(a) hereof, 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) and all other amounts due hereunder, and except as set forth in the Disclosure Statement with specific reference to the Section of this

Article V affected thereby concerning matters which do not conform to the covenants of this Article V, Borrower will do each and all of the following:

5.1 Accounting Records and Inspection. Maintain adequate financial and accounting books and records (which may be in the form of the consolidated financial statements and records of Guarantor) in accordance with sound business practices and, to the extent so required, GAAP consistently applied, and permit any representative of Agent (and after the occurrence and during the continuance of an Event of Default, any representatives of each Lender) upon reasonable notice to Borrower, at any time during usual business hours, to inspect, audit, and examine such books and records and to make copies and take extracts therefrom, and to discuss its affairs, financing, and accounts with Borrower's or Guarantor's officers and independent public accountants (provided that 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 Borrower's expense. Subject to Section 11.10 Borrower shall furnish Agent with any information reasonably requested by Agent regarding Borrower's business or finances promptly upon request.

5.2 Other Information. Furnish to Agent:

(a) Within 60 days after the end of each of the first three fiscal quarters of each fiscal year of Borrower, within 75 days of the end of the fourth fiscal quarter of each fiscal year of Borrower, and within 5 Business Days of (i) any determination by Borrower of any impairment charge or other reduction in the Fair Market Value of any Pledged Investment that is determined prior to the end of any fiscal quarter or (ii) the end of each fiscal month so long as the Stock of FL3 Holder constitutes a Pledged Investment, a Pledged Investments Certificate which shall include, among other things, a reasonably detailed calculation of the Fair Market Value of the Pledged Investments; provided, that Agent and Lenders hereby agree and acknowledge that Borrowers may (i) so long as FL3 Holder constitutes a Pledged Investment, add new Investments as Pledged Investments or replace or remove existing Pledged Investments, or (ii) if FL3 Holder does not constitute a Pledged Investment, add new Investments as Pledged Investments or replace existing Pledged Investments so long as no less than three (or such lesser number as otherwise agreed to by Agent) Investments constitute Pledged Investments, in each case, by identifying such new Investments as Pledged Investments for purposes of Schedule B-1 in any Pledged Investments Certificate (which such Investments, subject to the conditions set forth below, will thereafter be deemed to be Pledged Investments on Schedule B-1), so long as (1) such new Investments (A) are subject to a valid and perfected first priority Agent's Lien, (B) are owned by Borrower free and clear of all other Liens (other than Liens in favor of Agent) and (C) constitute Performing Obligations and (2) Borrower delivers to Agent an updated Pledged Investments Certificate which includes all Pledged Investments, including new Investments to be included. Upon receipt by Agent of such updated Pledged Investments Certificate delivered pursuant to Section 5.2, the Investments identified therein as a Pledged Investment shall thereafter constitute Pledged Investments for all purposes hereunder and any existing Pledged Investment identified in such Pledged Investments Certificate to be released shall be deemed automatically released from the Agent's Lien under the Loan Documents and shall no longer constitute Pledged Investments hereunder.

(b) notice, as soon as possible and, in any event, within 5 days after Borrower has knowledge, of: (i) the occurrence of any Event of Default or any Unmatured Event of Default; or (ii) any default or event of default as defined in any evidence of Debt of Borrower or under any material agreement, indenture, or other instrument under which such Debt has been issued, irrespective of whether such Debt is accelerated or such default waived. In any such event, Borrower also shall supply Agent with a statement from a Responsible Officer of Borrower, setting forth the details thereof and the action that Borrower proposes to take with respect thereto; provided, that Borrower shall not be required to provide any information that reasonably would be expected to result in a waiver of any attorney-client privilege of Borrower;

(c) as soon as practicable, any written report pertaining to material items in respect of Borrower's internal control matters submitted to Borrower by its independent accountants in connection with each annual audit of the financial condition of Guarantor;

(d) 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 on the Loan Parties, taken as a whole;

(e) promptly upon becoming aware of any Person's seeking to obtain or threatening to seek to obtain, in either case in writing, a decree or order for relief with respect to any Loan Party in an involuntary case under any applicable bankruptcy, insolvency, or other similar law now or hereafter in effect, a written notice thereof specifying what action Borrower is taking or proposes to take with respect thereto;

(f) promptly, copies of all amendments to the Governing Documents of any Loan Party except for (i) immaterial amendments or waivers permitted by such Governing Documents not requiring the consent of the holders of the equity Securities in the applicable Loan Party, or (ii) amendments or waivers which would not, either individually or collectively, be materially adverse to the interests of the Lender Group;

(g) prompt notice of:

(i) all legal or arbitral proceedings, and all proceedings by or before any governmental or regulatory authority or agency, against or, to the knowledge of Borrower, threatened in writing against or affecting any Loan Party which, if adversely determined, could reasonably be expected to have a Material Adverse Effect on the Loan Parties, taken as a whole, or on the timely payment of the principal of or interest on the Loans, or the enforceability of this Agreement or the other Loan Documents, or the rights and remedies of the Lender Group hereunder or thereunder, as applicable;

(ii) the acquisition by any Loan Party of any Margin Securities;

(iii) the issuance by any United States of America federal or state court or any United States of America federal or state regulatory authority of any injunction, order, or other restraint prohibiting, or having the effect of prohibiting or delaying, the making of the Loans or issuing Letters of Credit, or the institution of any litigation or similar

proceeding seeking any such injunction, order, or other restraint, in each case, of which Borrower has knowledge; and

(h) ~~[intentionally omitted]~~**Within 30 days after the end of month Borrower shall deliver to Administrative Agent a copy of the current Pricing Sources related to any Investment Grade Pledged Investment.**

(i) reasonably promptly, such other information and data (other than monthly financial statements) with respect to the Loan Parties, as from time to time may be reasonably requested by Agent, who may then deliver such information to any Lender (including any information reasonably requested by Agent to enable Agent or any Lender to comply with any of the requirements under Regulations T, U or X of the Federal Reserve Board).

5.3 Existence. Except as permitted by Section 6.6, preserve and keep in full force and effect, at all times, its existence.

5.4 Payment of Taxes and Claims. Pay all Taxes, governmental assessments, and other governmental charges in excess of $10,000 in the aggregate imposed upon it or any of its Assets or in respect of any of its businesses, incomes, or Assets before any penalty or interest accrues thereon, and all claims in excess of $10,000 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 its 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 any Loan Party's Assets, no such Tax, assessment, charge, or claim need be paid if the same is being 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.

5.5 Compliance with Laws. 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 on the Loan Parties taken as a whole.

5.6 Further Assurances. At any time or from time to time upon the request of Agent, Borrower shall, and shall cause each other Loan Party to, execute and deliver such further documents and do such other acts and things as Agent 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.

5.7 [Intentionally Omitted].

5.8 [Intentionally Omitted].

5.9 Foreign Qualification. Borrower shall duly qualify to conduct business in all jurisdictions where its failure to do so could reasonably be expected to have a Material Adverse Effect on Loan Parties taken as a whole.

5.10 Promissory Notes. Within 5 Business Days after the Closing Date (or such later date as agreed to by Agent in writing in its sole discretion), Loan Parties shall have delivered or caused to be delivered to Agent originals of any promissory notes (together with undated allonges executed in blank with respect to any such promissory notes) or any other instrument evidencing Borrower's interest in the Pledged Investments.

Article VI

NEGATIVE COVENANTS OF BORROWER

Borrower covenants and agrees that, so long as any portion of the Revolver Commitment under this Agreement shall be in effect and until payment, in full, of the Loans, with interest accrued and unpaid thereon, all other Obligations (including Obligations in respect of Letters of Credit, unless all such Letters of Credit are cancelled, expire or are cash collateralized in accordance with the provisions of Section 2.8(a) hereof 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) and all other amounts due hereunder, and except as set forth in the Disclosure Statement with specific reference to the Section of this Article VI affected thereby concerning matters which do not conform to the covenants of this Article VI, Borrower will not 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) Contingent Obligations resulting from the endorsement of instruments for collection in the ordinary course of business;

(c) Debt owed by Borrower to Guarantor so long as such Debt is subordinated pursuant to the Intercompany Subordination Agreement;

(d) 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 in an aggregate outstanding amount not to exceed $500,000 at any one time;

(e) Debt in respect of netting services, overdraft protections and otherwise in connection with deposit accounts incurred in the ordinary course of business;

(f) guaranties in the ordinary course of business of the obligations of suppliers, customers, franchisees and licensees of Borrower and its Subsidiaries in an aggregate outstanding amount at any one time not to exceed $400,000;

(g) Debt of Borrower under any Hedging Agreements so long as such Hedging Agreements are used solely as a party 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;

(h) Debt incurred in the ordinary course of business under incentive, non-compete, consulting, deferred compensation, or other similar arrangements incurred by Borrower;

(i) Debt incurred in the ordinary course of business with respect to the financing of insurance premiums;

(j) 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;

(k) refinancings, renewals, or extensions of Debt described on the Disclosure Statement with respect to this Section 6.1 so long as: (i) such refinancings, renewals, or extensions do not result in an increase in the then extant principal amount of the Debt so refinanced, renewed, or extended (other than for accrued interest and premiums and fees), (ii) such refinancings, renewals, or extensions do not result in a shortening of the average weighted maturity of the Debt so refinanced, renewed, or extended, nor are they on terms or conditions that, taken as a whole, are materially more burdensome or restrictive to Borrower, and (iii) the Debt that is refinanced, renewed, 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 refinanced, renewed, or extended;

(l) Debt described in the ACRC Pledge and Control Agreement as being secured by the liens permitted pursuant to clause (p) of the definition of "Permitted Liens" (as in effect on the Closing Date);

(m) Debt incurred by Borrower under the July 2014 Loan Documents;

(n) Debt resulting solely from the granting of Liens by Borrower on equity Securities of one or more of its Subsidiaries, so long as the holder of such Debt does not have recourse against Borrower with respect to such Debt, except solely with respect to the equity Securities of such Subsidiaries of Borrower that secure such Debt; and

(o) other Debt of Borrower in an aggregate amount not to exceed $500,000 at any time.

6.2 Liens.

(a) 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 Permitted Liens, or

(b) enter into, assume, or permit to exist any agreement to refrain from granting Liens on the Pledged Investments to or for the benefit of the Lender Group.

6.3 [Intentionally Omitted.]

6.4 [Intentionally Omitted.]

6.5 Dividends. At any time that the Revolving Credit Facility Usage is greater than zero, Borrower shall not make or declare, directly or indirectly, any dividend (in cash, return of capital, or any other form of Assets) on, or make any other payment or distribution on account of, or set aside Assets for a sinking or other similar fund for the purchase, redemption, or retirement of, or redeem, purchase, retire, or otherwise acquire, any interest of any class of equity interests in Borrower, whether now or hereafter outstanding, or grant or issue any warrant, right, or option pertaining thereto, or other security convertible into any of the foregoing, or make any other distribution in respect thereof, either directly or indirectly, whether in cash or Assets or in obligations (collectively, a "Distribution"); notwithstanding the foregoing, Borrower may make Distributions so long as (a) no Event of Default or Unmatured Event of Default has occurred and is continuing or would result therefrom and (b) no such Distribution could reasonably be expected to result in a violation of any applicable provisions of Regulations T, U or X of the Federal Reserve Board; provided, further, that, notwithstanding any of the foregoing, so long as no Event of Default has occurred and is continuing or would result therefrom, Borrower may make Distributions to Guarantor to enable Guarantor to make distributions to its shareholders in an amount necessary to qualify as a "real estate investment trust" as defined in Section 856 the Code ("REIT") and avoid the imposition of income and excise tax on Guarantor; provided, further, however, if an Event of Default has occurred and is continuing or would result therefrom, Borrower may make any such Distributions to Guarantor to enable Guarantor to make distributions to its shareholders to qualify as a REIT, solely if the sum of (i) unrestricted cash available to the Guarantor plus (ii) unrestricted cash of Subsidiaries of the Guarantor (other than Subsidiaries of Borrower) that may be distributed to the Guarantor by such Subsidiaries without violating or causing a default under the governing documents and agreements, contracts, indentures and other instruments to which such Subsidiaries are a party (such sum the "Total Unrestricted Cash"), is less than the amount of distributions that Guarantor is required to make for it to continue to qualify as a REIT. If the Total Unrestricted Cash is less than the amount of distributions that Guarantor is required to make for it to continue to qualify as a REIT (the difference between the amount of distributions that Guarantor is required to make for it to continue to qualify as a REIT and the Total Unrestricted Cash, the "Deficiency Amount"),

Borrower may make Distributions to Guarantor to enable Guarantor to make distributions to its shareholders to qualify as a REIT, in an amount equal to Borrower's Pro Rata Share (as defined below) of the Deficiency Amount. For the purposes of the foregoing, "Borrower's Pro Rata Share" shall mean the portion of the Deficiency Amount equal to (x) the percentage of the Deficiency Amount represented by (i) the aggregate amount of cash available to Borrower and its Subsidiaries, divided by (ii) the sum of (A) the aggregate amount of cash available to Borrower and its Subsidiaries, plus (B) the aggregate amount of restricted cash available to the Guarantor, plus (C) the aggregate amount of restricted cash of Subsidiaries of the Guarantor (other than Borrower and Subsidiaries of Borrower) times (y) the Deficiency Amount. For the avoidance of doubt, any cash available to Borrower and its Subsidiaries shall be deemed restricted cash for the purposes of this Section 6.5.

6.6 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 may sell Assets in accordance with the provisions of Section 6.7 hereof;

(b) Borrower may change its name or corporate, partnership or limited liability structure so long as Borrower provides written notice thereof (together with copies of any documents evidencing any such change) to Agent on or before the date that is 60 days after the date when such name or structure change occurs; and

(c) the merger, consolidation or reorganization of any Person, on the one hand, with and into Borrower, provided that (i) Borrower is the sole surviving entity of such merger, consolidation or reorganization, (ii) the Lender Group's rights in any Assets of Borrower, including, without limitation, the existence, perfection and priority of any Lien thereon, are not adversely affected by such merger, consolidation or reorganization, (iii) upon the consummation of such merger, consolidation or reorganization, Borrower expressly reaffirms its Obligations to the Lender Group under this Agreement and the other Loan Documents to which it is a party, and (iv) the consummation of such merger, consolidation or reorganization does not result in a Change of Control Event.

6.7 Sale of Assets. Sell, assign, transfer, convey, or otherwise dispose of its Assets, whether now owned or hereafter acquired, except for (a) the sale, assignment, transfer, conveyance or other disposition of any Asset by Borrower the Distribution of which by Borrower to the holders of its Stock would not result in an Event of Default or an Unmatured Event of Default (provided, however, that a sale, assignment, transfer, conveyance or other disposition of any equity Securities by Borrower will constitute a violation of this Section 6.7 if a Change of Control Event would result therefrom), (b) the sale, assignment, transfer, conveyance or other disposition of obsolete, worn out or surplus tangible property, (c) any sale, assignment, transfer,

conveyance or other disposition of Assets for the liquidation, dissolution or winding up of a wholly-owned Subsidiary of Borrower, (d) any transaction permitted by Section 6.5 of this Agreement; (e) any other sale, assignment, transfer, conveyance or other disposition of its Assets so long as, Borrower is in compliance with the covenant set forth in Section 6.14 immediately before such sale, assignment, transfer, conveyance or other disposition of its Assets, and immediately after giving effect thereto.

6.8 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 5% or more of any class of equity interests of Borrower or any of its Subsidiaries or Affiliates, or with any Affiliate of Borrower or of any such holder, in each case other than (x) a Loan Party, (y) any Subsidiary of Borrower, or (z) any direct or indirect parent of Borrower that is also a Subsidiary of Guarantor, on terms that are less favorable to such Loan Party, 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 not negotiated in good faith on an arm's length basis. Prior to Borrower or any of its Subsidiaries engaging in any such transaction described in this Section 6.8, other than transactions in de minimis amounts, Borrower shall determine that such transaction has been negotiated in good faith and on an arm's length basis; such determination shall be evidenced by a certificate of a Responsible Officer of Borrower to such effect. In no event shall the foregoing restrictive covenant apply to (a) Permitted Investments, (b) any transaction permitted by Section 6.5, (c) the Credit Support Fee Letter (as defined in the July 2014 Credit Agreement) and the Pledge Agreement (as defined in the July 2014 Credit Agreement), or (d) transactions involving the use, transfer, or other disposition of any Assets, to the extent that (i) the Distribution by Borrower of such Assets 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 Unmatured Event of Default.

6.9 Conduct of Business. Engage in any business other than the businesses in which it is permitted to conduct under its Governing Documents, or any businesses or activities substantially similar or related thereto.

6.10 Amendments or Waivers of Certain Documents; Actions Requiring the Consent of Agent. Without the prior written consent of Agent and the Required Lenders, which consent shall not unreasonably be withheld or delayed, agree to any amendment to or waiver of the terms or provisions of its Governing Documents except for: (i) immaterial amendments or waivers permitted by such Governing Documents not requiring the consent of the holders of the equity Securities in the Borrower, or (ii) amendments or waivers which would not, either individually or collectively, be materially adverse to the interests of the Lender Group.

6.11 Use of Proceeds. Use the proceeds of the Loans made and Letters of Credit issued hereunder for any purpose inconsistent with Section 3.2(d) hereof.

6.12 [Intentionally Omitted].

6.13 Margin Regulation. Use any portion of the proceeds of any of the Loans or Letters of Credit in any manner which could reasonably be expected to cause the Loans, the Letters of Credit, the application of such proceeds, or the transactions contemplated by this Agreement 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.

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) Borrower shall 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;

(ii) Borrower shall fail to pay, within 10 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 principal, payable in connection herewith;

(b) Breach of Certain Covenants.

(i) Borrower shall fail to perform or comply with any covenant, term, or condition contained in Article VI of this Agreement;

(ii) Borrower shall fail to perform or comply with any covenant, term, or condition contained in Section 4.1 of the Security Agreement; or

(iii) Borrower shall fail to perform or comply with any covenant, term, or condition contained in Sections 5.1, 5.2(a), 5.2(b), 5.6, or 5.9 of this Agreement and such failure shall not have been remedied or waived within 15 days after the occurrence thereof;

(iv) Borrower 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 30 days after receipt of notice from Agent of the occurrence thereof; provided, however, that this clause (iv) 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 clauses (i), (ii) or (iii) above of this subsection (b);

(c) Breach of Representation or Warranty. Any financial statement, representation, warranty, or certification made or furnished by Borrower under this Agreement or in any document, letter, or other writing or instrument furnished or delivered by Borrower to Agent or any Lender pursuant to or in connection with this Agreement 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) when made, effective, or reaffirmed, as the case may be;

(d) Involuntary Bankruptcy.

(i) If an involuntary case seeking the liquidation or reorganization of any Loan Party under Chapter 7 or Chapter 11, respectively, of the Bankruptcy Code or any similar proceeding shall be commenced against any Loan Party 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 Assets of any Loan Party; 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 any Loan Party to take possession of all or a substantial portion of its Assets shall have been entered and, within 45 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. Any Loan Party shall institute a voluntary case seeking liquidation or reorganization under Chapter 7 or Chapter 11, respectively, of the Bankruptcy Code; any Loan Party shall file a petition, answer, or complaint or shall otherwise institute any similar proceeding under any other applicable law, or shall consent thereto; any Loan Party shall consent to the conversion of an involuntary case to a voluntary case; or any Loan Party 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 Assets; any Loan Party shall generally fail to pay debts as such debts become due or shall admit in writing its inability to pay its debts generally; or any Loan Party shall make a general assignment for the benefit of creditors;

(f) Dissolution. Any order, judgment, or decree shall be entered decreeing the dissolution of any Loan Party, and such order, judgment or decree shall remain undischarged or unstayed for a period in excess of 45 days;

(g) Change of Control. A Change of Control Event shall occur;

(h) Judgments and Attachments. (i) Borrower 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 such Loan Party under applicable insurance policies (if any) in excess of $250,000 individually or $1,000,000 in the aggregate and shall not discharge, vacate, bond, or stay the same within a period of 30 days or (ii) Guarantor 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 such Loan party under applicable insurance policies (if any) in excess of $5,000,000 and shall not discharge, vacate, bond, or stay the same within a period of 30 days;

(i) Guaranty. (1) If the obligation of Guarantor under the Guaranty is limited or terminated by operation of law or Guarantor thereunder, except to the extent permitted by the terms of the Loan Documents, (2) if Guarantor shall fail to perform or comply with any covenant, term, or condition contained in the Guaranty or other Loan Documents to which it is a party (and except in the case of Section 8(b) of the Guaranty, such failure shall not have been remedied or waived within 15 days after receipt of notice from Agent of the occurrence thereof), or (3) any financial statement, representation, warranty, or certification made or furnished by Guarantor under this Agreement, the Guaranty or in any document, letter, or other writing or instrument furnished or delivered by Guarantor to 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) when made, effective, or reaffirmed, as the case may be;

(j) Material Agreements. If there is a default in any material agreement to which (i) Borrower is a party and such default (A) involves Debt in an aggregate principal amount equal to $500,000 or more and (B) either (i) occurs at the final maturity of the obligations thereunder, or (ii) results in a right by the other party thereto, irrespective of whether exercised, to accelerate the maturity of Borrower's obligations thereunder or to terminate such agreement or (ii) Guarantor is a party and such default (A) involves Debt in an aggregate principal amount equal to $5,000,000 or more and (B) either (i) occurs at the final maturity of the obligations thereunder, or (ii) results in a right by the other party thereto, irrespective of whether exercised, to accelerate the maturity of Guarantor's obligations thereunder or to terminate such agreement;

(k) [Intentionally Omitted].

(l) [Intentionally Omitted.];

(m) 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 Assets covered thereby and, except to the extent permitted by the terms hereof or thereof, a first priority Lien on the Assets covered thereby (in each case, for any reason other than the failure of Agent to take any action within its control); provided that the foregoing parenthetical shall not be applicable with respect to any Assets (i) to the extent that Agent's Lien thereon would be perfected by the filing of a uniform commercial code financing statement in the applicable jurisdiction, (ii) to the extent that such Assets consist of Deposit Accounts or Securities Accounts (or Assets held in such Deposit Accounts or Securities Accounts) or (iii) to the extent that the fair market value of all Collateral of any Loan Party that are not subject to a valid and perfected Lien and, except to the extent permitted by the terms hereof or thereof, a first priority Lien, is greater than $250,000 in the aggregate; and

(n) 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 contested by any Loan Party, or a proceeding shall be commenced by any Loan Party, or by any Governmental Authority having jurisdiction over any Loan Party, seeking to establish the invalidity or unenforceability thereof, or any Loan Party shall deny in writing that any Loan Party 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 Revolver Commitments hereunder immediately shall terminate and all of the Obligations owing hereunder or under the other Loan Documents automatically shall become immediately due and payable (including without limitation the cash collateralization of the Letters of Credit in accordance with the provisions hereof), without presentment, demand, protest, notice, or other requirements of any kind, all of which are hereby expressly waived by Borrower; and

(b) In the case of any other Event of Default that has occurred and is continuing, the Agent at the request of the Required Lenders, by written notice to Borrower, may declare the Revolver 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 (including without limitation the cash collateralization of the Letters of Credit in accordance with the provisions hereof), without presentment, demand, protest, further notice, or other requirements of any kind, all of which are hereby expressly waived by Borrower.

Upon acceleration, Agent (without notice to or demand upon Borrower, which are expressly waived by 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. Agent may determine, in its sole discretion, the order and manner in which the Lender Group's rights and remedies are to be exercised. All payments received by Agent shall be applied in accordance with Section 2.3(a)(ii).

Article VIII

EXPENSES AND INDEMNITIES

8.1 Expenses. Irrespective of whether any Loans are made hereunder, Borrower agrees to pay on demand any and all Lender Group Expenses; provided, however, that Borrower is not obligated to reimburse Agent for attorneys' fees incurred on or before the Closing Date in connection with the preparation of this Agreement and the other Loan Documents, to the extent that such attorneys' fees exceed $110,000.

8.2 Indemnity. In addition to the payment of expenses pursuant to Section 8.1 hereof, and irrespective of whether the transactions contemplated hereby are consummated, 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 one counsel for such Indemnitees 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 Revolver 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 Borrower to Agent and its counsel (the "Indemnified Liabilities"); provided, however, that Borrower shall have no obligation hereunder to any Indemnitee to the extent 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, fraud, or willful misconduct of such Indemnitee or its Affiliates or the violation of the express terms of this Agreement by such Indemnitee or its Affiliates. Each Indemnitee will promptly notify Borrower of each event of which it has knowledge which may give rise to a claim under the indemnification provisions of this Section 8.2. To the extent that the undertaking to indemnify, pay, and hold harmless set forth in the preceding sentence may be unenforceable because it is violative of any law or public policy, Borrower shall make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities that is permissible under applicable law or public policy. The obligations of Borrower under this Section 8.2 shall survive the termination of this Agreement and the discharge of 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 Assignments and Participations.

(a) With the consent of Borrower (which consent of Borrower shall not be (x) required if (i) a Payment Default or an Insolvency Default has occurred and is continuing or (ii) any other Event of Default has occurred and has been continuing for a period of at least 30 days, or (y) other than with respect to Direct Competitors, unreasonably withheld, conditioned or delayed), any Lender may assign and delegate to one or more assignees (each an "Assignee") that are Eligible Transferees all, or any ratable part of all, of the Obligations, the Revolver Commitments, the Loans and the other rights and obligations of such Lender hereunder and under the other Loan Documents, in a minimum amount of $5,000,000 (or the remaining amount of any Lender's Revolver Commitment or amount of Loans, if less); provided, however, that Borrower and Agent may continue to deal solely and directly with such Lender in connection with the interest so assigned to an Assignee until (i) written notice of such assignment, together with payment instructions, addresses, and related information with respect to the Assignee, have been given to Borrower and Agent by such Lender and the Assignee, (ii) such Lender and its Assignee have delivered to Borrower and Agent an Assignment and Acceptance, fully executed and delivered by each party thereto, and (iii) the assigning Lender or Assignee has paid to Agent for Agent's separate account a processing fee in the amount of $3,500. Anything contained herein to the contrary notwithstanding, the payment of any fees shall not be required and the consent of Borrower shall not be required if such assignment is in connection with any merger, consolidation, sale, transfer, or other disposition of all or any substantial portion of the business or loan portfolio of the assigning Lender.

(b) From and after the date that Agent notifies the assigning Lender (with a copy to Borrower) that it has received an executed Assignment and Acceptance satisfying clause (a) above and payment of the above-referenced processing fee, (i) the Assignee thereunder shall be a party hereto and, to the extent that rights and obligations hereunder have been assigned to it pursuant to such Assignment and Acceptance, shall have the rights and obligations of a Lender under the Loan Documents, and (ii) the assigning Lender shall, to the extent that rights and obligations hereunder and under the other Loan Documents have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights (except with respect to Section 8.2 hereof) and be released from any future obligations under this Agreement (and in the case of an Assignment and Acceptance covering all or the remaining portion of an assigning Lender's rights and obligations under this Agreement and the other Loan Documents, such Lender shall cease to be a party hereto and thereto), and such assignment shall effect a novation between Borrower and the Assignee; provided, however, that nothing contained herein shall release any assigning Lender from obligations that survive the termination of this Agreement, including such assigning Lender's obligations under Article X and Section 11.10 of this Agreement. No assignee shall be entitled to the benefits of Section 10.11 unless the Borrower is notified of the assignment and such Assignee has complied with the requirements of Section 10.11.

(c) By executing and delivering an Assignment and Acceptance, the assigning Lender thereunder and the Assignee thereunder confirm to and agree with each other and the other parties hereto as follows: (1) other than as provided in such Assignment and Acceptance, such assigning Lender makes no representation or warranty and assumes no

responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or any other Loan Document furnished pursuant hereto, (2) such assigning Lender makes no representation or warranty and assumes no responsibility with respect to the financial condition of Borrower or the performance or observance by Borrower of any of its obligations under this Agreement or any other Loan Document furnished pursuant hereto, (3) such Assignee confirms that it has received a copy of this Agreement, together with such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance, (4) such Assignee will, independently and without reliance upon Agent, such assigning Lender or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement, (5) such Assignee appoints and authorizes Agent to take such actions and to exercise such powers under this Agreement as are delegated to Agent, by the terms hereof, together with such powers as are reasonably incidental thereto, and (6) such Assignee agrees that it will perform all of the obligations which by the terms of this Agreement are required to be performed by it as a Lender.

(d) Immediately upon Agent's receipt of the required processing fee payment and the fully executed Assignment and Acceptance satisfying clause (a) above, this Agreement shall be deemed to be amended to the extent, but only to the extent, necessary to reflect the addition of the Assignee and the resulting adjustment of the Revolver Commitments or the Loans arising therefrom. The Revolver Commitment and the Loans allocated to each Assignee shall reduce such Revolver Commitments or Loans of the assigning Lender pro tanto.

(e) Any Lender may at any time sell to one or more commercial banks, financial institutions, or other institutional Persons not Affiliates of such Lender and who are not Direct Competitors (a "Participant") participating interests in its Obligations, its Loans, the Revolver Commitment, and the other rights and interests of that Lender (the "Originating Lender") hereunder and under the other Loan Documents (provided that no written consent of Agent shall be required in connection with any sale of any such participating interests by a Lender to an Eligible Transferee); provided, however, that (i) the Originating Lender shall remain a "Lender" for all purposes of this Agreement and the other Loan Documents and the Participant receiving the participating interest in the Obligations, the Loans, the Revolver Commitments, and the other rights and interests of the Originating Lender hereunder shall not constitute a "Lender" hereunder or under the other Loan Documents and the Originating Lender's obligations under this Agreement shall remain unchanged, (ii) the Originating Lender shall remain solely responsible for the performance of such obligations, (iii) Borrower, Agent, and the Lenders shall continue to deal solely and directly with the Originating Lender in connection with the Originating Lender's rights and obligations under this Agreement and the other Loan Documents, (iv) no Lender shall transfer or grant any participating interest under which the Participant has the right to approve any amendment to, or any consent or waiver with respect to, this Agreement or any other Loan Document, except to the extent such amendment to, or consent or waiver with respect to this Agreement or of any other Loan Document would (A) extend the final maturity date of the Obligations hereunder in which such Participant is

participating, (B) reduce the interest rate applicable to the Obligations hereunder in which such Participant is participating, (C) release all or substantially all of the Collateral or guaranties (except to the extent expressly provided herein or in any of the Loan Documents) supporting the Obligations hereunder in which such Participant is participating, (D) postpone the payment of, or reduce the amount of, the interest or fees payable to such Participant through such Lender, or (E) change the amount or due dates of scheduled principal repayments or prepayments or premiums, and (v) all amounts payable by Borrower hereunder shall be determined as if such Lender had not sold such participation, except that, if amounts outstanding under this Agreement are due and unpaid, or shall have been declared or shall have become due and payable upon the occurrence of an Event of Default, each Participant shall be deemed to have the right of set off in respect of its participating interest in amounts owing under this Agreement to the same extent as if the amount of its participating interest were owing directly to it as a Lender under this Agreement. The rights of any Participant only shall be derivative through the Originating Lender with whom such Participant participates and no Participant shall have any rights under this Agreement or the other Loan Documents or any direct rights as to the other Lenders, Agent, Borrower, the Collections of Borrower or its Subsidiaries, the Collateral, or otherwise in respect of the Obligations. No Participant shall have the right to participate directly in the making of decisions by the Lenders among themselves. A Participant shall not be entitled to receive any greater payment under Section 10.11 than the applicable Originating Lender would have been entitled to receive with respect to the participation sold to such Participant, 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. A Participant shall not be entitled to the benefits of Section 10.11 unless Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of Borrower and Agent, to comply with Section 10.11 as though it were a Lender.

(f) In connection with any such assignment or participation or proposed assignment or participation, a Lender may, subject to the provisions of Section 11.10, disclose all documents and information which it now or hereafter may have relating to Borrower and its Subsidiaries and their respective businesses.

(g) Any other provision in this Agreement notwithstanding, any Lender may at any time create a security interest in, or pledge, all or any portion of its rights under and interest in this Agreement in favor of any Federal Reserve Bank in accordance with Regulation A of the Federal Reserve Bank or U.S. Treasury Regulation 31 CFR §203.24, and such Federal Reserve Bank may enforce such pledge or security interest in any manner permitted under applicable law.

(h) Each Lender hereby represents and warrants to Borrower that, as of the Closing Date (or in the case of an Assignee, as of the date that such Person becomes a Lender), it is a Qualified Purchaser.

9.2 Successors. This Agreement shall bind and inure to the benefit of the respective successors and assigns of each of the parties; provided, however, that Borrower may not assign this Agreement or any rights or duties hereunder without the Lenders' prior written

consent and any prohibited assignment shall be absolutely void *ab initio*. A Lender may assign this Agreement and the other Loan Documents and its rights and duties hereunder and thereunder pursuant to Section 9.1 hereof and, except as expressly required pursuant to Section 9.1 hereof, no consent or approval by Borrower is required in connection with any such assignment.

9.3 Register.

(a) Agent (as non-fiduciary agent on behalf of Borrower) shall maintain, or cause to be maintained at one of its offices in Los Angeles, California, a register (the "Register") on which it enters the name and address of each Lender as the registered owner the Loans (and the principal amount thereof and stated interest thereon) held by such Lender (each, a "Registered Loan"). A Registered Loan may be assigned or sold in whole or in part only by registration of such assignment or sale on the Register and any assignment or sale of all or part of such Registered Loan may be effected only by registration of such assignment or sale on the Register. Prior to the registration of assignment or sale of any Registered Loan, Borrower shall treat the Person in whose name such Registered Loan is registered as the owner thereof for the purpose of receiving all payments thereon and for all other purposes, notwithstanding notice to the contrary.

(b) In the event that a Lender sells participations in the Registered Loan, such Lender, as a non-fiduciary agent on behalf of Borrower, shall maintain (or cause to be maintained) a register on which it enters the name of all Participants in the Registered Loans held by it (and the principal amount (and stated interest thereon) of the portion of such Registered Loans that is subject to such participations) (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. A Registered Loan may be participated in whole or in part only by registration of such participation on the Participant Register. Any participation of such Registered Loan may be effected only by the registration of such participation on the Participant Register.

Article X

AGENT; THE LENDER GROUP

10.1 Appointment and Authorization of Agent. Each Lender hereby designates and appoints CNB as its representative under this Agreement and the other Loan Documents and each Lender hereby irrevocably authorizes (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to designate, appoint, and authorize) 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 Agent by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto. Agent agrees 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 Agent, and the Lenders, and Borrower and its Subsidiaries shall have no rights as a third party beneficiary of any of the provisions contained herein. Any provision to the contrary contained elsewhere in this Agreement or in any other Loan Document notwithstanding, Agent shall not have any duties or responsibilities, except those expressly set forth herein, nor shall Agent 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 Agent; it being expressly understood and agreed that the use of the word "Agent" is for convenience only, that CNB is 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 Agent 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) 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, Agent shall have and may use its sole discretion with respect to exercising or refraining from exercising any discretionary rights or taking or refraining from taking any actions that Agent expressly is 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 Agent, Lenders agree that Agent 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 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 or on behalf of Lenders as provided in the Loan Documents, (d) exclusively receive, apply, and distribute the Collections of Borrower and its Subsidiaries as provided in the Loan Documents, (e) open and maintain such bank accounts and cash management arrangements as Agent deems necessary and appropriate in accordance with the Loan Documents for the foregoing purposes with respect to the Collateral and the Collections of Borrower and its Subsidiaries, (f) perform, exercise, and enforce any and all other rights and remedies of the Lender Group with respect to Borrower, the Obligations, the Collateral, the Collections of 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 Agent may deem necessary or appropriate for the performance and fulfillment of its functions and powers pursuant to the Loan Documents.

10.2 Delegation of Duties. Agent 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. Agent shall not be responsible for the negligence or misconduct of any agent or attorney in fact that it selects as long as such selection was made without gross negligence or willful misconduct.

10.3 Liability of Agent. None of the Agent-Related Persons shall (a) be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby (except for its own gross negligence or willful misconduct), or (b) be responsible in any manner to any of the Lenders for any recital, statement, representation or warranty made by Borrower or any Subsidiary or Affiliate of Borrower, or any officer or director thereof, contained in this Agreement or in any other Loan Document, or in any certificate, report, statement or other document referred to or provided for in, or received by Agent under or in connection with, this Agreement or any other Loan Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document, or for any failure of Borrower or any other party to any Loan Document to perform its obligations hereunder or thereunder. No Agent-Related Person shall be under any obligation to any Lender to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the books or properties of Borrower or the books or records or properties of any of Borrower's Subsidiaries or Affiliates.

10.4 Reliance by Agent. Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter, telegram, telefacsimile or other electronic method of transmission, telex or telephone message, statement or other document or conversation believed by it to be genuine and correct and to have been signed, sent, or made by the proper Person or Persons, and upon advice and statements of legal counsel (including counsel to Borrower or counsel to any Lender), independent accountants and other experts selected by Agent. Agent 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, Agent shall act, or refrain from acting, as it deems advisable. If 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. Agent 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 any action taken or failure to act pursuant thereto shall be binding upon all of the Lenders.

10.5 Notice of Unmatured Event of Default or Event of Default. Agent shall not be deemed to have knowledge or notice of the occurrence of any Unmatured Event of Default or Event of Default, except with respect to defaults in the payment of principal, interest, fees, and expenses required to be paid to Agent for the account of the Lenders and, except with respect to Events of Default of which Agent has actual knowledge, unless Agent shall have received written notice from a Lender or Borrower referring to this Agreement, describing such

Unmatured Event of Default or Event of Default, and stating that such notice is a "notice of default." Agent promptly will notify the Lenders of its receipt of any such notice or of any Event of Default of which Agent has actual knowledge. If any Lender obtains actual knowledge of any Event of Default, such Lender promptly shall notify the other Lenders and Agent of such Event of Default. Each Lender shall be solely responsible for giving any notices to its Participants, if any. Subject to Section 10.4, Agent shall take such action with respect to such Unmatured Event of Default or Event of Default as may be requested by the Required Lenders in accordance with Section 7.2; provided, however, that unless and until Agent has received any such request, Agent may (but shall not be obligated to) take such action (other than any acceleration of the Obligations pursuant to the provisions of Section 7.2, which shall require the consent of the Required Lenders), or refrain from taking such action, with respect to such Unmatured Event of Default or Event of Default as it shall deem advisable.

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 Agent hereinafter taken, including any review of the affairs of 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 Agent 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 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 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 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 Agent, Agent 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 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. Agent may incur and pay Lender Group Expenses to the extent 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 Agent or Lenders for such expenses pursuant to this Agreement or otherwise. Agent is authorized and directed to deduct and retain sufficient amounts from the Collections of Borrower and its Subsidiaries received by Agent to reimburse Agent for such out-of-pocket costs and expenses prior to the distribution of any amounts to Lenders. In the event Agent is not reimbursed for such costs and expenses from the Collections of Borrower and its Subsidiaries received by Agent, each Lender hereby agrees that it is and shall be obligated to pay to or reimburse Agent 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 Borrower and without limiting the obligation of 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 Agent 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 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 Agent is not reimbursed for such expenses by or on behalf of Borrower. The undertaking in this Section shall survive the payment of all Obligations hereunder and the resignation or replacement of Agent.

10.8 Agent in Individual Capacity. CNB and its Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, acquire equity interests 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 CNB were not Agent 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, CNB or its 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 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 Agent will use its reasonable best efforts to obtain), Agent shall not be under any obligation to provide such information to them. The terms "Lender" and "Lenders" include CNB in its individual capacity.

10.9 Successor Agent. Agent may resign as Agent upon 45 days notice to the Lenders. If Agent resigns under this Agreement, the Required Lenders shall appoint, with the consent of Borrower (such consent not to be unreasonably withheld or delayed) or, if (i) a

Payment Default or an Insolvency Default has occurred and is continuing or (ii) any other Event of Default has occurred and has been continuing for a period of at least 30 days, in consultation with Borrower, a successor Agent for the Lenders. If no successor Agent is appointed prior to the effective date of the resignation of Agent, Agent may appoint, after consulting with the Lenders and with the consent of Borrower (such consent not to be unreasonably withheld or delayed) or, if (i) a Payment Default or an Insolvency Default has occurred and is continuing or (ii) any other Event of Default has occurred and has been continuing for a period of at least 30 days, in consultation with Borrower, a successor Agent. If Agent has materially breached or failed to perform any material provision of this Agreement or of applicable law, the Required Lenders may agree in writing to remove and replace Agent with a successor Agent from among the Lenders with the consent of Borrower (such consent not to be unreasonably withheld or delayed). In any such event, upon the acceptance of its appointment as successor Agent hereunder, such successor Agent shall succeed to all the rights, powers, and duties of the retiring Agent and the term "Agent" shall mean such successor Agent and the retiring Agent's appointment, powers, and duties as Agent shall be terminated. After any retiring Agent's resignation hereunder as Agent, the provisions of this Article X shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent under this Agreement. If no successor Agent has accepted appointment as Agent by the date which is 45 days following a retiring Agent's notice of resignation, the retiring Agent's resignation shall nevertheless thereupon become effective and the Lenders shall perform all of the duties of Agent hereunder until such time, if any, as the Lenders appoint a successor Agent as provided for above.

10.10 Lender in Individual Capacity. Any Lender and its respective Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, acquire equity interests 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 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 its reasonable best efforts to obtain), such Lender shall not be under any obligation to provide such information to them.

10.11 Withholding Taxes.

(a) All payments made by Borrower hereunder or under any note or other Loan Document will be made without setoff, counterclaim, or other defense. In addition, all such payments 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 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) Agent or Lender receives an amount equal to the sum it would have received had no such deduction or withholding been made; provided, however, that Borrower shall not be required to increase any such amounts if the increase in such amount payable results from Agent's or such Lender's own willful misconduct or gross negligence (as finally determined by a court of competent jurisdiction). Borrower will furnish to Agent as promptly as possible after the date the payment of any Tax is due pursuant to applicable law certified copies of tax receipts evidencing such payment by Borrower. If Borrower fails to pay any Indemnified Taxes that are required to be deducted or withheld under this Section 10.11(a), without duplication of any additional amounts already paid pursuant to this Section 10.11(a), Borrower shall indemnify and hold Lender harmless for all Indemnified Taxes, penalties and interest resulting from such failure, together with all reasonable and documented costs and expenses (including attorneys' fees and expenses). Such indemnification obligation shall survive the payment of all Obligations. For purposes of this Section 10.11, the term "Lender" includes "Issuing Lender" and the term "applicable law" includes FATCA.

(b) Agent shall deliver to Borrower a properly completed and executed IRS Form W-9 before receiving its first payment under this Agreement and at any other time reasonably requested by Agent or 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 Agent and Borrower, to deliver to Agent whichever of the following is applicable:

(i) if such Lender claims an exemption from United States withholding tax pursuant to its portfolio interest exception, (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% shareholder of Borrower or Guarantor (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 successor form), before receiving its first payment under this Agreement and at any other time reasonably requested by Agent or Borrower;

(ii) if such Lender claims an exemption from, or a reduction of, withholding tax under a United States tax treaty, two properly completed and executed copies of IRS Form W-8BEN (or successor form) before receiving its first payment under this Agreement and at any other time reasonably requested by Agent or 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) before receiving its first payment under this Agreement and at any other time reasonably requested by Agent or Borrower;

(iv) two properly completed and executed copies of IRS Form W-8IMY (or successor form) before receiving its first payment under this Agreement and at any other time reasonably requested by Agent or 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 before receiving its first payment under this Agreement and at any other time reasonably requested by Agent or Borrower.

Agent and each such Lender agree promptly to notify Agent and Borrower of any change in circumstances which would modify or render invalid any claimed exemption or reduction.

(c) If 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, Agent or such Lender agrees with and in favor of Agent and Borrower to deliver to 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 before receiving its first payment under this Agreement and at any other time reasonably requested by Agent or Borrower.

Agent and each such Lender agrees promptly to notify Agent and 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 Borrower, such Lender agrees to notify Agent and Borrower of the percentage amount in which it is no longer the beneficial owner of Obligations of Borrower. To the extent of such percentage amount, Agent and Borrower will treat such Lender's documentation provided pursuant to Sections 10.11(b), 10.11(c) or 10.11(j) 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(j), if applicable.

(e) If any Lender is entitled to a reduction in the applicable withholding tax, 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 (j) of this Section 10.11 are not delivered to Agent, then 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 the IRS or any other Governmental Authority of the United States or other jurisdiction asserts a claim that Agent or Borrower did not properly withhold tax from amounts paid to or for the account of any Lender due to a failure on the part of the Lender

(because the appropriate form was not delivered, was not properly executed, or because such Lender failed to notify Agent or Borrower of a change in circumstances which rendered the exemption from, or reduction of, withholding tax ineffective, or for any other reason) such Lender shall indemnify and hold Agent and Borrower harmless for all amounts paid, directly or indirectly, by Agent or Borrower, as tax or otherwise, including penalties and interest, and including any taxes imposed by any jurisdiction on the amounts payable to Agent under this Section 10.11, together with all costs and expenses (including attorneys' fees and expenses). The obligation of the Lenders under this subsection shall survive the payment of all Obligations and the resignation or replacement of Agent.

(g) [Intentionally Omitted].

(h) If Agent or any Lender determines, in its sole discretion, that it has received a refund or credit of any Taxes (each, a "Tax Benefit") which Borrower has paid an additional or indemnification amount pursuant to this Section 10.11, it shall pay to Borrower an amount equal to such Tax Benefit, net of all reasonable and documented out-of-pocket expenses incurred by Agent or such Lender, as the case may be, in connection with such refund or credit and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that Borrower agrees to repay the amount paid over to the Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to Agent or such Lender within a reasonable time after receipt of written notice that Agent or such Lender is required to repay such Tax Benefit to such Governmental Authority.

(i) If Borrower determines in good faith that a reasonable basis exists for contesting Taxes with respect to which the Borrower has paid an additional or indemnification amount pursuant to this Section 10.11 that Borrower believes were not correctly or legally asserted by the relevant Government Authority, Agent or the applicable Lender, as the case may be, shall use reasonable efforts to cooperate with Borrower at Borrower's expense if requested by Borrower with a view to obtaining a refund, credit or benefit in respect of such Tax.

(j) 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 Borrower and Agent at the time or times prescribed by law and at such time or times reasonably requested by Borrower or 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 Borrower or Agent as may be necessary for Borrower and 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(j), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(k) Each party's obligations under this Section 10.11 shall survive the resignation or replacement of Agent or any assignment of rights by, or the replacement of, a

Lender, the termination of the Revolver Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

10.12 Collateral 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) Agent to, and Agent shall, release any Lien on any Collateral (i) upon the termination of the Revolver Commitments and payment and satisfaction in full by Borrower of all Obligations, (ii) constituting property, including any Subsidiary, being sold or disposed of if a release is required or requested in connection therewith and if Borrower certifies to Agent that the sale or disposition is permitted under Section 6.7 of this Agreement or the other Loan Documents (and Agent may rely conclusively on any such certificate, without further inquiry), (iii) which is being removed as a Pledged Investment in accordance with Section 5.2, (iv) constituting property in which Borrower or its Subsidiaries owned no interest at the time the Agent's Lien was granted nor at any time thereafter, or (v) constituting property leased to Borrower or its Subsidiaries under a lease that has expired or is terminated in a transaction permitted under this Agreement. Except as provided above, Agent will not execute and deliver a release of any Lien on any Collateral, release Guarantor from any obligations under any Guaranty, or contractually subordinate any of Agent's Liens, without the prior written authorization of (y) if the release is not with respect to an immaterial Guarantor, of if, with respect to the Collateral, the release or contractual subordination is with respect to all or substantially all of the Collateral, all of the Lenders, or (z) otherwise, the Required Lenders. Upon request by Agent or Borrower at any time, the Lenders will confirm in writing Agent's authority to release any such Liens on particular types or items of Collateral pursuant to this Section 10.12; provided, however, that (1) Agent shall not be required to execute any document necessary to evidence such release on terms that, in Agent's opinion, would expose 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 Borrower in respect of) all interests retained by Borrower, including, the proceeds of any sale, all of which shall continue to constitute part of the Collateral.

(b) Agent 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 Borrower or is cared for, protected, or insured or has been encumbered, or that the 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 Agent 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, Agent may act in any manner it may deem appropriate, in its sole discretion given Agent's own interest in the Collateral in its capacity as one of the Lenders and that Agent 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 Agent, and that it shall, to the extent it is lawfully entitled to do so, upon the written request of Agent, set off against the Obligations, any amounts owing by such Lender to Borrower or any deposit accounts of 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 Agent (which request shall not be made by Agent 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 Agent pursuant to the terms of this Agreement, or (ii) payments from Agent in excess of such Lender's ratable portion of all such distributions by Agent, such Lender promptly shall (1) turn the same over to Agent, in kind, and with such endorsements as may be required to negotiate the same to Agent, 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. Agent hereby appoints each other Lender (and each Bank Product Provider) as its 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 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 Agent thereof, and, promptly upon Agent's request therefor shall deliver possession or control of such Collateral to Agent or in accordance with Agent's instructions.

10.15 Payments by Agent to the Lenders. All payments to be made by Agent 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 Agent. Concurrently with each such payment, Agent shall identify whether such payment (or any portion thereof) represents principal, premium, fees, or interest of the Obligations.

10.16 Concerning the Collateral and Related Loan Documents. Each member of the Lender Group authorizes and directs Agent 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 Agent in accordance with the terms of this Agreement or the other Loan Documents relating to the Collateral and the exercise by Agent of its 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 Agent furnish such Lender, promptly after it becomes available, (i) a copy of each field examination or examination report prepared by Agent, and (ii) a copy of each document delivered to Agent pursuant to Sections 5.2(a), (b), (c), (d) and (f)(i) (each a "Report" and collectively, "Reports"), and Agent shall so furnish each Lender with such Reports,

(b) expressly agrees and acknowledges that Agent does 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 Agent or other party performing any examination will inspect only specific information regarding Borrower and will rely significantly upon the books of Borrower and the other Loan Parties, as well as on representations of 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 11.10, and

(e) without limiting the generality of any other indemnification provision contained in this Agreement, agrees: (i) to hold 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 Borrower, or the indemnifying Lender's participation in, or the indemnifying Lender's purchase of, a loan or loans of Borrower, and (ii) to pay and protect, and indemnify, defend and hold 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 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 Agent in writing that Agent provide to such Lender a copy of any report or document provided by Borrower to Agent that has not been contemporaneously provided by Borrower to such Lender, and, upon receipt of such request, Agent promptly shall provide a copy of same to such Lender, (y) to the extent that Agent is 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 Agent to exercise such right as specified in such Lender's notice to Agent, whereupon Agent promptly shall request of Borrower the additional reports or information reasonably specified by such Lender, and, upon receipt thereof from Borrower, Agent promptly shall provide a copy of same to such Lender, and (z) any time that Agent renders to Borrower a statement regarding the Loan Account, 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 Agent in its capacity as such, and not by or in favor of the Lenders, any and all obligations on the part of Agent (if any) 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 Revolver Commitments, to make an amount of such credit not to exceed, in principal amount, at any one time outstanding, the amount of their respective Revolver 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 Borrower or any other Person for any failure by any other Lender to fulfill its obligations to make credit available hereunder, nor to advance for it or on its behalf in connection with its Revolver Commitment, nor to take any other action on its behalf hereunder or in connection with the financing contemplated herein.

10.19 Legal Representation of Agent. In connection with the negotiation, drafting, and execution of this Agreement and the other Loan Documents, or in connection with future legal representation relating to loan administration, amendments, modifications, waivers, or enforcement of remedies, ~~PH~~Sidley only has represented and only shall represent CNB in its capacity as Agent and as a Lender. Each other Lender hereby acknowledges that ~~PH~~Sidley does not represent it in connection with any such matters.

10.20 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 Agent is acting. 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 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 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 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 Agent 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, 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 Agent as to the amounts that are due and owing to it and such written certification is received by Agent a reasonable period of time prior to the making of such distribution. Agent 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, Agent shall be entitled to assume that the amount due and payable to the relevant Bank Product Provider is the amount last certified to Agent by such Bank Product Provider as being due and payable (less any distributions made to such Bank Product Provider on account thereof). Borrower may obtain Bank Products from any Bank Product Provider, although Borrower is not required to do so. 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.

Article XI

MISCELLANEOUS

XI.1.1 No Waivers, Remedies. No failure or delay on the part of 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 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 or the Fee Letter), and no consent with respect to any departure by Borrower therefrom, shall be effective unless the same shall be in writing and signed by the Required Lenders (or by Agent at the written request of the Required Lenders) and 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, unless in writing and signed by all of the Lenders directly affected thereby and Borrower, do any of the following:

(a) increase or extend any Revolver Commitment of any Lender; provided that no amendment, modification or waiver of any condition precedent, covenant, Event of Default or Unmatured Event of Default shall constitute an increase in any Revolver Commitment of any Lender,

(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,

(c) reduce the principal of, or the rate of interest on, any Loan or other extension of credit hereunder, or reduce any fees or other amounts payable hereunder or under any other Loan Document,

(d) change the Pro Rata Share that is required to take any action hereunder,

(e) amend, modify, or eliminate any of the provisions of Section 9.1 or the definition of Eligible Transferee with respect to assignments to or participations with a Loan Party or Affiliates of a Loan Party,

(f) amend or modify this Section or any provision of the Agreement providing for consent or other action by all Lenders,

(g) other than as permitted by Section 10.12, release Agent's Lien in and to any of the Collateral,

(h) change the definition of "Required Lenders" or "Pro Rata Share",

(i) other than as permitted by Section 10.12, contractually subordinate any of the Agent's Liens,

(j) other than as permitted by Section 10.12, release any Loan Party from any obligation for the payment of money, or

(k) amend any of the provisions of Article X.

and, provided further, however, (a) that no amendment, waiver or consent shall, unless in writing and signed by Agent or the Issuing Lender, as applicable, affect the rights or duties of Agent or the Issuing Lender, as applicable, under this Agreement or any other Loan Document and (b) Borrower may amend the Disclosure Statement from time to time with Agent's written consent without the consent of any Lender.

If (i) any action to be taken by the Lender Group or Agent hereunder requires the greater than majority or unanimous consent, authorization, or agreement of all Lenders, and a Lender ("Holdout Lender") fails to give its consent, authorization, or agreement, or (ii) if any Lender is a Defaulting Lender hereunder, or (iii) if any Lender ("Compensated Lender") requests compensation pursuant to Section 2.13 or if Borrower is required to pay any additional amount to such Lender or any Governmental Authority for the account of such Lender pursuant to Section 10.11, then Agent or, if no Event of Default has occurred and is continuing, Borrower, upon at least 5 Business Days prior irrevocable notice to the Holdout Lender, Defaulting Lender or Compensated Lender, may permanently replace the Holdout Lender, Defaulting Lender or Compensated Lender with one or more substitute Lenders (each, a "Replacement Lender"), and the Holdout Lender, Defaulting Lender or Compensated Lender shall have no right to refuse to be replaced hereunder. Such notice to replace the Holdout Lender, Defaulting Lender or Compensated Lender shall specify an effective date for such replacement, which date shall not be later than 15 Business Days after the date such notice is given. Prior to the effective date of such replacement, the Holdout Lender, Defaulting Lender or Compensated Lender, as applicable, and each Replacement Lender shall execute and deliver an Assignment and Acceptance, subject only to the Holdout Lender, Defaulting Lender or Compensated Lender, as applicable, being repaid its share of the outstanding Obligations (including an assumption of its Pro Rata Share of the Risk Participation Liability) without any premium or penalty of any kind whatsoever. If the Holdout Lender, Defaulting Lender or Compensated Lender shall refuse or fail to execute and deliver any such Assignment and Acceptance prior to the effective date of such replacement, the Holdout Lender, Defaulting Lender or Compensated Lender shall be deemed to have executed and delivered such Assignment and Acceptance. The replacement of any Holdout Lender, Defaulting Lender or Compensated Lender shall be made in accordance with the terms of Section 9.1. Until such time as the Replacement Lenders shall have acquired all of the Obligations, the Revolver Commitments, and the other rights and obligations of the Holdout Lender, Defaulting Lender or Compensated Lender hereunder and under the other Loan Documents, the Holdout Lender, Defaulting Lender or Compensated Lender, as applicable, shall remain obligated to make its Pro Rata Share of Loans and to purchase a participation in each Letter of Credit, in an amount equal to its Pro Rata Share of the Risk Participation Liability of such Letter of Credit.

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 personally 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 **or email addresses**) indicated on Exhibit 11.3 attached hereto.

11.4 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*.

11.5 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*.

11.6 **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.**

11.7 **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 BORROWER 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 AGENT'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE 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. BORROWER 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 11.7 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.

11.8 **WAIVER OF TRIAL BY JURY. BORROWER 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, BORROWER 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 11.8 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.**

11.9 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 Unmatured Event of Default if such action is taken or condition exists.

11.10 Confidentiality. Agent and Lenders each individually (and not jointly or jointly and severally) agree that material, non-public information regarding Borrower and its Subsidiaries, their operations, assets, and existing and contemplated business plans shall be treated by Agent and the Lenders in a confidential manner, and shall not be disclosed by Agent

and the Lenders to Persons who are not parties to this Agreement, except: (a) to attorneys for and other advisors, accountants, auditors, and consultants to any member of the Lender Group, so long as such other attorneys, advisors, accountants, auditors, and consultants are informed as to the confidential nature of such information and are instructed to treat such information as confidential or are otherwise obligated to maintain the confidentiality of such information, (b) to Subsidiaries and Affiliates of any member of the Lender Group (including the Bank Product Providers), provided that any such Subsidiary or Affiliate shall have agreed to receive such information hereunder subject to the terms of this Section 11.10, (c) as may be required by statute, decision, or judicial or administrative order, rule, regulation or any Governmental Authority (other than any state, federal or foreign authority or examiner regulating banks or banking); provided that Agent or any such Lender shall notify Borrower of such requirement prior to any disclosure of such information to a party that Agent or such Lender reasonably believes may not keep such information confidential and shall reasonably cooperate with Borrower in any lawful effort by Borrower to prevent or limit such disclosure or otherwise protect the confidentiality of such information, (d) as may be agreed to in advance by Borrower or its Subsidiaries or as requested or required by any Governmental Authority pursuant to any subpoena or other legal process; provided that Agent or any such Lender shall notify Borrower of such requirement prior to any disclosure of such information to a party that Agent or such Lender reasonably believes may not keep such information confidential and shall reasonably cooperate with Borrower in any lawful effort by Borrower to prevent or limit such disclosure or otherwise protect the confidentiality of such information, (e) as requested or required by any state, federal or foreign authority or examiner regulating banks or banking, (f) as to any such information that is or becomes generally available to the public (other than as a result of prohibited disclosure by Agent or the Lenders), (g) in connection with any assignment, prospective assignment, sale, prospective sale, participation or prospective participations, or pledge or prospective pledge of any Lender's interest under this Agreement, provided that any such assignee, prospective assignee, purchaser, prospective purchaser, participant, prospective participant, pledgee, or prospective pledgee shall have agreed in writing to receive such information hereunder subject to the terms of this Section, and (h) in connection with any litigation or other adversary proceeding involving parties hereto which such litigation or adversary proceeding involves claims related to the rights or duties of such parties under this Agreement or the other Loan Documents. The provisions of this Section 11.10 shall survive for 2 years after the payment in full of the Obligations.

11.11 Complete Agreement. This Agreement, together with the exhibits hereto, the Disclosure Statement, 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.

11.12 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.

[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.

ACRC LENDER LLC,
a Delaware limited liability company, as Borrower

By:
Name:
Title:

CITY NATIONAL BANK,
a national banking association,
as Agent and as a Lender

By:
Name:
Title:

EXHIBITS AND SCHEDULES

Exhibit A-1 Form of Assignment and Acceptance

Exhibit A-2 Form of Secured Promissory Note for Advances

Exhibit B-1 Form of Bank Product Provider Letter Agreement

Exhibit P-1 Form of Pledged Investments Certificate

Exhibit R-1 Persons Authorized to Request a Loan

Exhibit R-2 Form of Request for Borrowing

Exhibit R-3 Form of Request for Conversion/Continuation

Exhibit 11.3 Addresses and Information for Notices

Schedule A-1 Agent's Account

Schedule B-1 Pledged Investments

Schedule C-1 Commitments

Exhibit B

Exhibit 11.3

[see attached]

EXHIBIT 11.3

ADDRESSES AND INFORMATION FOR NOTICES

Notices, demands, requests, instructions, and other communications in writing shall be given or made upon the respective parties hereto at their respective addresses (or to their respective telefacsimile number or email addresses) indicated below:

If to Borrower, to:
c/o Ares Commercial Real Estate Management LLC
245 Park Avenue, 42nd Floor
New York, NY 10167
Attention: Real Estate Debt Legal Department and ACREM Asset Management
Email: AREGDebtLegal@aresmgmt.com

with a copy to:
1800 Avenue of the Stars
12th Floor
Los Angeles, CA 90067
Attention: Real Estate Accounting

and
Latham & Watkins LLP
1271 Avenue of the Americas
New York, NY 10020
Attention: Graeme Smyth
Graeme.smyth@lw.com

If to Agent, to:
City National Bank
555 S. Flower Street, 24th Floor
Los Angeles, CA 90071
Attn: Brandon Feitelson
Facsimile: (213) 673-9801
brandon.feitelson@cnb.com

with a copy to:
Sidley Austin LLP
1999 Avenue of the Stars, 17th Floor
Los Angeles, California 90067
Attention: Peter Burke
Peter.burke@sidley.com

Exhibit C

REAFFIRMATION AND CONSENT

Reference is hereby made to that certain **AMENDMENT NUMBER ELEVEN TO CREDIT AGREEMENT**, dated as of November 6, 2024 (the "Amendment"), by and among on the one hand, the lenders from time to time party thereto (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 the arranger and administrative agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, "Agent"), and, on the other hand, **ACRC LENDER LLC**, a Delaware limited liability company ("Borrower"). All capitalized terms used herein but not otherwise defined herein shall have the meanings ascribed to them in that certain Credit Agreement dated as of March 12, 2014 (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), by and among Borrower, Agent, and Lenders. The undersigned Guarantor hereby (a) represents and warrants to Agent that the execution, delivery, and performance of this Reaffirmation and Consent have been duly authorized by Guarantor and all necessary corporate action in respect thereof has been taken, and the execution, delivery, and performance of this Reaffirmation and Consent 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); (b) consents to the amendment of the Credit Agreement as set forth in the Amendment; (c) acknowledges and reaffirms its obligations owing to the Agent and the Lenders under any Loan Documents to which it is a party; (d) restates, ratifies and reaffirms each and every term and condition set forth in the Credit Agreement and other Loan Documents to which it is a party effective as of the date of the Amendment; (e) confirms that all Debt of the Guarantor evidenced by the Loan Documents to which it is a party is unconditionally owing by it to Agent and the Lenders, without offset, defense, withholding, counterclaim or deduction of any kind, nature or description whatsoever; and (f) agrees that each of the Loan Documents to which it is a party is and shall remain in full force and effect.

Although the undersigned has been informed of the matters set forth herein and has acknowledged and agreed to same, the undersigned understands that neither Agent nor any Lender has any obligation to inform it of such matters in the future or to seek its acknowledgment or agreement to future amendments, and nothing herein shall create such a duty.

Delivery of an executed counterpart of this Reaffirmation and Consent by telefacsimile or other electronic method of transmission shall be equally as effective as delivery of an original executed counterpart of this Reaffirmation and Consent. Any party delivering an executed counterpart of this Reaffirmation and Consent by telefacsimile or other electronic method of transmission also shall deliver an original executed counterpart of this Reaffirmation and Consent but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Reaffirmation and Consent.

The validity of this Reaffirmation and Consent, its construction, interpretation and enforcement, and the rights of the parties hereunder, shall be determined under, governed by, and construed in accordance with the law of the State of New York.

[signature page follows]

IN WITNESS WHEREOF, the undersigned has caused this Reaffirmation and Consent to be executed as of the date of the Amendment.

ARES COMMERCIAL REAL ESTATE CORPORATION,
a Maryland corporation

By_____
Name:
Title:

Exhibit 10.2

Execution Version

OMNIBUS AMENDMENT TO TRANSACTION DOCUMENTS

THIS OMNIBUS AMENDMENT TO TRANSACTION DOCUMENTS (this "**Amendment**") is made as of November 4, 2024 (the "**Effective Date**"), by and among **ACRC LENDER C LLC**, a Delaware limited liability company ("**Seller**"), **ACRC 2017-FL3 HOLDER REIT LLC**, a Delaware limited liability company ("**Pledgor**"), **ARES COMMERCIAL REAL ESTATE CORPORATION**, a Maryland corporation ("**Guarantor**"), and **CITIBANK, N.A.**, a national banking association ("**Buyer**").

RECITALS:

WHEREAS, Seller and Buyer entered into that certain Master Repurchase Agreement , dated as of December 8, 2014, by and among Seller and Buyer (the "**Original Repurchase Agreement**"), as amended by (1) that certain First Amendment to Master Repurchase Agreement, dated as of July 13, 2016 (the "**First Amendment**"), (2) that certain Second Amendment to Master Repurchase Agreement, dated as of July 13, 2016 (the "**Second Amendment**"), (3) that certain Third Amendment to Master Repurchase Agreement, dated as of December 8, 2016 (the "**Third Amendment**"), (4) that certain Fourth Amendment to Master Repurchase Agreement, dated as of December 10, 2018 (the "**Fourth Amendment**"), (5) that certain Amended and Restated Fourth Amendment to Master Repurchase Agreement, dated as of December 13, 2018 (the "**Amended and Restated Fourth Amendment**"), (6) that certain Fifth Amendment to Master Repurchase Agreement, dated as of November 30, 2021 (the "**Fifth Amendment**"), (7) that certain Sixth Amendment to Master Repurchase Agreement, dated as of January 13, 2022 (the "**Sixth Amendment**"; together with the Original Repurchase Agreement, the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment, the Amended and Restated Fourth Amendment, the Fifth Amendment and the Sixth Amendment, as further amended by this Amendment and as further amended, restated, supplemented or otherwise modified from time to time, the "**Repurchase Agreement**"). Capitalized terms used but not defined herein shall have the meanings assigned to them in the Repurchase Agreement;

WHEREAS, ACRC Warehouse Holdings LLC, a Delaware limited liability company ("**Existing Pledgor**") and Buyer entered into that certain Pledge and Security Agreement, dated as of October 14, 2015 (the "**Existing Pledge Agreement**");

WHEREAS, concurrently with the Effective Date of this Amendment, Buyer is executing that certain Termination of Pledge and Security Agreement, dated as of the date hereof (the "**Termination Agreement**"), in order to terminate the Existing Pledge Agreement and release the Existing Pledgor of its obligations thereunder, and Pledgor and Buyer, as secured party, are entering into that certain Pledge and Security Agreement, dated as of the date hereof (the "**Pledge Agreement**"); and

WHEREAS, in connection with the Termination Agreement and the Pledge Agreement, the parties hereto desire to amend each of the Transaction Documents.

NOW THEREFORE, in consideration of the foregoing and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby consent and agree as follows:

AGREEMENT:

1. Amendments to Transaction Documents. The Transaction Documents are hereby amended as follows:

(a) Any references to, and any definition of "Pledgor" in any of the Transaction Documents shall mean, and such definition is hereby amended to refer to, the Pledgor, together with its successors and permitted assigns.

(b) Any references to, and any definition of "Pledge and Security Agreement" in any of the Transaction Documents shall mean, and such definition is hereby amended to refer to, the Pledge Agreement, as the same may be amended, restated, replaced, waived, modified, supplemented, extended or otherwise modified from time to time.

(c) On and after the Effective Date, all references in any of the Transaction Documents to "this Agreement", "hereunder", "herein" or words of like import referring to such Transaction Document shall mean and be a reference to such Transaction Document as modified by this Amendment.

2. Reaffirmation of Guaranty. Guarantor hereby represents, warrants and covenants that notwithstanding the execution and delivery of this Amendment, 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. Guarantor's Representations. Guarantor represents and warrants that (i) Guarantor has taken all necessary action to authorize the execution, delivery and performance of this Amendment, (ii) this Amendment has been duly executed and delivered by or on behalf of Guarantor and constitutes the legal, valid and binding obligation of Guarantor enforceable against Guarantor in accordance with its terms subject to bankruptcy, insolvency, and other limitations on creditors' rights generally and to equitable principles, (iii) no Event of Default has occurred and is continuing, and no Event of Default will occur as a result of the execution, delivery and performance by Guarantor of this Amendment, and (iv) any consent, approval, authorization, order, registration or qualification of or with any Governmental Authority required for the execution, delivery and performance by Guarantor of this Amendment has been obtained and is in full force and effect (other than consents, approvals, authorizations, orders, registrations or qualifications that if not obtained, are not reasonably likely to have a Material Adverse Effect).

4. Seller's Reaffirmation. Seller represents, warrants and covenants to Buyer that all of the terms, covenants and conditions of the Transaction Documents remain unmodified (except as expressly modified hereby) and are in full force and effect and enforceable in accordance with

their respective terms. Any inconsistency between this Amendment and the Transaction Documents (as same 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 Transaction Documents inconsistent with this Amendment.

5. Seller's Representations. Seller represents and warrants that (i) Seller has taken all necessary action to authorize the execution, delivery and performance of this Amendment, (ii) this Amendment has been duly executed and delivered by or on behalf of Seller and constitutes the legal, valid and binding obligation of Seller enforceable against Seller in accordance with its terms subject to bankruptcy, insolvency, and other limitations on creditors' rights generally and to equitable principles, (iii) no Event of Default has occurred and is continuing, and no Event of Default will occur as a result of the execution, delivery and performance by Seller of this Amendment, and (iv) any consent, approval, authorization, order, registration or qualification of or with any Governmental Authority required for the execution, delivery and performance by Seller of this Amendment has been obtained and is in full force and effect (other than consents, approvals, authorizations, orders, registrations or qualifications that if not obtained, are not reasonably likely to have a Material Adverse Effect).

6. Conditions Precedent. This Amendment and its provisions shall become effective upon Buyer's receipt of each of the following:

Transaction Documents. This Amendment, duly executed and delivered by Seller, Pledgor, Guarantor and Buyer, and the Pledge Agreement, duly executed and delivered by Pledgor and Buyer;

Legal Opinions. An opinion of outside counsel to Pledgor reasonably acceptable to Buyer as to enforceability, corporate matters and security interests; and

Officer's Certificate. An officer's certificate for Pledgor (i) certifying as to and attaching a good standing certificate from its state or jurisdiction of formation, (ii) certifying as to and attaching its organizational documents and (iii) certifying as to its authority to execute and deliver, and perform its obligations under, this Amendment, the Pledge Agreement and the other Transaction Documents to be executed and delivered by it in connection herewith.

7. 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 and the Pledge Agreement promptly after Buyer or Buyer's counsel gives Seller an invoice for such expenses.

8. 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, any of the other Transaction Documents or any other document, instrument or agreement executed and/or delivered in connection therewith.

9. Governing Law. This Amendment shall be governed in accordance with the terms and provisions of Section 20 of the Repurchase Agreement.

10. Severability. Wherever possible, each provision of this Amendment shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Amendment shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Amendment.

11. 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

12. Successors and Assigns. This Amendment shall inure to the benefit of and shall be binding on the parties hereto and their respective successors and assigns.

13. Amendments. This Amendment may not be modified, amended, waived, changed or terminated orally, but only by an agreement in writing signed by the party against whom the enforcement of the modification, amendment, waiver, change or termination is sought.

[NO FURTHER TEXT ON THIS PAGE]

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

SELLER:

ACRC LENDER C LLC,
a Delaware limited liability company

By: /s/ Elaine McKay
Name: Elaine McKay
Title: Vice President

PLEDGOR:

ACRC 2017-FL3 HOLDER REIT LLC,
a Delaware limited liability company

By: /s/ Elaine McKay
Name: Elaine McKay
Title: Vice President

GUARANTOR:
ARES COMMERCIAL REAL ESTATE CORPORATION,
a Maryland corporation

By: /s/ Elaine McKay
Name: Elaine McKay
Title: Vice President and Assistant Secretary

[Signatures Continue on Following Page]

BUYER:
CITIBANK, N.A., a national banking association

By: /s/ Christopher Cho
Name: Christopher Cho
Title: Authorized Signatory

Exhibit 10.3
Execution Version

OMNIBUS AMENDMENT TO REPURCHASE DOCUMENTS

THIS OMNIBUS AMENDMENT TO REPURCHASE DOCUMENTS (this "**Amendment**") is made as of November 4, 2024 (the "**Effective Date**"), 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 the ACRC Seller, individually and collectively as the context may require, "**Seller**"), **ACRC 2017-FL3 HOLDER REIT LLC**, a Delaware limited liability company ("**New Pledgor**"), **ARES COMMERCIAL REAL ESTATE CORPORATION**, a Maryland corporation ("**Guarantor**") and **WELLS FARGO BANK, NATIONAL ASSOCIATION**, a national banking association ("**Buyer**").

RECITALS:

WHEREAS, Seller and Buyer entered into that certain Third Amended and Restated Master Repurchase and Securities Contract, dated as of February 10, 2022, by and among Seller and Buyer (the "**Original Repurchase Agreement**"), as amended by (1) that certain Amendment No. 1 to Third Amended and Restated Master Repurchase Agreement and Securities Contract, dated as of February 10, 2022 (the "**First Amendment**") and (2) that certain Amendment No. 2 to the Third Amended and Restated Master Repurchase Agreement and Securities Contract, dated as of April 19, 2024 (the "**Second Amendment**"; and the Original Repurchase Agreement, as amended by the First Amendment and the Second Amendment, as further amended by this Amendment and as further amended, restated, supplemented or otherwise modified from time to time, the "**Repurchase Agreement**"). Capitalized terms used but not defined herein shall have the meanings assigned to them in the Repurchase Agreement;

WHEREAS, ACRC Warehouse Holdings LLC, a Delaware limited liability company ("**Existing Pledgor**") and Buyer entered into that certain Pledge and Security Agreement, dated as of October 14, 2015 (the "**Existing Pledge Agreement**");

WHEREAS, concurrently with the Effective Date of this Amendment, Buyer is executing that certain Termination of Pledge and Security Agreement, dated as of the date hereof (the "**Termination Agreement**"), in order to terminate the Existing Pledge Agreement and release the Existing Pledgor of its obligations thereunder;

WHEREAS, concurrently with the Effective Date of this Amendment, New Pledgor and Buyer, as secured party, are entering into that certain REIT Pledge and Security Agreement, dated as of the date hereof (the "**REIT Pledge Agreement**");

WHEREAS, concurrently with the Effective Date of this Amendment, Existing Pledgor and Buyer, as secured party, are entering into that certain Warehouse Pledge and Security Agreement, dated as of the date hereof (the "**Warehouse Pledge Agreement**" and, together with the REIT Pledge Agreement, the "**Pledge Agreements**"); and

WHEREAS, in connection with the Termination Agreement and the Pledge Agreement, the parties hereto desire to amend each of the Repurchase Documents.

NOW THEREFORE, in consideration of the foregoing and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby consent and agree as follows:

AGREEMENT:

Amendments to Repurchase Agreement. 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.

Amendments to Repurchase Documents. The Repurchase Documents (other than the Repurchase Agreement) are hereby amended as follows:

Any references to, and any definition of "Pledgor" in any of such Repurchase Documents shall mean, and such definition is hereby amended to refer to, individually and collectively as the context may require, each of (i) with respect to ACRC Seller, the New Pledgor, together with its successors and permitted assigns and (ii) with respect to TRS Seller, the Existing Pledgor, together with its successors and permitted assigns, together with its successors and permitted assigns.

Any references to, and any definition of "Pledge and Security Agreement" in any of such Repurchase Documents shall mean, and such definition is hereby amended to refer to, the Pledge Agreements, as the same may be amended, restated, replaced, waived, modified, supplemented, extended or otherwise modified from time to time.

On and after the Effective Date, all references in any of such Repurchase Documents to "this Agreement", "hereunder", "herein" or words of like import referring to such Repurchase Document shall mean and be a reference to such Repurchase Document as modified by this Amendment.

Reaffirmation of Guaranty. Guarantor hereby represents, warrants and covenants that notwithstanding the execution and delivery of this Amendment and Reaffirmation, 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.

Guarantor's Representations. Guarantor represents and warrants that (i) Guarantor has taken all necessary action to authorize the execution, delivery and performance of this Amendment, (ii) this Amendment has been duly executed and delivered by or on behalf of Guarantor and constitutes the legal, valid and binding obligation of Guarantor enforceable against Guarantor in accordance with its terms subject to bankruptcy, insolvency, and other

limitations on creditors' rights generally and to equitable principles, (iii) no Event of Default has occurred and is continuing, and no Event of Default will occur as a result of the execution, delivery and performance by Guarantor of this Amendment, and (iv) any consent, approval, authorization, order, registration or qualification of or with any Governmental Authority required for the execution, delivery and performance by Guarantor of this Amendment has been obtained and is in full force and effect (other than consents, approvals, authorizations, orders, registrations or qualifications that if not obtained, are not reasonably likely to have a Material Adverse Effect).

Seller's Reaffirmation. Seller represents, warrants and covenants to Buyer that all of the terms, covenants and conditions of the Repurchase Documents remain unmodified (except as expressly modified hereby) and are in full force and effect and enforceable in accordance with their respective terms. Any inconsistency between this Amendment and the Repurchase Documents (as same 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 Repurchase Documents inconsistent with this Amendment.

Seller's Representations. Seller represents and warrants that (i) Seller has taken all necessary action to authorize the execution, delivery and performance of this Amendment, (ii) this Amendment has been duly executed and delivered by or on behalf of Seller and constitutes the legal, valid and binding obligation of Seller enforceable against Seller in accordance with its terms subject to bankruptcy, insolvency, and other limitations on creditors' rights generally and to equitable principles, (iii) no Event of Default has occurred and is continuing, and no Event of Default will occur as a result of the execution, delivery and performance by Seller of this Amendment, and (iv) any consent, approval, authorization, order, registration or qualification of or with any Governmental Authority required for the execution, delivery and performance by Seller of this Amendment has been obtained and is in full force and effect (other than consents, approvals, authorizations, orders, registrations or qualifications that if not obtained, are not reasonably likely to have a Material Adverse Effect).

Governing Law. This Amendment shall be governed in accordance with the terms and provisions of Section 18.11 of the Repurchase Agreement.

Severability. Wherever possible, each provision of this Amendment shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Amendment shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Amendment.

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

Successors and Assigns. This Amendment shall inure to the benefit of and shall be binding on the parties hereto and their respective successors and assigns.

Amendments. This Amendment may not be modified, amended, waived, changed or terminated orally, but only by an agreement in writing signed by the party against whom the enforcement of the modification, amendment, waiver, change or termination is sought.

[NO FURTHER TEXT ON THIS PAGE]

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

SELLER: **ACRC LENDER W LLC**, a Delaware limited liability company

By:/s/Elaine McKay
Name: Elaine McKay
Title: Vice President

ACRC LENDER W TRS LLC, a Delaware limited liability company

By:/s/Elaine McKay
Name: Elaine McKay
Title: Vice President

PLEDGOR:

ACRC 2017-FL3 HOLDER REIT LLC, a Delaware limited liability company

By:/s/Elaine McKay
Name: Elaine McKay
Title: Vice President

GUARANTOR:
ARES COMMERCIAL REAL ESTATE CORPORATION, a Maryland corporation

By:/s/Elaine McKay
Name: Elaine McKay
Title: Vice President

[Signatures Continue on Following Page]

BUYER:

WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association

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

Exhibit A

CONFORMED THROUGH AMENDMENT NO. 1 ~~AND AMENDMENT NO. 2~~

AMENDMENT NO. 2
OMNIBUS AMENDMENT DATED NOVEMBER 4, 2024

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.

"ACRC REIT": ACRC 2017-FL3 Holder REIT *LLC, a Delaware limited liability company, together with its successors and permitted assigns.*

"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) **with respect to Guarantor, each Pledgor and each Seller,** 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~~**such Person** entitled to vote generally in the election of directors, of thirty-five percent (35%) or more; (b**) Guarantor,**

together with any shareholders that may hold non-controlling preferred shares in ACRC REIT from time to time, shall cease to own and control, of record and beneficially, directly or indirectly one-hundred percent (100%) of the outstanding Capital Stock of ACRC Seller, (c) 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~~**TRS** Seller~~,~~ or (d) 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~~**Individually and collectively as the context may require, each of (i) the REIT Pledge ad Security Agreement, dated as of November 4, 2024, between Buyer and ACRC REIT, as amended modified, waived supplemented, extended, restated or replaced from time to time and (ii) the Warehouse** Pledge and Security Agreement, dated as of ~~October 14~~**November 4, ~~2015~~2024**, between Buyer and ~~Pledgor~~**Warehouse Holdings**, 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~~**Individually and collectively as the context may require, each of (i) with respect to ACRC Seller, ACRC REIT and (ii) with respect to TRS Seller,** 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).

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

"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 **and Security** 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 **and Security** Agreement are preserved, (ii) the liens and security interests granted under the Existing Repurchase Agreement and the Pledge **and Security** 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.

Schedule 1(c)

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] Note to Form: Use for Amended and Restated Confirmation.

Seller:

[ACRC LENDER W LLC][ACRC LENDER W TRS LLC]

By:
Name:
Title:

Buyer:

WELLS FARGO BANK, NATIONAL ASSOCIATION

By: _____
Name:
Title:

<u>Appendix 1 to Confirmation</u>

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 South Tryon Street, 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 10.4

Execution

FIFTH AMENDMENT TO MASTER REPURCHASE AND SECURITIES CONTRACT

This **FIFTH AMENDMENT TO MASTER REPURCHASE AND SECURITIES CONTRACT** (this "Amendment"), dated as of October 22, 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"); and

WHEREAS, Seller has requested certain amendments and modifications be made to the Existing Repurchase Agreement, and Buyer has agreed to amend 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. Article 2 of the Existing Repurchase Agreement is hereby amended by deleting the defined terms "Pledge and Security Agreement" and "Pledgor" in their entirety and replacing them with the definitions set forth below:

""Pledge and Security Agreement" means the Pledge and Security Agreement, dated as of October 22, 2024, between Buyer and Pledgor, as amended, modified, waived, supplemented, extended, restated or replaced from time to time."

""Pledgor" means ACRC 2017-FL3 Holder REIT LLC, a Delaware limited liability company, together with its successors and permitted assigns."

b. Article 10(xiii) of the Existing Repurchase Agreement is hereby amended by deleting the first sentence of such Article 10(xiii) in its entirety and replacing it with the sentence set forth below:

"Taxes. Each of Guarantor and Pledgor is a REIT. Seller is treated as either a qualified REIT subsidiary, as defined in Section 856(i)(2) of the Code, or as an entity disregarded as an entity separate from its owner for U.S. federal income tax purposes."

c. Article 12(v) of the Existing Repurchase Agreement is hereby amended and restated in its entirety as follows:

"Seller and Guarantor shall ensure that at all times prior to the Facility Termination Date, each of Guarantor and Pledgor shall continue to qualify as a REIT, for which Seller shall continue to

be treated as either (i) a qualified REIT subsidiary as defined in Section 856(i)(2) of the Code, disregarded for U.S. federal income tax purposes or (ii) an entity disregarded as an entity separate from its owner for U.S. federal income tax purposes."

d. Article 13(f) through (i) of the Existing Repurchase Agreement is hereby amended and restated in its entirety as follows:

"(f) solely with respect to the Seller, it will not own any property or any other assets other than the Purchased Assets, cash and its interest under any associated Hedging Transactions;

(g) solely with respect to the Seller, it will not engage in any business other than the origination, acquisition, ownership, financing and disposition of the Purchased Assets and the associated Hedging Transactions in accordance with the applicable provisions of the Transaction Documents;

(h) solely with respect to the Seller, it will not enter into, any contract or agreement with any of its affiliates, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arm's length basis with Persons other than such affiliate;

(i) solely with respect to the Seller, it will not incur any indebtedness or obligation, secured or unsecured, direct or indirect, absolute or contingent (including guaranteeing any obligation), other than (A) obligations under the Transaction Documents, (B) obligations under the documents evidencing the Purchased Assets, and (C) unsecured trade payables, in an aggregate amount not to exceed $200,000 at any one time outstanding, incurred in the ordinary course of acquiring, owning, financing and disposing of the Purchased Assets; provided, however, that any such trade payables incurred by Seller shall be paid within sixty (60) days of the date incurred;"

2. Acknowledgements. Notwithstanding clause (c) of the definition of "Change of Control" or the provisions of Articles 12(u) and 14(a)(vii) to the contrary, Buyer hereby consents to the assignment and assumption of one hundred percent of the ownership interests in Seller held by ACRC Warehouse Holdings LLC, a Delaware limited liability company ("Original Pledgor"), as the original "Pledgor" under the Existing Repurchase Agreement, to ACRC 2017-FL3 Holder REIT LLC, a Delaware limited liability company ("Replacement Pledgor"), pursuant to that certain Interests Assignment and Assumption Agreement, dated as of the date hereof, by and between Original Pledgor, as assignor, and Replacement Pledgor, as assignee; provided, however, that such consent of Buyer is expressly conditioned upon the execution and delivery of (A) concurrently with the execution of this Amendment, a Pledge and Security Agreement by Replacement Pledgor in form and substance acceptable to Buyer pursuant to which Replacement Pledgor provides a pledge in one hundred percent (100%) of the ownership interests in Seller in favor of Buyer (the "Replacement Pledge Agreement"), and (B) promptly, but in no event later than fifteen (15) Business Days following the date of this Amendment, (i) updated organizational documents of Seller reflecting the replacement of Original Pledgor with Replacement Pledgor as its sole equity owner, (ii) updated opinions, authorizing resolutions, certificates, and such other documents as required by Buyer reflecting the replacement of Original Pledgor with Replacement Pledgor, each in form and substance satisfactory to Buyer, and (iii) UCC, bankruptcy, litigation, tax, and such other lien searches as may be reasonably requested by Buyer, the results of which are satisfactory to Buyer.

3. Representations and Warranties. Seller hereby represents and warrants to Buyer as follows:

a. No Margin Deficit, Event of Default, Default or, to Seller, Original Pledgor 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, Original Pledgor or Guarantor of this Amendment.

b. All representations and warranties contained in the Repurchase Agreement, Existing Guaranty and all other Transaction Documents 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, Original Pledgor or Guarantor since January 16, 2020, other than updated organizational documents of Seller delivered to Buyer in connection with this Amendment reflecting the replacement of Original Pledgor with Replacement Pledgor as the sole equity owner of Seller.

d. Seller, Original Pledgor 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, Original Pledgor, Guarantor and Buyer and acknowledged by Replacement Pledgor.

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, Original Pledgor, Replacement Pledgor, 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 and the Replacement Pledge Agreement 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 other Transaction Documents, 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 Existing Repurchase Agreement.

9. Costs and Expenses. Seller shall pay Buyer's 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 Pledge and Security Agreement 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 Replacement Pledge Agreement, 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/ Elaine McKay Name: Elaine McKay
Title: Vice President

ACRC WAREHOUSE HOLDINGS LLC, a Delaware limited liability company, as Original Pledgor

By: /s/ Elaine McKay Name: Elaine McKay
Title: Vice President

ARES COMMERCIAL REAL ESTATE CORPORATION, a Maryland corporation, as Guarantor

By: /s/ Elaine McKay Name: Elaine McKay
Title: Vice President

[signatures continue on next page]

MORGAN STANLEY BANK, N.A.,
a national banking association, as Buyer

By: /s/ Antony Preisano
Name: Anthony Preisano
Title: ED

ACKNOWLEDGED AND AGREED BY:

ACRC 2017-FL3 HOLDER REIT LLC, a Delaware limited liability company, as Replacement Pledgor

By: /s/ Elaine McKay Name: Elaine McKay
Title: Vice President

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: November 7, 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, Jeffrey Gonzales, 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: November 7, 2024

/s/ Jeffrey Gonzales
Jeffrey Gonzales
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 September 30, 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 Jeffrey Gonzales, 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: November 7, 2024

/s/ Bryan Donohoe
Bryan Donohoe
Chief Executive Officer

/s/ Jeffrey Gonzales
Jeffrey Gonzales
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.