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 June 30, 2023
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 August 1, 2023**
Common stock, $0.01 par value	54,136,273

TABLE OF CONTENTS

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, 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. Forward-looking statements 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 heightened inflation, slower growth or recession, changes to fiscal and monetary policy, higher interest rates, currency fluctuations and challenges in the supply chain;
- the failure of major financial institutions, namely banks, or sustained financial market illiquidity;
- 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;
- 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 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, interest rates, real estate values, the debt securities markets or the general economy.

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, 2022 ("2022 Annual Report") and Part II, Item 1A, "Risk Factors" in our quarterly report on Form 10-Q for the quarter ended March 31, 2023 ("Q1 Quarterly Report") and the other information included in our 2022 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 Securities and Exchange Commission ("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	
	June 30, 2023	**December 31, 2022**
	(unaudited)	
ASSETS		
Cash and cash equivalents	$ 142,603	$ 141,278
Loans held for investment ($886,343 and $887,662 related to consolidated VIEs, respectively)	2,228,100	2,264,008
Current expected credit loss reserve	(108,114)	(65,969)
Loans held for investment, net of current expected credit loss reserve	2,119,986	2,198,039
Investment in available-for-sale debt securities, at fair value	27,970	27,936
Other assets ($4,207 and $2,980 of interest receivable related to consolidated VIEs, respectively; $87,950 and $129,495 of other receivables related to consolidated VIEs, respectively)	109,452	155,749
Total assets	$ 2,400,011	$ 2,523,002
LIABILITIES AND STOCKHOLDERS' EQUITY		
LIABILITIES		
Secured funding agreements	$ 681,257	$ 705,231
Notes payable	104,559	104,460
Secured term loan	149,295	149,200
Collateralized loan obligation securitization debt (consolidated VIEs)	735,093	777,675
Due to affiliate	4,806	5,580
Dividends payable	19,180	19,347
Other liabilities ($1,952 and $1,913 of interest payable related to consolidated VIEs, respectively)	14,630	13,969
Total liabilities	1,708,820	1,775,462
Commitments and contingencies (Note 9)		
STOCKHOLDERS' EQUITY		
Common stock, par value $0.01 per share, 450,000,000 shares authorized at June 30, 2023 and December 31, 2022 and 54,136,273 and 54,443,983 shares issued and outstanding at June 30, 2023 and December 31, 2022, respectively	532	537
Additional paid-in capital	810,161	812,788
Accumulated other comprehensive income	987	7,541
Accumulated earnings (deficit)	(120,489)	(73,326)
Total stockholders' equity	691,191	747,540
Total liabilities and stockholders' equity	$ 2,400,011	$ 2,523,002

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)

	For the three months ended June 30,		For the six months ended June 30,	
	2023	2022	2023	2022
	(unaudited)	(unaudited)	(unaudited)	(unaudited)
Revenue:				
Interest income	$ 51,941	$ 38,621	$ 101,441	$ 71,986
Interest expense	(26,951)	(13,475)	(49,950)	(25,488)
Net interest margin	24,990	25,146	51,491	46,498
Revenue from real estate owned	—	—	—	2,672
Total revenue	24,990	25,146	51,491	49,170
Expenses:				
Management and incentive fees to affiliate	3,334	3,766	6,344	6,740
Professional fees	626	1,100	1,397	1,878
General and administrative expenses	2,038	1,587	3,723	3,200
General and administrative expenses reimbursed to affiliate	1,109	796	1,842	1,631
Expenses from real estate owned	—	—	—	4,309
Total expenses	7,107	7,249	13,306	17,758
Provision for current expected credit losses	20,127	7,768	41,146	7,174
Realized losses on loans sold	—	—	5,613	—
Gain on sale of real estate owned	—	—	—	2,197
Income (loss) before income taxes	(2,244)	10,129	(8,574)	26,435
Income tax expense (benefit), including excise tax	(46)	98	64	204
Net income (loss) attributable to common stockholders	$ (2,198)	$ 10,031	$ (8,638)	$ 26,231
Earnings (loss) per common share:				
Basic earnings (loss) per common share	$ (0.04)	$ 0.20	$ (0.16)	$ 0.54
Diluted earnings (loss) per common share	$ (0.04)	$ 0.20	$ (0.16)	$ 0.53
Weighted average number of common shares outstanding:				
Basic weighted average shares of common stock outstanding	54,347,204	50,562,559	54,468,752	48,892,754
Diluted weighted average shares of common stock outstanding	54,347,204	50,999,505	54,468,752	49,336,267
Dividends declared per share of common stock	$ 0.35	$ 0.35	$ 0.70	$ 0.70

See accompanying notes to consolidated financial statements.

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

	For the three months ended June 30,		For the six months ended June 30,	
	2023	2022	2023	2022
	(unaudited)	(unaudited)	(unaudited)	(unaudited)
Net income (loss) attributable to common stockholders	$ (2,198)	$ 10,031	$ (8,638)	$ 26,231
Other comprehensive income:				
Realized and unrealized gains (losses) on derivative financial instruments	(2,099)	1,931	(6,576)	9,545
Unrealized gains (losses) on available-for-sale debt securities	(43)	—	22	—
Comprehensive income (loss)	$ (4,340)	$ 11,962	$ (15,192)	$ 35,776

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	Accumulated Earnings (Deficit)	Total Stockholders' Equity
	Shares	Amount				
Balance at December 31, 2021	47,144,058	$ 465	$ 703,950	$ 2,844	$ (28,631)	$ 678,628
Sale of common stock	190,369	2	2,872	—	—	2,874
Offering costs	—	—	(9)	—	—	(9)
Stock-based compensation	78,009	—	766	—	—	766
Other comprehensive income (loss)	—	—	—	7,614	—	7,614
Net income	—	—	—	—	16,201	16,201
Dividends declared	—	—	—	—	(16,740)	(16,740)
Balance at March 31, 2022	47,412,436	467	707,579	10,458	(29,170)	689,334
Sale of common stock	7,000,000	70	103,323	—	—	103,393
Offering costs	—	—	(190)	—	—	(190)
Stock-based compensation	25,927	—	699	—	—	699
Other comprehensive income (loss)	—	—	—	1,931	—	1,931
Net income	—	—	—	—	10,031	10,031
Dividends declared	—	—	—	—	(19,198)	(19,198)
Balance at June 30, 2022	54,438,363	537	811,411	12,389	(38,337)	786,000
Offering costs	—	—	(34)	—	—	(34)
Stock-based compensation	—	—	673	—	—	673
Other comprehensive income (loss)	—	—	—	(1,010)	—	(1,010)
Net income	—	—	—	—	644	644
Dividends declared	—	—	—	—	(19,196)	(19,196)
Balance at September 30, 2022	54,438,363	537	812,050	11,379	(56,889)	767,077
Stock-based compensation	5,620	—	738	—	—	738
Other comprehensive income (loss)	—	—	—	(3,838)	—	(3,838)
Net income	—	—	—	—	2,909	2,909
Dividends declared	—	—	—	—	(19,346)	(19,346)
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 income (loss)	—	—	—	(4,412)	—	(4,412)
Net loss	—	—	—	—	(6,439)	(6,439)
Dividends declared	—	—	—	—	(19,346)	(19,346)
Balance at March 31, 2023	54,606,826	537	813,748	3,129	(99,111)	718,303
Offering costs	—	—	4	—	—	4
Stock-based compensation	65,412	—	1,004	—	—	1,004
Repurchase and retirement of common stock	(535,965)	(5)	(4,595)	—	—	(4,600)
Other comprehensive income (loss)	—	—	—	(2,142)	—	(2,142)
Net loss	—	—	—	—	(2,198)	(2,198)
Dividends declared	—	—	—	—	(19,180)	(19,180)
Balance at June 30, 2023	54,136,273	$ 532	$ 810,161	$ 987	$ (120,489)	$ 691,191

See accompanying notes to consolidated financial statements.

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

	For the six months ended June 30,	
	2023	2022
	(unaudited)	(unaudited)
Operating activities:		
Net income (loss)	$ (8,638)	$ 26,231
Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities:		
Amortization of deferred financing costs	1,901	4,058
Accretion of discounts, deferred loan origination fees and costs	(3,402)	(4,938)
Stock-based compensation	1,965	1,465
Provision for current expected credit losses	41,146	7,174
Realized losses on loans sold	5,613	—
Amortization of derivative financial instruments	(723)	(253)
Gain on sale of real estate owned	—	(2,197)
Changes in operating assets and liabilities:		
Other assets	(15,707)	(1,930)
Due to affiliate	(774)	406
Other liabilities	1,775	(864)
Net cash provided by (used in) operating activities	23,156	29,152
Investing activities:		
Issuance of and fundings on loans held for investment	(93,891)	(523,735)
Principal repayment of loans held for investment	145,335	400,429
Proceeds from sale of loans held for sale	37,200	—
Receipt of origination fees	658	6,794
Proceeds from sale of real estate owned	—	38,227
Amounts received (paid) under derivative financial instruments	—	2,085
Net cash provided by (used in) investing activities	89,302	(76,200)
Financing activities:		
Proceeds from secured funding agreements	14,960	225,192
Repayments of secured funding agreements	(38,934)	(212,180)
Repayments of notes payable	—	(51,110)
Payment of secured funding costs	(1,001)	(1,663)
Repayments of debt of consolidated VIEs	(42,865)	(11,000)
Dividends paid	(38,693)	(33,414)
Proceeds from sale of common stock	—	106,267
Repurchase of common stock	(4,600)	—
Payment of offering costs	—	(34)
Net cash provided by (used in) financing activities	(111,133)	22,058
Change in cash and cash equivalents	1,325	(24,990)
Cash and cash equivalents, beginning of period	141,278	50,615
Cash and cash equivalents, end of period	$ 142,603	$ 25,625
Supplemental disclosure of noncash investing and financing activities:		
Dividends declared, but not yet paid	$ 19,180	$ 19,198
Other receivables related to consolidated VIEs	$ 87,950	$ 65,229

See accompanying notes to consolidated financial statements.

ARES COMMERCIAL REAL ESTATE CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
As of June 30, 2023
(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 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, 2022 filed with the SEC.

Refer to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2022 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, 2023.

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 June 30, 2023, however, uncertainty over the global economy and the Company's business, makes any estimates and assumptions as of June 30, 2023 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 16 included in these consolidated financial statements for further discussion of the Company's VIEs.

Cash and Cash Equivalents

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

Loans Held for Investment

The Company originates CRE debt and related instruments generally to be held for investment. Loans that are held for investment are carried at cost, net of unamortized loan fees and origination costs (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 principal 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"). Increases and decreases to expected credit losses impact earnings and are recorded within provision for current expected credit losses in the Company's consolidated statements of operations. The CECL Reserve related to outstanding balances on loans held for investment required under ASC 326 is a valuation account that is deducted from the amortized cost basis of the Company's loans held for investment in the Company's consolidated balance sheets. The CECL Reserve related to unfunded commitments on loans held for investment is recorded within other liabilities in the Company's consolidated balance sheets. See Note 4 included in these consolidated financial statements for CECL related disclosures.

Loans Held for Sale

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

Real Estate Owned

Real estate assets are carried at their estimated fair value at acquisition and are presented net of accumulated depreciation and impairment charges. The Company allocates the purchase price of acquired real estate assets based on the fair value of the acquired land, building, furniture, fixtures and equipment.

Real estate assets are depreciated using the straight-line method over estimated useful lives of up to 40 years for buildings and improvements and up to 15 years for furniture, fixtures and equipment. 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.

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

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

Available-for-Sale Debt Securities

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

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

Available-for-sale debt securities are generally placed on non-accrual status when principal or interest payments are past due 30 days or more or when there is reasonable doubt that principal or interest will be collected in full. Accrued and unpaid interest is generally reversed against interest income in the period the debt security is placed on non-accrual status. Interest payments received on non-accrual securities may be recognized as income or applied to principal 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 secured borrowings (described in Note 7 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. Amortization of debt issuance costs for the note payable on the hotel property that was recognized as real estate owned in the Company's consolidated balance sheets (see Note 6 included in these consolidated financial statements for additional information on the note payable) is included within expenses from real estate owned in the Company's consolidated statements of operations.

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 loan 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 hotel property classified as real estate owned that was sold in March 2022. Revenue from the operation of the hotel property was recognized when guestrooms were occupied, services had been rendered or fees had been earned. Revenues were recorded net of any discounts and sales and other taxes collected from customers. Revenues consisted of room sales, food and beverage sales and other hotel revenues.

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, the Secured Term Loan (each individually defined in Note 6 included in these consolidated financial statements) and secured borrowings (described in Note 7 included in these consolidated financial statements) in net interest margin. For the three and six months ended June 30, 2023 and 2022, interest expense is comprised of the following ($ in thousands):

	For the three months ended June 30,		For the six months ended June 30,	
	2023	2022	2023	2022
Secured funding agreements	$ 13,081	$ 6,342	$ 25,392	$ 11,469
Notes payable (1)	1,904	531	3,663	984
Securitization debt	12,428	5,591	24,034	9,942
Secured term loan	1,754	1,752	3,488	3,484
Secured borrowings	—	296	—	588
Other (2)	(2,216)	(1,037)	(6,627)	(979)
Interest expense	$ 26,951	$ 13,475	$ 49,950	$ 25,488

(1) Excludes interest expense on the $28.3 million note payable, which was secured by a hotel property that was recognized as real estate owned in the Company's consolidated balance sheet (see Note 6 included in these consolidated financial statements for additional information on the note payable). Interest expense on the $28.3 million note payable is included within expenses from real estate owned in the Company's consolidated statements of operations.

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

Comprehensive Income

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

Recent Accounting Pronouncements

The Company considers the applicability and impact of all accounting standard updates ("ASU") issued by the FASB. ASUs were assessed and determined either to be not applicable or expected to have minimal impact on its unaudited consolidated financial statements.

3. LOANS HELD FOR INVESTMENT

As of June 30, 2023, the Company's portfolio included 53 loans held for investment, excluding 158 loans that were repaid, sold or converted to real estate owned since inception. The aggregate originated commitment under these loans at closing was approximately $2.5 billion and outstanding principal was $2.3 billion as of June 30, 2023. During the six months ended June 30, 2023, the Company funded approximately $106.8 million of outstanding principal, received repayments of $97.2 million of outstanding principal and sold two loans with aggregate outstanding principal of $41.5 million to third parties. As of June 30, 2023, 71.2% of the Company's loans have Secured Overnight Financing Rate ("SOFR") floors, with a weighted average floor of 1.12%, 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 June 30, 2023 and December 31, 2022 ($ in thousands):

	As of June 30, 2023				
	Carrying Amount (1)	Outstanding Principal (1)	Weighted Average Unleveraged Effective Yield		Weighted Average Remaining Life (Years)
Senior mortgage loans	$ 2,190,809	$ 2,212,972	8.8 % (2)	9.5 % (3)	1.3
Subordinated debt and preferred equity investments	37,291	39,098	8.0 % (2)	15.1 % (3)	2.3
Total loans held for investment portfolio	$ 2,228,100	$ 2,252,070	8.7 % (2)	9.5 % (3)	1.3

	As of December 31, 2022				
	Carrying Amount (1)	Outstanding Principal (1)	Weighted Average Unleveraged Effective Yield		Weighted Average Remaining Life (Years)
Senior mortgage loans	$ 2,225,725	$ 2,243,818	8.4 % (2)	8.8 % (3)	1.3
Subordinated debt and preferred equity investments	38,283	39,003	14.0 % (2)	14.0 % (3)	2.8
Total loans held for investment portfolio	$ 2,264,008	$ 2,282,821	8.5 % (2)	8.9 % (3)	1.4

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

(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 June 30, 2023 and December 31, 2022 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 the Company as of June 30, 2023 and December 31, 2022 as weighted by the total outstanding principal balance of each interest accruing loan (excludes loans on non-accrual status as of June 30, 2023 and December 31, 2022).

A more detailed listing of the Company's loans held for investment portfolio based on information available as of June 30, 2023 is as follows ($ in millions, except percentages):

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	$156.8	$154.0	(5)	7.4%	(5)	Mar 2025	(5)	I/O	
Multifamily	NY	132.2	131.1	S+3.90%	9.5%		Jun 2025		I/O	
Office	Diversified	122.2	122.0	S+3.75%	9.1%		Jan 2024		P/I	(6)
Industrial	IL	100.1	99.8	S+4.65%	10.2%		May 2024		I/O	
Multifamily	TX	100.0	99.3	S+3.50%	9.5%		Jul 2025		I/O	
Mixed-use	FL	82.7	82.7	S+4.25%	9.5%		Feb 2023	(7)	I/O	
Residential Condominium	NY	81.4	81.2	S+8.95%	15.9%		Oct 2023	(8)	I/O	
Office	AZ	79.1	78.7	S+3.61%	9.2%		Oct 2024		I/O	
Mixed-use	NY	75.7	75.4	S+3.75%	9.3%		Jul 2024		I/O	
Residential Condominium	FL	75.0	75.0	S+5.35%	11.0%		Jul 2024	(9)	I/O	
Office	NY	72.2	71.7	S+3.95%	9.5%		Aug 2025		I/O	
Office	NC	68.8	68.7	S+4.35%	9.8%		Mar 2024	(10)	P/I	(6)
Multifamily	TX	68.2	67.9	S+2.95%	8.5%		Dec 2024		I/O	
Office	NC	68.0	67.7	S+3.65%	9.2%		Aug 2024		I/O	
Multifamily/Office	SC	67.0	66.9	S+3.00%	8.4%		Nov 2024		I/O	
Office	IL	56.9	52.5	S+3.95%	—%	(11)	Dec 2023	(11)	I/O	
Office	IL	56.0	55.6	S+4.25%	9.9%		Jan 2025		I/O	
Office	GA	48.6	48.5	S+3.15%	8.6%		Dec 2023		P/I	(6)
Industrial	MA	47.0	46.8	S+2.90%	8.2%		Jun 2028		I/O	
Hotel	CA	42.0	41.6	S+4.20%	9.9%		Mar 2025		I/O	
Hotel	NY	39.5	39.0	S+4.40%	9.9%		Mar 2026		I/O	
Office	MA	38.1	37.5	S+3.75%	9.5%		Apr 2025		I/O	
Mixed-use	CA	37.9	37.9	S+4.10%	9.3%		Mar 2023	(12)	I/O	
Mixed-use	TX	35.3	35.2	S+3.85%	9.3%		Sep 2024		I/O	
Hotel	IL	35.0	29.6	S+4.00%	—%	(13)	May 2024		I/O	
Student Housing	CA	34.0	34.0	S+3.95%	9.1%		Jan 2024	(14)	I/O	
Office	CA	33.2	31.9	S+3.45%	—%	(15)	Nov 2023	(15)	I/O	
Multifamily	CA	31.7	31.5	S+3.00%	8.4%		Dec 2025		I/O	
Multifamily	PA	29.2	29.2	S+4.00%	9.4%		Dec 2023		P/I	(6)
Industrial	NJ	27.8	27.7	S+3.85%	9.6%		May 2024		I/O	
Industrial	FL	25.5	25.4	S+3.00%	8.4%		Dec 2025		I/O	
Multifamily	WA	23.1	23.0	S+3.00%	8.3%		Nov 2025		I/O	
Office	CA	22.9	22.8	S+3.50%	8.9%		Nov 2023		I/O	
Multifamily	TX	22.6	22.4	S+2.60%	8.1%		Oct 2024		I/O	
Industrial	CA	19.6	19.5	S+3.85%	9.3%		Sep 2024	(16)	I/O	
Student Housing	AL	19.5	19.4	S+3.95%	9.5%		May 2024		I/O	
Multifamily	WA	18.7	18.7	S+3.10%	8.8%		Sep 2023	(17)	I/O	
Self Storage	PA	18.2	18.1	S+3.00%	8.4%		Dec 2025		I/O	
Self Storage	NJ	17.6	17.4	S+2.90%	8.8%		Apr 2025		I/O	
Self Storage	WA	11.5	11.4	S+2.90%	8.8%		Mar 2025		I/O	
Industrial	TX	10.0	9.9	S+5.35%	10.9%		Dec 2024		I/O	
Self Storage	MA	8.5	8.5	S+3.00%	8.3%		Dec 2024		I/O	
Self Storage	TX	8.0	8.0	S+3.00%	8.4%		Aug 2024		I/O	
Self Storage	MA	7.7	7.7	S+3.00%	8.3%		Nov 2024		I/O	
Self Storage	MA	6.7	6.7	S+3.00%	8.4%		Oct 2024		I/O	
Self Storage	MO	6.5	6.5	S+3.10%	8.4%		Dec 2023		I/O	
Industrial	TN	6.4	6.4	S+5.60%	11.1%		Nov 2024		I/O	
Self Storage	NJ	5.9	5.9	S+3.00%	8.6%		Jul 2024		I/O	
Self Storage	IL	5.6	5.6	S+3.10%	8.6%		Dec 2023		I/O	
Industrial	FL	4.0	4.0	S+5.75%	11.3%		Mar 2025		I/O	
Self Storage	TX	2.9	2.9	S+3.00%	8.3%		Sep 2024		I/O	
Subordinated Debt and Preferred Equity Investments:										
Multifamily	SC	20.6	20.5	S+9.53%	15.1%		Sep 2025		I/O	
Office	NJ	18.5	16.8	12.00%	—%	(18)	Jan 2026		I/O	
Total/Weighted Average		$2,252.1	$2,228.1		8.7%					

(1) The difference between the Carrying Amount and the Outstanding Principal amount of the loans held for investment consists of unamortized purchase discount, deferred loan fees and loan origination costs. For the loans held for investment that represent co-investments with other investment vehicles managed by Ares Management (see Note 14 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 June 30, 2023 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 June 30, 2023 as weighted by the outstanding principal balance of each loan.

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

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

(5) The Illinois loan is structured as both a senior and mezzanine loan with the Company holding both positions. The senior position has a per annum interest rate of S + 2.25% and the mezzanine position has a fixed per annum interest rate of 10.00%. The mezzanine position of this loan, which had an outstanding principal balance of $42.8 million as of June 30, 2023, was on non-accrual status as of June 30, 2023 and therefore, the Unleveraged Effective Yield presented is for the senior position only as the mezzanine position is non-interest accruing. In March 2023, the Company and the borrower entered into a modification and extension agreement to, among other things, extend the maturity date on the Illinois loan from March 2023 to March 2025. For the three and six months ended June 30, 2023, the Company received $1.7 million of interest payments and other fees in cash on the mezzanine position of the Illinois 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 April 2022, amortization began on the senior North Carolina loan, which had an outstanding principal balance of $68.8 million as of June 30, 2023. In December 2022, amortization began on the senior Pennsylvania loan, which had an outstanding principal balance of $29.2 million as of June 30, 2023. In January 2023, amortization began on the senior Georgia loan, which had an outstanding principal balance of $48.6 million as of June 30, 2023. In February 2023, amortization began on the senior diversified loan, which had an outstanding principal balance of $122.2 million as of June 30, 2023. The remainder of the loans in the Company's portfolio are non-amortizing through their primary terms.

(7) As of June 30, 2023, the senior Florida loan, which is collateralized by a mixed-use property, is 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. The Company is in the process of a consensual foreclosure of the property with legal title of the property expected to be acquired in the third quarter of 2023. Once legal title of the property is acquired, the Company will derecognize the senior Florida loan and recognize the mixed-use property as real estate owned.

(8) In June 2023, the Company and the borrower entered into a modification agreement to, among other things, modify certain construction milestones. Upon the closing of the modification agreement, the senior New York loan was no longer in default.

(9) In June 2023, 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 2024.

(10) In March 2023, the Company and the borrower entered into a modification and extension agreement to, among other things, extend the maturity date on the senior North Carolina loan from March 2023 to March 2024.

(11) Loan was on non-accrual status as of June 30, 2023 and the Unleveraged Effective Yield is not applicable. In June 2023, 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 June 2023 to December 2023. For the three and six months ended June 30, 2023, the Company received $1.3 million and $2.5 million, respectively, of interest payments in cash on the senior Illinois loan that was recognized as a reduction to the carrying value of the loan and the borrower is current on all contractual interest payments.

(12) As of June 30, 2023, the senior California loan, which is collateralized by a mixed-use property, is 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.

(13) Loan was on non-accrual status as of June 30, 2023 and the Unleveraged Effective Yield is not applicable. For the six months ended June 30, 2023, the Company received $0.3 million of interest payments in cash on the senior Illinois loan that was recognized as a reduction to the carrying value of the loan. The senior Illinois loan is currently in default due to the failure of the borrower to make certain contractual reserve deposits by the May 2022 due date and due to the borrower not making its contractual interest payments due subsequent to the January 2023 interest payment date.

(14) In June 2023, the borrower exercised a six-month extension option in accordance with the loan agreement, which extended the maturity date on the senior California loan to January 2024.

(15) Loan was on non-accrual status as of June 30, 2023 and the Unleveraged Effective Yield is not applicable. In March 2023, the Company and the borrower entered into a modification and extension agreement to, among other things, extend the maturity date on the senior California loan from March 2023 to November 2023. For the three and six months ended June 30, 2023, the Company received $0.7 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.

(16) In February 2023, the Company and the borrower entered into a modification and extension agreement to, among other things, extend the maturity date on the senior California loan from March 2023 to September 2024.

(17) In March 2023, the Company and the borrower entered into a modification and extension agreement to, among other things, extend the maturity date on the senior Washington loan from March 2023 to September 2023. The senior Washington loan is currently in default due to the borrower not making its contractual interest payments due subsequent to the March 2023 interest payment date.

(18) Loan was on non-accrual status as of June 30, 2023 and the Unleveraged Effective Yield is not applicable. For the three and six months ended June 30, 2023, the Company received $0.6 million and $1.1 million, respectively, of interest payments in cash on the mezzanine New Jersey loan that was recognized as a reduction to the carrying value of the loan and the borrower is current on all contractual interest payments.

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 six months ended June 30, 2023, the activity in the Company's loan portfolio was as follows ($ in thousands):

Balance at December 31, 2022	$	2,264,008
Initial funding		47,000
Origination fees and discounts, net of costs		(658)
Additional funding		59,824
Amortizing payments		(7,558)
Loan payoffs		(96,416)
Loans sold to third parties (1)		(41,489)
Origination fee and discount accretion		3,389
Balance at June 30, 2023	$	2,228,100

(1) In January 2023, the Company 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 six months ended June 30, 2023, the Company recognized a realized loss of $5.6 million in the Company's consolidated statements of operations upon the sale of the senior mortgage loan as the carrying value exceeded the sale price of the loan. In addition, in April 2023, the Company closed the sale of a senior mortgage loan with outstanding principal of $27.2 million, which was collateralized by an office property located in Illinois, 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 January 2023 maturity date. The Company did not recognize any unrealized gain or loss in the Company's consolidated statements of operations upon the sale of the senior mortgage loan as the carrying value was equal to the sale price of the loan.

Except as described in the table above listing the Company's loans held for investment portfolio, as of June 30, 2023, all loans held for investment were paying in accordance with their contractual terms. As of June 30, 2023, the Company had five loans held for investment on non-accrual status with a carrying value of $170.8 million. As of December 31, 2022, the Company had three loans held for investment on non-accrual status with a carrying value of $99.1 million.

4. CURRENT EXPECTED CREDIT LOSSES

The Company estimates its CECL Reserve primarily using a probability-weighted model that considers the likelihood of default and expected loss given default for each individual loan. Calculation of the CECL Reserve requires loan specific data, which includes capital senior to the Company when the Company is the subordinate lender, changes in net operating income, debt service coverage ratio, loan-to-value, occupancy, property type and geographic location. Estimating the CECL Reserve also requires significant judgment with respect to various factors, including (i) the appropriate historical loan loss reference data, (ii) the expected timing of loan repayments, (iii) calibration of the likelihood of default to reflect the risk characteristics of the Company's floating rate loan portfolio and (iv) the Company's current and future view of the macroeconomic environment. The Company may consider loan-specific qualitative factors on certain loans to estimate its CECL Reserve. In order to estimate the future expected loan losses relevant to the Company's portfolio, the Company utilizes historical market loan loss data licensed from a third party data service. The third party's loan database includes historical loss data for commercial mortgage-backed securities, or CMBS, issued dating back to 1998, which the Company believes is a reasonably comparable and available data set to its type of loans. The Company utilized macroeconomic data that reflects weak economic growth in the near term given current macroeconomic conditions; however, the actual financial impact on the Company of the current environment is highly uncertain. For periods beyond the reasonable and supportable forecast period, the Company reverts back to historical loss data. Management's current estimate of expected credit losses as of June 30, 2023 increased compared to the current estimate of expected credit losses as of March 31, 2023 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, and other loan specific factors partially offset by shorter average remaining loan term and loan repayments during the three months ended June 30, 2023. 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 specific reserve is warranted for a select asset.

As of June 30, 2023, the Company's CECL Reserve for its loans held for investment portfolio is $112.5 million or 466 basis points of the Company's total loans held for investment commitment balance of $2.4 billion and is bifurcated between the CECL reserve (contra-asset) related to outstanding balances on loans held for investment of $108.1 million and a liability for unfunded commitments of $4.3 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.

During the six months ended June 30, 2023, the senior mortgage loan on an office property located in Illinois with a principal balance of $56.9 million and the senior mortgage loan on a hotel property located in Illinois with a principal balance of $35.0 million were both downgraded to a risk rating of "5." As of June 30, 2023, both loans were assessed individually and the Company elected to assign specific CECL reserves of $42.1 million on the Illinois office loan and $5.9 million on the Illinois hotel loan. These specific CECL reserves for both loans were based on the Company's estimate of proceeds available from the anticipated sale of the collateral property less the estimated cost to sell the property and the specific 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 six months ended June 30, 2023 was as follows ($ in thousands):

Balance at March 31, 2023 [(1)]	$	87,502
Provision for current expected credit losses		20,612
Write-offs		—
Recoveries		—
Balance at June 30, 2023 [(1)]	$	108,114
Balance at December 31, 2022 [(1)]	$	65,969
Provision for current expected credit losses		42,145
Write-offs		—
Recoveries		—
Balance at June 30, 2023 [(1)]	$	108,114

(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 six months ended June 30, 2023 was as follows ($ in thousands):

Balance at March 31, 2023 [(1)]	$	4,825
Provision for current expected credit losses		(485)
Write-offs		—
Recoveries		—
Balance at June 30, 2023 [(1)]	$	4,340
Balance at December 31, 2022 [(1)]	$	5,339
Provision for current expected credit losses		(999)
Write-offs		—
Recoveries		—
Balance at June 30, 2023 [(1)]	$	4,340

(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 June 30, 2023, 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):

Risk rating:	2023	2022	2021	2020	2019	Prior	Total
1	$ —	$ 13,554	$ 5,592	$ —	$ —	$ —	$ 19,146
2	—	35,004	276,653	—	—	56,790	368,447
3	46,758	466,522	498,689	121,999	103,291	29,217	1,266,476
4	—	81,224	—	210,646	183,269	16,823	491,962
5	—	—	—	—	—	82,069	82,069
Total	$ 46,758	$ 596,304	$ 780,934	$ 332,645	$ 286,560	$ 184,899	$ 2,228,100

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 June 30, 2023 and December 31, 2022, interest receivable of $14.6 million and $14.0 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 March 8, 2019, the Company acquired legal title to a hotel property located in New York through a deed in lieu of foreclosure. Prior to March 8, 2019, the hotel property collateralized a $38.6 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 December 2018 maturity date. In conjunction with the deed in lieu of foreclosure, the Company derecognized the $38.6 million senior mortgage loan and recognized the hotel property as real estate owned. As of the date of the deed in lieu of foreclosure, the Company did not expect to complete a sale of the hotel property within the next twelve months and thus, the hotel property was considered held for use, and was carried at its estimated fair value at acquisition and was presented net of accumulated depreciation 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 hotel property of $36.9 million and the net assets held at the hotel property of $1.7 million at acquisition approximated the $38.6 million carrying value of the senior mortgage loan.

On November 8, 2021, the Company entered into a Purchase and Sale Agreement to sell the hotel property to a third party for $40.0 million and the sale closed on March 1, 2022. For the six months ended June 30, 2022, the Company recognized a $2.2 million gain on the sale of the hotel property as the net carrying value of the hotel property as of the March 1, 2022 sale date was lower than the net sales proceeds received by the Company. The gain on the sale of the hotel property is included within gain on sale of real estate owned in the Company's consolidated statements of operations. In connection with the sale of the hotel property, the Company provided a senior mortgage loan to the buyer of the hotel property. The initial advance funded under such loan was $30.7 million, with up to another $25.0 million of additional loan proceeds to be available for future advances to cover a portion of the anticipated property renovation plan costs, provided certain conditions are satisfied. At closing, the buyer contributed $12.9 million of equity into the purchase. Additionally, the buyer is required to fund an additional $8.7 million of equity associated with the anticipated property renovation plan costs.

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 June 30, 2023 and December 31, 2022, the outstanding balances and total commitments under the Financing Agreements consisted of the following ($ in thousands):

	June 30, 2023		December 31, 2022	
	Outstanding Balance	Total Commitment	Outstanding Balance	Total Commitment
Secured Funding Agreements:				
Wells Fargo Facility	$ 241,844	$ 450,000 (1)	$ 270,798	$ 450,000 (1)
Citibank Facility	236,240	325,000	236,240	325,000
CNB Facility	—	75,000	—	75,000
MetLife Facility	—	180,000	—	180,000
Morgan Stanley Facility	203,173	250,000	198,193	250,000
Subtotal	$ 681,257	$ 1,280,000	$ 705,231	$ 1,280,000
Notes Payable	$ 105,000	$ 105,000	$ 105,000	$ 105,000
Secured Term Loan	$ 150,000	$ 150,000	$ 150,000	$ 150,000
Total	$ 936,257	$ 1,535,000	$ 960,231	$ 1,535,000

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

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

Wells Fargo Facility

The Company is party to a master repurchase funding facility with Wells Fargo Bank, National Association ("Wells Fargo") (the "Wells Fargo Facility"), which allows the Company to borrow up to $450.0 million. The maximum commitment may be increased to up to $500.0 million at the Company's option, subject to the satisfaction of certain conditions, including payment of an upsize fee. Under the Wells Fargo Facility, the Company is permitted to sell, and later repurchase, certain qualifying senior commercial mortgage loans, A-Notes, pari-passu participations in commercial mortgage loans and mezzanine loans under certain circumstances, subject to available collateral approved by Wells Fargo in its sole discretion. The funding period of the Wells Fargo Facility expires on December 15, 2025. The initial maturity date of the Wells Fargo Facility is December 15, 2025, subject to two 12-month extensions, each of which may be exercised at the Company's option, subject to the satisfaction of certain conditions, including payment of an extension fee, which, if both were exercised, would extend the maturity date of the Wells Fargo Facility to December 14, 2027. Advances under the Wells Fargo Facility accrue interest at a

per annum rate equal to the sum of one-month SOFR plus a pricing margin range of 1.50% to 3.75%, subject to certain exceptions.

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. Prior to the January 2022 amendment, the Company incurred a non-utilization fee of 25 basis points per annum on the average daily available balance of the Citibank Facility to the extent less than 75% of the Citibank Facility was utilized. Subsequent to the January 2022 amendment, 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 both the three and six months ended June 30, 2023, the Company did not incur a non-utilization fee. For both the three and six months ended June 30, 2022, the Company incurred a non-utilization fee of $11 thousand. The non-utilization fee is included within interest expense in the Company's consolidated statements of operations.

CNB Facility

The Company is party to a $75.0 million secured revolving funding facility with City National Bank (the "CNB Facility"). The Company is permitted to borrow funds under the CNB Facility to finance investments and for other working capital and general corporate needs. In February 2023, the Company exercised a 12-month extension option on the CNB Facility to extend the maturity date to March 11, 2024. Advances under the CNB Facility accrue interest at a per annum rate equal to the sum of, at the Company's option, either (a) SOFR (with a 0.35% floor) plus 2.65% or (b) a base rate (which is the highest of a prime rate, the federal funds rate plus 0.50%, or Daily Simple SOFR plus 1.00%) plus 1.00%; provided that in no event shall the interest rate be less than 2.65%. 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 six months ended June 30, 2023, the Company incurred a non-utilization fee of $71 thousand and $141 thousand, respectively. For the three and six months ended June 30, 2022, the Company incurred a non-utilization fee of $70 thousand and $140 thousand, respectively. The non-utilization fee is included within interest expense in the Company's consolidated statements of operations.

MetLife Facility

The Company is party to a $180.0 million revolving master repurchase facility with Metropolitan Life Insurance Company ("MetLife") (the "MetLife Facility"), pursuant to which the Company may sell, and later repurchase, commercial mortgage loans meeting defined eligibility criteria which are approved by MetLife in its sole discretion. In June 2023, the Company exercised a 12-month extension option on the MetLife Facility to extend the maturity date to August 13, 2024. Advances under the MetLife Facility accrue interest at a per annum rate equal to the sum of one-month SOFR plus a spread of 2.50%, subject to certain exceptions. Unless at least 65% of the MetLife Facility is utilized, unused commitments under the MetLife Facility accrue non-utilization fees at the rate of 0.25% per annum on the average daily available balance. For the three and six months ended June 30, 2023, the Company incurred a non-utilization fee of $74 thousand and $147 thousand, respectively. For the three and six months ended June 30, 2022, the Company incurred a non-utilization fee of $61 thousand and $121 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 January 16, 2024, 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 January 16, 2025. Advances under the Morgan Stanley Facility generally accrue interest at a per annum rate

equal to the sum of one-month SOFR plus a spread ranging from 1.75% to 2.25%, determined by Morgan Stanley, depending upon the mortgage loan sold to Morgan Stanley in the applicable transaction. See Note 17 included in these consolidated financial statements for a subsequent event related to the Morgan Stanley Facility.

Notes Payable

Certain of the Company's subsidiaries were party to two separate non-recourse note agreements with the lenders referred to therein, consisting of (1) a $28.3 million note that was closed in June 2019, which was secured by a hotel property located in New York that was recognized as real estate owned in the Company's consolidated balance sheets and (2) a $23.5 million note that was closed in November 2019, which was secured by a $34.6 million senior mortgage loan held by the Company on a multifamily property located in South Carolina.

The $28.3 million note was repaid in full in conjunction with the sale of the hotel property that was recognized as real estate owned on March 1, 2022. See Note 5 for further details. Advances under the $28.3 million note accrued interest at a per annum rate equal to the sum of one-month LIBOR plus a spread of 3.00%.

In June 2022, the Company repaid the $23.5 million note in full. Advances under the $23.5 million note accrued interest at a per annum rate equal to the sum of one-month LIBOR plus a spread of 3.75%.

In July 2022, ACRC Lender CO LLC, a wholly owned subsidiary of the Company entered into a Credit and Security Agreement with Capital One, National Association, as administrative agent and collateral agent, and the lender referred to therein. The Credit and Security Agreement provides for a $105.0 million recourse note (together with the two non-recourse note agreements discussed above, the "Notes Payable"). The $105.0 million note is secured by a $133.0 million senior mortgage loan held by the Company on a multifamily property located in New York and is fully and unconditionally guaranteed by the Company pursuant to a Guaranty of Recourse Obligation. The initial maturity date of the $105.0 million note is July 28, 2025, subject to two 12-month extensions, each of which may be exercised at the Company's option, subject to the satisfaction of certain conditions, including payment of an extension fee, which, if both were exercised, would extend the maturity date to July 28, 2027. The $105.0 million note accrues interest at a per annum rate equal to the sum of one-month SOFR plus a spread of 2.00%. As of June 30, 2023, the total outstanding principal balance of the note was $105.0 million.

Secured Term Loan

The Company and certain of its subsidiaries are party to a $150.0 million Credit and Guaranty Agreement with the lenders referred to therein and Cortland Capital Market Services LLC, as administrative agent and collateral agent for the lenders (the "Secured Term Loan"). The maturity date of the Secured Term Loan is November 12, 2026. Advances under the Secured Term Loan are subject to the following fixed rates: (i) 4.50% per annum until May 12, 2025, (ii) after May 12, 2025 through November 12, 2025, the interest rate increases 0.125% every three months and (iii) after November 12, 2025 through November 12, 2026, the interest rate increases 0.250% every three months. As of June 30, 2023, the total outstanding principal balance of the Secured Term Loan was $150.0 million.

The total original issue discount on the Secured Term Loan was equal to 0.50% of the commitment amount and represents a discount to the debt cost to be amortized into interest expense using the effective interest method over the term of the Secured Term Loan. For both the three and six months ended June 30, 2023 and 2022, the estimated per annum effective interest rate of the Secured Term Loan, which is equal to the fixed interest rate plus the accretion of the original issue discount and associated costs, was 4.6%.

7. SECURED BORROWINGS

A subsidiary of the Company was party to a secured borrowing arrangement related to a transferred loan that was closed in February 2020. In April 2019, the Company originated a $30.5 million loan on an office property located in North Carolina, which was bifurcated between a $24.4 million senior mortgage loan and a $6.1 million mezzanine loan. In February 2020, the Company transferred its interest in the $24.4 million senior mortgage loan to a third party and retained the $6.1 million mezzanine loan. The Company evaluated whether the transfer of the $24.4 million senior mortgage loan met the criteria in FASB ASC Topic 860, *Transfers and Servicing*, for treatment as a sale – legal isolation, ability of transferee to pledge or exchange the transferred assets without constraint and transfer of effective control – and determined that the transfer did not qualify as a sale and thus, was treated as a financing transaction. As such, the Company did not derecognize the $24.4 million senior mortgage loan asset and recorded a secured borrowing liability in the Company's consolidated balance sheets. The initial maturity date of the $24.4 million secured borrowing was May 5, 2023, subject to one 12-month extension, which may have been exercised at the transferee's option, which, if exercised, would have extended the maturity date to May 5, 2024. Advances

under the $24.4 million secured borrowing accrued interest at a per annum rate equal to the sum of one-month LIBOR plus a spread of 2.50%. In July 2022, the $30.5 million loan was fully repaid and thus, the $24.4 million secured borrowing liability was derecognized.

8. DERIVATIVE FINANCIAL INSTRUMENTS

The Company uses derivative financial instruments, which includes 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.

The following tables detail our outstanding interest rate derivatives that were designated as cash flow hedges of interest rate risk as of June 30, 2023 and December 31, 2022 (notional amount in thousands):

	As of									
	June 30, 2023					December 31, 2022				
Interest Rate Derivatives	Number of Instruments	Notional Amount	Rate[1]	Index	Weighted Average Maturity (Years)	Number of Instruments	Notional Amount	Rate[1]	Index	Weighted Average Maturity (Years)
Interest rate swaps	1	$30,000	0.2075%	LIBOR[2]	0.5	1	$410,000	0.2075%	LIBOR[2]	0.4
Interest rate caps	0[3]	—	—	—	—	0[3]	—	—	—	—

(1) Represents fixed rate for interest rate swaps and strike rate for interest rate caps.
(2) Subject to a 0.00% floor.
(3) 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 three months ended March 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 is 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 six months ended June 30, 2023, the Company recognized a realized gain of $266 thousand and $723 thousand, respectively, and for the three and six months ended June 30, 2022, the Company recognized a realized gain of $264 thousand and $268 thousand, respectively, through a reduction in interest expense on the termination of the interest rate cap within current earnings.

The following table summarizes the fair value of our derivative financial instruments ($ in thousands):

	Fair Value of Derivatives in an Asset Position[1] as of		Fair Value of Derivatives in a Liability Position[2] as of	
	June 30, 2023	December 31, 2022	June 30, 2023	December 31, 2022
Derivatives designated as hedging instruments:				
Interest rate derivatives	$ 712	$ 6,565	$ —	$ —

(1) Included in other assets in the Company's consolidated balance sheets.
(2) Included in other liabilities in the Company's consolidated balance sheets.

9. COMMITMENTS AND CONTINGENCIES

As of June 30, 2023, 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 June 30, 2023 and December 31, 2022, 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	
	June 30, 2023	December 31, 2022
Total commitments	$ 2,413,134	$ 2,510,308
Less: funded commitments	(2,252,070)	(2,282,821)
Total unfunded commitments	$ 161,064	$ 227,487

The Company from time to time may be a party to litigation relating to claims arising in the normal course of business. As of June 30, 2023, the Company is not aware of any legal claims that could materially impact its business, financial condition or results of operations.

10. STOCKHOLDERS' EQUITY

Stock Repurchase Program

On July 26, 2022, the Company's Board of Directors approved a stock repurchase program of up to $50.0 million, which was expected to be in effect until July 26, 2023, or until the approved dollar amount had been used to repurchase shares (the "Repurchase Program"). On July 25, 2023, the Company's Board of Directors renewed the Repurchase Program of up to $50.0 million, which is expected to be in effect until July 31, 2024, or until the approved dollar amount has been used to repurchase shares. Pursuant to the Repurchase Program, the Company may repurchase shares of its common stock in amounts, at prices and at such times as it deems appropriate, subject to market conditions and other considerations, including all applicable legal requirements. Repurchases may include purchases on the open market or privately negotiated transactions, under Rule 10b5-1 trading plans, under accelerated share repurchase programs, in tender offers and otherwise. The Repurchase Program does not obligate the Company to acquire any particular amount of shares of its common stock and may be modified or suspended at any time at its discretion. During the three months ended June 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 six months ended June 30, 2023. See "Equity Incentive Plan" below for shares issued under the Equity Incentive Plan described below.

Equity Incentive Plan

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

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

The following tables summarize the (i) non-vested shares of restricted stock and RSUs and (ii) vesting schedule of shares of restricted stock and RSUs for the Company's directors and officers and employees of the Manager as of June 30, 2023:

Schedule of Non-Vested Share and Share Equivalents

	Restricted Stock Grants—Directors	RSUs—Officers and Employees of the Manager	Total
Balance at December 31, 2022	16,137	832,472	848,609
Granted	64,266	—	64,266
Vested	(13,218)	(163,989)	(177,207)
Forfeited	—	(4,833)	(4,833)
Balance at June 30, 2023	67,185	663,650	730,835

Future Anticipated Vesting Schedule

	Restricted Stock Grants —Directors	RSUs—Officers and Employees of the Manager	Total
2023	32,970	4,285	37,255
2024	33,798	283,238	317,036
2025	417	231,931	232,348
2026	—	144,196	144,196
2027	—	—	—
Total	67,185	663,650	730,835

11. EARNINGS PER SHARE

The following information sets forth the computations of basic and diluted earnings (loss) per common share for the three and six months ended June 30, 2023 and 2022 ($ in thousands, except share and per share data):

	For the three months ended June 30,		For the six months ended June 30,	
	2023	2022	2023	2022
Net income (loss) attributable to common stockholders	$ (2,198)	$ 10,031	$ (8,638)	$ 26,231
Divided by:				
Basic weighted average shares of common stock outstanding:	54,347,204	50,562,559	54,468,752	48,892,754
Weighted average non-vested restricted stock and RSUs (1)	—	436,946	—	443,513
Diluted weighted average shares of common stock outstanding:	54,347,204	50,999,505	54,468,752	49,336,267
Basic earnings (loss) per common share	$ (0.04)	$ 0.20	$ (0.16)	$ 0.54
Diluted earnings (loss) per common share	$ (0.04)	$ 0.20	$ (0.16)	$ 0.53

(1) For the three and six months ended June 30, 2023, the weighted average non-vested restricted stock and RSUs of 716,983 and 699,896 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.

12. 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 six months ended June 30, 2023 and 2022 ($ in thousands):

	For the three months ended June 30,		For the six months ended June 30,	
	2023	2022	2023	2022
Current	$ 9	$ 8	$ 19	$ 24
Deferred	—	—	—	—
Excise tax	(55)	90	45	180
Total income tax expense (benefit), including excise tax	$ (46)	$ 98	$ 64	$ 204

For the three and six months ended June 30, 2023, the Company incurred an expense (benefit) of $(55) thousand and $45 thousand, respectively, and for three and six months ended June 30, 2022, the Company incurred an expense of $90 thousand and $180 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 June 30, 2023, tax years 2019 through 2023 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.

13. 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

Derivative Financial Instruments

The Company is required to record derivative financial instruments at fair value on a recurring basis in accordance with GAAP. The fair value of interest rate derivatives was estimated using a third-party specialist, based on contractual cash flows and observable inputs comprising credit spreads.

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 June 30, 2023 and December 31, 2022, 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 June 30, 2023 and December 31, 2022 ($ in thousands):

	As of June 30, 2023			
	Face Amount	Amortized Cost	Unamortized Discount	Unrealized Gain (Loss), Net
Available-for-sale debt securities	$ 28,000	$ 27,893	$ 107	$ 77

	As of December 31, 2022			
	Face Amount	Amortized Cost	Unamortized Discount	Unrealized Gain (Loss), Net
Available-for-sale debt securities	$ 28,000	$ 27,881	$ 119	$ 55

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 and liabilities measured at fair value on a recurring basis as of June 30, 2023 and December 31, 2022 ($ in thousands):

	As of June 30, 2023			
	Level 1	Level 2	Level 3	Total
Financial assets:				
Interest rate derivatives	$ —	$ 712	$ —	$ 712
Available-for-sale debt securities	—	27,970	—	27,970
Financial liabilities:				
Interest rate derivatives	$ —	$ —	$ —	$ —

	As of December 31, 2022			
	Level 1	Level 2	Level 3	Total
Financial assets:				
Interest rate derivatives	$ —	$ 6,565	$ —	$ 6,565
Available-for-sale debt securities	—	27,936	—	27,936
Financial liabilities:				
Interest rate derivatives	$ —	$ —	$ —	$ —

As of June 30, 2023 and December 31, 2022, the Company did not have any nonfinancial assets or liabilities required to be recorded at fair value on a recurring basis.

Nonrecurring Fair Value Measurements

The Company was required to record real estate owned, a nonfinancial asset, at fair value on a nonrecurring basis in accordance with GAAP. Real estate owned consisted of a hotel property that was acquired by the Company on March 8, 2019 through 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 was recorded at fair value at acquisition using Level 3 inputs and is evaluated for indicators of impairment on a quarterly basis. Real estate owned was considered impaired when the sum of estimated future undiscounted cash flows expected to be generated by the real estate owned over the estimated remaining holding period is less than the carrying amount of such real estate owned. Cash flows include operating cash flows and anticipated capital proceeds generated by the real estate owned. An impairment charge is recorded equal to the excess of the carrying value of the real estate owned over the fair value. The fair value of the hotel 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 a hotel, certain assumptions are made including, but not limited to: (1) projected operating cash flows, including factors such as booking pace, growth rates, occupancy, daily room rates, hotel specific operating costs and future capital expenditures; and (2) projected cash flows from the eventual disposition of the hotel based upon the Company's estimation of a hotel specific capitalization rate, hotel specific discount rates and comparable selling prices in the market.

As of June 30, 2023 and December 31, 2022, the Company did not have any financial assets or liabilities or nonfinancial assets or liabilities required to be recorded at fair value on a nonrecurring basis.

Financial Assets and Liabilities Not Measured at Fair Value

As of June 30, 2023 and December 31, 2022, the carrying values and fair values of the Company's financial assets and liabilities recorded at cost are as follows ($ in thousands):

		As of			
		June 30, 2023		December 31, 2022	
	Level in Fair Value Hierarchy	Carrying Value	Fair Value	Carrying Value	Fair Value
Financial assets:					
Loans held for investment	3	$ 2,228,100	$ 2,127,328	$ 2,264,008	$ 2,233,319
Financial liabilities:					
Secured funding agreements	2	$ 681,257	$ 681,257	$ 705,231	$ 705,231
Notes payable	2	104,559	105,000	104,460	103,635
Secured term loan	3	149,295	128,634	149,200	137,571
Collateralized loan obligation securitization debt (consolidated VIEs)	2	735,093	709,517	777,675	749,242

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 loan fees and origination costs. 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, 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.

14. 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 10 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 GAAP 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. On April 25, 2022, the Company and ACREM entered into an amendment to the Management Agreement to (a) exclude $2.4 million of net income associated with the sale of the real estate owned property for the three months ended March 31, 2022 and to (b) include $2.0 million of net income associated with the Company's gain on the termination of its interest rate cap derivative for the three months ended March 31, 2022, in each case, with respect to Core Earnings for the three months ended March 31, 2022. 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 six months ended June 30, 2023, the Company incurred incentive fees of $334 thousand. For the three and six months ended June 30, 2022, the Company incurred incentive fees of $965 thousand and $1.3 million, respectively.

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, 2024, 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 six months ended June 30, 2023 and 2022 and amounts payable to the Company's Manager as of June 30, 2023 and December 31, 2022 ($ in thousands):

	Incurred				Payable	
	For the three months ended June 30,		For the six months ended June 30,		As of	
	2023	2022	2023	2022	June 30, 2023	December 31, 2022
Affiliate Payments						
Management fees	$ 3,000	$ 2,801	$ 6,010	$ 5,417	$ 3,000	$ 3,026
Incentive fees	334	965	334	1,323	334	1,264
General and administrative expenses	1,109	796	1,842	1,631	1,313	1,232
Direct costs (1)	19	10	40	40	159	58
Total	$ 4,462	$ 4,572	$ 8,226	$ 8,411	$ 4,806	$ 5,580

(1) For the three and six months ended June 30, 2023 and 2022, 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 June 30, 2023 and December 31, 2022, the total outstanding principal balance for co-investments held by the Company was $225.1 million and $213.7 million, respectively.

Loan Purchases From Affiliate

An affiliate of the Company's Manager maintains a $200.0 million real estate debt warehouse investment vehicle (the "Ares Warehouse Vehicle") that holds Ares Management originated commercial real estate loans, which are made available to purchase by other investment vehicles, including the Company and other Ares Management managed investment vehicles. From time to time, the Company may purchase loans from the Ares Warehouse Vehicle. 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 once the Company has sufficient liquidity. The Company is not obligated to purchase any loans originated by the Ares Warehouse Vehicle. 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 the Ares Warehouse Vehicle 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 the Ares Warehouse Vehicle for the three and six months ended June 30, 2023.

15. DIVIDENDS AND DISTRIBUTIONS

The following table summarizes the Company's dividends declared during the six months ended June 30, 2023 and 2022 ($ in thousands, except per share data):

Date Declared	Record Date	Payment Date	Per Share Amount	Total Amount
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)	19,346
Total cash dividends declared for the six months ended June 30, 2023			$ 0.70	$ 38,526
May 3, 2022	June 30, 2022	July 15, 2022	$ 0.35 (1)	$ 19,198
February 15, 2022	March 31, 2022	April 14, 2022	0.35 (1)	16,740
Total cash dividends declared for the six months ended June 30, 2022			$ 0.70	$ 35,938

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

16. 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 June 30, 2023, the FL3 Notes were collateralized by interests in a pool of 16 mortgage assets having a total principal balance of $469.1 million (the "FL3 Mortgage Assets") that were closed by a wholly-owned subsidiary of the Company and approximately $87.9 million of receivables related to repayments of outstanding principal on previous mortgage assets. As of December 31, 2022, the FL3 Notes were collateralized by interests in a pool of 16 mortgage assets having a total principal balance of approximately $429.4 million that were closed by a wholly-owned subsidiary of the Company and approximately $127.6 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 may direct the FL3 Issuer to acquire additional mortgage assets meeting applicable reinvestment criteria using the principal repayments from the FL3 Mortgage Assets, subject to the satisfaction of certain conditions, including receipt of a Rating Agency Confirmation and investor approval of the new mortgage assets.

The contribution of the FL3 Mortgage Assets to the Issuer is governed by a Mortgage Asset Purchase Agreement between 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.

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 ACRC Lender LLC, a wholly owned subsidiary of the Company (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 June 30, 2023, the FL4 Notes were collateralized by interests in a pool of 11 mortgage assets having a total principal balance of approximately $417.3 million (the "FL4 Mortgage Assets") that were closed by a wholly-owned subsidiary of the Company. As of December 31, 2022, the FL4 Notes were collateralized by interests in a pool of 12 mortgage assets having a total principal balance of approximately $458.3 million that were closed by a wholly-owned subsidiary of the Company and approximately $1.9 million of receivables related to repayments of outstanding principal on previous mortgage assets. During the period ending in April 2024 (the "Companion Participation Acquisition Period"), the FL4 Issuer may use certain principal proceeds from the FL4 Mortgage Assets to acquire additional funded pari-passu participations related to the FL4 Mortgage Assets that meet certain acquisition criteria.

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

In connection with the FL4 CLO Securitization, the FL4 Issuer and FL4 Co-Issuer offered and issued the following classes of FL4 Notes to third party investors: Class A, Class A-S, Class B, Class C, Class D and Class E Notes (collectively, the "FL4 Offered Notes"). A wholly owned subsidiary of the Company retained approximately $62.5 million of the FL4 Notes and all of the $64.3 million of preferred equity in the FL4 Issuer, which totaled $126.8 million. The Company, as the holder of the subordinated FL4 Notes and all of the preferred equity in the FL4 Issuer, has the obligation to absorb losses of the FL4 CLO Securitization, since the Company has a first loss position in the capital structure of the FL4 CLO Securitization. During the three and six months ended June 30, 2023, the Company paid down $0.8 million and $42.9 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 June 30, 2023, the Company's maximum risk of loss was $238.2 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 June 30, 2023, the Company's maximum risk of loss was $81.2 million, which represents the carrying value of its investment in the VIE.

17. 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 six months ended June 30, 2023, except as disclosed below.

On July 27, 2023, ACRC Lender MS LLC ("ACRC Lender MS"), a subsidiary of the Company, entered into an amendment to the Morgan Stanley Facility with Morgan Stanley Bank, N.A. The purpose of the amendment to the Morgan Stanley Facility was to, among other things, extend the initial maturity date of the Morgan Stanley Facility to July 16, 2025. The initial maturity date of the Morgan Stanley Facility is subject to one 12-month extension, which may be exercised at ACRC Lender MS's option, subject to the satisfaction of certain conditions and applicable extension fees being paid.

The Company's Board of Directors declared a regular cash dividend of $0.33 per common share for the third quarter of 2023. The third quarter 2023 cash dividend will be payable on October 17, 2023 to common stockholders of record as of September 29, 2023.

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 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 Investment Company Act of 1940 (the "1940 Act").

Developments During the Second Quarter of 2023:

- We closed the sale of the senior mortgage loan collateralized by an office property located in Illinois that was in maturity default due to the failure of the borrower to repay the outstanding principal balance of the loan by the January 2023 maturity date. At the time of the sale, the carrying value of the senior mortgage loan was $27.4 million and we did not recognize any gain or loss upon the sale of the senior mortgage loan as the carrying value was equal to the sale price of the loan.

- We originated a $49.0 million senior mortgage loan on an industrial property located in Massachusetts.

Trends Affecting Our Business

Global publicly-traded markets rallied during the first half of 2023, driven by normalization of the macroeconomic environment. While inflationary pressures have shown signs of moderation, the commercial real estate markets continue to be impacted by certain property specific and macroeconomic factors. Most notably, the Federal Reserve's tightening monetary policy and the uncertainty with respect to small and regional U.S. banking demand to finance commercial real estate properties. Office properties, specifically, continue to experience unique headwinds driven by the increased prevalence of remote work and elevated costs to operate or configure office properties. These factors have largely resulted in lower demand for office space and driven rising vacancy rates.

Offsetting some of these market dynamics is a material amount of unspent capital targeting commercial real estate properties that could support values and elevate transaction activity.

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 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 will 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 may also be impacted by credit losses in excess of initial anticipations or unanticipated credit events experienced by borrowers.

Stock Repurchase Program

On July 26, 2022, our Board of Directors approved the Repurchase Program of up to $50.0 million, which was expected to be in effect until July 26, 2023, or until the approved dollar amount had been used to repurchase shares. On July 25, 2023, our Board of Directors renewed the Repurchase Program of up to $50.0 million, which is expected to be in effect until July 31, 2024, or until the approved dollar amount has been used to repurchase shares. Pursuant to the Repurchase Program, we may repurchase shares of our common stock in amounts, at prices and at such times as we deem appropriate, subject to market

conditions and other considerations, including all applicable legal requirements. Repurchases may include purchases on the open market or privately negotiated transactions, under Rule 10b5-1 trading plans, under accelerated share repurchase programs, in tender offers and otherwise. The Repurchase Program does not obligate us to acquire any particular amount of shares of our common stock and may be modified or suspended at any time at our discretion. During the three months ended June 30, 2023, we repurchased a total of 535,965 shares of our 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.

Loans Held for Investment Portfolio

As of June 30, 2023, our portfolio included 53 loans held for investment, excluding 158 loans that were repaid, sold or converted to real estate owned since inception. As of June 30, 2023, the aggregate originated commitment under these loans at closing was approximately $2.5 billion and outstanding principal was $2.3 billion. During the six months ended June 30, 2023, we funded approximately $106.8 million of outstanding principal, received repayments of $97.2 million of outstanding principal and sold two loans with outstanding principal of $41.5 million to third parties. As of June 30, 2023, 71.2% of our loans have SOFR floors, with a weighted average floor of 1.12%, 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 June 30, 2023, 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 June 30, 2023 ($ in thousands):

	As of June 30, 2023				
	Carrying Amount (1)	Outstanding Principal (1)	Weighted Average Unleveraged Effective Yield		Weighted Average Remaining Life (Years)
Senior mortgage loans	$ 2,190,809	$ 2,212,972	8.8 % (2)	9.5 % (3)	1.3
Subordinated debt and preferred equity investments	37,291	39,098	8.0 % (2)	15.1 % (3)	2.3
Total loans held for investment portfolio	$ 2,228,100	$ 2,252,070	8.7 % (2)	9.5 % (3)	1.3

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

(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 June 30, 2023 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 June 30, 2023 as weighted by the total outstanding principal balance of each interest accruing loan (excludes loans on non-accrual status as of June 30, 2023).

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. There have been no significant changes to our critical accounting estimates as disclosed in Part II, "Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations" in our 2022 Annual Report on Form 10-K. See Note 2 to our consolidated financial statements included in this quarterly report on Form 10-Q, which describes factors which may impact management's estimates and assumptions and the recently issued

accounting pronouncements that were adopted or not yet required to be adopted by us.

RECENT DEVELOPMENTS

On July 27, 2023, ACRC Lender MS LLC ("ACRC Lender MS"), one of our subsidiaries, entered into an amendment to the Morgan Stanley Facility with Morgan Stanley Bank, N.A. The purpose of the amendment to the Morgan Stanley Facility was to, among other things, extend the initial maturity date of the Morgan Stanley Facility to July 16, 2025. The initial maturity date of the Morgan Stanley Facility is subject to one 12-month extension, which may be exercised at ACRC Lender MS's option, subject to the satisfaction of certain conditions and applicable extension fees being paid.

Our Board of Directors declared a regular cash dividend of $0.33 per common share for the third quarter of 2023. The third quarter 2023 cash dividend will be payable on October 17, 2023 to common stockholders of record as of September 29, 2023.

RESULTS OF OPERATIONS

The following table sets forth a summary of our consolidated results of operations for the three and six months ended June 30, 2023 and 2022 ($ in thousands):

	For the three months ended June 30,		For the six months ended June 30,	
	2023	2022	2023	2022
Total revenue	$ 24,990	$ 25,146	$ 51,491	$ 49,170
Total expenses	7,107	7,249	13,306	17,758
Provision for current expected credit losses	20,127	7,768	41,146	7,174
Realized losses on loans sold	—	—	5,613	—
Gain on sale of real estate owned	—	—	—	2,197
Income (loss) before income taxes	(2,244)	10,129	(8,574)	26,435
Income tax expense (benefit), including excise tax	(46)	98	64	204
Net income (loss) attributable to common stockholders	$ (2,198)	$ 10,031	$ (8,638)	$ 26,231

The following tables set forth select details of our consolidated results of operations for the three and six months ended June 30, 2023 and 2022 ($ in thousands):

Net Interest Margin

	For the three months ended June 30,		For the six months ended June 30,	
	2023	2022	2023	2022
Interest income	$ 51,941	$ 38,621	$ 101,441	$ 71,986
Interest expense	(26,951)	(13,475)	(49,950)	(25,488)
Net interest margin	$ 24,990	$ 25,146	$ 51,491	$ 46,498

For the three months ended June 30, 2023 and 2022, net interest margin was approximately $25.0 million and $25.1 million, respectively. For the three months ended June 30, 2023 and 2022, interest income of $51.9 million and $38.6 million, respectively, was generated by weighted average earning assets of $2.2 billion and $2.5 billion, respectively, offset by $27.0 million and $13.5 million, respectively, of interest expense, unused fees and amortization of deferred loan costs. The weighted average borrowings 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), the Secured Term Loan, Secured Borrowings and securitization debt (as defined below) were $1.7 billion for the three months ended June 30, 2023 and $1.8 billion for the three months ended June 30, 2022. The decrease in net interest margin for the three months ended June 30, 2023 compared to the three months ended June 30, 2022 primarily relates to a decrease in our weighted average earning assets and weighted average borrowings for the three months ended June 30, 2023. This was partially offset by the benefit received from our interest rate hedging derivative contracts for the three months ended June 30, 2023 and the benefit received from the increase in LIBOR and SOFR rates on our loans held for investment for the three months ended June 30, 2023.

For the six months ended June 30, 2023 and 2022, net interest margin was approximately $51.5 million and $46.5 million, respectively. For the six months ended June 30, 2023 and 2022, interest income of $101.4 million and $72.0 million, respectively, was generated by weighted average earning assets of $2.3 billion and $2.4 billion, respectively, offset by $50.0 million and $25.5 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 $1.7 billion for the six months ended June 30, 2023 and $1.8 billion for the six months ended June 30, 2022. The increase in net interest margin for the six months ended June 30, 2023 compared to the six months ended June 30, 2022 primarily relates to the benefit received from our interest rate hedging derivative contracts for the six months ended June 30, 2023 and the benefit received from the increase in LIBOR and SOFR rates on our loans held for investment for the six months ended June 30, 2023. This was partially offset by a decrease in our weighted average earning assets and weighted average borrowings for the six months ended June 30, 2023.

Revenue From Real Estate Owned

On March 8, 2019, we acquired legal title to a hotel property through a deed in lieu of foreclosure. Prior to March 8, 2019, the hotel property collateralized a $38.6 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 December 2018 maturity date. In conjunction with the deed in lieu of foreclosure, we derecognized the $38.6 million senior mortgage loan and recognized the hotel property as real estate owned. For the three and six months ended June 30, 2023 and three months ended June 30, 2022, there was no revenue from real estate owned as we closed the sale of the hotel property to a third party on March 1, 2022. For the six months ended June 30, 2022, revenue from real estate owned was $2.7 million. Revenues consisted of room sales, food and beverage sales and other hotel revenues. In connection with the sale of the hotel property, we provided a senior mortgage loan to the buyer of the hotel property. The initial advance funded under such loan was $30.7 million, with up to another $25.0 million of additional loan proceeds to be available for future advances to cover a portion of the anticipated property renovation plan costs, provided certain conditions are satisfied. At closing, the buyer contributed $12.9 million of equity into the purchase. Additionally, the buyer is required to fund an additional $8.7 million of equity associated with the anticipated property renovation plan costs.

Operating Expenses

	For the three months ended June 30,		For the six months ended June 30,	
	2023	**2022**	**2023**	**2022**
Management and incentive fees to affiliate	$ 3,334	$ 3,766	$ 6,344	$ 6,740
Professional fees	626	1,100	1,397	1,878
General and administrative expenses	2,038	1,587	3,723	3,200
General and administrative expenses reimbursed to affiliate	1,109	796	1,842	1,631
Expenses from real estate owned	—	—	—	4,309
Total expenses	$ 7,107	$ 7,249	$ 13,306	$ 17,758

See the Related Party Expenses, Other Expenses and Expenses from Real Estate Owned discussions below for the cause of the decrease in operating expenses for the three months ended June 30, 2023 compared to the three months ended June 30, 2022 and the cause of the decrease in operating expenses for the six months ended June 30, 2023 compared to the six months ended June 30, 2022.

Related Party Expenses

For the three months ended June 30, 2023, related party expenses included $3.3 million in management and incentive fees due to our Manager pursuant to the Management Agreement, which consisted of $3.0 million in management fees and $0.3 million in incentive fees. For the three months ended June 30, 2023, related party expenses also included $1.1 million for our share of allocable general and administrative expenses for which we were required to reimburse our Manager pursuant to the Management Agreement. For the three months ended June 30, 2022, related party expenses included $3.8 million in management and incentive fees due to our Manager pursuant to the Management Agreement, which consisted of $2.8 million in management fees and $1.0 million in incentive fees. For the three months ended June 30, 2022, 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 increase in management fees for the three months ended June 30, 2023 compared to the three months ended June 30, 2022 primarily relates to an increase in our weighted average stockholders' equity for the three months ended June 30, 2023 as a result of the public offering of 7,000,000 shares of our common stock in May 2022, which generated net proceeds of approximately $103.2 million. The decrease in incentive fees for the three months ended June 30, 2023 compared to the three months ended June 30, 2022 primarily relates to our Core Earnings (defined below) for the twelve months ended June 30, 2023 exceeding the 8% minimum return by a lower margin than the twelve months ended June 30, 2022. "Core Earnings" is defined in the Management Agreement as GAAP 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 our Manager and our independent directors and after approval by a majority of our independent directors. Core Earnings is defined in the Management Agreement and is used to calculate the incentive fees the Company pays to ACREM. The increase in allocable general and administrative expenses due to our Manager for the three months ended June 30, 2023 compared to the three months ended June 30, 2022 primarily 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 and

the inclusion of additional eligible expense reimbursements per the Amended and Restated Management Agreement for the three months ended June 30, 2023 that became effective during the three months ended September 30, 2022.

For the six months ended June 30, 2023, related party expenses included $6.3 million in management and incentive fees due to our Manager pursuant to the Management Agreement, which consisted of $6.0 million in management fees and $0.3 million in incentive fees. For the six months ended June 30, 2023, related party expenses also included $1.8 million for our share of allocable general and administrative expenses for which we were required to reimburse our Manager pursuant to the Management Agreement. For the six months ended June 30, 2022, related party expenses included $6.7 million in management and incentive fees due to our Manager pursuant to the Management Agreement, which consisted of $5.4 million in management fees and $1.3 million in incentive fees. For the six months ended June 30, 2022, related party expenses also included $1.6 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 increase in management fees for the six months ended June 30, 2023 compared to the six months ended June 30, 2022 primarily relates to an increase in our weighted average stockholders' equity for the six months ended June 30, 2023 as a result of the public offering of 7,000,000 shares of our common stock in May 2022, which generated net proceeds of approximately $103.2 million. The decrease in incentive fees for the six months ended June 30, 2023 compared to the six months ended June 30, 2022 primarily relates to our Core Earnings for the twelve months ended June 30, 2023 exceeding the 8% minimum return by a lower margin than the twelve months ended June 30, 2022. The increase in allocable general and administrative expenses due to our Manager for the six months ended June 30, 2023 compared to the six months ended June 30, 2022 primarily 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 and the inclusion of additional eligible expense reimbursements per the Amended and Restated Management Agreement for the six months ended June 30, 2023 that became effective during the three months ended September 30, 2022.

Other Expenses

For the three months ended June 30, 2023 and 2022, professional fees were $0.6 million and $1.1 million, respectively. The decrease in professional fees for the three months ended June 30, 2023 compared to the three months ended June 30, 2022 primarily relates to a decrease in our use of third-party professionals due to changes in transaction activity year over year. For the three months ended June 30, 2023 and 2022, general and administrative expenses were $2.0 million and $1.6 million, respectively. The increase in general and administrative expenses for the three months ended June 30, 2023 compared to the three months ended June 30, 2022 primarily relates to an increase in stock-based compensation expense due to restricted stock and restricted stock unit awards granted after June 30, 2022.

For the six months ended June 30, 2023 and 2022, professional fees were $1.4 million and $1.9 million, respectively. The decrease in professional fees for the six months ended June 30, 2023 compared to the six months ended June 30, 2022 primarily relates to a decrease in our use of third-party professionals due to changes in transaction activity year over year. For the six months ended June 30, 2023 and 2022, general and administrative expenses were $3.7 million and $3.2 million, respectively. The increase in general and administrative expenses for the six months ended June 30, 2023 compared to the six months ended June 30, 2022 primarily relates to an increase in stock-based compensation expense due to restricted stock and restricted stock unit awards granted after June 30, 2022.

Expenses From Real Estate Owned

For the three and six months ended June 30, 2023 and three months ended June 30, 2022, there were no expenses from real estate owned as we closed the sale of the hotel property to a third party on March 1, 2022. For the six months ended June 30, 2022, expenses from real estate owned was comprised of the following ($ in thousands):

	For the six months ended June 30, 2022
Hotel operating expenses	$ 3,631
Interest expense on note payable	678
Depreciation expense	—
Expenses from real estate owned	$ 4,309

For the six months ended June 30, 2022, hotel operating expenses were $3.6 million. Hotel operating expenses consisted primarily of expenses incurred in the day-to-day operation of our hotel property, including room expense, food and beverage expense and other operating expenses. Room expense included housekeeping and front office wages and payroll taxes, reservation systems, room supplies, laundry services and other costs. Food and beverage expense primarily included the cost of food, the cost of beverages and associated labor costs. Other operating expenses included labor and other costs associated with administrative departments, sales and marketing, repairs and maintenance, real estate taxes, insurance, utility

costs and management and incentive fees paid to the hotel property manager. For the six months ended June 30, 2022, interest expense on our note payable was $0.7 million. For the six months ended June 30, 2022, no depreciation expense was incurred as the hotel property was classified as real estate owned held for sale effective in November 2021.

Provision for Current Expected Credit Losses

For the three months ended June 30, 2023 and 2022, the provision for current expected credit losses was $20.1 million and $7.8 million, respectively. The increase in the provision for current expected credit losses for the three months ended June 30, 2023 compared to the three months ended June 30, 2022 is 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, and other loan specific factors partially offset by shorter average remaining loan term and loan repayments during the three months ended June 30, 2023.

For the six months ended June 30, 2023 and 2022, the provision for current expected credit losses was $41.1 million and $7.2 million, respectively. The increase in the provision for current expected credit losses for the six months ended June 30, 2023 compared to the six months ended June 30, 2022 is 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, and other loan specific factors partially offset by shorter average remaining loan term and loan repayments during the six months ended June 30, 2023.

The current expected credit loss reserve (“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 specific 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 Sold

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 six months ended June 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.

Gain on Sale of Real Estate Owned

For the six months ended June 30, 2022, we recognized a $2.2 million gain on the sale of the hotel property that was recognized as real estate owned as the net carrying value of the hotel property as of the March 1, 2022 sale date was lower than the net sales proceeds received by the Company.

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

We expect our primary sources of cash to continue to be sufficient to fund our operating activities and cash commitments for investing and financing activities for at least the next 12 months and thereafter for the foreseeable future. As a result of the current macroeconomic environment, borrowers may be unable to make interest and principal payments timely, including at the maturity date of the borrower’s loan. We have increased our CECL Reserve to reflect this risk. Our Secured Funding Agreements contain margin call provisions following the occurrence of certain mortgage loan credit events. If we are unable to make the required payment or if we fail to meet or satisfy any of the covenants in our Financing Agreements, we

would be in default under these agreements, and our lenders could elect to declare outstanding amounts due and payable, terminate their commitments, require the posting of additional collateral, including cash to satisfy margin calls, and enforce their interests against existing collateral. We are also subject to cross-default and acceleration rights with respect to our Financing Agreements. During the COVID-19 pandemic, to mitigate the risk of future margin calls, we proactively engaged in discussions with certain of our lenders to modify the terms of our borrowings on certain assets within these facilities, in order to, among other things, reduce the amounts we were borrowing against such assets and/or increase the borrowing spreads. 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, similar to those negotiated during COVID-19, or to 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. We are also able to access additional liquidity through the (i) reinvestment provisions in our FL3 CLO Securitization, which allows us to replace mortgage assets in our FL3 CLO Securitization which have repaid and (ii) future funding acquisition provisions in our FL4 collateralized loan obligation securitization debt ("FL4 CLO Securitization", together with our FL3 CLO Securitization, our "CLO Securitizations"), which allows us to use mortgage asset repayment funds to acquire additional funded pari-passu participations related to the mortgage assets then-remaining in our FL4 CLO Securitization; each subject to the satisfaction of certain reinvestment or acquisition conditions, which may include receipt of a Rating Agency Confirmation and investor approval. There can be no assurance that the conditions for reinvestment or acquisition will be satisfied and whether our CLO Securitizations will acquire any additional mortgage assets or funded pari-passu participations. 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.

Ares Management or one of its investment vehicles, including the Ares Warehouse Vehicle, 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 August 1, 2023, we had approximately $193 million in liquidity including $118 million of unrestricted cash and $75 million of availability under our Secured Funding Agreements.

Cash Flows

The following table sets forth changes in cash and cash equivalents for the six months ended June 30, 2023 and 2022 ($ in thousands):

	For the six months ended June 30,	
	2023	2022
Net income (loss)	$ (8,638)	$ 26,231
Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities:	31,794	2,921
Net cash provided by (used in) operating activities	23,156	29,152
Net cash provided by (used in) investing activities	89,302	(76,200)
Net cash provided by (used in) financing activities	(111,133)	22,058
Change in cash and cash equivalents	$ 1,325	$ (24,990)

During the six months ended June 30, 2023 and 2022, cash and cash equivalents increased (decreased) by $1.3 million and $(25.0) million, respectively.

Operating Activities

For the six months ended June 30, 2023 and 2022, net cash provided by operating activities totaled $23.2 million and $29.2 million, respectively. For the six months ended June 30, 2023, adjustments to net income (loss) related to operating activities primarily included the provision for current expected credit losses of $41.1 million, accretion of discounts, deferred loan origination fees and costs of $3.4 million, amortization of deferred financing costs of $1.9 million, change in other assets of $15.7 million and realized losses on loans sold of $5.6 million. For the six months ended June 30, 2022, adjustments to net income related to operating activities primarily included the provision for current expected credit losses of $7.2 million, accretion of discounts, deferred loan origination fees and costs of $4.9 million, amortization of deferred financing costs of $4.1 million, change in other assets of $1.9 million and gain on sale of real estate owned of $2.2 million.

Investing Activities

For the six months ended June 30, 2023 and 2022, net cash provided by (used in) investing activities totaled $89.3 million and $(76.2) million, respectively. This change in net cash provided by investing activities was primarily as a result of the cash received from principal repayment of 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 six months ended June 30, 2023.

Financing Activities

For the six months ended June 30, 2023, net cash used in financing activities totaled $111.1 million and primarily related to repayments of our Secured Funding Agreements of $38.9 million, repayments of debt of consolidated VIEs of $42.9 million, dividends paid of $38.7 million and repurchases of our common stock of $4.6 million, partially offset by proceeds from our Secured Funding Agreements of $15.0 million. For the six months ended June 30, 2022, net cash provided by financing activities totaled $22.1 million and primarily related to proceeds from our Secured Funding Agreements of $225.2 million and

proceeds from the sale of our common stock of $106.3 million, partially offset by repayments of our Secured Funding Agreements of $212.2 million, repayments of our Notes Payable of $51.1 million and dividends paid of $33.4 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								
	June 30, 2023				December 31, 2022				
	Total Commitment	Outstanding Balance	Interest Rate	Maturity Date	Total Commitment	Outstanding Balance	Interest Rate	Maturity Date	
Secured Funding Agreements:									
Wells Fargo Facility	$ 450,000	$ 241,844	SOFR+1.50 to 3.75%	December 15, 2025 (2)	$ 450,000	$ 270,798	Base Rate(1)+1.50 to 3.75%	December 15, 2025 (2)	
Citibank Facility	325,000	236,240	SOFR+1.50 to 2.10%	January 13, 2025 (3)	325,000	236,240	Base Rate(1)+1.50 to 2.10%	January 13, 2025 (3)	
CNB Facility	75,000	—	SOFR+2.65%	March 11, 2024 (4)	75,000	—	SOFR+2.65%	March 10, 2023 (4)	
MetLife Facility	180,000	—	SOFR+2.50%	August 13, 2024 (5)	180,000	—	Base Rate(1)+2.10 to 2.50%	August 13, 2023 (5)	
Morgan Stanley Facility	250,000	203,173	SOFR+1.60 to 3.10%	January 16, 2024 (6)	250,000	198,193	Base Rate(1)+1.50 to 3.00%	January 16, 2024 (6)	
Subtotal	$ 1,280,000	$ 681,257			$ 1,280,000	$ 705,231			
Notes Payable	$ 105,000	$ 105,000	SOFR+2.00%	July 28, 2025 (7)	$ 105,000	$ 105,000	SOFR+2.00%	July 28, 2025 (7)	
Secured Term Loan	$ 150,000	$ 150,000	4.50%	November 12, 2026 (8)	$ 150,000	$ 150,000	4.50%	November 12, 2026 (8)	
Total	$ 1,535,000	$ 936,257			$ 1,535,000	$ 960,231			

(1) The base rate is LIBOR for loans pledged prior to December 31, 2021 and SOFR for loans pledged subsequent to December 31, 2021.

(2) 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.

(3) 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.

(4) In February 2023, we exercised a 12-month extension option on the secured revolving funding facility with City National Bank (the "CNB Facility").

(5) In June 2023, we exercised a 12-month extension option on the revolving master repurchase facility with Metropolitan Life Insurance Company (the "MetLife Facility").

(6) 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.

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

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

Our Financing Agreements contain various affirmative and negative covenants, including negative pledges, and provisions related to events of default that are normal and customary for similar financing agreements. As of June 30, 2023, 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 June 30, 2023, the carrying amount and outstanding principal of our CLO Securitizations was $735.1 million and $736.1 million, respectively. See Note 16 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, and they 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 June 30, 2023, (2) no change in the outstanding principal balance of our loans held for investment portfolio, available-for-sale debt securities and borrowings as of June 30, 2023 and (3) no change in the notional amount of the interest rate swap agreement entered into as of June 30, 2023 ($ in millions):

Change in 30-Day SOFR	Increase/(Decrease) in Net Income
Up 100 basis points	$6.0
Up 50 basis points	$3.0
SOFR at 0 basis points	$(15.2)

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

Interest Rate Floor Risk

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

Market Risk

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

Prepayment and Securitizations Repayment Risk

Our net income 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 recently have 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 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. 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.

Continued strain on the banking system, and 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.

Real Estate Risk

Our real estate investments 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 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 has impacted the operations of office properties. 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, which could also 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 record 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 June 30, 2023. Based upon that evaluation and subject to the foregoing, our principal executive officer and principal financial officer concluded that, as of June 30, 2023, 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 June 30, 2023 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

In the normal course of business, we may be subject to various legal proceedings from time to time. Furthermore, third parties may try to seek to impose liability on us in connection with our loans. As of June 30, 2023, we were not subject to any material pending legal proceedings. Litigation 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.

Item 1A. Risk Factors

There have been no material changes to the risk factors previously disclosed in our 2022 Annual Report and Q1 Quarterly Report. You should carefully consider the risk factors discussed in Part I, “Item 1A. Risk Factors” in our 2022 Annual Report and Part II, "Item 1A. Risk Factors" in our Q1 Quarterly Report, which could materially affect our business, financial condition and/or operating results. The risks described in our 2022 Annual Report and Q1 Quarterly 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 [1]	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs [2]	Maximum Approximate Dollar Value of Shares that May Yet Be Purchased Under the Program [2] ($ in thousands)
April 1, 2023 - April 30, 2023	—	$—	—	$50,000
May 1, 2023 - May 31, 2023	535,965	$8.58	535,965	45,400
June 1, 2023 - June 30, 2023	—	$—	—	45,400
Total	**535,965**		**535,965**	

(1) Represents purchase price including expenses paid.

(2) On July 26, 2022, our Board of Directors approved the Repurchase Program of up to $50.0 million of our common stock which was expected to be in effect until July 26, 2023, or until the approved dollar amount had been used to repurchase shares. As of June 30, 2023, $45.4 million remained available for future purchases of our common stock under such Repurchase Program. On July 25, 2023, our Board of Directors renewed the Repurchase Program of up to $50.0 million, which is expected to be in effect until July 31, 2024, or until the approved dollar amount has been used to repurchase shares. 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 June 30, 2023, 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 Morgan Stanley Facility

On July 27, 2023, ACRC Lender MS LLC ("ACRC Lender MS"), one of our subsidiaries, entered into an amendment to the Morgan Stanley Facility with Morgan Stanley Bank, N.A. The purpose of the amendment to the Morgan Stanley Facility was to, among other things, extend the initial maturity date of the Morgan Stanley Facility to July 16, 2025. The initial maturity date of the Morgan Stanley Facility is subject to one 12-month extension, which may be exercised at ACRC Lender MS's option, subject to the satisfaction of certain conditions and applicable extension fees being paid.

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	Third Amendment to Master Repurchase and Securities Contract Agreement, dated as of July 27, 2023, by and between ACRC Lender MS LLC, as seller, and Morgan Stanley Bank, N.A., as buyer.
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.

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: August 2, 2023

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

Date: August 2, 2023

By: /s/ Tae-Sik Yoon
Tae-Sik Yoon
Chief Financial Officer and Treasurer
(Principal Financial and Accounting Officer)

EXHIBIT 10.1

THIRD AMENDMENT TO MASTER REPURCHASE AND SECURITIES CONTRACT AGREEMENT

This THIRD AMENDMENT TO MASTER REPURCHASE AND SECURITIES CONTRACT AGREEMENT, dated as of July 27, 2023 (this "Amendment"), is made by and between ACRC LENDER MS LLC, a Delaware limited liability company ("Seller"), and MORGAN STANLEY BANK, N.A., a national banking association (together with its successors and assigns, "Buyer"). Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Repurchase Agreement (as defined below).

RECITALS

WHEREAS, Seller and Buyer are parties to that certain Master Repurchase and Securities Contract Agreement, dated as of January 16, 2020, as amended by that certain First Amendment to Master Repurchase and Securities Contract Agreement, dated as of June 23, 2021, as further amended by that certain Second Amendment to Master Repurchase and Securities Contract Agreement, dated as of March 21, 2022, and as extended pursuant to the letter agreement dated as of December 21, 2022 between Buyer and Seller (as the same may be further amended, restated, supplemented or otherwise modified and in effect from time to time, the "Repurchase Agreement"); and

WHEREAS, Seller and Buyer desire to modify certain terms and provisions of the Repurchase Agreement.

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

Amendment. The Repurchase Agreement is hereby amended and restated in its entirety in the form attached hereto as Exhibit A.

Organizational Documents. No amendments have been made to the organizational documents of Seller since January 16, 2020.

Conditions Precedent to Amendment. The effectiveness of this Amendment is subject to the following:

(a) This Amendment being duly executed and delivered by Seller and Buyer; and

(b) Payment in full by Seller to Buyer of the Third Amendment Extension Fee.

Seller Representations. Seller hereby represents and warrants that:

no Default, Event of Default or Margin Deficit that is due and unpaid in accordance with Section 4(a) of the Repurchase Agreement exists, and no Default, Event of Default or Margin Deficit will occur as a result of the execution, delivery and performance by Seller of this Amendment; and

all representations and warranties contained in the Repurchase Agreement are true, correct, complete and accurate in all respects (except 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).

Defined Terms. Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Repurchase Agreement.

Continuing Effect; Reaffirmation of Guarantee. As amended by this Amendment, all terms, covenants and provisions of the Repurchase Agreement are ratified and confirmed and shall remain

in full force and effect. In addition, any and all guaranties and indemnities for the benefit of Buyer (including, without limitation, the Guarantee) and confirmed and shall not be released, diminished, impaired, reduced or adversely affected by this Amendment.

Binding Effect; No Partnership; Counterparts. The provisions of the Repurchase Agreement, 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. Delivery of an executed counterpart signature page to this Amendment in Portable Document Format (PDF) shall be effective as delivery of a manually executed original counterpart thereof.

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.

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.

Governing Law; Consent to Jurisdiction; Waiver of Jury Trail. The parties agree that Article 18 (Governing Law; Consent to Jurisdiction; Waiver of Jury Trail; Etc.) of the Repurchase Agreement is hereby incorporated herein by reference, mutatis mutandis.

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.

References to Transaction Documents. All references to the Repurchase 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 Repurchase Agreement as amended hereby, unless the context expressly requires otherwise.

[Signature Pages to Follow]

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

BUYER:

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

By: /s/ William P. Bowman
Name: William P. Bowman
Title: Authorized Signatory

SELLER:

ACRC LENDER MS LLC,
a Delaware limited liability company

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

EXHIBIT A

REPURCHASE AGREEMENT CONFORMED THROUGH THIRD AMENDMENT

~~*Execution Version*~~*Conformed through First, Second, Third Amendments*

MASTER REPURCHASE AND SECURITIES CONTRACT AGREEMENT

among

MORGAN STANLEY BANK, N.A.

as Buyer and

ACRC LENDER MS LLC

as Seller

TABLE OF CONTENTS

SCHEDULES

SCHEDULE 1	Intentionally Omitted
SCHEDULE	Purchased Asset Documents
SCHEDULE 3	

EXHIBITS

EXHIBIT I	Form of Confirmation
EXHIBIT II-1	Form of Power of Attorney to Buyer
EXHIBIT II-2	Form of Power of Attorney to Seller
EXHIBIT III	Representations and Warranties Regarding the Purchased Assets
EXHIBIT IV	Form of Bailee Agreement
EXHIBIT V	Authorized Representatives of Seller

ANNEXES

ANNEX I	Notice Instructions
ANNEX II	Wiring Instructions

MASTER REPURCHASE AND SECURITIES CONTRACT AGREEMENT

This Master Repurchase and Securities Contract Agreement (this "Agreement") is dated as of January 16, 2020, and is made by and among MORGAN STANLEY BANK, N.A., as buyer (together with its successors and assigns, "Buyer") and ACRC LENDER MS LLC, a Delaware limited liability company, as seller ("Seller").

1. APPLICABILITY

From time to time the parties hereto may enter into transactions in which Seller agrees to transfer to Buyer one or more Eligible Assets, on a servicing-released basis, against the transfer of funds by Buyer with a simultaneous agreement by Buyer to transfer to Seller such Eligible Assets at a date certain (or such earlier date in accordance with the terms hereof) against the transfer of funds by Seller to Buyer. Each such transaction involving the transfer of an Eligible Asset from Seller to Buyer shall be referred to herein as a "Transaction" and, unless otherwise agreed in writing, shall be governed by this Agreement.

2. DEFINITIONS

Capitalized terms in this Agreement shall have the respective meanings set forth below: "1934 Act" shall mean the Securities

Exchange Act of 1934, as amended.

"AB Mortgage Loan" shall mean a Mortgage Loan evidenced by two or more senior and subordinate Mortgage Notes.

"Accelerated Repurchase Date" shall have the meaning specified in Section 14(b)(i) of this Agreement.

"Act of Insolvency" shall mean, with respect to any Person: (a) the filing of a decree or order for relief by a court having jurisdiction over 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 sixty (60) 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 writing of the inability of such Person to pay its debts or discharge its obligations generally as they become due or mature, (g) the failure by such Person generally to pay its debts as they become due, (h) the taking of any action by any Governmental Authority or agency or any Person, agency or entity acting or purporting to act under Governmental Authority to condemn, seize or appropriate, or to assume custody or control of, all or any substantial part of the property of such Person, or shall have taken any action to displace the management of such Person or to curtail its authority in the conduct of the business of such Person, or (i) the taking of action by such Person in furtherance of any of the foregoing.

"Affiliate" shall mean, (i) when used with respect to any specified Person, any other Person directly or indirectly Controlling, Controlled by, or under common Control with, such Person and (ii) with respect to Seller, any "affiliate" of Seller as such term is defined in the Bankruptcy Code. Notwithstanding anything in this definition to the contrary, with respect to representations, warranties or covenants related to anti-money laundering related to Guarantor, Pledgor or Seller, references to Affiliate herein shall not include any other Person other than the Guarantor and its Subsidiaries.

"Affiliated Hedge Counterparty" shall mean Morgan Stanley Bank, N.A., or any Affiliate thereof, in its capacity as a party to any Hedging Transaction with Seller.

"Aggregate Repurchase Price" shall mean, as of any date of determination, the aggregate Repurchase Price (excluding any accrued and unpaid Price Differential) of all Purchased Assets outstanding as of such date.

"Agreement" shall have the meaning specified in the introductory paragraph of this Agreement.

~~"Applicable Index" shall have the meaning set forth in the Fee Letter. "Applicable Interest Rate" shall have the meaning set forth in the Fee Letter.~~ "Applicable Spread" shall have the meaning specified in the Fee Letter.

"Appraisal" shall mean an appraisal of any Eligible Property prepared by a licensed Independent Appraiser approved by Buyer in its reasonable discretion, in accordance with the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation, in compliance with the requirements of Title 11 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 and utilizing customary valuation methods, such as the income, sales/market or cost approaches, as any of the same may be updated by recertification from time to time by the appraiser performing such Appraisal.

"Asset Base Component" shall mean, as of any date of determination, with respect to each Purchased Asset, the product of (a) its Market Value, *multiplied by* (b) the Maximum Purchase Percentage applicable to such Purchased Asset as of such date.

"Assignment of Leases" shall mean, with respect to any Purchased Asset that is a Mortgage Loan, any assignment of leases, rents and profits or equivalent instrument, whether contained in the related Mortgage or executed separately, assigning to the holder or holders of such Mortgage all of the related Mortgagor's interest in the leases, rents and profits derived from the ownership, operation, leasing or disposition of all or a portion of the related Mortgaged Property as security for repayment of such Purchased Asset.

"Assignment of Mortgage" shall mean, with respect to any Purchased Asset that is a Mortgage Loan, an assignment of the mortgage, notice of transfer or equivalent instrument in

recordable form, sufficient under the laws of the jurisdiction wherein the related property is located to reflect the assignment and pledge of the Mortgage, subject to the terms of this Agreement.

"Available Tenor" means, as of any date of determination and with respect to the then current Benchmark, any tenor for such Benchmark or payment period for price differential calculated with reference to such Benchmark, as applicable, that is or may be used for determining the length of a Pricing Period pursuant to this Agreement as of such date.

"Bailee" shall mean such third party as Buyer and Seller shall mutually approve in their sole discretion.

"Bailee Agreement" shall mean a Bailee Agreement among Seller, Buyer and Bailee in the form of Exhibit IV hereto.

"Bailee Delivery Failure" shall have the meaning specified in the Bailee Agreement. "Bankruptcy Code" shall mean Title 11 of

the United States Code, as amended, modified

or replaced from time to time.

"Benchmark" means, initially (x) LIBOR (provided, that LIBOR shall only be permitted as a Benchmark for Purchased Assets with Purchase Dates on or prior to December 31, 2021 (any such asset a "LIBOR Purchased Asset"), after which the Benchmark shall be Term SOFR) or (y) Term SOFR, as set forth in the applicable Confirmation for the subject Purchased Asset; provided, that, if a Benchmark Transition Event and the Benchmark Replacement Date with respect thereto have occurred with respect to the Term SOFR Reference Rate or the then-current Benchmark (other than for LIBOR Purchased Assets), then "Benchmark" means the applicable Benchmark Replacement to the extent such Benchmark Replacement has replaced such Benchmark pursuant to Article 3(l).

"Benchmark Determination" shall mean any determination related to a Benchmark or a Benchmark Transition.

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

(1) the sum of: (a) either of (i) Compounded SOFR or (ii) Daily Simple SOFR, as selected by Buyer, to be the then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for the applicable loan market and (b) the applicable Benchmark Replacement Adjustment;

(2) the sum of: (a) the alternate rate of interest that has been selected or recommended by the Relevant Governmental Body as the replacement for the then-current Benchmark for the applicable Corresponding Tenor and (b) the Benchmark Replacement Adjustment; or

(3) the sum of: (a) the alternate rate of interest that has been selected by Buyer, as the replacement for the then-current Benchmark for the applicable Corresponding Tenor in accordance with any industry-accepted rate of interest as a replacement for the then-current Benchmark for U.S. dollar denominated secured financings or securitizations relating to the relevant asset class, as applicable at such time and (b) the Benchmark Replacement Adjustment.

If at any time the Benchmark Replacement as determined pursuant to this definition would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement.

"Benchmark Replacement Adjustment" shall mean, with respect to any replacement of the then-current Benchmark for any Transaction, 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 giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Benchmark Replacement by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Benchmark Replacement for U.S. dollar-denominated commercial mortgage loan repurchase facilities at such time.

"Benchmark Replacement Conforming Changes" means, with respect to the use or administration of LIBOR, Term SOFR or any Benchmark Replacement, any technical, administrative or operational changes (including but not limited to changes to the definition of "Business Day," the definition of "Pricing Period," timing and frequency of determining rates and making payments of price differential, timing of Transaction requests or prepayment, conversion or continuation notices, length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that Buyer decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the 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 such Benchmark Replacement exists, in such other manner of administration as Buyer determines is reasonably necessary in connection with the administration of this Agreement.

"Benchmark Replacement Date" means the earliest to occur of the following events with respect to the then-current Benchmark or if the then current Benchmark is Term SOFR, with respect to the Term SOFR Reference Rate:

(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 (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or

(2) in the case of clause (3) of the definition of "Benchmark Transition Event," the date of the public statement or publication of information referenced therein.

For the avoidance of doubt, (i) if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination and (ii) the "Benchmark Replacement Date" will be deemed to have occurred in the case of clause (1) or (2) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

"Benchmark Transition Event" shall mean the occurrence of one or more of the following events with respect to the then-current Benchmark for any Transaction:

(1) 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;

(2) 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;

(3) 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 or in compliance with or aligned with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks;

(4) Buyer determines in its sole discretion that, by reason of circumstances affecting the relevant market, adequate and reasonable means do not exist for ascertaining such Benchmark; or

(5) Buyer determines in its sole discretion that the adoption of or any change in any Requirement of Law or in the interpretation or application thereof shall make it unlawful for Buyer to accrue Price Differential based on such Benchmark.

"Blocked Account" shall have the meaning specified in Section 5(a) of this Agreement.

"Blocked Account Agreement" shall mean that certain Blocked Account Agreement executed by Buyer Seller and the Depository Bank (and any successor thereto or replacement thereof executed by Buyer, Seller and the Depository Bank).

"Breakage Costs" shall have the meaning specified in Section 3(p) of this Agreement. "Business Day" shall mean (a) any day

other than (i) a Saturday or Sunday and (ii) a day

on which the New York Stock Exchange, the Federal Reserve Bank of New York, Custodian or Buyer is authorized or obligated by law or executive order to be closed, and (b) with respect to Pricing Rate Reset Date, a day on which banks are open for dealing in foreign currency and exchange in London.

"Buyer" shall have the meaning set forth in the introductory paragraph hereto.

"Capital Lease Obligations" shall mean, for any Person, all obligations of such Person to pay rent or other amounts under a lease of (or other agreement conveying the right to use) property to the extent such obligations are required to be classified and accounted for as a capital lease on a balance sheet of such Person under GAAP, and, for purposes of this Agreement, the amount of such obligations shall be the capitalized amount thereof, determined in accordance with GAAP.

"Capital Stock" shall mean 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 membership or other equivalent interests 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.

"Cash Equivalents" shall mean, as of any date of determination, (a) marketable securities
(i) issued or directly and unconditionally guaranteed as to interest and principal by the United States Government or (ii) issued by any agency of the United States the obligations of which are backed by the full faith and credit of the United States and (b) time deposits, certificates of deposit, money market accounts or banker's acceptances of any investment grade rated commercial bank, in each case maturing within ninety (90) days after such date, in each case as reasonably acceptable to Buyer.

"Cash Liquidity" shall mean, with respect to Guarantor on any date, the amount of unrestricted cash (including any cash availability under any subscription line or other credit facilities) and Cash Equivalents held by Guarantor and its consolidated subsidiaries.

"Cause" shall mean, with respect to an Independent Director, (i) acts or omissions by such Independent Director that constitute willful disregard of, or bad faith or gross negligence with respect to, the Independent Director's duties with respect to Seller's obligations under this Agreement, (ii) such Independent Director 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, (iii) such Independent Director is unable to perform his or her duties as

Independent Director due to death, disability or incapacity, or (iv) such Independent Director no longer meets the definition of Independent Director, as that term is defined in this Section 2.

"Change in Law" shall mean the introduction of, or a change in, any Requirement of Law or in the interpretation or application thereof, or compliance by Buyer with any request or directive (whether or not having the force of law) hereafter issued from any central bank or other Governmental Authority.

"Change of Control" shall mean the occurrence of any of the following:

(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 Equity Interests 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, 100% of each class of the outstanding Capital Stock of Pledgor; or

(c) Pledgor shall cease to own and control, of record and beneficially, directly or indirectly, 100% of each class of the outstanding Capital Stock of Seller.

"Code" shall mean the Internal Revenue Code of 1986, as amended.

"Collection Period" shall mean, with respect to the Remittance Date in any month, the period beginning on the Remittance Date in the preceding month to and including the calendar day immediately preceding such Remittance Date.

~~"Compounded SOFR" shall mean the compounded average of SOFR, as calculated and published by, or at the direction of, a Relevant Governmental Body.~~

"Compounded SOFR" means the compounded average of SOFRs for the applicable Corresponding Tenor, with the rate, or methodology for this rate, and conventions for this rate (which, for example, may be compounded in arrears with a lookback and/or suspension period as a mechanism to determine the interest amount payable prior to the end of each Pricing Period or compounded in advance) being established by Buyer in accordance with:

(1) the rate, or methodology for this rate, and conventions for this rate selected or recommended by the Relevant Governmental Body for determining compounded SOFR; provided that:

(2) if, and to the extent that, Buyer determines that Compounded SOFR cannot be determined in accordance with clause (1) above, then the rate, or methodology for this rate, and conventions for this rate that have been selected by Buyer giving due consideration to any industry-accepted market practice for similar U.S. dollar

denominated secured financing or securitization transactions relating to the relevant asset class, as applicable at such time.

"Concentration Limit" shall mean, with respect to any New Asset, (a) the original principal balance of such New Asset does not exceed 35% of the sum of (i) the Facility Amount and (ii) the Preapproved Accordion Amount (if the Facility Amount is increased by the Preapproved Accordion Amount pursuant to Section 9(c)), and (b) if such New Asset is a Hospitality Asset, the aggregate outstanding principal balance of all Hospitality Assets, after giving effect to such New Asset, does not exceed 35% of the Facility Amount.

"Confirmation" means, a written confirmation from Buyer to Seller, executed by Buyer and acknowledged by Seller, of Buyer's Final Approval to purchase a Purchased Asset, substantially in the form attached hereto as Exhibit I.

~~"Conforming Changes" means any technical, administrative or operational changes which the Buyer determines is both (i) appropriate to implement the Index Transition and (ii) consistent with Market Practice.~~

"Control" shall mean, with respect to any Person, the possession of the direct or indirect 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.

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

"Corresponding Tenor" with respect to any Available Tenor means, as applicable, either a tenor (including overnight) or a price differential payment period having approximately the same length (disregarding business day adjustment) as such Available Tenor.

"Custodial Agreement" shall mean that certain Custodial Agreement, dated as of the date hereof, entered into by and among Custodian, Seller and Buyer.

"Custodian" shall mean Wells Fargo Bank, National Association, or any successor custodian appointed by Buyer and reasonably acceptable to Seller, or appointed by Buyer in its sole discretion during the continuance of an Event of Default.

"Daily Simple SOFR" means, for any day, SOFR, with the conventions for this rate (which may include a lookback) being established by the Buyer in accordance with the conventions for this rate selected or recommended by the Relevant Governmental Body for determining "Daily Simple SOFR" for business loans at such times; provided that, if the Buyer decides that any such convention is not administratively feasible, then the Buyer may establish another convention in its reasonable discretion.

"Debt Yield Ratio" shall mean, with respect to any Eligible Property or Eligible Properties directly or indirectly securing a New Asset, the quotient (expressed as a percentage) of
(i) net operating income for the trailing 12-month period for the most recently ended fiscal

quarter, *divided by* (ii) the total amount of indebtedness secured directly or indirectly by such Eligible Property or Eligible Properties that are senior to or *pari passu* with such New Asset.

"Default" shall mean any event that, with the giving of notice, the passage of time, or both, would constitute an Event of Default.

"Defaulted Asset" shall mean any Purchased Asset as to which (i) there is a breach beyond any applicable notice and cure period of a representation or warranty by Seller under Exhibit III attached hereto (without regard to any knowledge qualifier therein), (ii) a default, or an event that, with the giving of notice, the passage of time, or both, would constitute a default, has occurred and is continuing beyond any applicable notice and cure period under the related Purchased Asset Documents in the payment when due of any scheduled payment of interest or principal or any other amounts due under the Purchased Asset Documents, (iii) the occurrence and continuance of any other "event of default" as defined under the related Purchased Asset Documents, (iv) to the extent that the related Transaction is deemed to be a loan under federal, state or local law, Buyer ceases to have a first priority perfected security interest in the related Purchased Asset, (v) a Significant Modification has been made without the consent of Buyer pursuant to this Agreement, (vi) the related Purchased Asset File or any portion thereof is subject to a continuing Bailee Delivery Failure or has been released from the possession of Custodian under the Custodial Agreement to anyone other than Buyer or any Affiliate of Buyer except in accordance with the terms of the Custodial Agreement, (vii) upon the occurrence of any Act of Insolvency with respect to any co-participant or any other person having an interest in such Purchased Asset or any related Mortgaged Property that is senior to, or *pari passu* with, in right of payment or priority with the rights of Buyer in such Purchased Asset, (viii) such Purchased Asset has gone into special servicing, however so defined in any servicing, or pooling and servicing, agreement related to a securitization or similar transaction, or (ix) the related Mortgaged Property ceases to have appropriate zoning approval, required insurance or similar legal compliance in the relevant jurisdiction, and in any such case such failure continues beyond any applicable notice and cure period under the related Purchased Asset Documents.

"Depository Bank" shall mean City National Bank or any successor depository bank appointed by Seller and reasonably acceptable to Buyer, or appointed by Buyer in its sole discretion during the continuance of an Event of Default; provided, further, that in each case such appointee depository bank shall be rated no less than "A3" by Moody's and "A-" by Standard & Poor's.

~~"Determination Date" shall mean, with respect to any Pricing Period:~~

~~(a) if the Applicable Index with respect to such Pricing Period is LIBOR, with respect to each Pricing Period, the date that is two (2) London Business Days prior to the commencement date of such Pricing Period; provided, however, that Buyer shall have the right to change the Determination Date to any other day upon written notice to Seller (in which event such change shall then be deemed effective) and, if requested by Buyer, Seller shall promptly execute an amendment to this Agreement in form reasonably acceptable to Seller to evidence such change;~~

~~(b) if the Applicable Index with respect to such Pricing Period is a Replacement Index, a date the Buyer determines, on or prior to the applicable Index Transition Date, is consistent with Market Practice in implementing the applicable Index Transition.~~

"Diligence Fees" shall mean fees, costs and expenses payable by Seller to Buyer in respect of Buyer's fees, costs and expenses (other than legal expenses) incurred in connection with its review of the Diligence Materials hereunder and Buyer's continuing due diligence reviews of Purchased Assets pursuant to Section 21 or otherwise hereunder.

"Diligence Materials" shall mean, with respect to any New Asset, the related Preliminary Due Diligence Package together with the related Supplemental Due Diligence Package.

"Draft Appraisal" shall mean a short form appraisal, "letter opinion of value", or any other form of draft appraisal acceptable to Buyer.

"Early Opt-in Election" means, if the then-current Benchmark is LIBOR, the occurrence of the joint election by Buyer and Seller to trigger a fallback from LIBOR and the provision by Buyer of written notice of such election to other parties hereto.

"Early Repurchase Date" shall have the meaning specified in Section 3(i) of this Agreement.

"Eligible Assets" shall mean (i) performing first lien Mortgage Loans and Participation Interests or Mezzanine Loans (A) acceptable to Buyer in the exercise of its sole discretion, (B) secured directly by an Eligible Property, (C) which have a term equal to or less than ten (10) years (assuming exercise of all extension options), (D) as to which the applicable representations and warranties set forth in Exhibit III are true and correct as of the applicable Purchase Date unless otherwise disclosed in the Exception Report delivered to Buyer on or prior to such Purchase Date, (E) that do not require any Hedging Transaction or have a Hedging Transaction acceptable to Buyer in its sole discretion, (F) that have a maximum LTV not in excess of 80%,
(G) that have an original principal balance of not less than $5,000,000, (H) that is not a Defaulted Asset and (I) that are not subject to restrictions on transfer of lender's interest therein and (ii) such other commercial real estate debt instruments acceptable to Buyer in its sole discretion; in each case, acceptable to Buyer in its sole discretion on a case-by-case basis; provided, however, neither (x) more than 35% of the Facility Amount shall be attributable to Transactions the subject of which are Hospitality Assets nor (y) more than 10% of the Facility Amount shall be attributable to Transactions involving non-controlling *pari passu* participation interests. For the avoidance of doubt, any Purchased Assets repurchased by Seller do not qualify as "Eligible Assets".

"Eligible Property" shall mean a property that is a multifamily, office, retail, industrial, hospitality, self-storage, student housing, or mixed-use property of some combination thereof, or such other property type acceptable to Buyer in the exercise of its sole discretion.

"Environmental Law" means: (a) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Re-authorization Act of 1986, 42 U.S.C. §9601 et seq.; (b) the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42

U.S.C. §6901 et seq.; (c) the Clean Air Act, 42 U.S.C. §7401 et seq., as amended by the Clean Air Act Amendments of 1990; (d) the Clean Water Act of 1977, 33 U.S.C. §1251 et seq.; (e) the Toxic Substances Control Act, 15 U.S.C.A. §2601 et seq.; (f) all other federal, state and local laws, ordinances, regulations or policies relating to pollution or protection of human health or the environment including without limitation, air pollution, water pollution, or the use, handling, discharge, disposal or release or recovery of on-site or off-site Hazardous Materials, as each of the foregoing may be amended from time to time; and (g) any and all regulations promulgated under or pursuant to any of the foregoing statutes.

"ERISA" shall mean 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.

"ERISA Affiliate" shall mean any corporation or trade or business (whether or not incorporated) that is a member of any group of organizations described in (i) Section 414(b) or
~~(c)~~ of the Code or Section 4001(b) of ERISA of which Seller is a member at any relevant time or
(ii) solely for purposes of the lien created under Section 302(f) of ERISA and Section 412(n) of the Code, described in Section 414(m) or (o) of the Code of which Seller is a member.

"Event of Default" shall have the meaning specified in Section 14(a). "Exception Report" shall have the meaning

specified in Section 3(c)(viii).

"Exchange Act" shall mean the Securities and Exchange Act of 1934, as amended.

"Excluded Taxes" shall mean 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 Transaction 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 Buyer pursuant to a law in effect as of the date on which such Buyer (i) becomes a party to this Agreement, (ii) changes the office from which it books the Transactions or (iii) where Buyer is treated as a partnership for tax purposes and the tax status of a partner in such partnership is determinative of the obligation to pay Taxes or be subject to withholding of any Tax, the later of the date on which Buyer acquired its applicable interest hereunder or the date on which the affected partner becomes a partner of Buyer, except to the extent that, pursuant to Section 3(q), the sum payable to such Buyer's assignor immediately before such Buyer became a party to this Agreement or to such Buyer immediately before it changed the office from which it books the Transaction had been increased in respect of such Taxes, (c) Taxes attributable to Buyer's failure to comply with Section 3(r) of this Agreement and (d) any withholding Taxes imposed under FATCA.

"Executive Order 13224" shall mean Executive Order 13224 "On Terrorist Financing: Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism", effective September 24, 2001.

"Exit Fee" shall have the meaning specified in the Fee Letter.

"Extended Facility Termination Date" shall have the meaning specified in Section 9(a) of this Agreement.

"Extension Effective Date" shall have the meaning specified in Section 9(a) of this Agreement.

"Extension Fee" shall have the meaning specified in the Fee Letter.

"Facility Amount" shall mean ~~$150,000,000, subject to increase per the terms of Section 9(c) hereof~~250,000,000.

"Facility Termination Date" shall mean the earlier to occur of (a) the Initial Facility Termination Date, which date may be extended in accordance with Section 9(a) ~~and (b)~~ of this Agreement to the ~~First~~ Extended Facility Termination Date, ~~the Second Extended Facility Termination Date, the Third Extended Facility Termination Date or the Final Extended Facility Termination Date, as applicable,~~ or (b) the Accelerated Repurchase Date.

"FATCA" shall mean 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), together in each case with any current or future regulations, guidance or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any law or agreement implementing an intergovernmental approach thereto.

"FATF" shall mean the Financial Action Task Force on Money Laundering. "FDIA" shall mean the Federal

Deposit Insurance Act, as amended.

"FDICIA" shall mean Title IV of the Federal Deposit Insurance Corporation Improvement Act of 1991.

"Fee Letter" shall mean that certain letter agreement, dated the date hereof, between Buyer and Seller, as the same may be amended, supplemented or otherwise modified from time to time.

"Filings" shall have the meaning specified in Section 6(b) of this Agreement.

"Final Approval" shall have the meaning specified in Section 3(d) of this Agreement.

~~"Final Extended Facility Termination Date" shall have the meaning specified in Section 9(b) of this Agreement.~~

"Financial Covenant Compliance Certificate" shall mean, with respect to any Person, an Officer's Certificate to be delivered, subject to Section 3(f)(iii) of this Agreement, within sixty

(60) days after the end of the first three (3) fiscal quarters and within one hundred twenty (120) days after the end of each fiscal year.

~~"First Extended Facility Termination Date" shall have the meaning specified in Section 9(a) of this Agreement.~~

"First Mortgage A-Note" shall mean (i) a senior Mortgage Note in an AB Mortgage Loan or (ii) a senior controlling *pari passu* Mortgage Note in a Split Mortgage Loan.

"Floor" shall mean zero (0) or such other rate with respect to a Transaction as set forth in the related Confirmation.

"Future Advance Asset" shall mean any Purchased Asset with respect to which there exists a continuing obligation on the part of the holder of such Purchased Asset, pursuant to the terms and conditions of the Purchased Asset Documents, to provide additional funding to the Mortgagor.

"Future Advance Purchase" shall have the meaning specified in Section 3(h) of this Agreement.

"GAAP" shall mean United States generally accepted accounting principles consistently applied as in effect from time to time.

"GLB Act" shall have the meaning specified in Section 27(b) hereof.

"GLB Indemnified Party" shall have the meaning specified in Section 27(b) hereof. "Governmental Authority" shall mean any

national or federal government, any state,

regional, local or other political subdivision thereof with jurisdiction and any Person with jurisdiction exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

"Guarantee" shall mean, as to any Person, any obligation of such Person directly or indirectly guaranteeing any Indebtedness of any other Person or in any manner providing for the payment of any Indebtedness of any other Person or otherwise protecting the holder of such Indebtedness against loss (whether by virtue of partnership arrangements, by agreement to keep-well, to purchase assets, goods, securities or services, or to take-or-pay or otherwise); provided that the term "Guarantee" shall not include endorsements for collection or deposit in the ordinary course of business. The amount of any Guarantee of a Person shall be deemed to be an amount equal to the maximum reasonably anticipated liability in respect thereof as determined by such Person in accordance with GAAP. The terms "Guarantee" and "Guaranteed" used as verbs shall have correlative meanings.

"Guarantor" shall mean Ares Commercial Real Estate Corporation, a Maryland corporation, together with its permitted successors and assigns.

"Guaranty" shall mean that certain Guaranty, dated as of the date hereof, made by Guarantor in favor of Buyer as the same may be amended, supplemented or otherwise modified from time to time.

"Hedging Transactions" shall mean, with respect to any or all of the Purchased Assets, any short sale of U.S. Treasury Securities or mortgage-related securities, futures contract (including currency futures) or options contract or any interest rate swap, cap or collar agreement or similar arrangements providing for protection against fluctuations in interest rates or the exchange of nominal interest obligations, either generally or under specific contingencies, entered into by Seller, or by the underlying obligor with respect to any Purchased Asset and pledged to Seller as collateral for such Purchased Asset, with one or more counterparties that is an Affiliated Hedge Counterparty or a Qualified Hedge Counterparty or, with respect to any Hedging Transaction pledged to Seller as additional collateral for a Purchased Asset, complies with such other rating requirement applicable to such Hedging Transaction set forth in the related Purchased Asset Documents or which is otherwise acceptable to Buyer; provided that Seller shall not grant or permit any liens, security interests, charges, or encumbrances with respect to any such Hedging Transactions for the benefit of any Person other than Buyer.

"Hospitality Asset" shall mean any Eligible Asset that is a Mortgage Loan or Participation Interest therein on an Eligible Property that is developed or to be developed for hospitality use (including, without limitation, hotel or resort properties).

"Income" shall mean, with respect to any Purchased Asset at any time, any payment or other cash distribution thereon of principal, interest, dividends, fees, reimbursements or proceeds thereof (including sales proceeds) or other cash distributions thereon (including casualty or condemnation proceeds).

"Indebtedness" shall with respect to any Person: (i) all indebtedness, whether or not represented by bonds, debentures, notes, securities, or other evidences of indebtedness, for the repayment of money borrowed, (ii) all indebtedness representing deferred payment of the purchase price of property or assets, (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 "Indebtedness" 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.

"Indemnified Amounts" shall have the meaning specified in Section 20(a) of this Agreement.

"Indemnified Parties" shall have the meaning specified in Section 20(a) of this Agreement.

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

"Independent Appraiser" shall mean 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 Eligible 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 (5) years' experience in the subject property type.

"Independent Director" shall mean, with respect to any corporation or limited liability company, an individual who: (a) is provided by CT Corporation, Corporation Service Company, Citadel SPV, MaplesFS, Global Securitization Services LLC, National Registered Agents, Inc., Wilmington Trust Company, Stewart Management Company, Lord Securities Corporation, Puglisi & Associates or, if none of those companies is then providing professional independent directors, another nationally-recognized company reasonably approved by Buyer, in each case that is not an Affiliate of such corporation or limited liability company and that provides professional independent directors and other corporate services in the ordinary course of its business; (b) is duly appointed as a member of the board of directors of such corporation or as an independent manager, member of the board of managers, or special member of such limited liability company; and (c) is not, and has never been, and will not while serving as Independent Director be (i) a member (other than an independent, non-economic "springing" member), partner, equityholder, manager, director, officer or employee of such corporation or limited liability company or any of its equityholders or affiliates (other than an affiliate that is not in the direct chain of ownership of such corporation or limited liability company and that is a Single-Purpose Entity; provided that the fees such individual earns from serving as an Independent Director of such affiliates in any given year constitute in the aggregate less than 5% of such individual's annual income for that year); (ii) a creditor, supplier or service provider (including provider of professional services) to such corporation or limited liability company or any of its equityholders or affiliates (other than a nationally recognized company that routinely provides professional independent managers or directors and that also provides lien search and other similar services to such corporation or limited liability company or any of its equityholders or affiliates in the ordinary course of business); (iii) a family member of any such member, partner, equityholder, manager, director, officer, employee, creditor, supplier or service provider; or (iv) a Person that controls (whether directly, indirectly or otherwise) any of clauses (i) or (ii) above.

~~"Index" shall have the meaning set forth in the Fee Letter. "Index Rate" shall have the meaning set forth in the Fee Letter.~~

~~"Index Transition" shall have the meaning set forth in the Fee Letter.~~

~~"Index Transition Date" shall mean the next subsequent Determination Date following an Index Transition Notice.~~

"Index Transition Event" shall mean a determination by the Buyer that one of the following events has occurred with respect to the then-current Applicable Index:

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

(b) a public statement or publication of information by the regulatory supervisor for the administrator of such Applicable Index, a Relevant Governmental Body, an insolvency official with jurisdiction over the administrator for such Applicable Index, a resolution authority with jurisdiction over the administrator for such Applicable Index or a court or an entity with similar insolvency or resolution authority over the administrator for such Applicable Index, which states that the administrator of such Applicable Index has ceased or will cease to provide such Applicable Index permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide such Applicable Index;

(c) a public statement or publication of information by the regulatory supervisor for the administrator of such Applicable Index announcing that such Applicable Index is no longer representative;

(d) a majority of similar repurchase facilities entered into in the previous calendar quarter reference a single Index other than such Applicable Index; or

(e) a Change in Law prohibiting, restricting or limiting the use of such Applicable Index. "Index Transition Notice" shall mean a notice given by the Buyer which:

(a) sets forth in reasonable detail the circumstances of the Index Transition;

(b) designates an Index Transition Date; and

(c) if feasible, identifies other Interest Determinations and Conforming Changes to implement such Index Transition.

"Initial Facility Termination Date" shall mean ~~January~~July 16, ~~2023~~2025.

"Insolvency Law" shall mean 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.

"Insured Closing Letter and Escrow Instructions" shall mean a letter addressed to Seller and Buyer from the title insurance underwriter (or any agent thereof) acting as an agent for each

Table Funded Purchased Asset and related escrow instructions, which letter and instructions shall be in form and substance reasonably acceptable to Buyer and Seller.

~~"Interest Determination" shall mean any determination related to an Index or an Index Transition.~~

"Interest Expense" shall mean, for any period, with respect to any Person and its consolidated Subsidiaries, the amount of total interest expense (including capitalized and accruing interest) incurred by such Person during such period.

"IRS" shall mean the United States Internal Revenue Service.

~~"ISDA" shall mean the International Swaps and Derivatives Association, Inc.~~

~~"ISDA Definitions" shall mean the 2006 ISDA Definitions published by ISDA 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.~~

~~"ISDA Fallback Adjustment" shall mean the adjustment (which may be zero or a positive~~ or negative value) that would apply for derivatives transactions referencing the ISDA Definitions ~~to be determined upon the occurrence of an Index Transition.~~

~~"ISDA Fallback Rate" shall mean, with respect to any Index Transition, the Index~~ identified by ISDA as a fallback for derivatives transactions referencing a London interbank ~~offered rate.~~

"Last Endorsee" shall have the meaning specified in Schedule 2 of this Agreement.

"LIBOR" shall mean, for ~~each~~any Pricing Period with respect to a Purchased Asset, the ~~rate (expressed as a percentage~~ per annum ~~and rounded upward, as necessary, to the next nearest 1/1000 of 1%) equal to the~~ rate ~~reported~~ for deposits in U.S. ~~dollars, for a one-month period,~~Dollars that appears on Reuters Screen LIBOR01 Page (or the successor thereto) as one-month LIBOR as of 11:00 a.m., London time, on the ~~related Pricing Rate Reset Date; provided that, (i) if such rate does not appear on Reuters Screen LIBOR01 Page as of 11:00 a.m., London time on such Pricing Rate Reset Date, Buyer shall request the principal London office of any four major reference banks in the London interbank market selected by Buyer to provide such bank's offered quotation (expressed as a percentage per annum) to prime banks in the London interbank market for deposits in U.S. dollars for a one month period as of 11:00 a.m., London time, on such Pricing Rate Reset Date for loan amounts comparable to the Purchase Price of such Purchased Asset at the time of such calculation and, if at least two such offered quotations are so provided, LIBOR shall be the arithmetic mean of such quotations, and (ii) if fewer than two such quotations in clause (i) are so provided, Buyer shall request any three major banks in New York City selected by Buyer to provide such bank's rate (expressed as a percentage per annum) for loans in U.S. dollars to leading European banks for a one-month period as of approximately 11:00 a.m., New York City time on the applicable Pricing Rate Reset Date for the amounts for a comparable loan at the time of such calculation and, if at least two such rates are so provided, LIBOR shall be the arithmetic mean of such rates. Buyer's computation of LIBOR shall be conclusive and binding on Seller for all purposes, absent~~

~~manifest error. Notwithstanding anything to the contrary set forth herein, in no event shall LIBOR ever be~~Pricing Rate Reset Date, but in no event, less than ~~0.0%~~the Floor.

~~"LIBOR Transaction" shall mean any Transaction with respect to which the Pricing Rate is determined with reference to LIBOR.~~

"LIBOR Purchased Asset" shall have the meaning set forth in the definition of "Benchmark".

"LTV" shall mean, with respect to any Eligible Asset, as of any date of determination, the ratio of the aggregate outstanding debt (which shall include such Eligible Asset and all debt senior to or *pari passu* with such Eligible Asset) secured, directly or indirectly, by the related Eligible Property or Eligible Properties, to the aggregate "as-is" market value of such Eligible Property or Eligible Properties as determined by Buyer in its commercially reasonable discretion.

"Margin Credit Event" shall mean, with respect to any Purchased Asset, the date upon which material changes that adversely impact the value of the Purchased Asset relative to Buyer's underwriting relative to the performance or condition of (i) the relevant Mortgaged Property, (ii) the Mortgagor (or its sponsor(s) in relation to such Purchased Asset or (iii) the commercial real estate market in the relevant jurisdiction relating to the relevant Mortgaged Property, taken in the aggregate, exist with respect to such Purchased Asset as determined by Buyer in its sole good faith discretion (using customary factors utilized by Buyer in its ordinary course, which may include an agreed-upon market recognized third-party source).

"Margin Deficit" shall have the meaning specified in Section 4(a) of this Agreement. "Margin Excess" shall have the meaning specified in Section 4(b) of this Agreement.

~~"Market Practice" shall mean the practice and course of dealing, including the manner of implementing Index Transitions, under similar repurchase facilities.~~

"Market Value" shall mean, with respect to any Purchased Asset as of any relevant date, the market value of such Purchased Asset on such date, as determined by Buyer in its sole good faith discretion.

"Material Adverse Effect" shall mean a material adverse effect on (i) the property, business, operations, financial condition or credit quality of Guarantor, Pledgor and/or Seller, (ii) the ability of the Guarantor, Pledgor or Seller to perform its obligations under any of the Transaction Documents to which it is party, (iii) the validity or enforceability of any the Transaction Documents, (iv) the rights and remedies of Buyer under any of the Transaction Documents or (v) the Market Value, rating (if applicable) or liquidity of any Purchased Asset or of all the Purchased Assets in the aggregate.

"Maximum Asset Exposure Threshold" shall mean, (i) with respect to any Eligible Asset where the related underlying Mortgaged Property is not a multifamily property, the Maximum Purchase Percentage, *multiplied by* the LTV of such Eligible Asset shall not exceed 60% and (ii) with respect to any Eligible Asset where the related underlying Mortgaged Property is a multifamily property, the Maximum Purchase Percentage, *multiplied by* the LTV of such Eligible

Asset shall not exceed 64%, in each case, unless otherwise permitted by Buyer in its sole discretion.

"Maximum Purchase Percentage" shall mean, with respect to any Purchased Asset, 80% (or as otherwise specified in the applicable Confirmation).

"Mezzanine Loan" shall mean a mezzanine loan secured by pledges of 100% of the Capital Stock of the Mortgagor under a related Mortgage Loan which is a Purchased Asset.

"Monthly Statement" shall mean, for each calendar month during which this Agreement shall be in effect, Seller's or Servicer's, as applicable, reconciliation in arrears of beginning balances, interest and principal paid to date and ending balances for each Purchased Asset, together with a certified written report describing each of the following (subject to, in the case of clauses (i) and (ii), the extent the Seller or Servicer has received notice or knowledge of such event or condition, and, in the case of clauses (vii) and (viii), to the extent such information can be obtained without undue burden to Seller) (i) any developments or events with respect to such Purchased Asset since the prior Monthly Statement that are reasonably likely to have a Material Adverse Effect, (ii) any Defaults or potential Defaults, (iii) any and all written modifications to any Purchased Asset Documents since the prior Monthly Statement, (iv) loan status, collection performance and any delinquency and loss experience with respect to each Purchased Asset, (v) an update as to the expected disposition or sale of the Purchased Assets, (vi) any information or notices as to pending or threatened litigation, (vii) any information or notices as to regulatory (including licensing) issues with respect to the Purchased Assets, and (viii) such other information as Buyer may reasonably request with respect to Seller, any Purchased Asset, Mortgagor or Mortgaged Property, which report shall be delivered to Buyer for each calendar month during the term of this Agreement within thirty (30) days following the end of such calendar month.

"Moody's" shall mean Moody's Investors Service, Inc.

"More Favorable Third-Party Covenant" shall have the meaning specified in Section 12(t) of this Agreement.

"Mortgage" shall mean the mortgage, deed of trust, deed to secure debt or other instruments, creating a valid and enforceable first lien on or a first priority ownership interest in a Mortgaged Property.

"Mortgage Loan" shall mean (i) a whole commercial mortgage loan or (ii) a First Mortgage A-Note, in each case secured by a Mortgage and evidenced by a Mortgage Note and all other Purchased Asset Documents, all right, title and interest of Seller in and to any Mortgaged Property covered by the related Mortgage and all related Servicing Rights.

"Mortgage Note" shall mean (a) with respect to a Mortgage, a note or other evidence of indebtedness of a Mortgagor secured by such Mortgage and (b) with respect to a Participation Interest, a Participation Certificate evidencing such Participation Interest.

"Mortgaged Property" shall mean the real property or properties securing repayment of the debt evidenced by a Mortgage Note (or Mortgage Notes, in the case of an AB Mortgage Loan or Split Mortgage Loan).

"Mortgagor" shall mean the obligor on a Mortgage Note, the grantor of the related Mortgage and the owner of the related Mortgaged Property.

"Net Income" shall mean, for any period, with respect to any Person, the consolidated net income (or loss) for such period as reported in such Person's financial statements prepared in accordance with GAAP.

"New Asset" shall mean an Eligible Asset that Seller proposes to sell to Buyer pursuant to a Transaction.

"OFAC" shall mean the Office of Foreign Assets Control of the United States Department of the Treasury.

"Officer's Certificate" shall mean, as to any Person, a certificate of the chief executive officer, the chief financial officer, the president, any vice president or the secretary of such Person.

"Other Connection Taxes" shall mean Taxes imposed on Buyer as a result of a present or former connection between Buyer and the jurisdiction imposing such Tax (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 Transaction Document, or sold or assigned an interest in any Transaction Document).

"Other Taxes" shall mean any and all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that may arise from any payment made under any Transaction Document or from the execution, delivery or enforcement of, or otherwise with respect to, any Transaction Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment.

"Participation Certificate" shall mean a participation certificate which evidences the outstanding balance of a Participation Interest.

"Participation Interest" shall mean a senior controlling *pari passu* participation interest evidenced by a senior note or participation interest in a performing first lien Mortgage Loan or a non-controlling *pari passu* participation interest evidenced by a note or participation interest in a performing first lien Mortgage Loan (provided, that, any non-controlling *pari passu* participation interest may not be more than 10% of the Facility Amount).

"Permitted Encumbrances" shall mean (a) liens for real property Taxes, ground rents, water charges, sewer rates and assessments not yet due and payable; (b) liens arising by operation of law (such as materialmen's, mechanics', carriers', workmen's, repairmen's and similar liens) arising in the ordinary course of business which are (i) discharged by payment, bonding or otherwise or (ii) being contested in good faith by the related Mortgagor in accordance

with the related Purchased Asset Documents; (c) covenants, conditions and restrictions, rights of way, easements and other matters of public record, which do not individually or in the aggregate, in the reasonable judgment of Seller, materially interfere with (i) the current use of the related Mortgaged Property, (ii) the security intended to be provided by the related Mortgage, (iii) the underlying obligor's ability to pay its obligations when they become due or (iv) the value of the related Mortgaged Property; (d) liens and encumbrances set forth in the related Title Policy; and
(e) rights of existing or future tenants as tenants only pursuant to leases.

"Person" shall mean an individual, corporation, limited liability company, business trust, partnership, joint tenant or tenant-in-common, trust, joint stock company, joint venture, unincorporated organization, or other entity, or a federal, state or local government or any agency or political subdivision thereof.

"Plan" shall mean an employee benefit or other plan established or maintained during the five-year period ended prior to the date of this Agreement or to which Seller or any ERISA Affiliate makes, is obligated to make or has, within the five-year period ended prior to the date of this Agreement, been required to make contributions and that is covered by Title IV of ERISA or Section 302 of ERISA or Section 412 of the Code.

"Plan Assets" shall mean assets of any (i) employee benefit plan (as defined in Section 3(3) of ERISA) subject to Title I of ERISA, (ii) plan (as defined in Section 4975(e)(l) of the Code) subject to Section 4975 of the Code, or (iii) governmental plan (as defined in Section 3(32) of ERISA) subject to any other federal, state or local laws, rules or regulations substantially similar to Title I of ERISA or Section 4975 of the Code.

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

"Pledged Collateral" has the meaning assigned to such term in the Pledge and Security Agreement.

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

"Portfolio Exposure Threshold" shall mean that the product of (i) the actual weighted-average aggregate Purchase Percentage of all Purchased Assets, *multiplied by* (ii) the weighted average LTV for all Purchased Assets does not exceed 57.5%, unless otherwise permitted by Buyer in its sole discretion.

"Power of Attorney to Buyer" shall mean (i) that certain Power of Attorney to Buyer dated as of the date hereof executed by Seller in favor of Buyer and (ii) such other power of attorney executed pursuant to this Agreement in substantially the form attached as Exhibit II-1.

"Power of Attorney to Seller" shall mean (i) that certain Power of Attorney to Seller dated as of the date hereof executed by Buyer in favor of Seller and (ii) such other power of attorney executed pursuant to this Agreement substantially in the form of Exhibit II-2.

"Preapproved Accordion Amount" shall mean $100,000,000.

"Preliminary Approval" shall have the meaning specified in Section 3(b) of this Agreement.

"Preliminary Due Diligence Package" shall mean, with respect to any New Asset, the following due diligence information, to the extent applicable, relating to such New Asset to be provided by Seller to Buyer pursuant to this Agreement:

(a) Seller's internal credit committee or investment committee memorandum, among other things, outlining the proposed transaction, including potential transaction benefits and all material underwriting risks and Underwriting Issues, anticipated exit strategies, underwriting models and all other characteristics of the proposed transaction that a prudent buyer would consider material;

(b) current rent roll and rollover schedule, if applicable;

(c) cash flow pro forma, plus historical information, if available;

(d) flood certification , in form and substance acceptable to Buyer;

(e) maps and photos, if available;

(f) interest coverage ratios and Debt Yield Ratio;

(g) description of the Mortgaged Property, along with a description of the Mortgagor and sponsor (including their experience with other projects, ownership structure and financial statements);

(h) loan-to-value ratio;

(i) Seller's or any Affiliate's relationship with the Mortgagor or any affiliate;

(j) material third party reports, to the extent available and applicable, including: (i) engineering and structural reports, each in form and prepared by consultants acceptable to Buyer;
(ii) current Appraisal; (iii) Phase I environmental report (including asbestos and lead paint report) and, if applicable, Phase II or other follow-up environmental report if recommended in Phase I, each in form and prepared by consultants acceptable to Buyer; (iv) seismic reports, each in form and prepared by consultants acceptable to Buyer; (v) operations and maintenance plan with respect to asbestos containing materials, each in form and prepared by consultants acceptable to Buyer; (vi) the servicing data tape; (vii) credit reports by a credit reporting agency acceptable to Buyer, in form and substance acceptable to Buyer; and (viii) background searches and reports of the findings of such searches, in form and substance acceptable to Buyer;

(k) copies of documents evidencing such New Asset, or current drafts thereof, including, without limitation, underlying debt and security documents, guaranties, Mortgagor's

organizational documents, loan and collateral pledge agreements, and intercreditor agreements, as applicable;

(l) (i) insurance reports in form and substance acceptable to Buyer and prepared by third-party consultants acceptable to Buyer, and (ii) insurance certificates or other evidence of insurance coverage evidencing the insurance required to be maintained with respect to any Eligible Property or Eligible Properties pursuant to Section 3(c)(iv) hereof (including evidence of terrorism insurance coverage and such other customary insurance coverage satisfactory to Buyer);

(m) analyses and reports with respect to such other matters concerning the New Asset as Buyer may in its reasonable discretion require; and

(n) with respect to any Transaction involving a New Asset that is a Future Advance Asset, Seller shall indicate in the related Preliminary Due Diligence Package that such New Asset is a Future Advance Asset and shall provide Buyer with the information required to complete the Confirmation regarding such Future Advance Asset, as well as the then remaining unfunded principal amount of all Purchased Assets that constitute Future Advance Assets.

"Prescribed Laws" shall mean, as applicable, (a) the USA PATRIOT Act, (b) Executive Order 13224, (c) the International Emergency Economic Power Act, 50 U.S.C. §1701 et. seq., (d) the Bank Secrecy Act (31 U.S.C. Sections 5311 et seq.) as amended and (e) all other Requirements of Law relating to money laundering or terrorism, and all regulations and executive orders promulgated with respect to money laundering or terrorism, including, without limitation, those promulgated by the Office of Foreign Assets Control of the United States Department of the Treasury.

"Price Differential" shall mean, with respect to any Transaction as of any date, the aggregate amount obtained by daily application of the Pricing Rate for such Transaction to the Repurchase Price thereof (excluding any amount attributable to Price Differential in the definition thereof), calculated on the basis of a three hundred sixty (360) day per year basis for the actual number of days during the period commencing on (and including) the Purchase Date for such Transaction and ending on (but excluding) the date of determination (such aggregate amount to be reduced by any amount of such Price Differential paid by Seller to Buyer, prior to such date, with respect to such Transaction).

~~"Pricing Period" shall mean, with respect to a Payment Date during which the Applicable Index is:~~

~~LIBOR~~"Pricing Period" shall mean, with respect to each Purchased Asset~~,~~ (a) in the case of the first (1st) Remittance Date, the period from and including the original Purchase Date for such Purchased Asset to but excluding the next following Remittance Date, and (b) in the case of each subsequent Remittance Date, the one-month period from and including the preceding Remittance Date to but excluding such Remittance Date; provided, that no Pricing Period for a Purchased Asset shall end after the Repurchase Date for such Purchased Asset~~; or~~.

~~(b) a Replacement Index, a period the Buyer determines is consistent with Market Practice implementing the applicable Index Transition.~~

"Pricing Rate" shall mean, for any Pricing Period with respect to a Purchased Asset, an annual rate equal to ~~(A) with respect to a LIBOR Transaction, LIBOR~~the Benchmark for such Pricing Period, plus the Applicable Spread for the related Purchased Asset (subject to adjustment and/or conversion as provided in Sections 3(l), 3(m), 3(n), 3(o)~~,~~ and 3(p) of this Agreement) ~~or (B) on and after an Index Transition Date, the Applicable Interest Rate~~.

"Pricing Rate Reset Date" shall mean, with respect to a Purchased Asset, (a) in the case of the first (1st) Pricing Period for such Purchased Asset, the original Purchase Date for such Purchased Asset, and (b) in the case of each subsequent Pricing Period, two (2) Business Days preceding the Remittance Date on which such Pricing Period begins.

"Principal Payment" shall mean, with respect to any Purchased Asset, any payment or prepayment of principal received in respect thereof (including casualty or condemnation proceeds to the extent that such proceeds are not required under the underlying loan documents to be reserved, escrowed, readvanced or applied for the benefit of the Mortgagor or the related Mortgaged Property). For purposes of clarification, prepayment premiums, fees or penalties shall not be deemed to be principal.

"Prohibited Assignee" shall mean any of the Persons listed on Schedule 3 attached to this Agreement.

"Prohibited Person" shall mean any Person: (i) listed in the Annex to, or otherwise subject to the provisions of, Executive Order 13224; (ii) that is owned or controlled by, or acting for or on behalf of, any person or entity that is listed in the Annex to, or is otherwise subject to the provisions of, Executive Order 13224; (iii) with whom Buyer is prohibited from dealing or otherwise engaging in any transaction by any terrorism or money laundering law, including Executive Order 13224; (iv) who commits, threatens or conspires to commit or supports "terrorism" as defined in Executive Order 13224; (v) that is the subject of Sanctions; (vi) that is a foreign shell bank; (vii) that is a resident of, or whose subscription funds are transferred from or through an account in, a jurisdiction that has been designated as a non-cooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization, such as the FATF, of which the U.S. is a member and with which designation the U.S. representative to the group or organization continues to concur (see http://www.fatf-gati.org for the FATF's "Non-Cooperative Countries and Territories Initiative"); or (viii) who is an Affiliate of a Person described above.

"Purchase Date" shall mean, with respect to any Purchased Asset, the date on which such Purchased Asset is transferred by Seller to Buyer.

"Purchase Percentage" shall mean, with respect to any Purchased Asset, the Maximum Purchase Percentage (or as otherwise specified in the applicable Confirmation).

"Purchase Price" shall mean, with respect to any Purchased Asset, the price at which such Purchased Asset is transferred by Seller to Buyer on the applicable Purchase Date. The Purchase Price as of any Purchase Date for any Purchased Asset shall be an amount (expressed

in dollars) equal to the product of (a) the Market Value of such Purchased Asset, *multiplied by* (b) the applicable Purchase Percentage. The Purchase Price shall increase by any Future Advance Purchase pursuant to Section 3(h) and any payment made to Seller in connection with a Margin Excess pursuant to Section 4(b), and shall decrease by any payment applied in connection with a Margin Deficit pursuant to Section 4(a) and any Principal Payment applied pursuant to Section 5 to reduce such Purchase Price and any other amounts paid to Buyer by Seller to reduce such Purchase Price.

"Purchase Term" shall mean, with respect to any Purchased Asset and any date of determination, the applicable period from the Purchase Date for such Purchased Asset to such date of determination.

"Purchased Asset" shall mean (i) with respect to any Transaction, the Eligible Assets sold by Seller to Buyer in such Transaction and (ii) with respect to the Transactions in general, all Eligible Assets sold by Seller to Buyer.

"Purchased Asset Documents" shall mean, with respect to a Purchased Asset, the documents specified in Schedule 2.

"Purchased Asset File" shall mean the Purchased Asset Documents, together with any additional documents and information required to be delivered to Buyer or its designee (including Custodian) pursuant to this Agreement.

"Purchased Asset File Checklist" shall have the meaning specified in the Custodial Agreement.

"Purchased Asset Schedule" shall have the meaning specified in the Custodial Agreement.

"Qualified Hedge Counterparty" shall mean, with respect to any Hedging Transaction, any entity other than an Affiliated Hedge Counterparty, that (a) qualifies as an "eligible contract participant" as such term is defined in the Commodity Exchange Act (as amended by the Commodity Futures Modernization Act of 2000), (b) the long-term debt of which is rated no less than "A+" by Standard & Poor's and "A1" by Moody's and (c) is reasonably acceptable to Buyer; provided that, with respect to clause (c), if Buyer has approved an entity as a counterparty, it may not thereafter deem such counterparty unacceptable with respect to any previously outstanding Transaction unless clause (a) or (b) no longer applies with respect to such counterparty.

"Quarterly Report" shall mean, for each fiscal quarter during which this Agreement shall be in effect, (i) Seller's or Servicer's, as applicable, certified written report summarizing (with a separate cover sheet for each Purchased Asset or, in the case of a Purchased Asset secured (directly or indirectly) by a portfolio of Mortgaged Properties, a cover sheet for such portfolio on a consolidated basis), with respect to the Mortgaged Properties securing each Purchased Asset (or, in the case of a Purchased Asset secured (directly or indirectly) by a portfolio of Mortgaged Properties, such information on a consolidated basis), the net operating income, debt service coverage, occupancy, the revenues per room (for hospitality properties) and sales per square footage (for retail properties), in each case, to the extent received by Seller, and such other

information as mutually agreed by Seller and Buyer, and (ii) the updated underwriting report, which reports shall be delivered to Buyer for each fiscal quarter during the term of this Agreement within sixty (60) days following the end of each such fiscal quarter.

"Reference Time" shall mean with respect to any setting of the then-current Benchmark means (1) if such Benchmark is LIBOR, 11:00 a.m. (London time) on the date that is two London banking days preceding the date of such setting, (2) if such Benchmark is Term SOFR, the time set forth in the definition of Term SOFR, and (3) if such Benchmark is not Term SOFR, then the time determined by Buyer in accordance with the Benchmark Replacement Conforming Changes.

~~"Rate Adjustment" shall mean, an adjustment which may be zero or a positive or negative value, and:~~

~~(a) if the Applicable Index is LIBOR, than equal to zero;~~

~~(b) if the Index Transition is a transition from LIBOR to:~~

~~(i) Term SOFR, then the adjustment that has been selected, endorsed or recommended by the Relevant Governmental Body for such Index Transition;~~

~~(ii) Compounded SOFR, then the adjustment that has been selected, endorsed or recommended by the Relevant Governmental Body for such Index Transition;~~

~~(iii) the ISDA Fallback Rate, then the ISDA Fallback Adjustment;~~

~~(iv) a Replacement Index other than Term SOFR, Compounded SOFR, or the ISDA Fallback Rate, an adjustment, consistent with Market Practice for handling such Index Transition, selected by the Buyer;~~

~~(c) if the Index Transition is a transition from an Index other than LIBOR to another Index, an adjustment, consistent with Market Practice for handling such Index Transition, selected by the Buyer.~~

"Regulations T, U and X" shall mean Regulations T, U and X of the Board of Governors of the Federal Reserve System (or any successor thereto), as the same may be modified and supplemented and in effect from time to time.

"REIT" shall mean a Person satisfying the conditions and limitations set forth in Section 856(b), Section 856(c), and Section 857(a) of the Code and qualifying as a real estate investment trust, as defined in Section 856(a) of the Code.

"Relevant Governmental Body" ~~shall mean:~~
~~(a)~~ means the Board of Governors of the Federal Reserve ~~Board~~System or the Federal Reserve Bank of New York;, or

~~(b)~~ a committee officially endorsed or convened by the Board of Governors of the Federal Reserve ~~Board~~System or the Federal Reserve Bank of New York, or any successor thereto.

"Remittance Date" shall mean the fifteenth (15th) calendar day of each month, or the next succeeding Business Day, if such calendar day shall not be a Business Day.

~~"Replacement Index" shall mean, as of the relevant Index Transition Date and thereafter until a subsequent Index Transition Date or the Maturity Date, the first alternative Index set forth in the order below that the Buyer determines is available, appropriate for the transaction and consistent with Market Practice:~~

~~(a) Term SOFR;~~

~~(b) Compounded SOFR;~~

~~(c) an Index selected or recommended by the Relevant Government Body as the replacement for the then-current Applicable Index;~~

~~(d) the ISDA Fallback Rate; or~~

~~(e) an Index selected by the Buyer.~~

"Representatives" shall have the meaning specified in Section 27(a) hereof.

"Repurchase Assets" shall have the meaning specified in Section 6(a) hereof. "Repurchase Date" shall mean, with respect to any Purchased Asset, the date that is the earliest to occur of the following: (a) the Facility Termination Date, (b) the date otherwise specified in the related Confirmation, or (c) if applicable, the related Early Repurchase Date or Accelerated Repurchase Date.

"Repurchase Obligations" shall mean the Aggregate Repurchase Price and all other amounts due under the Transaction Documents (including interest which would be payable as post-petition interest in connection with any bankruptcy or similar proceeding) irrespective of whether such obligations are direct or indirect, absolute or contingent, matured or unmatured.

"Repurchase Price" shall mean, with respect to any Purchased Asset, as of any date, the price at which such Purchased Asset is to be transferred from Buyer to Seller upon termination of the related Transaction; in each case, such price shall equal the sum of the Purchase Price of such Purchased Asset and the accrued and unpaid Price Differential with respect to such Purchased Asset as of the date of such determination, *minus* all Income and other cash actually received by Buyer in respect of such Purchased Asset and applied towards the Repurchase Price and/or Price Differential pursuant to this Agreement.

"Requirement of Law" shall mean any law (including, without limitation, Prescribed Law), treaty, rule, regulation, code, directive, policy, order or requirement or determination of an arbitrator or a court or any other Governmental Authority whether now or hereafter enacted or in effect.

"Reserve Requirements" shall mean, with respect to any date of determination, the aggregate (without duplication) of the rates (expressed as a decimal fraction) of reserve requirements in effect on such date (including, without limitation, basic, supplemental, marginal and emergency reserves under any regulations of the Board of Governors of the Federal Reserve System, the Federal Reserve Bank of New York or other Governmental Authority having jurisdiction with respect thereto) dealing with reserve requirements prescribed for Eurocurrency

funding (currently referred to as "Eurocurrency Liabilities" in Regulation D of the Board of Governors of the Federal Reserve System) maintained by Buyer.

"Sanctions" shall have the meaning specified in Section 10(xxv)(A) of this Agreement. "SEC" shall mean the Securities and

Exchange Commission.

"Seller" shall have the meaning specified in the introductory paragraph of this Agreement.

"Servicer" shall mean Barings Multifamily Capital LLC, or any successor servicer appointed by Buyer and reasonably acceptable to Seller; provided that the provisions of Section 22 are satisfied.

"Servicer Acknowledgment" shall mean a servicer acknowledgment entered into by Seller on Buyer's behalf in accordance with Section 22 of this Agreement.

"Servicing Agreement" shall mean (i) that certain Servicing Agreement, dated as of the date hereof, by and between Servicer, Ares Commercial Real Estate Servicer LLC, Buyer and Seller and (ii) such other servicing or subservicing agreement entered into by Seller on Buyer's behalf in accordance with Section 22 of this Agreement, as the same may be amended, supplemented or otherwise modified from time to time.

"Servicing Records" shall have the meaning specified in Section 22(b) of this Agreement.

"Servicing Rights" shall mean contractual, possessory or other rights of any Person to administer, service or subservice any Purchased Assets (or to possess any Servicing Records relating thereto), including: (i) the rights to service the Purchased Assets; (ii) the right to receive compensation (whether direct or indirect) for such servicing, including the right to receive and retain the related servicing fee and all other fees with respect to such Purchased Assets; and (iii) all rights, powers and privileges incidental to the foregoing, together with all Servicing Records relating thereto.

"Significant Modification" shall mean any modification or amendment of a Purchased Asset that:

(i) reduces the principal amount of such Purchased Asset (other than (a) with respect to a dollar-for-dollar principal payment or (b) as expressly permitted in the related Confirmation);

(ii) increases the principal amount of such Purchased Asset (other than as expressly permitted in the related Confirmation or the Purchased Asset Documents, including permitted increases resulting from future funding amounts advanced by Seller to Mortgagor as set forth therein);

(iii) modifies or changes the amount or frequency of regularly scheduled payments of principal and interest of such Purchased Asset including any modification of the interest rate or principal payments of such Purchased Asset; provided, however, that Seller shall be permitted, without the consent of Buyer, to change the monthly payment date with respect to a Purchased Asset in connection with an intended securitization;

(iv) changes the maturity date in respect of such Purchased Asset;

(v) subordinates the lien priority of such Purchased Asset or the payment priority of the Purchased Asset other than subordinations required under the then existing terms and conditions

of the Purchased Asset (provided, however, the foregoing shall not preclude the execution and delivery of subordination, nondisturbance and attornment agreements with tenants, subordination to tenant leases, easements, plats of subdivision and condominium declarations and similar instruments which in the commercially reasonable judgment of the Seller do not materially adversely affect the rights and interest of the holder of such Purchased Asset);

(vi) releases any collateral (either full or partial) for such Purchased Asset other than releases required under the then existing Purchased Asset Documents or releases in connection with eminent domain or under threat of eminent domain or releases any guarantees (either full or partial) securing the Purchased Asset;

(vii) releases any borrower, guarantor, pledgor or other obligor from any material obligation under the Purchased Asset Documents;

(viii) waives any monetary or material non-monetary defaults of any Underlying Obligor under the Purchased Asset Documents;

(ix) modifies any other economic terms in respect of a Purchased Asset, including, but not limited to, the prepayment terms;

(x) materially waives, amends or modifies, in Borrower's reasonable judgment, any cash management or reserve account requirements of such Purchased Asset other than changes required under the related Purchased Asset Documents;

(xi) waives any due-on-sale or due-on-encumbrance provisions of such Purchased Asset other than waivers required to be given under the then existing Purchased Asset Documents;

(xii) materially waives, amends or modifies any insurance requirements of such Purchased Asset under the related Purchased Asset Documents;

(xiii) encumbers the related Purchased Asset or the direct or indirect ownership interest in the mortgagor in connection with a subordinate financing, a mezzanine financing or a preferred equity investment; or

(xiv) relates to the issuance of a letter of credit as security for a Purchased Asset where Seller has a consent right to the form of letter of credit.

"Single-Purpose Entity" shall mean any corporation, limited partnership or limited liability company that, since the date of its formation and at all times on and after the date hereof, has complied with and shall at all times comply with the provisions of Section 13 of this Agreement.

"SIPA" shall have the meaning specified in Section 25(a) of this Agreement.

"SOFR" ~~shall mean~~with respect to any day means the secured overnight financing rate published ~~by the Relevant Governmental Body~~for such day by the Federal Reserve Bank of New York, as the administrator of the benchmark, (or a successor administrator) on the Federal Reserve Bank of New York's Website.

"Specified Third Party Securitization" means any securitization transaction that was not established or sponsored by Guarantor or any of its consolidated Subsidiaries.

"Split Mortgage Loan" shall mean a Mortgage Loan evidenced by two or more senior *pari passu* Mortgage Notes.

"Standard & Poor's" shall mean Standard & Poor's Ratings Services, Inc., a division of the McGraw Hill Companies Inc. and any successor in interest thereto.

"Subsidiary" shall mean, as to any Person, a 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 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. Unless otherwise qualified, all references to a Subsidiary or to Subsidiaries in this Agreement shall refer to a Subsidiary or Subsidiaries of Seller and/or Guarantor.

~~"Substitute Rate Transaction" shall mean a Transaction at any time on and after an Index Transition Date.~~

"Supplemental Due Diligence Package" shall mean, with respect to any New Asset, information or deliveries concerning such New Asset that Buyer shall reasonably request in addition to the Preliminary Due Diligence Package, including, without limitation, a credit approval memorandum representing the final terms of the underlying transaction, a loan-to-value ratio computation and a final Debt Yield Ratio computation for such New Asset.

"Survey" shall mean a certified ALTA/ACSM (or applicable state standards for the state in which a Mortgaged Property is located) survey of a Mortgaged Property prepared by a registered independent surveyor and in form and content reasonably satisfactory to Buyer and the company issuing the Title Policy for such Mortgaged Property.

"Table Funded Purchased Asset" shall mean a Purchased Asset which is sold to Buyer simultaneously with the origination or acquisition thereof, which origination or acquisition is financed with the Purchase Price, pursuant to Seller's request, paid directly to a title company or other settlement agent, in each case, approved by Buyer, for disbursement in connection with such origination or acquisition. A Purchased Asset shall cease to be a Table Funded Purchased Asset after Custodian has delivered a Trust Receipt to Buyer certifying its receipt of the Purchased Asset File therefor.

"Taxes" shall mean 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" means, with respect to any advance of a Purchase Price or Future Advance Purchase for any day, the Term SOFR Reference Rate for a one-month tenor on the day (such day, the "Term SOFR Determination Day") that is two (2) U.S. Government Securities Business Days prior to the first day of such Pricing Period, as such rate is published by the Term SOFR Administrator for such day at 6:00 a.m. (New York City time); provided, however, that if as of 5:00 p.m. (New York City time) on any Term SOFR Determination Day the Term SOFR Reference Rate for the foregoing 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 Term SOFR Determination Day; provided, further, that if Term SOFR determined as provided above shall be less than the Floor, then Term SOFR shall be deemed to be the Floor.

"Term SOFR Administrator" means 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 Determination Day" shall have the meaning set forth in the definition of Term SOFR in this Agreement.

"Term SOFR~~" shall mean an Index which, the Buyer determines meets each of the following criteria:~~ Reference Rate" means the forward-looking term rate based on SOFR.

~~(a) is a forward-looking term rate;~~
~~(b) is based on SOFR;~~
~~(c) has a tenor of one month (disregarding business day adjustment); and~~
~~(d) has been selected, recommended or endorsed by the Relevant Governmental Body.~~ "Title Policy" shall mean (a) an American Land Title Association lender's title insurance policy or a comparable form of lender's title insurance policy approved for use in the applicable jurisdiction, in form and substance reasonably acceptable to Buyer or, (b) if such policy has not yet been issued, (i) a pro forma policy, (ii) a preliminary title policy together with an Insured Closing Letter and Escrow Instructions or (iii) a "marked up" commitment, in each case that is binding on the title insurer.

"Transaction" shall have the meaning specified in Section 1 of this Agreement.

"Transaction Conditions Precedent" shall have the meaning specified in Section 3(f) of this Agreement.

"Transaction Costs" shall have the meaning specified in Section 20(b) of this Agreement.

"Transaction Documents" shall mean, collectively, this Agreement, the Blocked Account Agreement, the Custodial Agreement, the Fee Letter, the Guaranty, the Servicing Agreement, the Power of Attorney to Buyer, the Power of Attorney to Seller, all Confirmations executed pursuant to this Agreement in connection with specific Transactions and all other documents executed in connection herewith and therewith.

"Transfer" shall mean, with respect to any Person, any sale or other whole or partial conveyance of all or any portion of such Person's assets, or any direct or indirect interest therein to a third party (other than in connection with the transfer of a Purchased Asset to Buyer in accordance herewith), including the granting of any purchase options, rights of first refusal, rights of first offer or similar rights in respect of any portion of such assets or the subjecting of any portion of such assets to restrictions on transfer.

"Transfer Documents" shall mean, with respect to any Purchased Asset, all applicable Purchased Asset Documents necessary to transfer all of Seller's right, title and interest in such Purchased Asset to Buyer in accordance with the terms of this Agreement.

"Trust Receipt" shall mean a trust receipt issued by Custodian, or, in the case of a Table Funded Purchased Asset, Bailee, to Buyer substantially in the form required under the Custodial Agreement or the Bailee Agreement, as applicable.

"UCC" shall mean the Uniform Commercial Code as in effect from time to time in the State of New York; provided that if, by reason of mandatory provisions of law, the perfection or the effect of perfection or non-perfection of any security interest is governed by the Uniform Commercial Code as in effect in a jurisdiction other than New York, with respect to perfection or the effect of perfection or non-perfection, "UCC" shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions of this Agreement relating to such perfection or effect of perfection or non-perfection.

"Unadjusted Benchmark Replacement" means the applicable Benchmark Replacement excluding the Benchmark Replacement Adjustment with respect thereto.

"Underwriting Issues" shall mean, with respect to any New Asset, all material information of which Seller has knowledge that, based on the making of reasonable inquiries and the exercise of reasonable care and diligence by a reasonable institutional mortgage loan buyer in determining whether to originate or acquire such New Asset under the circumstances, would, in the context of the totality of the Transaction in question, be considered a materially "negative" factor (either separately or in the aggregate with other information relating to such New Asset), including, but not limited to, whether such New Asset was repurchased from any warehouse loan facility or a repurchase transaction due to the breach of a representation and warranty or a material defect in loan documentation or closing deliveries (such as the absence of any material Purchased Asset Document(s)).

"Upfront Fee" shall have the meaning specified in the Fee Letter.

"USA PATRIOT Act" shall mean the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56).

"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, 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" shall mean any Person that is a "United States Person" as defined in Section 7701(a)(30) of the Code.

"U.S. Tax Compliance Certificate" shall have the meaning specified in Section 3(r)(ii)(C) hereof.

3. INITIATION; CONFIRMATION; TERMINATION; FEES

(a) Seller may prior to the Facility Termination Date, from time to time request that Buyer enter into a Transaction with respect to one or more New Assets by submitting a Preliminary Due Diligence Package for Buyer's review and approval, which approval shall be in Buyer's sole discretion. Notwithstanding anything to the contrary herein, Buyer shall have no obligation to consider for purchase any New Asset if, immediately after the purchase of such New Asset, the Aggregate Repurchase Price would exceed the Facility Amount. Buyer and its representatives shall have the right to review all New Assets proposed to be sold to Buyer in any Transaction and to conduct its own due diligence investigation of such New Assets as Buyer determines is necessary in Buyer's sole discretion, including, without limitation, any applicable lender licensee requirements with respect to any New Asset. Notwithstanding any provision to the contrary herein or in any other Transaction Document, Buyer shall be entitled to determine, in its sole discretion, whether a New Asset qualifies as an Eligible Asset or whether to reject any New Asset proposed to be sold to Buyer by Seller. Notwithstanding anything in this Agreement to the contrary, prior to Seller requesting Buyer enter into a Transaction (or, for the avoidance of doubt, Buyer entering into any Transaction) with respect to one or more New Assets that consist of any Mezzanine Loan or Mezzanine Loans, Buyer shall receive an opinion of counsel in form and substance satisfactory to Buyer as to the safe harbor treatment for "securities contracts" and "master netting agreements" under the Bankruptcy Code covering mezzanine loans.

(b) Upon Buyer's receipt of a Preliminary Due Diligence Package, Buyer shall have the right to request a Supplemental Due Diligence Package to evaluate the proposed Transaction. Upon Buyer's receipt or waiver of such Supplemental Due Diligence Package, Buyer shall, in its sole discretion, within five (5) Business Days, either (i) notify Seller of its intent to proceed with the Transaction together with its determination of the Purchase Price and the Market Value for the related New Asset (such notice, a "Preliminary Approval") or (ii) deny Seller's request. Buyer's failure to respond to Seller within five (5) Business Days shall be

deemed to be a denial of Seller's request to enter into the proposed Transaction, unless Buyer and Seller have agreed otherwise in writing.

(c) Upon Seller's receipt of Preliminary Approval with respect to a Transaction, Seller shall, if Seller desires to enter into such Transaction with respect to the related New Asset upon the terms set forth by Buyer in the Preliminary Approval, deliver the documents set forth below in this Section 3(c) with respect to each New Asset and related Eligible Property or Eligible Properties (to the extent not already delivered in the Preliminary Due Diligence Package or in the Supplemental Due Diligence Package) as a condition precedent to a Final Approval and issuance of a Confirmation, all in a manner and/or form satisfactory to Buyer in its sole discretion and pursuant to documentation satisfactory to Buyer in its sole discretion:

(i) Delivery of Purchased Asset Documents. Copies of each of the final Purchased Asset Documents, or drafts of such Purchased Asset Documents in substantially final form if such New Asset is being originated concurrently with the transfer to Buyer, subject to delivery of final, executed copies of such Purchased Asset Documents on the Purchase Date of such New Asset.

(ii) Environmental and Engineering. A "Phase I" (and, if recommended by the Phase I, a "Phase II") environmental report, an asbestos survey, if applicable, and an engineering report, each in form reasonably satisfactory to Buyer, by an engineer and an environmental consultant, approved by Buyer in its reasonable discretion.

(iii) Appraisal. If obtained by Seller, an Appraisal or a Draft Appraisal of the related Eligible Property or Eligible Properties dated less than one hundred twenty (120) days prior to the proposed Purchase Date (or such earlier date as is agreed by Buyer). If Buyer receives only a Draft Appraisal prior to entering into a Transaction, Seller shall use its best efforts to deliver an Appraisal on or before thirty (30) days after the Purchase Date.

(iv) Insurance. Insurance reports in form and substance acceptable to Buyer and prepared by third-party consultants acceptable to Buyer, as well as certificates or other evidence of insurance detailing insurance coverage in respect of the related Eligible Property or Eligible Properties of types (including but not limited to casualty, general liability and terrorism insurance coverage), in amounts, with insurers and otherwise in compliance with the terms, provisions and conditions set forth in the Purchased Asset Documents and otherwise reasonably satisfactory to Buyer. Such certificates or other evidence shall indicate that Seller (or as to a New Asset that is a Participation Interest, the lead lender on the related whole loan in which Seller is a participant) will be named as an additional insured as its interest may appear and shall contain a loss payee endorsement in favor of such additional insured with respect to the policies required to be maintained under the Purchased Asset Documents.

(v) Opinions of Counsel. Copies of all legal opinions with respect to the New Asset (which shall include a non-consolidation opinion, if applicable) that shall be in form and substance reasonably satisfactory to Buyer; provided that Seller may deliver drafts of such opinions if such New Asset is being originated concurrently with the transfer to Buyer and shall deliver final, executed copies of such legal opinions on the Purchase Date of such New Asset.

(vi) Title Policy. (A) An unconditional commitment from the title company to issue a Title Policy or Policies in favor of Seller and Seller's successors and/or assigns with respect to each Mortgage securing such New Asset with an amount of insurance that shall be not less than the principal balance of such New Asset, or (B) an endorsement or confirmatory letter from the title company that issued the existing Title

Policy (in an amount not less than the principal balance of such New Asset) in favor of Seller and Seller's successors and assigns adding such parties as an additional insured.

(vii) Additional Real Estate Matters. To the extent obtained by Seller, such other real estate related certificates and documentation as may have been reasonably requested by Buyer, such as: (A) certificates of occupancy issued by the appropriate Governmental Authority and either letters certifying that the related Eligible Property or Eligible Properties are in compliance with all applicable zoning laws issued by the appropriate Governmental Authority, a zoning report in form and prepared by a zoning consultant satisfactory to Buyer or evidence that the related Title Policy includes a zoning endorsement; and (B) abstracts of all material leases in effect at the Mortgaged Property delivered in connection with the New Asset.

(viii) Exception Report. A written report of any exceptions to the representations and warranties in Exhibit III attached hereto (an "Exception Report").

(ix) Other Documents. Such other documents as Buyer shall reasonably deem to be necessary.

(d) Within five (5) Business Days of Seller's delivery of the documents and materials contemplated in Section 3(c) above, Buyer shall in its sole discretion notify Seller that either (A) Buyer has not approved the New Asset or (B) Buyer agrees to purchase the New Asset, subject to satisfaction (or waiver by Buyer) of the Transaction Conditions Precedent (such notice, a "Final Approval") set forth in Section 3(f) below, which such Final Approval shall indicate whether internal credit approval has been obtained with respect to any Future Advance Purchase in respect of any Future Advance Asset. Buyer's failure to respond to Seller within five (5) Business Days shall be deemed to be a denial of Seller's request that Buyer purchase the New Asset, unless Buyer and Seller have agreed otherwise in writing.

(e) Subject to satisfaction of the Transaction Conditions Precedent, Buyer shall deliver to Seller an executed Confirmation with respect to a proposed Transaction; provided that, unless otherwise agreed by Seller, Buyer shall deliver a separate Confirmation with respect to each New Asset that will be the subject of a Transaction. Each Confirmation shall be deemed to be incorporated herein by reference with the same effect as if set forth herein at length.

(f) Subject to Seller's rights under Section 3(h) hereof, Buyer shall transfer the Purchase Price to Seller with respect to each New Asset for which it has issued a Confirmation on the Purchase Date specified in such Confirmation (which Purchase Date shall be at least three
(3) Business Days after the date the Final Approval is delivered), and the related New Asset shall be concurrently transferred by Seller to Buyer or Buyer's nominee; provided that the following conditions (collectively, the "Transaction Conditions Precedent") shall be satisfied (or waived by Buyer in its sole discretion) with respect to such proposed Transaction:

(i) no Default, Event of Default or Margin Deficit shall have occurred and be continuing as of the Purchase Date;

(ii) Seller shall have executed a Confirmation for such proposed Transaction;

(iii) Guarantor shall have delivered to Buyer a true and accurate Financial Covenant Compliance Certificate with respect to Guarantor's most recently ended fiscal quarter for which a Financial Covenant Compliance Certificate is required to be delivered hereunder;

(iv) Seller shall have delivered an Officer's Certificate of Seller covering such matters as Buyer may reasonably request with respect to matters relating to this Agreement or the other Transaction Documents;

(v) Buyer shall have (A) determined, in its sole discretion, in accordance with Section 3(a) of this Agreement, that the New Asset proposed to be sold to Buyer by Seller in such Transaction is an Eligible Asset, (B) obtained internal credit approval for the inclusion of such New Asset as a Purchased Asset in a Transaction, (C) confirmed that, after giving effect to such Purchased Asset, the Concentration Limit shall be satisfied and
(D) determined, in its sole discretion, that the Maximum Asset Exposure Threshold and Portfolio Exposure Threshold will be satisfied immediately after giving effect to such proposed Transaction;

(vi) (A) if the New Asset is not a Table Funded Purchased Asset, the applicable Purchased Asset File described in Section 7(b)(i) of this Agreement shall have been either (x) delivered to Custodian or (y) held for the benefit of the Buyer by Bailee (and Bailee shall have executed and delivered a Bailee Agreement) and Buyer shall have received a Trust Receipt with respect to such Purchased Asset File, and (B) if the Purchased Asset is a Table Funded Purchased Asset, the documents required by Section 7(b)(i) shall have been delivered to Bailee and Bailee shall have executed and delivered a Bailee Agreement;

(vii) Seller shall have delivered to any related Mortgagor, obligor, related servicer or lead lender a direction letter in accordance with Section 5(a) of this Agreement unless such Mortgagor, obligor, related servicer or lead lender is already remitting payments to Servicer, in which case Seller shall direct Servicer to remit all such amounts into the Blocked Account in accordance with Section 5(a) of this Agreement and to service such payments in accordance with the provisions of this Agreement;

(viii) Seller shall have paid to Buyer (A) any fees then due and payable under the Fee Letter and (B) any unpaid Transaction Costs in respect of such Purchased Asset due and owing by Seller (which amounts, at Seller's option, may be held back from funds remitted to Seller by Buyer on the Purchase Date);

(ix) the New Asset is not a Defaulted Asset;

(x) Buyer shall have received true and complete copies of fully executed originals of all Transfer Documents;

(xi) Buyer shall have received a copy of any document relating to any Hedging Transaction, and Seller shall have validly pledged and assigned to Buyer all of Seller's rights under each Hedging Transaction included within a Purchased Asset, if any;

(xii) no circumstance shall exist or event have occurred resulting in a Material Adverse Effect (such matter to be certified in the Officer's Certificate of Seller delivered pursuant to and in accordance with Section 3(f)(iii) above); and

(xiii) there shall not have occurred (A) a material adverse change in financial markets, an outbreak or escalation of hostilities or a material change in national or international political, financial or economic conditions, or (B) a general suspension of trading on major stock exchanges, or (C) a disruption in or moratorium on commercial banking activities or securities settlement services; and

(xiv) no circumstance shall exist or event have occurred (including, without limitation, a change in any Requirement of Law or in the interpretation or administration

thereof) resulting in (A) the effective absence of a "repo market" or comparable "lending market" for financing debt obligations secured by commercial mortgage loans, (B) Buyer not being able to finance Eligible Assets through the "repo market" or "lending market" with traditional counterparties at rates which would have been reasonable prior to the occurrence of such event or events, or (C) any of the events or circumstances described in Sections 3(n), (o) and (p).

(g) Each Confirmation, together with this Agreement, shall be conclusive evidence of the terms of the related Transaction covered thereby.

(h) Subject to Section 4 of this Agreement, at any time prior to the Repurchase Date, in the event a future advance is to be made by Seller pursuant to the Purchased Asset Documents with respect to a Future Advance Asset, Seller may submit to Buyer a request that Buyer transfer cash to Seller in an amount not to exceed the Maximum Purchase Percentage, *multiplied by* the amount of such future advance (a "Future Advance Purchase"), which Future Advance shall increase the outstanding Purchase Price for such Future Advance Asset. Buyer shall transfer cash to Seller as provided in this Section 3(h) (and in accordance with the wire instructions provided by Seller in such request) on the date requested by Seller, which date shall be no earlier than three (3) Business Days following the Business Day on which Buyer reasonably determines that the conditions precedent to Buyer's obligation to make any Future Advance Purchase as set forth in this Section 3(h) have been satisfied (or, in Buyer's sole discretion, waived). It shall be a condition to Buyer's obligation to make any Future Advance Purchase that:

(i) no Margin Deficit shall be due and unpaid in accordance with Section 4(a) and no Event of Default has occurred and is continuing or will result from the funding of such Future Advance Purchase;

(ii) the funding of the Future Advance Purchase will not cause the aggregate outstanding Purchase Price for all Purchased Assets to exceed the Facility Amount;

(iii) the Future Advance Purchase will not cause the Purchase Price of the applicable Future Advance Asset to exceed the Concentration Limit;

(iv) Buyer shall have determined, in its sole discretion, that the Maximum Asset Exposure Threshold and Portfolio Exposure Threshold will be satisfied immediately after giving effect to the funding of the Future Advance Purchase;

(v) Seller shall have demonstrated to Buyer's reasonable satisfaction that all conditions to the future advance under the Purchased Asset Documents have been satisfied;

(vi) the Future Advance Purchase shall be in an amount equal to or greater than $500,000;

(vii) previously or simultaneously with Buyer's funding of the Future Advance Purchase, Seller shall have funded or caused to be funded to the Mortgagor (or to an escrow agent or as otherwise directed by the Mortgagor) its pro rata portion of such Future Advance Purchase in respect of such Future Advance Asset;

(viii) Guarantor shall have delivered to Buyer a true and accurate Financial Covenant Compliance Certificate with respect to Guarantor's most recently ended fiscal quarter for which a Financial Covenant Compliance Certificate is required to be delivered hereunder;

(ix) no circumstance shall exist or event have occurred resulting in a Material Adverse Effect (such matter to be certified in the Officer's Certificate of Seller delivered pursuant to and in accordance with Section 3(f)(iv) above); and

(x) if not previously obtained during the Final Approval, Buyer shall have obtained internal credit approval for the applicable Future Advance Purchase.

(i) Seller shall be entitled to terminate a Transaction on demand, and repurchase the related Purchased Asset on any Business Day prior to the applicable Repurchase Date (an "Early Repurchase Date"); provided, however, that:

(i) No Default; Event of Default or Margin Deficit shall be continuing or would occur or result from such early repurchase unless such Default or Event of Default would be cured by the repurchase of such Purchased Asset or such Margin Deficit is concurrently cured by Seller in accordance with Section 4 of this Agreement or such Default or Event of Default is concurrently cured in accordance with this Agreement;

(ii) Seller notifies Buyer in writing, no later than five (5) Business Days prior to the Early Repurchase Date, of its intent to terminate such Transaction and repurchase the related Purchased Asset; and

(iii) Seller shall pay to Buyer on the Early Repurchase Date an amount equal to the sum of the Repurchase Price for such Transaction, all Transaction Costs and any other amounts payable by Seller and outstanding under this Agreement or the other Transaction Documents (including, without limitation, Section 3(o), Section 3(p) and Section 3(q) of this Agreement, if any) with respect to such Transaction against transfer to Seller or its agent of the related Purchased Asset.

(j) On the Repurchase Date for any Transaction, termination of the applicable Transaction will be effected by transfer to Seller or, if requested by Seller, its designee of the related Purchased Assets, and any Income in respect thereof received by Buyer (and not previously credited or transferred to, or applied to the obligations of, Seller pursuant to Section 4 or Section 5 hereof) against the simultaneous transfer to Buyer of the applicable Repurchase Price, all Transaction Costs and any other amounts payable by Seller and outstanding under this Agreement with respect to such Transaction (including without limitation, Section 3(o), Section 3(p) and Section 3(q) of this Agreement, if any) to an account of Buyer.

(k) So long as no Event of Default has occurred and is then continuing, the Repurchase Price with respect to one or more Purchased Assets may be paid in part at any time upon two (2) Business Days prior written notice from Seller to Buyer; provided, however, that any such payment shall be accompanied by an amount representing accrued Price Differential with respect to such Purchased Asset(s) on the amount of such payment and all other amounts then due under the Transaction Documents. Each partial payment of the Repurchase Price that is voluntary (as opposed to mandatory under the terms of this Agreement) shall be in an amount of not less than $1,000,000.

(l) ~~Upon the Buyer's determination that an Index~~(i) Notwithstanding anything to the contrary herein or in any other Transaction Document, if a Benchmark Transition Event ~~has occurred:~~and a Benchmark Replacement Date with respect thereto have occurred prior to the Reference Time in connection with any setting of the then-current Benchmark, then such Benchmark Replacement will replace the then-current Benchmark for all purposes under this Agreement and under any other Transaction Document in respect of such Benchmark setting and subsequent Benchmark settings without requiring any amendment to, or requiring any further action by or consent of any other party to, this Agreement or any other Transaction Document.

(ii) Notwithstanding the forgoing, in the event that Buyer shall have determined (which determination shall be conclusive and binding upon Seller absent manifest error) that by reason of circumstances affecting the relevant market or otherwise, (i) adequate and reasonable means do not exist for ascertaining the applicable Benchmark, but a Benchmark Transition Event (as provided in the definition of Benchmark Transition Event as set forth herein) has not yet occurred or (ii) the Benchmark does not fairly and accurately reflect the costs to Buyers of effecting or maintaining the Transactions, then Buyer shall give written notice to Seller as soon as practicable thereafter. If such notice is given, the Pricing Rate with respect to all outstanding Transactions, until such notice has been withdrawn by Buyer, shall be a per annum rate equal to 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 related Applicable Spread."

~~(i) The Buyer shall, within three (3) Business Days, provide an Index Transition~~ Notice;

~~(ii) The Applicable Index shall transition, as of the Index Transition Date, to a Replacement Index identified in accordance with the definition thereof and the provisions hereof; and~~

~~(iii) The Rate Adjustment shall transition in accordance with the definition thereof.~~

(m) ~~Notwithstanding~~(i) In connection with the implementation and administration of a Benchmark Replacement, Buyer will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other ~~Transactions Documents, the Buyer shall make~~Transaction Document, any amendments implementing such Benchmark Replacement Conforming Changes ~~to the Transaction Documents from time to time in connection with an Index Transition Event, and such Conforming Changes shall~~will become effective without requiring any further action by or consent of any other party to this Agreement or any other Transaction Document.

(ii) Buyer will promptly notify Seller of (A) any occurrence of (i) a Benchmark Transition Event and (ii) the Benchmark Replacement Date with respect thereto, (B) the implementation of any Benchmark Replacement, and (C) the effectiveness of any Benchmark Replacement Conforming Changes.

Any determination, decision or election that may be made by Buyer pursuant to Section 3(l) or this Section 3(m), 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 the sole discretion of Buyer and without consent from Seller or any other party to any other Transaction Document."

(n) If Buyer shall have determined that the introduction of, or a change in, any Requirement of Law or in the interpretation or administration of any Requirement of Law (including, without limitation changes in any Reserve Requirements and any other increase in cost to Buyer) has made it unlawful, or any Governmental Authority shall have asserted that it is unlawful, for Buyer to enter into any Transaction or any Governmental Authority has imposed material restrictions on the authority of Buyer to enter into any Transaction, then on notice thereof by Buyer to Seller, any obligations of Buyer to enter into Transactions shall be suspended until Buyer notifies Seller that the circumstances giving rise to such determination no longer exist.

(o) In the event of the introduction of, or a change in, any Requirement of Law or in the interpretation or application thereof (including, without limitation changes in any Reserve Requirements and any other increase in cost to Buyer), or compliance by Buyer with any request or directive (whether or not having the force of law) hereafter issued from any central bank or other Governmental Authority:

(i) shall hereafter have the effect of reducing the rate of return on Buyer's capital (including by subjecting Buyer to any Taxes (other than (A) Indemnified Taxes,
(B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and
(C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto) as a consequence of its obligations hereunder to a level below that which Buyer could have achieved but for such adoption, change or compliance (taking into consideration Buyer's policies with respect to capital adequacy) by any amount deemed by Buyer to be material;

(ii) shall hereafter impose, modify, increase or hold applicable any reserve, special deposit, compulsory loan or similar requirement against assets held by, or deposits or other liabilities in or for the account of, advances or loans by, or other credit extended by, or any other acquisition of funds by, any office of Buyer which is not otherwise included in the determination of the rate hereunder (other than as a result of an increase in Taxes); or

(iii) shall hereafter impose on Buyer any other condition (other than Taxes) and the result of any of the foregoing is to increase the cost to Buyer of effecting, renewing or maintaining Transactions or to reduce any amount receivable hereunder;

then, in any such case, Seller shall promptly pay Buyer, upon demand, any additional amounts necessary to compensate Buyer for such additional cost or reduced amount receivable which Buyer deems to be material as reasonably determined by Buyer. If Buyer becomes entitled to claim any additional amounts pursuant to this Section 3(o), Seller shall not be required to pay same unless they are the result of requirements imposed generally on buyers or lenders similar to Buyer, and not the result of some specific reserve or similar requirement imposed on Buyer as a result of Buyer's special circumstances. If Buyer becomes entitled to claim any additional amounts pursuant to this Section 3(o), Buyer shall provide Seller with not less than thirty (30) days' written notice specifying in reasonable detail the event by reason of which it has become so entitled and the additional amount required to fully compensate Buyer for such additional cost or reduced amount. A certificate as to any additional costs or amounts payable pursuant to the foregoing sentence, executed by an authorized signatory of Buyer and submitted to Seller, shall be conclusive in the absence of manifest error. This provision shall survive payment of the Repurchase Price and the satisfaction of all other obligations of Seller under this Agreement and the Transaction Documents. In exercising its rights and remedies under this Section 3(o), Buyer shall act in a manner similar to the manner in which Buyer is contemporaneously exercising similar remedies in agreements with similarly situated counterparties.

(p) Seller agrees to indemnify Buyer and to hold Buyer harmless from any loss or expense (other than consequential and punitive damages) which Buyer sustains or incurs as a consequence of (i) any default by Seller in payment in accordance with Section 5 of this Agreement, relating to ~~a LIBOR Transaction or Substitute Rate~~any Transaction, including, without limitation, any such loss or expense arising from interest or fees payable by Buyer to lenders of funds obtained by it in order to effect or maintain a ~~LIBOR Transaction or Substitute~~ ~~Rate~~ Transaction hereunder, (ii) any payment of all or any portion of the Repurchase Price, as the case may be, on any day other than a Remittance Date, including, without limitation, such loss or expense arising from interest or fees payable by Buyer to lenders of funds obtained by it in order to effect or maintain a ~~LIBOR Transaction or Substitute Rate~~ Transaction hereunder,

(iii) ~~any Interest Determination~~the conversion (for any reason whatsoever, whether voluntary or involuntary) of the Benchmark to a Benchmark Replacement on a date other than the first day of a Pricing Period and (iv) any loss or expenses arising from interest or fees payable by Buyer to lenders of funds obtained by it in order to effect or maintain a ~~LIBOR~~ Transaction ~~or Substitute Rate Transaction~~ hereunder (the amounts referred to in clauses (i), (ii) and (iii) are herein referred to collectively as the "**Breakage Costs**"). Buyer will provide to Seller a statement detailing such Breakage Costs and the calculation thereof. The provisions of this Section 3(p) shall survive payment of the Repurchase Price in full for any Transaction and the satisfaction of all other obligations of Seller under this Agreement and the other Transaction Documents. ~~In exercising its rights and remedies under this Section 3(p), Buyer shall act in a manner similar to the manner in which Buyer is contemporaneously exercising similar remedies in agreements with similarly situated counterparties.~~"

(q) Any and all payments by or on account of any obligation of Seller under this Agreement 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 Seller 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 shall be increased by Seller as necessary so that after such deduction or withholding has been made, Buyer receives an amount equal to the sum it would have received had no such deduction or withholding been made. Seller shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with Requirements of Law. As soon as practicable after any payment of Taxes by Seller to a Governmental Authority pursuant to this Section 3(q), Seller shall deliver to Buyer the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, or if such receipts are not available, other reasonable evidence of such payment.

(r) If Buyer is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Transaction Document, Buyer shall deliver to Seller, prior to becoming a party to this Agreement, and at the time or times reasonably requested by Seller, such properly completed and executed documentation reasonably requested by Seller as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, Buyer 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 3(r)(i), Section 3(r)(ii) and Section 3(r)(iv) below) shall not be required if in Buyer's reasonable judgment such completion, execution or submission would be illegal, would subject Buyer to any material unreimbursed cost or expense or would otherwise materially prejudice the legal or commercial position of Buyer. Without limiting the generality of the foregoing:

(i) if Buyer is a U.S. Person, it shall deliver to Seller on or prior to the date on which Buyer becomes a party to this Agreement (and from time to time thereafter upon the reasonable request of Seller), executed originals of IRS Form W-9 certifying that Buyer is exempt from U.S. federal backup withholding tax;

(ii) if Buyer is not a U.S. Person it shall, to the extent it is legally entitled to do so, deliver to Seller (in such number of copies as shall be requested by Seller) 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 Seller), whichever of the following is applicable:

(A) in the case of Buyer claiming the benefits of an income tax treaty to which the United States is a party, (1) with respect to payments characterized as interest for U.S. tax purposes under any Transaction Document, executed originals 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 (2) with respect to any other applicable payments under any Transaction 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;

(B) executed originals of IRS Form W-8ECI;

(C) in the case of Buyer claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (1) a certificate to the effect that Buyer is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of 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 (2) executed originals of IRS Form W-8BEN or IRS Form W-8BEN-E (as applicable); or

(D) to the extent Buyer is not the beneficial owner, executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN-E, a U.S. Tax Compliance Certificate, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if Buyer is a partnership and one or more direct or indirect partners of Buyer are claiming the portfolio interest exemption, Buyer may provide a U.S. Tax Compliance Certificate on behalf of each such direct and indirect partner;

(iii) if Buyer is not a U.S. Person, it shall, to the extent it is legally entitled to do so, deliver to Seller (in such number of copies as shall be requested by Seller) on or prior to the date on which Buyer becomes a party to this Agreement (and from time to time thereafter upon the reasonable request of Seller), executed originals 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 Seller to determine the withholding or deduction required to be made; and

(iv) if a payment made to Buyer under any Transaction 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 Seller at the time or times prescribed by law and at such time or times reasonably requested by Seller 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 Seller as may be necessary for Seller to comply with its obligations under FATCA and to determine whether 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 Section 3(r)(iv), "FATCA" shall include any amendments made to FATCA after the date of this Agreement; provided that Buyer agrees that if any form or certification it previously delivered pursuant to this Section 3(r) expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify Seller in writing of its legal inability to do so.

(s) 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 Section 3(q) (including by the payment of additional amounts pursuant to Section 3(q)), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under Section 3(q) 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 Section 3(q) (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 3(s), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this Section 3(s) 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 3(s) 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.

(t) For the avoidance of doubt, for purposes of Section 3(p), Section 3(q) and Section 3(r), the term "applicable law" includes FATCA.

(u) If any of the events described in Section 3(o), Section 3(p) or Section 3(q) result in Buyer's request for additional amounts, then Seller shall have the option to notify Buyer in writing of its intent to terminate all of the Transactions and this Agreement and repurchase all of the Purchased Assets no later than one hundred and twenty (120) days after Seller's receipt of the Interest Determination Notice or notice of Conformation Changes and within ten (10) Business Days after notice is given to Buyer, and such repurchase by Seller shall be conducted pursuant to and in accordance with Section 3(i). The election by Seller to terminate the Transactions in accordance with this Section 3(u) shall not relieve Seller for liability with respect to any additional amounts or increased costs actually incurred by Buyer prior to the actual repurchase of the Purchased Assets.

(v) If the Rate Adjustment with respect to any Replacement Index is higher than the corresponding adjustment on any Purchased Asset, then Seller shall have the option to notify Buyer in writing of its intent to terminate the Transaction with respect to such Purchased Asset and repurchase such Purchased Assets no later one hundred and twenty (120) days after Seller's receipt of the Interest Determination Notice and within ten (10) Business Days after such notice is given to Buyer.

(w) If the Seller receives an Index Transition Notice and does not in good faith agree with the Interest Determination and/or related Conforming Changes, then Seller shall have the option to notify Buyer in writing of its intent to terminate the Transaction with respect to such Purchased Asset and repurchase such Purchased Assets no later one hundred and twenty (120) days after Seller's receipt of the Interest Determination Notice and within ten (10) Business Days after such notice is given to Buyer.

(x) If Buyer becomes entitled to claim any additional amounts pursuant to this Section 3, it shall promptly notify Seller of the event by reason of which it has become so entitled within one hundred and eighty (180) days after becoming aware thereof (the "Increased Cost Notice"). The Increased Cost Notice shall not include any amounts calculated on account of any change in any Requirement of Law or interpretation thereof for a period that is more than one hundred and eighty (180) days prior to Seller's receipt of the Increased Cost Notice.

(y) From and after the Facility Termination Date, Buyer shall have no further obligation to purchase any New Assets. On the Facility Termination Date, Seller shall be obligated to repurchase all of the Purchased Assets and transfer payment of the Repurchase Price for each such Purchased Asset, together with the accrued and unpaid Price Differential and all Transaction Costs and other amounts due and payable to Buyer hereunder, against the transfer by Buyer to Seller of each such Purchased Asset. Following the Facility Termination Date, Buyer shall not be obligated to transfer any Purchased Assets to Seller until payment in full to Buyer of all amounts due hereunder.

(z) Notwithstanding any provision herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all rules, regulations, guidelines or directives promulgated in connection therewith or in implementation thereof, and (ii) all requests, rules, guidelines, requirements and directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or by United States or foreign regulatory authorities, shall in each case be deemed to be an adoption of or change in a Requirement of Law made subsequent to the date of this Agreement.

4. MANDATORY PAYMENT OR DELIVERY OF ADDITIONAL ASSETS

(a) Buyer may determine and re-determine the Asset Base Components on any Business Day and on as many Business Days as it may elect. Upon the occurrence of a Margin Credit Event with respect to one or more Purchased Assets, if at any such time the aggregate Purchase Price of such Purchased Assets is greater than the aggregate Asset Base Components of such Purchased Assets as determined by Buyer in its sole good faith discretion (a "Margin Deficit"), without giving effect to any changes in Market Value resulting from any event that results in the increase or decrease of interest rate spreads or other similar benchmarks (including, without limitation, U.S. treasury rates, interest rate swaps, LIBOR or the prime rate) or any disruption in the commercial mortgage backed securities markets, capital markets or credit markets, then Seller shall, not later than three (3) Business Days after receipt of notice of such Margin Deficit from Buyer, at its option (i) deliver to Buyer cash in an amount sufficient to reduce the aggregate Purchase Price of such Purchased Assets to an amount equal to the aggregate Asset Base Components as re-determined by Buyer after giving effect to the delivery of cash or additional collateral by Seller to Buyer pursuant to this Section 4(a) (provided that any cash delivered to Buyer pursuant to this Section 4(a)(i) shall be applied by Buyer to reduce the Purchase Price of the applicable Purchased Assets), (ii) repurchase the affected Purchased Assets at the applicable Repurchase Price or (iii) a combination of clauses (i) and (ii), provided that no fees (including, for the avoidance of doubt, Breakage Costs, exit fees or any other fees pursuant to the Transaction Documents) shall be payable by Seller to Buyer in the event of such repurchase. So long as no Default or Event of Default has occurred and is continuing, Seller shall not be required to cure a Margin Deficit in accordance with the preceding sentence unless and until the aggregate Margin Deficit of all Purchased Assets equals or exceeds $1,000,000 on any date of determination.

(b) If at any such time the Purchase Price of one or more Purchased Assets is less than the aggregate Asset Base Components of such Purchased Assets as determined by Buyer in its sole discretion (a "Margin Excess"), then Buyer shall, no later than five (5) Business Days after receipt of a request from Seller, transfer cash to Seller in an amount (not to exceed such Margin Excess) such that the Purchase Price of such Purchased Asset, after the addition of any such cash so transferred, will thereupon not exceed such Asset Base Component as re-determined by Buyer after giving effect to the delivery of cash by Buyer to Seller pursuant to this Section 4(b); provided that (i) no Margin Deficit is due and unpaid in accordance with Section 4(a), and no Event of Default has occurred and is continuing or would result from such funding, (ii) such funding shall not result in the Aggregate Repurchase Price of all Purchased Assets exceeding the Facility Amount and (iii) each such funding shall be in an amount of not less than

$1,000,000. Seller shall not be permitted to request more than four (4) Margin Excess advances in any calendar month. Any cash delivered by Buyer to Seller pursuant to this Section 4(b) shall be applied by Buyer to increase the Purchase Price of the applicable Purchased Asset. Buyer and Seller shall execute and deliver a restated Confirmation for the applicable Transaction to set forth the new Purchase Price for such Purchased Asset. Seller may not request funding under this Section 4(b) more than three times in any calendar month.

5. INCOME PAYMENTS AND PRINCIPAL PAYMENTS

(a) On or before the date hereof, Seller and Buyer shall establish and maintain with the Depository Bank a deposit account in the name of Seller in trust for Buyer and under the sole control of Buyer with respect to which the Blocked Account Agreement shall have been executed (such account, together with any replacement or successor thereof, the "Blocked Account"). Seller shall cause all Income received with respect to the Purchased Assets to be deposited in the Blocked Account. In furtherance of the foregoing, Seller shall cause Servicer to remit to the Blocked Account all Income received in respect of the Purchased Assets within one (1) Business Day of receipt. All Income in respect of the Purchased Assets, which may include payments in respect of associated Hedging Transactions, shall be deposited directly into, or, if applicable, remitted directly from the applicable underlying collection account to, the Blocked Account.

(b) Unless an Event of Default shall have occurred and be continuing, on each Remittance Date, all Income on deposit in the Blocked Account in respect of the Purchased Assets and the associated Hedging Transactions shall be applied as follows:

(i) *first*, to Buyer, an amount equal to the Price Differential which has accrued and is outstanding in respect of the Transactions as of such Remittance Date;

(ii) *second*, to Buyer, any accrued and unpaid Exit Fee and all Transaction Costs and all other amounts payable by Seller and outstanding hereunder and under the other Transaction Documents (other than the Repurchase Price);

(iii) *third*, if a Principal Payment in respect of any Purchased Asset has been made during the related Collection Period, to Buyer an amount equal to the product of the amount of such Principal Payment, *multiplied by* the applicable Purchase Percentage;

(iv) *fourth*, if any Margin Deficit shall be due and unpaid with respect to one or more Purchased Assets pursuant to Section 4(a), to Buyer, an amount such that, after giving effect to such payment, the aggregate Purchase Price of such Purchased Assets is equal to the aggregate Asset Base Components of such Purchased Assets, as determined by Buyer after giving effect to such payment to the extent of remaining funds in the Blocked Account; and

(v) *fifth*, to Seller, the remainder, if any.

If, on any Remittance Date, the amounts deposited in the Blocked Account shall be insufficient to make the payments required under (i) through (iv) above of this Section 5(b), and Seller does not otherwise make such payments on such Remittance Date, the same shall constitute an Event of Default hereunder.

(c) If an Event of Default shall have occurred and be continuing, all Income on deposit in the Blocked Account in respect of the Purchased Assets and the associated Hedging Transactions shall be applied as determined in Buyer's sole discretion pursuant to Section 14(b)(ii).

(d) If at any time during the term of any Transaction any Income is distributed to Seller with respect to the related Purchased Asset or Seller has otherwise received such Income and has made a payment in respect of such Income to Buyer pursuant to this Section 5, and for any reason such amount is required to be returned by Buyer to an obligor under such Purchased Asset (either before or after the Repurchase Date), Buyer may provide Seller with notice of such required return, and Seller shall pay the amount of such required return to Buyer by 5:00 p.m. (New York time) on the Business Day following Seller's receipt of such notice.

(e) Subject to the other provisions hereof, Seller shall be responsible for all Transaction Costs in respect of any Purchased Assets to the extent it would be so obligated if the Purchased Assets had not been sold to Buyer. Buyer shall provide Seller with notice of any Transaction Costs, and Seller shall pay the amount of any Transaction Costs to Buyer by 11:00 a.m. (New York time) on the later of (i) five (5) Business Days after the date on which Buyer has informed Seller that such amount is due under the Purchased Asset Documents and (ii) three (3) Business Days following Seller's receipt of such notice.

6. SECURITY INTEREST

(a) Buyer and Seller intend that all Transactions hereunder be sales to Buyer of the Purchased Assets for all purposes (other than for U.S. federal, state and local income or franchise tax purposes) and not loans from Buyer to Seller secured by the Purchased Assets. However, in the event that any Transaction is deemed to be a loan, Seller hereby pledges to Buyer as security for the performance by Seller of the Repurchase Obligations and hereby grants to Buyer a first priority security interest in all of Seller's right, title and interest in and to the following (collectively, the "Repurchase Assets"):

(i) all of the Purchased Assets (including, for the avoidance of doubt, all security interests, mortgages and liens on personal or real property securing the Purchased Assets) and related Servicing Rights;

(ii) all Income from the Purchased Assets;

(iii) all insurance policies and insurance proceeds relating to any Purchased Asset or the related Eligible Property;

(iv) all "general intangibles", "accounts" and "chattel paper" as defined in the UCC relating to or constituting any and all of the foregoing;

(v) all replacements, substitutions or distributions on or proceeds, payments and profits of, and records and files relating to, any and all of the foregoing; and

(vi) any other property, rights, titles or interests as are specified in the Confirmation and/or the Trust Receipt, the Purchased Asset Schedule or exception report with respect to the foregoing in all instances, whether now owned or hereafter acquired, now existing or hereafter created.

(b) With respect to the security interest in the Repurchase Assets granted in Section 6(a) hereof, and with respect to the security interests granted in Sections 6(c) and 6(d), Buyer shall have all of the rights and may exercise all of the remedies of a secured creditor under the UCC and any other applicable law and shall have the right to apply the Repurchase Assets or proceeds therefrom to the obligations of Seller under the Transaction Documents. In furtherance of the foregoing, (i) Buyer, at Seller's sole cost and expense, shall cause to be filed as a protective filing with respect to the Repurchase Assets and as a UCC filing with respect to the security interests granted in Sections 6(c) and 6(d) one or more UCC financing statements in form satisfactory to Buyer (to be filed in the filing office indicated therein), in such locations as may be necessary to perfect and maintain perfection and priority of the outright transfer

(including under Section 22 of this Agreement) and the security interest granted hereby and, in each case, continuation statements and any amendments thereto (including, without limitation, by causing to be filed any amendments necessary to add or delete Repurchase Assets covered by the financing statement to reflect the purchase and repurchase of Purchased Assets) (collectively, the "Filings"), and shall forward copies of such Filings to Seller upon completion thereof, and (ii) Seller shall, from time to time, at its own expense, deliver and cause to be duly filed all such further filings, instruments and documents and take all such further actions as may be necessary or desirable or as may be requested by Buyer with respect to the perfection and priority of the outright transfer of the Purchased Assets and the security interest granted hereunder in the Repurchase Assets and the rights and remedies of Buyer with respect to the Repurchase Assets (including under Section 22 of this Agreement) (including the payments of any fees and Other Taxes required in connection with the execution and delivery of this Agreement).

(c) Seller hereby pledges to Buyer as security for the performance by Seller of the Repurchase Obligations and hereby grants to Buyer a first priority security interest in all of Seller's right, title and interest in and to Seller's rights under all Hedging Transactions relating to Purchased Assets entered into by Seller and all proceeds thereof. Seller shall take all action as is necessary or desirable to obtain consent to assignment of any such Hedging Transaction to Buyer and shall cause the counterparty under each such Hedging Transaction to enter into such document or instrument satisfactory to Buyer, Seller and such counterparty, pursuant to which such counterparty will covenant and agree to accept notice from Buyer to redirect payments under such Hedging Transaction as Buyer may direct. So long as no Event of Default shall be continuing, Buyer agrees that it will not redirect payments under any Hedging Transaction pledged to Buyer pursuant to the terms of this Section 6(c).

(d) Seller hereby pledges to Buyer as security for the performance by Seller of the Repurchase Obligations and hereby grants to Buyer a first priority security interest in all of Seller's right, title and interest in and to the Blocked Account and all amounts and property from time to time on deposit therein and all replacements, substitutions or distributions on or proceeds, payments and profits of, and records and files relating to, the Blocked Account.

(e) In connection with the repurchase by Seller of any Purchased Asset in accordance herewith, upon receipt of the Repurchase Price by Buyer, Buyer will deliver to Seller, at Seller's expense, such documents and instruments as may be reasonably necessary and requested by Seller to release and reconvey such Purchased Asset and any Income related thereto to Seller, such release related thereto shall be effective automatically without further action by any party.

7. PAYMENT, TRANSFER AND CUSTODY

(a) Subject to the terms and conditions of this Agreement, on the Purchase Date for each Transaction, ownership of the Purchased Assets and all rights thereunder shall be transferred to Buyer or its designee (including Custodian) against the simultaneous transfer of the Purchase Price to an account of Seller specified in the Confirmation relating to such Transaction. Buyer will provide Seller with a Power of Attorney to Seller, allowing Seller to administer, operate and service such Purchased Assets. Provided that no Event of Default shall have occurred and be continuing, such Power of Attorney to Seller shall be binding upon Buyer and Buyer's successors and assigns.

(b) Seller shall:

(i) with respect to each Table Funded Purchased Asset, (A) not later than 1:00 p.m. (New York time) on the Purchase Date, deliver or cause Bailee to deliver to Buyer, by electronic transmission, a true and complete copy of the related Mortgage Note or Participation Certificate with assignment in blank (as applicable), loan agreement,

Mortgage, Title Policy, Insured Closing Letter and Escrow Instructions, if any, and the executed Bailee Agreement; (B) not later than 1:00 p.m. (New York time) on the third (3rd) Business Day following the Purchase Date, deliver or cause Bailee to deliver and release to Custodian (with a copy to Buyer), together with a Purchased Asset File Checklist, the Purchased Asset Documents with respect to each Purchased Asset identified in the Purchased Asset File Checklist delivered therewith, and (C) not later than two (2) Business Days following receipt of such Purchased Asset Documents by Custodian, cause Custodian to deliver a Trust Receipt confirming such receipt; and

(ii) with respect to each Purchased Asset that is not a Table Funded Purchased Asset, (A) not later than 1:00 p.m. (New York time) two (2) Business Days prior to the related Purchase Date, deliver and release or cause Bailee to deliver and release to Custodian (with a copy to Buyer), together with the Purchased Asset File Checklist, the Purchased Asset Documents with respect to each Table Funded Purchased Asset identified in the Purchased Asset File Checklist delivered therewith, and the executed Bailee Agreement, as applicable, and (B) on the Purchase Date, cause Custodian to deliver a Trust Receipt confirming receipt of such Purchased Asset Documents; provided that if Seller cannot deliver, or cause to be delivered, any of the original Purchased Asset Documents required to be delivered as originals (excluding the Mortgage Note, the Assignment of Mortgage and, if applicable, the Participation Certificate, originals of which must be delivered at the time required under the provisions above), Seller shall deliver a photocopy thereof and an Officer's Certificate of Seller certifying that such copy represents a true and correct copy of the original and shall use its best efforts to obtain and deliver such original document within one hundred eighty (180) days after the related Purchase Date (or such longer period after the related Purchase Date to which Buyer may consent in its sole discretion, so long as Seller is, as certified in writing to Buyer not less frequently than monthly, using its best efforts to obtain the original). After the expiration of such best efforts period, Seller shall deliver to Buyer a certification that states, despite Seller's best efforts, Seller was unable to obtain such original document, and thereafter Seller shall have no further obligation to deliver the related original document. Notwithstanding the foregoing, Buyer shall, at its option, have the right to cancel the purchase of an Eligible Asset if all required originals have not been delivered as required in this Agreement.

(c) From time to time, Seller shall forward to Custodian additional original documents (or additional documents reasonably requested by Buyer and can be provided by Seller without undue burden) evidencing any assumption, modification, consolidation or extension of a Purchased Asset approved in accordance with the terms of this Agreement, and upon receipt of any such other documents, Custodian shall hold such other documents on behalf of Buyer and as Buyer shall request from time to time. With respect to any documents which have been delivered or are being delivered to recording offices for recording and have not been returned to Seller in time to permit their delivery hereunder at the time required, in lieu of delivering such original documents, Seller shall deliver to Buyer a true copy thereof with an Officer's Certificate certifying that such copy is a true, correct and complete copy of the original, which has been transmitted for recordation. Seller shall deliver such original documents to Custodian promptly when they are received. With respect to all of the Purchased Assets delivered by Seller to Buyer or its designee (including Custodian), Seller shall execute an omnibus Power of Attorney to Buyer irrevocably appointing Buyer its attorney-in-fact with full power to (i) complete and record any Assignment of Mortgage, (ii) complete the endorsement of any Mortgage Note or Participation Certificate (as applicable) and (iii) take such other steps as may be necessary or desirable to enforce Buyer's rights against any Purchased Assets and the related Purchased Asset Files and the Servicing Records. Buyer shall deposit the Purchased Asset Files representing the Purchased Assets, or cause the Purchased Asset Files to be deposited directly, with Custodian to be held by Custodian on behalf of Buyer. The Purchased Asset Files shall be maintained in accordance with Custodial Agreement. Any Purchased Asset File not delivered to Buyer or its

designee (including Custodian) is and shall be held in trust by Seller or its designee for the benefit of Buyer as the owner thereof. Seller or its designee shall maintain a copy of the Purchased Asset File and the originals of the Purchased Asset File not delivered to Buyer or its designee. The possession of the Purchased Asset File by Seller or its designee is at the will of Buyer for the sole purpose of servicing the related Purchased Asset, and such retention and possession by Seller or its designee is in a custodial capacity only. The books and records (including, without limitation, any computer records or tapes) of Seller or its designee shall be marked appropriately to reflect clearly the transfer, subject to the terms and conditions of this Agreement, of the related Purchased Asset to Buyer. Seller or its designee (including Custodian) shall release its custody of the Purchased Asset File only in accordance with written instructions from Buyer, unless such release is required as incidental to the servicing of the Purchased Assets or is in connection with a repurchase of any Purchased Asset by Seller or is pursuant to the order of a court of competent jurisdiction.

(d) On the date of this Agreement, Buyer shall have received all of the following items and documents, each of which shall be satisfactory to Buyer in form and substance:

(i) Transaction Documents. (A) This Agreement, duly executed and delivered by Seller and Buyer; (B) the Custodial Agreement, duly executed and delivered by Seller, Buyer and Custodian;(C) the Blocked Account Agreement, duly executed and delivered by Seller, Buyer and Depository Bank; (D) the Fee Letter, duly executed and delivered by Seller and Buyer; (E) the Pledge and Security Agreement, duly executed by Pledgor and Buyer; (F) the Guaranty, duly executed and delivered by Guarantor; (G) the Power of Attorney to Buyer; (H) the Power of Attorney to Seller; (I) the Servicing Agreement, duly executed by the parties thereto; and (J) the Filings;

(ii) Fees and Costs. The Upfront Fee and all other Transaction Costs payable to Buyer in connection with the negotiation of the Transaction Documents;

(iii) Organizational Documents. Certified copies of the organizational documents of Seller, Pledgor and Guarantor and resolutions or other documents evidencing the authority of Seller, Pledgor and Guarantor with respect to the execution, delivery and performance of the Transaction Documents to which it is a party and each other document to be delivered by Seller, Pledgor and/or Guarantor from time to time in connection with the Transaction Documents (and Buyer may conclusively rely on such certifications until it receives notice in writing from Seller, Pledgor or Guarantor, as the case may be, to the contrary);

(iv) Legal Opinions. Opinions of counsel to Seller and Guarantor in form and substance satisfactory to Buyer as to due formation, good standing, authority, enforceability of the Transaction Documents to which it is a party, perfection, the Investment Company Act, safe harbor treatment for "securities contracts" and "master netting agreements" under the Bankruptcy Code, and such other matters as may be requested by Buyer, including, without limitation, "true sale" opinions with respect to Seller's acquisition of any loan from an affiliate of Seller, provided that Buyer shall not require a true sale opinion if Seller acquired such loan from a wholly-owned (directly or indirect) subsidiary of Guarantor; and

(v) Other Documents. Such other documents (to the extent such documents are in the possession of the Seller or can be obtained by Seller without undue burden or expense) as Buyer may reasonably request.

8. CERTAIN RIGHTS OF BUYER WITH RESPECT TO THE PURCHASED ASSETS

(a) Subject to the terms and conditions of this Agreement, title to all Purchased Assets shall pass to Buyer on the applicable Purchase Date, and Buyer shall have free and unrestricted use of its interest in the Purchased Assets in accordance with the terms and conditions of the Purchased Asset Documents, subject, however, to the terms of this Agreement. Nothing in this Agreement or any other Transaction Document shall preclude Buyer from engaging (at its expense) in repurchase transactions with the Purchased Assets with Persons (other than Prohibited Assignees) in conformity with the terms and conditions of the Purchased Asset Documents or otherwise selling, transferring, pledging, repledging, hypothecating, or rehypothecating the Purchased Assets to Persons (other than Prohibited Assignees) in conformity with the terms and conditions of the Purchased Asset Documents, but no such transaction shall relieve Buyer of its obligations to transfer the Purchased Assets to Seller pursuant to Section 3 of this Agreement or of Buyer's obligation to credit or pay Income to, or apply Income to the obligations of, Seller pursuant to Section 5 of this Agreement or otherwise affect the rights, obligations and remedies of any party to this Agreement.

(b) Nothing contained in this Agreement or any other Transaction Document shall obligate Buyer to segregate any Purchased Assets delivered to Buyer by Seller. Notwithstanding anything to the contrary in this Agreement or any other Transaction Document, no Purchased Asset shall remain in the custody of Seller or an Affiliate of Seller other than as permitted herein. Subject to the terms and conditions of this Agreement, any documents delivered to Custodian pursuant to Section 7 of this Agreement shall be released only in accordance with the terms and conditions of the Custodial Agreement.

9. EXTENSION OF FACILITY TERMINATION DATE; INCREASE OF FACILITY AMOUNT

(a) ~~First and Final~~ Extension of Facility Termination Date. At the request of Seller delivered to Buyer no earlier than ninety (90) days and no later than thirty (30) days before the ~~then applicable~~Initial Facility Termination Date, Seller may request ~~two one (1) year extensions of such Facility Termination Date, each for~~ a one (1) year ~~period~~extension of such Initial Facility Termination Date (such extended Initial Facility Termination ~~Dates hereinafter~~Date, the "~~First~~ Extended Facility Termination Date" ~~and the "Final Extended Facility Termination Date" as applicable). Such requests~~). Such request may be approved or denied in Buyer's sole discretion, and in any case shall be approved only if (i) no Default, Event of Default or Margin Deficit that is due and unpaid in accordance with Section 4(a), shall exist, in each case, on the date of Seller's request to extend or on the ~~then current~~Initial Facility Termination Date, (ii) Seller shall deliver an Officer's Certificate to Buyer certifying that all representations and warranties in this Agreement remain true, correct, complete and accurate in all respects as of the ~~then current~~Initial Facility Termination Date (except 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 (iii) on or before the ~~then current~~Initial Facility Termination Date, Seller shall have paid the Extension Fee to Buyer. For the avoidance of doubt, in the event that Seller requests ~~each of~~ the ~~two extensions~~extension set forth in this Section 9(~~b~~a) and Buyer approves ~~the extensions in Section 9(b), (i)~~such extension, Seller would be obligated to pay the Extension Fee to Buyer ~~first~~ on or before ~~January~~July 16, ~~2023 and January 16, 2024 and (ii) the~~2025, and the Initial Facility Termination Date would be extended by ~~two~~one (~~2~~1) ~~years in the aggregate to the Final~~ year to July 16, 2026 (the "Extended Facility Termination Date ~~(i.e January 16, 2025~~").

(b) Increase of Facility Amount. At the request of Seller delivered to Buyer no earlier than ninety (90) days and no later than thirty (30) days before the third (3rd) anniversary of the

date of this Agreement, Seller may, permanently increase the Facility Amount by the Preapproved Accordion Amount, provided that the following conditions are satisfied:

(i) Seller shall, as applicable, execute: (A) an amendment documenting such increased Facility Amount or (B) such other documents as Buyer may reasonably require;

(ii) no Default, Event of Default or Margin Deficit that is due and unpaid in accordance with Section 4(a) shall exist, in each case, on the date of Seller's request to increase the Facility Amount or on the date of such increase of the Facility Amount; and

(iii) Seller shall deliver an Officer's Certificate to Buyer certifying that all representations and warranties in this Agreement remain true, correct, complete and accurate in all respects as of the date of such increase of the Facility Amount (except 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).

10. REPRESENTATIONS

Seller represents and warrants to Buyer that as of the date of this Agreement and as of each Purchase Date and at all times while this Agreement and any Transaction thereunder is in effect or any Repurchase Obligations remain outstanding:

(i) Organization. Seller (A) is a limited liability company duly organized, and, as of the date hereof and each Purchase Date, is validly existing and in good standing under the laws and regulations of the State of Delaware; (B) is duly licensed, qualified, and in good standing in every state where such licensing or qualification is necessary for the transaction of Seller's business; (C) has all requisite limited liability company or other power, and has all governmental licenses, authorizations, consents and approvals necessary, to (1) own and hold its assets and to carry on its business as now being conducted and proposed to be conducted and (2) to execute the Transaction Documents and enter into the Transactions thereunder, and (D) has all requisite limited liability company or other power to execute, deliver, and perform its obligations under this Agreement and the other Transaction Documents.

(ii) Authorization; Due Execution; Enforceability. The execution, delivery and performance by Seller of each of this Agreement and each of the Transaction Documents have been duly authorized by all necessary limited liability company or other action on its part. The Transaction Documents have been duly executed and delivered by Seller for good and valuable consideration. The Transaction Documents constitute the legal, valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms subject to bankruptcy, insolvency, and other limitations on creditors' rights generally and to equitable principles.

(iii) Non-Contravention; Consents. Neither the execution and delivery of the Transaction Documents, nor consummation by Seller of the transactions contemplated by the Transaction Documents (or any of them), nor compliance by Seller with the terms, conditions and provisions of the Transaction Documents (or any of them) will (A) conflict with or result in a breach of the organizational documents of Seller, (B) conflict with any applicable law (including, without limitation, Prescribed Laws), rule or regulation or result in a breach or violation of any of the terms, conditions or provisions of any judgment or order, writ, injunction, decree or demand of any Governmental Authority applicable to Seller, (C) result in the creation or imposition of any lien or any other encumbrance upon any of the assets of Seller, other than pursuant to the Transaction Documents or (D) violate or conflict with contractual provisions of, or cause

an event of default under, any indenture, loan agreement, mortgage, contract or other material agreement to which Seller is a party or by which Seller may be bound; provided, that in each case of clauses (B)-(D) above, to the extent that such conflict or violation would not reasonably be expected to result in any Material Adverse Effect.

(iv) Litigation; Requirements of Law. As of the date hereof, each Purchase Date, the date of any Future Advance Purchase and the date of any Margin Excess payment made to Seller, there is no action, suit, proceeding, investigation, or arbitration pending or, to the best knowledge of Seller, threatened against Seller, Pledgor or Guarantor or any of their respective assets which (A) would reasonably be expected to, individually or in the aggregate, result in any Material Adverse Effect; (B) may have an adverse effect on the validity of the Transaction Documents or any action taken or to be taken in connection with the obligations of Seller under any of the Transaction Documents; (C) makes a claim or claims in an amount greater than (i) $250,000 with respect to the Seller and (ii) $10,000,000 with respect to the Pledgor or Guarantor; or (D) unless notified to Buyer, requires filing with the SEC in accordance with the 1934 Act or any rules thereunder. Seller, Pledgor and Guarantor are in compliance in all material respects with all Requirements of Law. None of Seller, Pledgor or Guarantor are in default in any material respect with respect to any judgment, order, writ, injunction, decree, rule or regulation of any arbitrator or Governmental Authority.

(v) No Broker. Seller has not dealt with any broker, investment banker, agent or other Person (other than Buyer or an Affiliate of Buyer) who may be entitled to any commission or compensation in connection with the sale of the Purchased Assets pursuant to any Transaction Documents.

(vi) Good Title to Purchased Assets. Immediately prior to the purchase of any Purchased Assets by Buyer from Seller, such Purchased Assets are free and clear of any lien, security interest, claim, option, charge, encumbrance or impediment to transfer to Buyer (including any "adverse claim" as defined in Section 8-102(a)(1) of the UCC), and are not subject to any rights of setoff, any prior sale, transfer, assignment, or participation by Seller or any agreement (other than the Transaction Documents) by Seller to assign, convey, transfer or participate in such Purchased Assets, in whole or in part, and Seller is the sole legal record and beneficial owner of, and owns and has the right to sell and transfer, such Purchased Assets to Buyer, and, upon transfer of such Purchased Assets to Buyer, Buyer shall be the owner of such Purchased Assets (other than for U.S. federal, state and local income and franchise tax purposes) free of any adverse claim other than any Permitted Encumbrances, subject to Seller's rights pursuant to this Agreement. In the event that the related Transaction is recharacterized as a secured financing of the Purchased Assets and with respect to the security interests granted in Section 6(a), Section 6(c) and Section 6(d), the provisions of this Agreement and the filing of the Filings are effective to create in favor of Buyer a valid security interest in all right, title and interest of Seller in, to and under the Repurchase Assets specified in Section 6(a) and the other collateral specified in Section 6(c) and Section 6(d), and Buyer shall have a valid, perfected and enforceable first priority security interest in the Repurchase Assets and such other collateral, subject to no lien or rights of others other than as granted herein.

(vii) No Material Adverse Effect. As of the date hereof, each Purchase Date, the date of any Future Advance Purchase and the date of any Margin Excess payment made to Seller, no Default or Event of Default exists under or with respect to the Transaction Documents. To Seller's knowledge, there are no post-Transaction facts or circumstances that have a Material Adverse Effect on any Purchased Asset that Seller has not notified Buyer of in writing in accordance with Section 12(a).

(viii) Representations and Warranties Regarding Purchased Assets; Delivery of Purchased Asset File. Each Purchased Asset sold hereunder, as of the applicable Purchase Date for the Transaction with respect to such Purchased Asset, conforms to the applicable representations and warranties set forth in Exhibit III attached hereto, except as has been disclosed to Buyer in an Exception Report prior to Buyer's issuance of a Confirmation with respect to the related Purchased Asset. It is understood and agreed that the representations and warranties set forth in Exhibit III hereto (as modified by any Exception Report disclosed to Buyer in writing prior to Buyer's issuance of a Confirmation with respect to the related Purchased Asset), shall survive delivery of the respective Purchased Asset File to Buyer or its designee (including Custodian). With respect to each Purchased Asset, the Purchased Asset File and any other documents required to be delivered under this Agreement and the Custodial Agreement for such Purchased Asset have been delivered to Buyer or Bailee, as applicable, or to Custodian on behalf of Buyer. Seller or its designee is in possession of a complete, true and accurate Purchased Asset File with respect to each Purchased Asset, except for such documents the originals of which have been delivered to Custodian.

(ix) Adequate Capitalization; No Fraudulent Transfer. As of the date hereof and after giving effect to each Transaction (A) the amount of the "present fair saleable value" of the assets of Seller and of Seller and its Subsidiaries, taken as a whole, will, as of such date, exceed the amount of all "liabilities of Seller and of Seller and its Subsidiaries, taken as a whole, contingent or otherwise", as of such date, as such quoted terms are determined in accordance with applicable federal and state laws governing determinations of the insolvency of debtors, (B) the present fair saleable value of the assets of Seller and of Seller and its Subsidiaries, taken as a whole, will, as of such date, be greater than the amount that will be required to pay the liabilities of Seller and its Subsidiaries, taken as a whole, on their respective debts as such debts become absolute and matured, (C) neither Seller, nor Seller and its Subsidiaries, taken as a whole, will have, as of such date, an unreasonably small amount of capital with which to conduct their respective businesses, and (D) Seller and its Subsidiaries, taken as a whole, will be able to pay their respective debts as they mature. Seller does not intend to incur, or believe that it has incurred, debts beyond its ability to pay such debts as they mature. Seller is not contemplating the commencement of insolvency, bankruptcy, liquidation or consolidation proceedings or the appointment of a receiver, liquidator, conservator, trustee or similar official in respect of Seller or any of its assets. Seller is not transferring any New Assets with any intent to hinder, delay or defraud any of its creditors. For purposes of this Section 10(ix), "debt" means "liability on a claim", "claim" means any (1) right to payment, whether or not such a right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured, and (2) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured or unmatured, disputed, undisputed, secured or unsecured.

(x) Organizational Documents. Seller has delivered to Buyer true and correct certified copies of its organizational documents, together with all amendments thereto.

(xi) No Encumbrances. Other than Permitted Encumbrances, there are (A) no outstanding rights, options, warrants or agreements on the part of Seller for a purchase, sale or issuance, in connection with the Purchased Assets, (B) no agreements on the part of Seller to issue, sell or distribute the Purchased Assets and (C) no obligations on the part of Seller (contingent or otherwise) to purchase, redeem or otherwise acquire any securities or interest therein, except, in each of the foregoing instances, as contemplated by the Transaction Documents.

(xii) No Investment Company or Holding Company. None of Seller, Pledgor or Guarantor is an "investment company", or a company "controlled by an investment company", within the meaning of the Investment Company Act of 1940, as amended.

(xiii) Taxes. Guarantor is a REIT. Pledgor and Seller are treated as either, as applicable, 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. As of the date hereof, each Purchase Date, the date of any Future Advance Purchase and the date of any Margin Excess payment made to Seller, Seller and to Seller's knowledge, Pledgor and Guarantor (A) have filed or caused to be filed all tax returns or extensions thereto that would be delinquent if they had not been filed on or before the date hereof (taking into account any extensions) and (B) has paid all Taxes shown to be due and payable on such returns on or before the date hereof and all Taxes, imposed on it and any of its assets, except for any such Taxes as are being contested in good faith by appropriate proceedings and with respect to which adequate reserves have been provided in accordance with GAAP, except with respect to each (A) and (B), to the extent that a failure to file such tax returns or pay such Taxes would not result in a Material Adverse Effect. No material tax liens have been filed against the assets of Seller, Pledgor or Guarantor; and, to Seller's knowledge, no material claims are being asserted in writing with respect to any such Taxes.

(xiv) ERISA. Neither Seller nor any ERISA Affiliate (A) sponsors or maintains any Plans or (B) makes any contributions to or has any liabilities or obligations (direct or contingent) with respect to any Plans. Seller does not hold Plan Assets, and the consummation of the transactions contemplated by this Agreement will not constitute or result in any non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code or substantially similar Requirements of Law (provided the accuracy of such representation assumes Buyer does not, and is contingent on Buyer not, holding Plan Assets).

(xv) Judgments/Bankruptcy. As of the date hereof, each Purchase Date, the date of any Future Advance Purchase and the date of any Margin Excess payment made to Seller, except as disclosed in writing to Buyer, there are no judgments against Seller or Pledgor in an amount greater than (i) $250,000 with respect to the Seller and (ii) $10,000,000 with respect to the Pledgor, in each case, that are unsatisfied of record or docketed in any court located in the United States of America and no Act of Insolvency has ever occurred with respect to Seller or Pledgor.

(xvi) Full and Accurate Disclosure. As of the date delivered, no information provided in writing pursuant to or during the negotiation of the Transaction Documents, or any written statement furnished by or on behalf of Seller, Pledgor or Guarantor pursuant to the terms of the Transaction Documents (including any certification of Bailee), are true and correct in all material respects, and does not omit to state a material fact necessary to make the statements contained herein or therein not misleading in light of the circumstances under which they were made when such statements and omissions are considered in the totality of the circumstances in question.

(xvii) Financial Information. As of the date delivered, no information provided pursuant to or during the negotiation of the Transaction Documents, or any written statement furnished by or on behalf of Seller, Pledgor or Guarantor pursuant to the terms of the Transaction Documents (including any certification of Bailee), are true and correct in all material respects, and does not omit to state a material fact necessary to make the statements contained herein or therein not misleading in light of the circumstances under which they were made when such statements and omissions are considered in the totality of the circumstances in question.

(xviii) Jurisdiction of Organization. Seller's jurisdiction of organization is the State of Delaware.

(xix) Location of Books and Records. The location where Seller keeps its books and records is at its chief executive office at 245 Park Avenue, 42nd Floor, New York, New York, 10167.

(xx) Authorized Representatives. The duly authorized representatives of Seller are listed on, and true signatures of such authorized representatives are set forth on, Exhibit V attached to this Agreement, as amended from time to time in writing by the Seller delivered to the Buyer, subject to any additional documentation as Buyer may reasonably request with respect to such amendments.

(xxi) Use of Proceeds; Regulations T, U and X. All proceeds of each Transaction shall be used by Seller for purposes permitted under Seller's governing documents; provided that no part of the proceeds of any Transaction will be used by Seller to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying any margin stock. Neither the entering into nor consummation of any Transaction hereunder, nor the use of the proceeds thereof, will violate any provision of Regulations T, U and X.

(xxii) Regulatory Status. Seller is not a "bank holding company" or a direct or indirect subsidiary of a "bank holding company" as defined in the Bank Holding Company Act of 1956, as amended, and Regulation Y thereunder of the Board of Governors of the Federal Reserve System.

(xxiii) Hedging Transactions. As of the Purchase Date for any Purchased Asset that is subject to a Hedging Transaction, each such Hedging Transaction is in full force and effect in accordance with its terms, each counterparty thereto is an Affiliated Hedge Counterparty or a Qualified Hedge Counterparty, and no "Termination Event", "Event of Default", "Potential Event of Default" or any similar event, however denominated, has occurred with respect thereto.

(xxiv) Anti-Money Laundering. The operations of Seller, Guarantor and their controlled Subsidiaries are and have been conducted at all times in material compliance with all applicable financial recordkeeping and reporting requirements, including those required by the Prescribed Laws, and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving Seller or Guarantor or any of their controlled Subsidiaries with respect to the Prescribed Laws is pending or, to the best knowledge of Seller, threatened.

(xxv) OFAC.

(A) None of Seller, any director or officer of Seller, or to Seller's knowledge, any employee, agent, Affiliate or representative of Seller, is a Person that is, or is owned or controlled by a Person that is: (1) the subject of any sanction administered or enforced by OFAC, the United Nations Security Council, the European Union, or Her Majesty's Treasury (collectively, "Sanctions"); or (2) located, organized or resides in a country or territory that is the subject of comprehensive Sanctions (including, without limitation, Cuba, Iran, North Korea, the Crimea region of Ukraine and Syria).

(B) Seller is not now knowingly engaged in, and will not knowingly engage in, any dealings or transactions with any Person, or in any country or territory, that at the time of the dealing or transaction is or was the subject of comprehensive Sanctions.

(xxvi) Anti-Corruption.

(A) None of Seller, its directors, officers, or employees, or, to Seller's knowledge, any agent, Affiliate or representative of Seller or any Affiliate of them, has taken or will take any action in furtherance of an offer, payment, promise to pay, or authorization or approval of the payment or giving of money, property, gifts or anything else of value, directly or indirectly, to any Person while knowing that all or some portion of the money or value will be offered, given or promised to anyone to improperly influence official action, to obtain or retain business or otherwise to secure any improper advantage, in each case in violation of applicable anti-corruption or anti-bribery laws.

(B) Seller and, to Seller's knowledge, Seller's Affiliates have conducted their businesses in compliance with applicable anti-corruption laws and have instituted and maintained, and will continue to maintain, policies and procedures reasonably designed to promote and achieve compliance with such laws and with the representations and warranties contained in this Section 10(xxvi).

11. NEGATIVE COVENANTS OF SELLER

On and as of date of this Agreement and each Purchase Date and at all times while this Agreement and any Transaction hereunder is in effect or any Repurchase Obligations remain outstanding, Seller shall not without the prior written consent of Buyer:

(a) subject to Seller's right to repurchase the Purchased Assets, take any action which would directly or indirectly materially impair or adversely affect Buyer's title to the Purchased Assets;

(b) transfer, assign, convey, grant, bargain, sell, set over, deliver or otherwise dispose of, or pledge or hypothecate, directly or indirectly, any interest in the Purchased Assets (or any of them) to any Person other than Buyer, or engage in repurchase transactions or similar transactions with respect to the Purchased Assets (or any of them) with any Person other than Buyer, except where the Purchased Assets in question are simultaneously repurchased from Buyer;

(c) create, incur or permit to exist any lien, encumbrance or security interest in or on any of the Repurchase Assets or other collateral subject to the security interests granted by Seller pursuant to Section 6 of this Agreement and the lien granted by Pledgor under the Pledge and Security Agreement;

(d) create, incur or permit any lien, security interest, charges, or encumbrances with respect to any Repurchase Assets or Hedging Transaction relating to the Purchased Assets for the benefit of any Person other than Buyer;

(e) consent or assent to a Significant Modification of any Purchased Asset without the prior written consent of Buyer in its sole discretion; provided, however, that if Buyer shall fail to deliver written consent to a Significant Modification within five (5) Business Days of receipt of notice thereof from Seller in accordance with Section 12(o), Buyer's failure to respond shall be deemed to be a denial of Seller's request and upon any deemed or explicit denial from Buyer, Seller shall have the option to repurchase such Purchased Asset pursuant to and in accordance with Section 3(i);

(f) take any action or permit such action to be taken which would result in a Change of Control;

(g) after the occurrence and during the continuation of any Event of Default, make any distribution, payment on account of, or set apart assets for, a sinking or other analogous fund for the purchase, redemption, defeasance, retirement or other acquisition of any equity or ownership interest of Seller, 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 Seller; provided that, notwithstanding the foregoing, Seller shall, during a non-monetary default, be permitted to pay any dividends or distributions necessary to maintain the status of the Guarantor as a REIT.

(h) sponsor or maintain any Plans or make any contributions to, or have any liability or obligation (direct or contingent) with respect to, any Plan or permit any ERISA Affiliate to sponsor or maintain any Plans or make any contributions to, or have any liability or obligation (direct or contingent) with respect to, any Plan;

(i) engage in any transaction that would cause any obligation or action taken or to be taken hereunder (or the exercise by Buyer of any of its rights under this Agreement, the Purchased Assets or any Transaction Document) to be a non-exempt prohibited transaction under Section 406 of ERISA, Section 4975 of the Code or a violation of any substantially similar Requirements of Law (except to the extent a result of or otherwise in connection with Buyer holding Plan Assets);

(j) make any future advances under any Purchased Asset to any underlying obligor that are not permitted by the related Purchased Asset Documents;

(k) seek its dissolution, liquidation or winding up, in whole or in part;

(l) incur any Indebtedness except as provided in Section 13(i) hereof or otherwise cease to be a Single-Purpose Entity;

(m) permit the organizational documents or organizational structure of Seller to be amended in any material respect without the prior written consent of Buyer in its sole discretion (such consent not to be unreasonably withheld, delayed or denied);

(n) acquire or maintain any right or interest in any Purchased Asset or Mortgaged Property that is senior to, junior to or *pari passu* with the rights and interests of Buyer therein under this Agreement and the other Transaction Documents unless such right or interest becomes a Purchased Asset hereunder;

(o) knowingly, directly or indirectly use the proceeds from any Transaction, or lend contribute or otherwise make available such proceeds to any other Person (i) to fund or facilitate any activities or business of or with any Person or in any country or territory that, at the time of such funding or facilitation, is the subject of comprehensive Sanctions or (ii) in any other manner that would result in a violation of Sanctions by any Person (including Buyer); or

(p) knowingly, directly or indirectly use the proceeds from any Transaction or lend, contribute or otherwise make available such proceeds to any Person for the purpose of financing or facilitating any activity that would violate applicable anti-corruption laws, rules, or regulations.

12. AFFIRMATIVE COVENANTS OF SELLER

On and as of the date of this Agreement and each Purchase Date and at all times while this Agreement and any Transaction thereunder is in effect or any Repurchase Obligations remain outstanding:

(a) Seller shall promptly notify Buyer upon notice or knowledge of any event and/or condition that could reasonably be expected to have a Material Adverse Effect.

(b) Seller shall give notice to Buyer of the following (accompanied by an Officer's Certificate setting forth details of the occurrence referred to therein and stating what actions Seller has taken or proposes to take with respect thereto):

(i) promptly upon receipt by Seller of notice or knowledge of the occurrence of any monetary or material non-monetary Default or Event of Default;

(ii) with respect to any Purchased Asset sold to Buyer hereunder, promptly following receipt of any unscheduled Principal Payment (in full or in part);

(iii) with respect to any Purchased Asset sold to Buyer hereunder, promptly following receipt by Seller of notice or knowledge that the related Mortgaged Property has been damaged by waste, fire, earthquake or earth movement, windstorm, flood, tornado or other casualty, or otherwise damaged so as to affect adversely the value of such Mortgaged Property;

(iv) promptly upon receipt of notice by Seller or knowledge of (A) any Purchased Asset that becomes a Defaulted Asset, (B) any lien or security interest (other than security interests created hereby) on, or claim asserted against, any Purchased Asset or, to Seller's knowledge, the underlying collateral therefor, (C) any event or change in circumstances that has or could reasonably be expected to have a material adverse effect on the Market Value of a Purchased Asset, or (D) any change with respect to Servicer or in the servicing of any Purchased Asset;

(v) promptly, and in any event within ten (10) days after service of process on any of the following, give to Buyer notice of all material litigation, actions, suits, arbitrations, investigations (including, without limitation, any of the foregoing which are pending or threatened) or other legal or arbitrable proceedings affecting Seller or affecting any of the assets of Seller before any Governmental Authority that (A) questions or challenges the validity or enforceability of any of the Transaction Documents or any action to be taken in connection with the transactions contemplated hereby, (B) makes a claim or claims in an aggregate amount greater than $250,000, (C) which, individually or in the aggregate, if adversely determined could reasonably expect to have a Material Adverse Effect, (D) requires filing with the SEC in accordance with the 1934 Act and any rules thereunder or (E) raises any material lender licensee issues with respect to any Purchased Asset;

(vi) promptly upon any transfer of any underlying Mortgaged Property or any direct or indirect equity interest in any Mortgagor of which Seller has knowledge, whether or not consent to such transfer is required under the applicable Purchased Asset Documents; and

(vii) promptly, and in any event within ten (10) days after Seller or any of its ERISA Affiliates knows or has reason to know that any "reportable event" (within the meaning of Section 4043(c) of ERISA) has occurred or is reasonably expected to occur in respect of a Plan that, individually or in the aggregate, either has resulted, or could reasonably be expected to result, in a Material Adverse Effect.

(c) Seller shall provide Buyer with copies of such documents (to the extent such documents are reasonably requested by Buyer and can be provided by Seller without undue burden) as Buyer may reasonably request evidencing the truthfulness of the representations set forth in Section 10 hereof.

(d) Seller shall defend the right, title and interest of Buyer in and to the Purchased Assets and any Hedging Transactions against, and take such other action as is necessary to remove, any liens, security interests, claims, encumbrances, charges and demands of all Persons thereon (other than security interests granted to Buyer hereunder and Permitted Encumbrances), and take any such other action as is necessary to obtain or preserve a first priority perfected security interest in the Purchased Assets and any Hedging Transactions.

(e) Seller will permit Buyer or its designated representative to inspect any of Seller's records with respect to all or any portion of the Purchased Assets and the conduct and operation of its business related thereto at such reasonable times and with reasonable frequency requested by Buyer or its designated representative upon Buyer's reasonable notice to the Seller and to make copies of extracts of any and all thereof; provided, that, so long as no Event of Default has occurred and is continuing, the costs and expenses of such inspections payable by the Seller shall be limited to one (1) such inspection per calendar year.

(f) If any amount payable under or in connection with any of the Purchased Assets shall be or become evidenced by any promissory note, other instrument or chattel paper (as each of the foregoing is defined under the UCC), such note, instrument or chattel paper shall be promptly delivered to Buyer or its designee, duly endorsed in a manner satisfactory to Buyer or if any collateral or other security shall subsequently be delivered to Seller in connection with any Purchased Asset, Seller shall immediately deliver or forward such item of collateral or other security to Buyer or its designee, together with such instruments of assignment as Buyer may reasonably request.

(g) Seller shall provide (or cause to be provided) to Buyer the following financial and reporting information:

(i) the Monthly Statement;

(ii) within sixty (60) days following the end of each of the first three fiscal quarters, the unaudited Quarterly Report, together with all financial statements, operating statements, rent rolls and occupancy information that Seller or Servicer has received relating to the Purchased Assets for the related fiscal quarter; provided, further, that Seller shall use reasonable efforts to require all Mortgagors under the applicable Mortgage Loans to comply with the reporting requirements set forth in the applicable Purchased Asset Documents;

(iii) within one hundred and twenty (120) days after the end of each fiscal year of Guarantor (A) the audited balance sheets of Guarantor and its consolidated subsidiaries, and unaudited balance sheet of Pledgor and Seller, in each case as at the end of such fiscal year, (B) the related statements of income, retained earnings and cash flows for such year, setting forth in each case in comparative form the figures for the previous year, (C) 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 consolidated Subsidiaries as at the end of and for such fiscal year in accordance with GAAP, (D) a certification from such accountants that, in making the examination necessary therefor, no information was

obtained of any monetary or material non-monetary Default or Event of Default except as specified therein, and (E) projections of Guarantor and Seller of the operating budget and cash flow budget of Guarantor for the following fiscal year;

(iv) a Financial Covenant Compliance Certificate;

(v) within sixty (60) days following the end of each of the first three quarters, and within one hundred and twenty (120) days following the end of each fiscal year, as the case may be, an Officer's Certificate of Seller in form and substance reasonably satisfactory to Buyer certifying that during such fiscal quarter or year Seller has observed or performed all of its covenants and other agreements, and satisfied every condition, contained in this Agreement and the other Transaction Documents to be observed, performed or satisfied by it, in each case, in all material respects (or in the event of any failure to so observe, perform or satisfy, the details of such failure), and that to the knowledge of the Seller (i) any Event of Default and any event or circumstance that has occurred that is reasonably likely to result in a Material Adverse Effect or (ii) there has occurred no Event of Default and no event or circumstance has occurred that is reasonably likely to result in a Material Adverse Effect;

(vi) servicing data tapes for each of Purchased Asset, to be delivered in accordance with the applicable servicing agreement;

(vii) within ten (10) Business Days after Buyer's request, such further information with respect to the operation of any Mortgaged Property, Purchased Asset, the financial affairs of Seller, Pledgor or Guarantor and any Plan as may be reasonably requested by Buyer, including all business plans prepared by or for Seller

(viii) upon the request of Buyer no more often than annually, updated Appraisals of the Mortgaged Properties relating to the Purchased Assets, at Buyer's sole cost and expense; provided, however, as long as no Event of Default has occurred and is continuing, Buyer shall not request an updated appraisal more than once in any 12 month period; and

(ix) such other reports as Buyer shall reasonably request (to the extent such requests do not unduly burden Seller).

(h) Seller shall at all times comply in all material respects with all laws (including, without limitation, Prescribed Laws), ordinances, rules and regulations of any federal, state, municipal or other public authority having jurisdiction over Seller or any of its assets, and Seller shall do or cause to be done all things reasonably necessary to preserve and maintain in full force and effect its legal existence and all licenses material to its business.

(i) Seller agrees that, from time to time upon the prior written request of Buyer, it shall (A) execute and deliver such further documents, provide such additional information and reports and perform such other acts as Buyer may reasonably request in order to insure compliance with all Prescribed Laws and to fully effectuate the purposes of this Agreement and
(B) provide such opinions of counsel concerning matters relating to the Prescribed Laws as Buyer may reasonably request; provided, however, that nothing in this Section 3(i) shall be construed as requiring Buyer to conduct any inquiry or decreasing Seller's responsibility for its statements, representations, warranties or covenants under this Agreement. In order to enable Buyer and its respective Affiliates to comply with any anti-money laundering program and related responsibilities including, but not limited to, any obligations under the Prescribed Laws and regulations thereunder, Seller, on behalf of itself and its Affiliates, represents and covenants to Buyer and its Affiliates that: (A) neither Seller, nor, any of its Affiliates, is a Prohibited Person and (B) Seller is not acting on behalf of or on behalf of any Prohibited Person. Seller

agrees to promptly notify Buyer or a person appointed by Buyer to administer its anti-money laundering program, if applicable, of any change in information affecting this Section 12(i).

(j) Seller shall at all times keep proper books of records and accounts in which full, true and correct entries shall be made of its transactions in accordance with GAAP and set aside on its books from its earnings for each fiscal year all such proper reserves in accordance with GAAP.

(k) Seller shall advise Buyer in writing of the opening of any new chief executive office of Seller or the closing of any such office and of any change in Seller's name or the places where the books and records pertaining to the Purchased Assets are held not less than fifteen (15) Business Days prior to taking any such action.

(l) Seller shall pay when due all Transaction Costs. Seller shall pay and discharge all Taxes, levies, liens and other charges, if any, on its assets and on the Purchased Assets that, in each case, in any manner would create any material lien or charge upon the Purchased Assets, except for any such Taxes as are being contested in good faith by appropriate proceedings diligently conducted and with respect to which adequate reserves have been provided in accordance with GAAP.

(m) Seller shall maintain its existence as a limited liability company organized solely and in good standing under the law of the State of Delaware, and shall not dissolve, liquidate, merge with or into any other Person or otherwise change its organizational structure or documents or identity or incorporate or organize in any other jurisdiction.

(n) Seller shall maintain all records with respect to the Purchased Assets and the conduct and operation of its business with no less a degree of prudence than if the Purchased Assets were held by Seller for its own account and will furnish Buyer, upon request by Buyer or its designated representative, with information reasonably obtainable by Seller with respect to the Purchased Assets and the conduct and operation of its business.

(o) Seller shall provide Buyer with notice the execution of each modification of any Purchased Asset Documents consented to by Seller (including such modifications which do not constitute a Significant Modification).

(p) Seller shall provide Buyer with reasonable access to operating statements, the occupancy status and other property level information, with respect to the Mortgaged Properties, plus any such additional reports as Buyer may reasonably request and can be provided by Seller without undue burden.

(q) Seller may propose, and Buyer will consider, but shall be under no obligation to approve, strategies for the foreclosure or other realization upon the security for any Purchased Asset that has become a Defaulted Asset.

(r) Seller shall not cause any Purchased Asset to be serviced by any servicer other than the Servicer or another servicer expressly approved in writing by Buyer.

(s) If Seller shall at any time become entitled to receive or shall receive any rights, whether in addition to, in substitution of, as a conversion of, or in exchange for a Purchased Asset, or otherwise in respect thereof, Seller shall accept the same as Buyer's agent, hold the same in trust for Buyer and deliver the same forthwith to Buyer (or Custodian, as appropriate) in the exact form received, duly endorsed by Seller to Buyer if required, together with all related and necessary duly executed Transfer Documents to be held by Buyer hereunder as additional collateral security for the Transactions. If any sums of money or property so paid or distributed in respect of the Purchased Assets shall be received by Seller, Seller shall, until such money or

property is paid or delivered to Buyer, hold such money or property in trust for Buyer, segregated from other funds of Seller, as additional collateral security for the Transactions.

(t) If Guarantor or any Subsidiary of Guarantor has entered into or shall enter into or amend a repurchase agreement, warehouse facility, credit facility or other similar arrangement with any Person which by its terms provides more favorable terms with respect to any financial covenants (including defined terms used to calculate such financial covenants) tested at the Guarantor level, including without limitation covenants covering the same or similar subject matter set forth in any Financial Covenant Compliance Certificate required to be delivered hereunder (a "More Favorable Third-Party Covenant"), Seller shall (i) give notice to Buyer of such More Favorable Third-Party Covenant on the same day that that the agreement evidencing such More Favorable Third Party-Covenant is executed and the terms of such More Favorable Third-Party Covenant shall, without any action by any party, automatically become part of the terms of this Agreement and the other Transaction Documents and be incorporated herein and/or therein for so long as (and only for so long as) the More Favorable Third-Party Covenant remain in effect and (ii) if required by the Buyer, enter into such amendments to this Agreement and the other Transaction Documents to evidence such More Favorable Third-Party Covenant in accordance with this Section 12(t) (provided that the execution of such amendment shall not be a precondition to the effectiveness of such amendment, but shall merely be for the convenience of the parties hereto and thereto).

(u) 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. Seller shall not permit any additional Persons to acquire equity interests in Seller other than the equity interests owned by Pledgor and pledged to Buyer on the date of this Agreement, and Seller shall not permit any sales, assignments, pledges or transfers of the equity interests in Seller other than to Buyer.

(v) Seller and Guarantor shall ensure that at all times prior to the Facility Termination Date, Guarantor shall continue to qualify as a REIT, for which Pledgor and Seller shall continue to be treated as either, as applicable, (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.

13. SINGLE-PURPOSE ENTITY

Seller hereby represents and warrants to Buyer and covenants with Buyer that, with respect to each of Seller and Pledgor, as applicable, on and as of the date of this Agreement and each Purchase Date and at all times while this Agreement and any Transaction hereunder is in effect or any Repurchase Obligations remain outstanding:

(a) it intends to remain solvent, and it has paid and will pay its debts and liabilities (including overhead expenses) from its own assets as the same shall become due;

(b) it will comply with the provisions of its certificate of formation and its limited liability company agreement;

(c) it will do all things necessary to observe limited liability company formalities and to preserve its existence;

(d) it will maintain all of its books, records, financial statements and bank accounts separate from those of its affiliates, its members and any other Person, and it will file its own tax returns (except to the extent consolidation or inclusion in another Person's books, records, financial statements or tax returns is required or permitted under GAAP or as a matter of law);

(e) it will at all times hold itself out to the public as, a legal entity separate and distinct from any other entity (including any Affiliate of Seller and Pledgor, as applicable (except to the extent it may be disregarded as separate from its sole owner for tax purposes)), it shall correct any known misunderstanding regarding its status as a separate entity, it shall conduct business in its own name, it shall not identify itself or any of its Affiliates as a division or part of the other and it shall maintain and utilize separate stationery, invoices and checks;

(f) 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) 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) 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) 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;

(j) it will not make any loans or advances to any other Person, and shall not acquire obligations or securities of any member or affiliate of any member or any other Person (other than in connection with the origination or acquisition of Purchased Assets);

(k) it will 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) neither it nor Guarantor will seek the dissolution, liquidation or winding up, in whole or in part of Seller or Pledgor, as applicable;

(m) it will not commingle its funds and other assets with those of any of its Affiliates or any other Person;

(n) it will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any of its Affiliates or any other Person;

(o) it will not hold itself out to be responsible for the debts or obligations of any other Person;

(p) (1) with respect to the Seller only, it will (i) have at all times at least one (1) Independent Director and (ii) provide Buyer with up-to-date contact information for all Independent Directors and a copy of the agreement pursuant to which each Independent Director consents to and serves as an Independent Director for Seller;

(2) its organizational documents shall provide that (i) no Independent Director of Seller may be removed or replaced without Cause, (ii) Buyer be given at least two (2) Business Days prior notice of the removal and/or replacement of any Independent Director, together with the name and contact information of the replacement Independent Director and evidence of the replacement's satisfaction of the definition of Independent Director and (iii) any Independent Director of Seller shall not have any fiduciary duty to anyone including the holders of the equity interests in Seller and any Affiliates of Seller, except Seller and the creditors of Seller with respect to taking of, or otherwise voting on, any Act of Insolvency; provided that the foregoing shall not eliminate the implied contractual covenant of good faith and fair dealing;

(3) it shall not, without the consent of its Independent Directors, institute any proceeding to be adjudicated as bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against it, or file a petition or answer or consent seeking reorganization or relief under the Bankruptcy Code or consent to the filing of any such petition or to the appointment of a receiver, rehabilitator, conservator, liquidator, assignee, trustee or sequestrator (or other similar official) of it or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, or make an assignment for the benefit of creditors, or admit in writing its inability to pay its debts generally as they become due, or take any action in furtherance of any of the foregoing; and

(q) it shall not have any employees.

14. EVENTS OF DEFAULT; REMEDIES

(a) Events of Default. The following shall constitute an event of default (each, an "Event of Default") by Seller hereunder:

(i) failure of Seller to repurchase one or more Purchased Assets on the applicable Repurchase Date;

(ii) failure of Seller to apply any Income received by Seller in accordance with the provisions hereof and such failure continues for a period of one (1) Business Day past the date on which the same was due;

(iii) if any of the Transaction Documents shall for any reason (A) not cause, or shall cease to cause, Buyer to be the owner of, or, if recharacterized as a secured financing, a secured party with respect to, the Repurchase Assets specified in Section 6(a) hereof and the other collateral specified in Sections 6(c) or 6(d) hereof free of any adverse claim, liens and other rights of others (other than as granted herein and Permitted Encumbrances); (B) cease, if a Transaction is recharacterized as a secured financing, to create a valid first priority perfected security interest in favor of Buyer in the Repurchase Assets specified in Section 6(a) hereof and the other collateral specified in Sections 6(c) or 6(d) hereof; or (C) cease to be in full force and effect or if the enforceability of any of them is challenged or repudiated by Seller, Pledgor, Guarantor or Servicer or any other Person; provided, that in each case for clauses (A)-(C), such condition is not cured within three (3) Business Days after the earlier of receipt of notice thereof from Buyer or Seller, Pledgor, Guarantor or Servicer otherwise obtaining knowledge thereof;

(iv) failure of Seller to make the payments required under Section 4(a) or Section 5(b) hereof on the date such payment is due, subject to the applicable grace periods pursuant to Section 4(a) or Section 5(b), as applicable, including, if Servicer causes such failure, an additional one (1) Business Day cure period;

(v) failure of Seller to make any other payment owing to Buyer which has become due, whether by acceleration or otherwise, under the terms of this Agreement which failure is not remedied within the period specified herein or, if no period is specified for such payments three (3) Business Days after notice thereof to Seller from Buyer;

(vi) breach by Seller in the due performance or observance of any term, covenant or agreement contained in Section 11 of this Agreement, subject to the applicable grace periods as set forth in Section 11 of this Agreement;

(vii) a Change of Control shall have occurred with respect to Seller, Pledgor or Guarantor;

(viii) any representation made by Seller, Pledgor or Guarantor herein or in any Transaction Document shall have been incorrect or untrue in any material respect when made or repeated or deemed to have been made or repeated and such incorrect or untrue representation exists and continues unremedied for five (5) Business Days after the earlier of receipt of written notice thereof from Buyer or Seller, Pledgor or Guarantor's knowledge of such incorrect or untrue representation; provided that the representations and warranties made by Seller in Sections 10(vi) or 10(viii) hereof shall not be considered an Event of Default if incorrect or untrue in any material respect (which determination shall be made with respect to the representations and warranties in Exhibit III without regard to any knowledge qualifier therein), if Buyer terminates the related Transaction and Seller repurchases the related Purchased Asset(s) on an Early Repurchase Date no later than ten (10) Business Days after receiving written notice of such incorrect or untrue representation; provided, however, that if Seller shall have made any such representation with knowledge that it was materially incorrect or untrue at the time made, such misrepresentation shall constitute an Event of Default;

(ix) (A) a final judgment by any competent court in the United States of America for the payment of money in an amount greater than $250,000 shall have been rendered against Seller and remains undischarged or unpaid for a period of sixty (60) days, during which period execution of such judgment is not effectively stayed or (B) a final judgment by any competent court in the United States of America for the payment of money in an amount greater than $10,000,000 shall have been rendered against Guarantor or Pledgor and remains undischarged or unpaid for a period of sixty (60) days, during which period execution of such judgment is not effectively stayed;

(x) (A) Seller or Pledgor shall have defaulted or failed to perform under any note, indenture, loan agreement, guaranty, swap agreement or any other contract, agreement or transaction to which it is a party, and which default involves the failure to pay an obligation in excess of $250,000 or (B) Guarantor or Pledgor shall have defaulted or failed to perform under any note, indenture, loan agreement, guaranty, swap agreement or any other contract, agreement or transaction to which it is a party, and which default involves the failure to pay an obligation in excess of $10,000,000; provided, however, that any such default, failure to perform or breach shall not constitute an Event of Default if Seller, Pledgor or Guarantor, as the case may be, cures such default, failure to perform or breach, as the case may be, within the grace period, if any, provided under the applicable agreement;

(xi) if Seller, Pledgor or Guarantor shall breach or fail to perform any of the terms, covenants, obligations or conditions of this Agreement or any other Transaction Document, other than as specifically otherwise referred to in this Section 14(a), and such breach or failure to perform is susceptible of cure and is not remedied within (A) the specified cure period or (B) if no cure period is specified, five (5) Business Days after notice thereof to Seller by Buyer, or its successors or assigns; provided, however, that with respect to clause (B) only, if such default is susceptible of cure but cannot reasonably be cured within such five (5) Business Day period; and provided further that Seller shall have commenced to cure such default within such five (5) Business Day period and thereafter diligently and expeditiously proceeds to cure the same, such five (5) Business Day period shall be extended for such time as is reasonably necessary for Seller, Pledgor or Guarantor, as applicable, in the exercise of due diligence, to cure such default, and in no event shall such cure period exceed fifteen (15) days from such party's receipt of Buyer's notice of such default;

(xii) an "event of default" or "facility termination event" (as defined in the agreements relating to a facility described below), by Seller, Pledgor, Guarantor or a Subsidiary of Guarantor beyond any applicable notice and cure period, shall have occurred under (A) any repurchase facility, loan facility or hedging transaction entered into by Seller, Guarantor, Pledgor or any Subsidiary of Guarantor and Buyer or any Affiliate of Buyer, (B) any repurchase facility, loan facility or hedging transaction with Buyer or any Affiliate of Buyer in which Seller, Pledgor, Guarantor or any Subsidiary of Guarantor is a guarantor or (C) any Hedging Transaction with Buyer or any Affiliate of Buyer entered into by Seller, Pledgor, Guarantor or any Subsidiary of Guarantor or in which Seller, Pledgor, Guarantor or any Subsidiary of Guarantor is a guarantor;

(xiii) an Act of Insolvency shall have occurred with respect to Seller, Pledgor or Guarantor;

(xiv) (A) any of the representations and warranties of Guarantor in the Guaranty or in any Financial Covenant Compliance Certificate shall have been incorrect or untrue in any material respect when made or repeated or deemed to have been made or repeated or (B) Guarantor shall breach any covenant or agreement in the Guaranty, and, if no cure period is specified for the applicable breach, such breach has not been cured within five (5) Business Days after receipt of notice thereof from Buyer; or

(xv) (A) any of the representations and warranties of Pledgor in the Pledge and Security Agreement shall have been incorrect or untrue in any material respect when made or repeated or deemed to have been made or repeated or (B) Pledgor shall breach any covenant or agreement in the Pledge and Security Agreement, and, if no cure period is specified for the applicable breach, such breach has not been cured within five (5) Business Days after receipt of notice thereof from Buyer.

(xvi) (1) Guarantor fails to qualify as a REIT (after giving effect to any cure or corrective periods or allowances pursuant to the Code), or (2) Seller becomes subject to
U.S. federal income tax on a net income basis.

(b) Remedies. If an Event of Default shall occur and be continuing, the following rights and remedies shall be available to Buyer:

(i) At the option of Buyer, exercised by written notice to Seller (which option shall be deemed to have been exercised, even if no notice is given, immediately upon the occurrence of an Act of Insolvency with respect to Seller, Pledgor or Guarantor), the Repurchase Date for each Transaction hereunder shall, if it has not already occurred, be deemed immediately to occur (the date on which such option is exercised or deemed to

have been exercised, the "Accelerated Repurchase Date") (and any Transaction for which the related Purchase Date has not yet occurred shall be canceled).

(ii) If Buyer exercises or is deemed to have exercised the option referred to in Section 14(b)(i) hereof (A) Seller's obligations hereunder to repurchase all Purchased Assets shall become immediately due and payable on and as of the Accelerated Repurchase Date, and all Income deposited in the Blocked Account shall be retained by Buyer and applied to the Repurchase Obligations; (B) the Repurchase Price with respect to each Transaction (determined as of the Accelerated Repurchase Date) shall include the accrued and unpaid Price Differential with respect to each Purchased Asset accrued at the Pricing Rate applicable upon an Event of Default for such Transaction; and (C) Custodian shall, upon the request of Buyer (with simultaneous copy of such request to Seller), deliver to Buyer all instruments, certificates and other documents then held by Custodian relating to the Purchased Assets.

(iii) Buyer may, after ten (10) days' notice to Seller of Buyer's intent to take such action (provided that no such notice shall be required in the circumstances set forth in Section 9-611(d) of the UCC), (A) immediately sell, at a public or private sale in a commercially reasonable manner and at such price or prices as Buyer may deem to be satisfactory any or all of the Purchased Assets on a servicing released basis or (B) in its sole discretion elect, in lieu of selling all or a portion of such Purchased Assets, to give Seller credit for such Purchased Assets in an amount equal to the market value of such Purchased Assets against the aggregate Repurchase Obligations in the amount set forth in the related notice to Seller. The proceeds of any disposition of Purchased Assets effected pursuant to this Section 14(b)(iii) shall be applied: *first*, to the costs and expenses incurred by Buyer in connection with Seller's default; *second*, to the costs of cover and/or Hedging Transactions, if any; *third*, to the Repurchase Price; *fourth*, to all other outstanding Repurchase Obligations; and *fifth*, the balance, if any, to Seller. In the event that Buyer shall not have received repayment in full of the Repurchase Obligations following its liquidation of the Purchased Assets, Buyer may, in its sole discretion, pursue Seller, Pledgor (to the extent provided in the Pledge and Security Agreement or Guaranty) and Guarantor (to the extent provided in the Guaranty) for all or any part of any deficiency.

(iv) The parties recognize that it may not be possible to purchase or sell all of the Purchased Assets on a particular Business Day, or in a transaction with the same purchaser, or in the same manner because the market for such Purchased Assets may not be liquid. In view of the nature of the Purchased Assets, the parties agree that, to the extent permitted by applicable law, liquidation of a Transaction or the Purchased Assets shall not require a public purchase or sale and that a private purchase or sale shall be deemed to have been made in a commercially reasonable manner. Accordingly, Buyer may elect, in its sole discretion, the time and manner of liquidating any Purchased Assets, and nothing contained herein shall (A) obligate Buyer to liquidate any Purchased Assets following the occurrence of an Event of Default or to liquidate all of the Purchased Assets in the same manner or on the same Business Day or (B) constitute a waiver of any right or remedy of Buyer.

(v) Seller shall be liable to Buyer for (A) the amount of all expenses, including reasonable legal fees and expenses of counsel, incurred by Buyer in connection with or as a consequence of an Event of Default, (B) all costs incurred in connection with covering transactions or Hedging Transactions (including short sales) or entering into replacement, hedging or covering transactions, (C) all damages, losses, judgments, costs and other expenses of any kind that may be imposed on, incurred by or asserted against Buyer relating to or arising out of such hedging transactions or covering transactions, and

(D) any other loss, damage, cost or expense directly arising or resulting from the occurrence of an Event of Default.

(vi) Except as set forth in clause (iii) above, Buyer may exercise any or all of the remedies available to Buyer immediately upon the occurrence of an Event of Default and at any time during the continuance thereof. All rights and remedies arising under the Transaction Documents, as amended from time to time, are cumulative and not exclusive of any other rights or remedies that Buyer may have.

(vii) Buyer may enforce its rights and remedies hereunder without prior judicial process or hearing, and Seller hereby expressly waives any defenses Seller might otherwise have to require Buyer to enforce its rights by judicial process. Seller also waives any defense Seller might otherwise have arising from the use of nonjudicial process, disposition of any or all of the Purchased Assets, or from any other election of remedies. Seller recognizes 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.

(viii) Without limiting any other rights or remedies of Buyer, Buyer shall have the right of set-off set forth in Section 26 hereof.

(ix) Buyer shall have, in addition to its rights and remedies under the Transaction Documents, all of the rights and remedies provided by applicable federal, state, foreign, and local laws (including, without limitation, if the Transactions are recharacterized as secured financings, the rights and remedies of a secured party under the UCC of the State of New York, to the extent that the UCC is applicable, and the right to offset any mutual debt and claim), in equity, and under any other agreement between Buyer and Seller, exercisable upon ten (10) days notice from Buyer to Seller. Without limiting the generality of the foregoing, but subject to the notice and grace periods as set forth herein, Buyer shall be entitled to set off the proceeds of the liquidation of the Purchased Assets against all of Seller's obligations to Buyer or its Affiliates, whether under this Agreement or under any other agreement between Seller and Buyer or between Seller and any Affiliate of Buyer, or otherwise, whether or not such obligations are then due, without prejudice to Buyer's right to recover any deficiency.

(x) Subject to notice and grace periods as set forth herein, Buyer shall at any time have the right, in each case until such time as Buyer determines otherwise, to retain, to suspend payment or performance of, or to decline to remit, any amount or property that Buyer would otherwise be obligated to pay, remit or deliver to Seller hereunder if an Event of Default has occurred and is continuing.

(xi) For the avoidance of doubt, Buyer shall have no obligation to review or purchase any Eligible Asset during the continuance of an Event of Default.

15. SINGLE AGREEMENT

Buyer and Seller acknowledge that, and have entered hereinto and will enter into each Transaction hereunder in consideration of and in reliance upon the fact that, all Transactions hereunder constitute a single business and contractual relationship and have been made in consideration of each other. Accordingly, each of Buyer and Seller agrees to perform all of its obligations in respect of each Transaction hereunder, and that a default in the performance of any such obligations shall constitute a default by it in respect of all Transactions hereunder.

16. NOTICES AND OTHER COMMUNICATIONS

All notices, consents, approvals and requests required or permitted hereunder shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) hand delivery, with proof of attempted delivery, (b) certified or registered United States mail, postage prepaid, (c) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, or (d) by email (with confirmation of receipt by the receiving party); provided that such email notice must also be delivered by one of the means set forth in clauses **(a)**, **(b)** or **(c)** above, to the addresses specified in Annex I hereto or at such other address and person as shall be designated from time to time by any party hereto, as the case may be, in a written notice to the other parties hereto in the manner provided for in this Section 16. A notice shall be deemed to have been given: (i) in the case of hand delivery, at the time of delivery; (ii) in the case of registered or certified mail, when delivered or the first attempted delivery on a Business Day; (iii) in the case of expedited prepaid delivery upon the first attempted delivery on a Business Day; or (iv) in the case of email, upon receipt of confirmation or receipt; provided that such emailed notice is also delivered as required in this Section 16. A party receiving a notice that does not comply with the technical requirements for notice under this Section 16 may elect to waive any deficiencies and treat such notice as having been properly given. Notwithstanding the foregoing, notices pursuant to Section 4 hereof may be sent by electronic mail to the email addresses set forth on Annex I attached hereto; provided that such notice delivered by email shall be deemed to be given only upon receipt of confirmation of receipt by the receiving party.

17. NON-ASSIGNABILITY

(a) The rights and obligations of Seller under the Transaction Documents, the Hedging Transactions and under any Transaction shall not be assigned by Seller without the prior written consent of Buyer. Any attempt by Seller to assign any of its rights or obligations under this Agreement without the prior written consent of Buyer shall be null and void, *ab initio*.

(b) Buyer may at any time, without the consent of Seller, sell participations in or otherwise syndicate up to 100% (in the aggregate, in one or more Transactions, including any assignments under Section 17(c)) of Buyer's rights and/or obligations under the Transaction Documents; provided, that, so long as no Event of Default has occurred, (i) Buyer's obligations and Seller's rights and obligations under the Transaction Documents shall remain unchanged, (ii) Buyer shall retain sole decision-making authority under the Transaction Documents, (iii) Seller shall continue to deal solely and directly with Buyer in connection with Buyer's rights and obligations under the Transaction Documents and (iv) Buyer shall not sell participations or syndicate to a Prohibited Assignee.

(c) Buyer may at any time, without the consent of Seller, sell and assign up to 100% (in the aggregate, in one or more Transactions, and including any participation under Section 17(b)) of the rights and obligations of Buyer under the Transaction Documents. From and after the effective date of such assignment, such assignee shall be a party and, to the extent provided in such assignment agreement, have the rights and obligations of Buyer under the Transaction Documents with respect to the percentage and amount of the Repurchase Price allocated to it. Provided, that, so long as no Event of Default has occurred, Buyer shall not assign to a Prohibited Assignee.

(d) As long as an Event of Default shall have occurred and be continuing, Buyer may assign, participate or sell its rights and obligations under the Transaction Documents and/or any Transaction to any Person without prior notice to Seller and without regard to the limitations set forth in Section 17(b) and Section 17(c) above. From and after the date Buyer is no longer a party to this Agreement, Buyer shall have no obligation to act as agent or to make decisions under this Agreement.

(e) Buyer, acting solely for this purpose as an agent of Seller, shall maintain a copy of each assignment and a register for the recordation of the names and addresses of the assignees, and ownership rights in the Transactions, Purchased Assets or other interests under this Agreement. The entries in such register shall be conclusive absent manifest error, and each of Seller and Buyer and their respective assignees shall treat each Person whose name is recorded in such register pursuant to the terms hereof as the beneficial owner of the interests in the Transactions, Purchased Assets or other interests under this Agreement for all purposes. If any assignee is not a U.S. Person, such assignee shall timely provide Seller with such forms as may be required to establish the assignee's status for U.S. withholding tax purposes.

(f) If Buyer sells a participation, Buyer shall, acting solely for this purpose as an agent of Seller, maintain a register on which it enters the name and address of each participant and the ownership rights of each participant in the Transactions, Purchased Assets or other interests under this Agreement. The entries in such register shall be conclusive absent manifest error, and Buyer shall treat each Person whose name is recorded in such register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. If any participant is not a U.S. Person, such participant shall timely provide Seller with such forms as may be required to establish such participant's status for U.S. withholding tax purposes. Each participant shall be entitled to the benefits of Section 3(q)-(t) (subject to the requirements and limitations therein, including the requirements under Section 3(r) (it being understood that the documentation required under Section 3(r) shall be delivered to the participating Buyer)) to the same extent as if it had acquired its interest by assignment under Section 17(c); provided that such participant shall not be entitled to receive any greater payment under Section 3(q)-(t) than the participating Buyer would have been entitled to receive.

(g) For the avoidance of doubt, to the extent Buyer sells a participation, the participants rights will be limited to the rights of the Buyer hereunder.

(h) Subject to the foregoing, the Transaction Documents and any Transactions shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns. Nothing in the Transaction Documents, express or implied, shall give to any Person, other than the parties to the Transaction Documents and their respective successors, any benefit or any legal or equitable right, power, remedy or claim under the Transaction Documents.

(i) Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement shall prevent or prohibit Buyer from pledging its interest in the Purchased Assets hereunder to any Person as determined by Buyer in its sole discretion; provided, however, no such pledge shall release Buyer, as the case may be, from any of its obligations hereunder or substitute any such pledgee for Buyer, as the case may be, as a party hereto.

18. GOVERNING LAW; CONSENT TO JURISDICTION; WAIVER OF JURY TRIAL; ETC.

(a) This Agreement shall be governed by the laws of the State of New York without giving effect to the conflict of law principles thereof, except for Section 5-1401 of the General Obligations Law of the State of New York.

(b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of any United States Federal or New York State court sitting in Manhattan, and any appellate court from any such court, solely for the purpose of any suit, action or proceeding brought to enforce its obligations under this Agreement or relating in any way to this Agreement or any Transaction under this Agreement.

(c) To the extent that either party has or hereafter may acquire any immunity (sovereign or otherwise) from any legal action, suit or proceeding, from jurisdiction of any court or from set-off or any legal process (whether service or notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise) with respect to itself or any of its property, such party hereby irrevocably waives and agrees not to plead or claim such immunity in respect of any action brought to enforce its obligations under this Agreement or relating in any way to this Agreement or any Transaction under this Agreement.

(d) **EACH PARTY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT IT MAY EFFECTIVELY DO SO, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT AND ANY RIGHT OF JURISDICTION ON ACCOUNT OF ITS PLACE OF RESIDENCE OR DOMICILE AND IRREVOCABLY CONSENTS TO THE SERVICE OF ANY SUMMONS AND COMPLAINT AND ANY OTHER PROCESS BY THE MAILING OF COPIES OF SUCH PROCESS TO IT AT ITS RESPECTIVE ADDRESS SPECIFIED HEREIN. EACH PARTY HEREBY 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 SECTION 18 SHALL AFFECT THE RIGHT OF BUYER TO SERVE LEGAL PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR AFFECT THE RIGHT OF BUYER TO BRING ANY ACTION OR PROCEEDING AGAINST SELLER OR ITS PROPERTY IN THE COURTS OF OTHER JURISDICTIONS.**

(e) **EACH PARTY HEREBY IRREVOCABLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER TRANSACTION DOCUMENT OR ANY INSTRUMENT OR DOCUMENT DELIVERED HEREUNDER OR THEREUNDER.**

19. NO RELIANCE; DISCLAIMERS

(a) Each party hereby acknowledges, represents and warrants to the other that, in connection with the negotiation of, the entering into, and the performance under, the Transaction Documents and each Transaction thereunder:

(i) It is not relying (for purposes of making any investment decision or otherwise) upon any advice, counsel or representations (whether written or oral) of the other party to the Transaction Documents, other than the representations expressly set forth in the Transaction Documents.

(ii) It has consulted with its own legal, regulatory, tax, business, investment, financial and accounting advisors to the extent that it has deemed to be necessary, and it has made its own investment, hedging and trading decisions (including decisions regarding the suitability of any Transaction) based upon its own judgment and upon any advice from such advisors as it has deemed to be necessary and not upon any view expressed by the other party.

(iii) It is a sophisticated and informed Person that has a full understanding of all the terms, conditions and risks (economic and otherwise) of the Transaction Documents and each Transaction thereunder and is capable of assuming and willing to assume (financially and otherwise) those risks.

(iv) It is entering into the Transaction Documents and each Transaction thereunder for the purposes of managing its borrowings or investments or hedging its underlying assets or liabilities and not for purposes of speculation.

(v) 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 Transaction Documents or any Transaction thereunder.

(b) Each determination by Buyer of the Market Value with respect to each New Asset or Purchased Asset or the communication to Seller of any information pertaining to Market Value under this Agreement shall be made in Buyer's sole discretion, subject to the following disclaimers:

(i) Buyer has assumed and relied upon, with Seller's consent and without independent verification, the accuracy and completeness of the information provided by Seller and reviewed by Buyer. Buyer has not made any independent inquiry of any aspect of the New Assets or Purchased Assets or the underlying collateral. Buyer's view is based on economic, market and other conditions as in effect on, and the information made available to Buyer as of, the date of any such determination or communication of information, and such view may change at any time without prior notice to Seller.

(ii) Market Value determinations and other information provided to Seller constitute a statement of Buyer's view of the value of one or more loans or other assets at a particular point in time and does not (A) constitute a bid for a particular trade, (B) indicate a willingness on the part of Buyer or any Affiliate thereof to make such a bid, or
(C) reflect a valuation for substantially similar assets at the same or another point in time, or for the same assets at another point in time.

(iii) Market Value determinations and other information provided to Seller may vary significantly from valuation determinations and other information that may be obtained from other sources.

(iv) Market Value determinations and other information provided to Seller are communicated to Seller solely for its use and may not be relied upon by any other person and may not be disclosed or referred to publicly or to any third party without the prior written consent of Buyer, which consent Buyer may withhold or delay in its sole and absolute discretion.

(v) Buyer makes no representations or warranties with respect to any Market Value determinations or other information provided to Seller. Buyer shall not be liable for any incidental or consequential damages arising out of any inaccuracy in such valuation determinations and other information provided to Seller, including as a result of any act of gross negligence or breach of any warranty.

(vi) Market Value determinations and other information provided to Seller in connection with Section 3(b) hereof are only indicative of the initial Market Value of the New Asset submitted to Buyer for consideration thereunder, and may change without notice to Seller prior to, or subsequent to, the transfer by Seller of the New Asset pursuant to Section 3(f) hereof. No indication is provided as to Buyer's expectation of the future value of such Purchased Asset or the underlying collateral.

(vii) Initial Market Value determinations and other information provided to Seller in connection with Section 3(b) hereof are to be used by Seller for the sole

purpose of determining whether to proceed in accordance with Section 3 hereof and for no other purpose.

20. INDEMNITY AND EXPENSES

(a) Seller hereby agrees to hold Buyer and Buyer's Affiliates and each of their respective officers, directors and employees (the "Indemnified Parties") harmless from and indemnify the Indemnified Parties against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, fees, reasonable costs and actual out-of-pocket expenses (including reasonable attorneys' fees and disbursements and any and all servicing and enforcement costs incurred with respect to the Purchased Assets) (all of the foregoing, collectively, "Indemnified Amounts") that may at any time (including, without limitation, such time as this Agreement shall no longer be in effect and the Transactions shall have been repaid in full) be imposed on or asserted against any Indemnified Party in any way whatsoever arising out of or in connection with, or relating to, this Agreement or any Transactions thereunder or any action taken or omitted to be taken by any Indemnified Party under or in connection with any of the foregoing; provided that Seller shall not be liable for (i) Indemnified Amounts resulting from the gross negligence or willful misconduct of any Indemnified Party, (ii) Taxes other than any Taxes that represent losses, claims or damages arising from any non-Tax claim (which, for the avoidance of doubt, shall be governed by Sections 3(q)-(t)) and (iii) any special, indirect, consequential or punitive damages arising out of, in connection with, or as a result of the transactions contemplated hereby. Without limiting the generality of the foregoing, Seller agrees to hold each Indemnified Party harmless from and indemnify each Indemnified Party against all Indemnified Amounts with respect to all Purchased Assets relating to or arising out of any violation or alleged violation of any environmental law, rule or regulation or any consumer credit laws, including without limitation ERISA, the Truth in Lending Act and/or Real Estate Settlement Procedures Act, that, in each case, results from anything other than the gross negligence or willful misconduct of an Indemnified Party; provided that Seller shall have no liability for any claims arising as a direct result of activities or events in connection with the foregoing 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 Buyer in connection with any Purchased Asset for any sum owing thereunder, or to enforce any provisions of any Purchased Asset Documents, Seller will save, indemnify and hold Buyer harmless from and against all expenses, loss or damage suffered by Buyer by reason of any defense, set-off, counterclaim, recoupment or reduction or liability whatsoever of the account debtor or obligor thereunder, arising out of a breach by 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 obligor or its successors from Seller. Seller also agrees to reimburse an Indemnified Party as and when billed by such Indemnified Party for all such Indemnified Party's actual out-of-pocket costs and expenses incurred in connection with the enforcement or the preservation of such Indemnified Party's rights under this Agreement and any other Transaction Document or any transaction contemplated hereby or thereby, including without limitation the reasonable and documented fees and disbursements of its counsel. Seller hereby acknowledges that its obligations hereunder are recourse obligations of Seller.

(b) Seller agrees to pay as and when billed by Buyer (i) all Indemnified Amounts provided in Section 20(a), (ii) all of the actual out-of-pocket costs and expenses incurred by Buyer in connection with the development, preparation and execution of, and any amendment, supplement or modification to this Agreement and the other Transaction Documents or any other documents prepared in connection herewith or therewith including without limitation all the actual out-of-pocket fees, disbursements and expenses of counsel to Buyer, (iii) all of the actual out-of-pocket costs and expenses incurred in connection with the consummation and administration of the Transactions contemplated hereby and thereby including without limitation all the actual out-of-pocket fees, disbursements and expenses of counsel to Buyer and any fees, disbursements and expenses in connection with the Blocked Account and Depository Bank, the

Custodial Agreement, the Bailee Agreement, and the servicing of the Purchased Assets, (iv) all costs and expenses contemplated by Section 14(b)(v) and (v) all the Diligence Fees (collectively, "Transaction Costs").

21. DUE DILIGENCE

Seller acknowledges that Buyer has the right to perform continuing due diligence reviews with respect to the Purchased Assets, for purposes of verifying compliance with the representations, warranties and specifications made hereunder, or determining or re-determining the Asset Base for purposes of Section 4 of this Agreement, or otherwise, and Seller agrees that Buyer, at its option, has the right at any time to conduct a partial or complete due diligence review on any or all of the Purchased Assets, including, without limitation, ordering new credit reports and Appraisals on the applicable collateral and otherwise regenerating the information used to originate such Purchased Assets. Upon reasonable prior notice to Seller, Buyer or its authorized representatives will be permitted during normal business hours to examine, inspect, and make copies and extracts of, the Purchased Asset Files, Servicing Records and any and all documents, records, agreements, instruments or information relating to any Purchased Asset in the possession or under the control of Seller, any servicer or sub-servicer and/or Custodian. Seller also shall make available to Buyer a knowledgeable financial or accounting officer for the purpose of answering questions respecting the Purchased Asset Files, the Servicing Records and the Purchased Assets. Seller agrees to cooperate with Buyer and any third party underwriter designated by Buyer in connection with such underwriting, including, but not limited to, providing Buyer and any third party underwriter with access to any and all documents, records, agreements, instruments or information relating to such Purchased Assets in the possession, or under the control, of such Seller. Seller agrees to reimburse Buyer for any and all attorneys' fees, costs and expenses incurred by Buyer in connection with continuing due diligence on Eligible Assets and Purchased Assets and Diligence Fees. Diligence Fees applicable to underwriting only shall be subject to an annual, calendar year dollar cap of $30,000.

22. SERVICING

(a) The parties hereto agree and acknowledge that the Purchased Assets will be sold by Seller to Buyer on a servicing released basis. In furtherance of the foregoing, Seller and Buyer hereby agree and confirm that from and after the date hereof, only such Servicing Agreements that have been approved by Buyer shall govern the servicing of the Purchased Assets and any prior agreement between Seller and any other Person or otherwise with respect to such servicing is hereby superseded in all respects. Provided that, unless Buyer is a party to the Servicing Agreement with the related Servicer, Buyer shall have received a duly executed Servicer Acknowledgment from Servicer, prior to an Event of Default, Seller may retain Servicer, on behalf of Buyer, to service the Purchased Assets for the benefit of or on behalf of Buyer; provided, however, that the obligation of Servicer to service any Purchased Asset for the benefit of or on behalf of Buyer as aforesaid shall cease upon the repurchase of such Purchased Asset by Seller in accordance with the provisions of this Agreement or as otherwise provided in the Servicer Acknowledgment.

(b) Seller agrees that, as between Seller and Buyer, Buyer is the owner of all servicing records, including but not limited to any and all servicing agreements, files, documents, records, data bases, computer tapes, copies of computer tapes, proof of insurance coverage, insurance policies, appraisals, other closing documentation, payment history records, and any other records relating to or evidencing the servicing of Purchased Assets (the "Servicing Records") so long as the Purchased Assets are subject to this Agreement. Seller covenants to safeguard any such Servicing Records in Seller's possession and to deliver them promptly to Buyer or its designee (including Custodian) at Buyer's request.

(c) Seller shall not, and shall not provide consent to Servicer to, employ any other sub-servicers to service the Purchased Assets without the prior written approval of Buyer which approval shall be in Buyer's sole discretion.

(d) Seller shall cause any sub-servicers engaged on behalf of Buyer to execute a Servicer Acknowledgment acknowledging Buyer's interest in the Purchased Assets and the Servicing Agreement and agreeing that Servicer and any sub-servicer (if applicable) shall deposit all Income with respect to the Purchased Assets in the Blocked Account, all in such manner as shall be reasonably acceptable to Buyer.

(e) To the extent applicable, Seller shall cause Servicer to permit Buyer to inspect Servicer's servicing facilities for the purpose of satisfying Buyer that Servicer has the ability to service such Purchased Asset as provided in this Agreement.

(f) Buyer may, in its sole discretion if an Event of Default shall have occurred and be continuing, sell the Purchased Assets on a servicing released basis without payment of any termination fee or any other amount to Servicer. Upon the occurrence of an Event of Default hereunder, Buyer shall have the right immediately to terminate Servicer's right to service the Purchased Assets without payment of any penalty or termination fee.

23. TREATMENT FOR TAX PURPOSES

It is the intention of the parties that, for U.S. federal, state and local income and franchise tax purposes, the Transactions constitute a financing from Buyer to Seller (or any person from whom Seller is disregarded for U.S. federal income tax purposes), and that Seller (or any person from whom Seller is disregarded for U.S. federal income tax purposes) is, and, so long as no Event of Default shall have occurred and be continuing and Buyer shall have exercised its remedies following such Event of Default, will continue to be, treated as the owner of the Purchased Assets for such purposes. Unless prohibited by applicable law, Seller and Buyer agree to treat the Transactions as described in the preceding sentence on any and all filings with any U.S. federal, state or local taxing authority and agree not to take any action inconsistent with such treatment.

24. INTENT

(a) The parties intend and acknowledge that this Agreement and the Guaranty constitute a "master netting agreement" as that term is defined in Section 101(38A) of the Bankruptcy Code and as used in Section 561 of the Bankruptcy Code and a "securities contract" within the meaning of Section 555 and Section 559 of the Bankruptcy Code. The parties further intended and acknowledge that the grant of a security interest set forth in Section 6 hereof, which secures the rights of Buyer hereunder, also constitutes a "repurchase agreement" as contemplated by Section 101(47(A)(v) of the Bankruptcy Code and a "securities contract" as contemplated by Section 741(7)(A)(xi) of the Bankruptcy Code. The parties further intend and acknowledge that all payments hereunder are deemed 'margin payments' or 'settlement payments' as defined in Section 741 of the Bankruptcy Code or transfers in connection with a securities contract.

(b) The parties intend and acknowledge that each Transaction is a "repurchase agreement" as that term is defined in Section 101(47) of the Bankruptcy Code (except insofar as the type of assets subject to such Transaction or the Term of such Transaction would render such definition inapplicable).

(c) The parties intend and acknowledge that each Transaction is a "securities contract" as that term is defined in Section 741(7) of the Bankruptcy Code (except insofar as the type of assets subject to such Transaction would render such definition inapplicable).

(d) The parties intend and acknowledge that the Guaranty is a "securities contract" as that term is defined in Section 741(7)(A)(xi) of the Bankruptcy Code.

(e) The parties intend and acknowledge that any provisions hereof or in any other document, agreement or instrument that is related in any way to the servicing of the Purchased Assets shall be deemed "related to" this Agreement within the meaning of Section 741 of the Bankruptcy Code.

(f) Each party hereto agrees that is shall not challenge the characterization of this Agreement as a "securities contract" or a "master netting agreement" within the meaning of the Bankruptcy Code.

(g) It is understood that either party's right to accelerate or terminate this Agreement or to liquidate Purchased Assets delivered to it in connection with the Transactions hereunder or to exercise any other remedies pursuant to Section 14 hereof is a contractual right to accelerate or terminate this Agreement or to liquidate Purchased Assets as described in Sections 362(b)(6), 555, 559 and 561 of the Bankruptcy Code. It is further understood and agreed that either party's right to cause the termination, liquidation or acceleration of, or to offset net termination values, payment amounts or other transfer obligations arising under or in connection with this Agreement or the Transactions hereunder or to exercise any other remedies pursuant to Section 14 hereof is in each case is a contractual right to cause the termination, liquidation or acceleration of, or to offset net termination values, payment amounts or other transfer obligations arising under or in connection with this Agreement as described in Section 561 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" and a "securities contract" and a "master netting agreement".

(h) The parties intend and acknowledge that if a party hereto is an "insured depository institution," as such term is defined in the FDIA, then this Agreement and each Transaction hereunder is a "qualified financial contract," as that term is defined in the 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).

(i) The parties intend and acknowledge that this Agreement constitutes a "netting contract" as defined in and subject to FDICIA and each payment entitlement and payment obligation under any Transaction hereunder 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). It is further understood and agreed that either party's right to cause the termination, liquidation or acceleration of, or to offset net termination values, payment amounts or other transfer obligations arising under or in connection with this Agreement or the Transactions hereunder is a contractual right to cause the termination, liquidation or acceleration of, or to offset net termination values, payment amounts or other transfer obligations arising under or in connection with this Agreement as described in Sections 362(b)(6), 555 and 561 of the Bankruptcy Code.

(j) It is understood that this Agreement constitutes a "netting contract" as defined in and subject to FDICIA and each payment entitlement and payment obligation under any Transaction hereunder 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).

25. DISCLOSURE RELATING TO CERTAIN FEDERAL PROTECTIONS

The parties acknowledge that they have been advised that:

(a) in the case of Transactions in which one of the parties is a broker or dealer registered with the SEC under Section 15 of the 1934 Act, the Securities Investor Protection Corporation has taken the position that the provisions of the Securities Investor Protection Act of 1970 ("SIPA") do not protect the other party with respect to any Transaction hereunder;

(b) in the case of Transactions in which one of the parties is a government securities broker or a government securities dealer registered with the SEC under Section 15C of the 1934 Act, SIPA will not provide protection to the other party with respect to any Transaction hereunder;

(c) in the case of Transactions in which one of the parties is a financial institution, funds held by the financial institution pursuant to a Transaction hereunder 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) in the case of Transactions in which 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 the financial institution pursuant to a 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.

26. SETOFF RIGHTS

Without limiting any other rights or remedies of Buyer, Buyer shall have the right, without prior notice to Seller except for applicable notice and the related grace period provided herein, and any such notice being expressly waived by Seller to the extent permitted by applicable law, to set off and appropriate and apply any and all deposits (general or special, time or demand, provisional or final) in any currency, and any other obligation (including to return excess margin), credits, indebtedness, claims, securities, collateral or other property, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by or due from Buyer or any Affiliate thereof to or for the credit of the account of Seller to any obligations of Seller hereunder to Buyer. If a sum or obligation is unascertained, Buyer may estimate that obligation and set off in respect of the estimate, subject to the relevant party accounting to the other when the obligation is ascertained. This Section 26 shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other rights to which any party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

27. MISCELLANEOUS

(a) The Transaction Documents and their respective terms, provisions, supplements and amendments, and transactions and notices thereunder, are proprietary to Buyer and shall be held by Seller in strict confidence and shall not be disclosed to any third party without the consent of Buyer except for (i) disclosure to Seller's Affiliates or its or their respective managers, directors, officers, attorneys, agents or accountants (the "Representatives"); provided that Seller shall (A) inform each of its Representatives receiving any Transaction Documents of the confidential nature of the Transaction Documents, (B) direct its Representatives to treat the Transaction Documents confidentially, and (C) be responsible for any improper use of the Transaction Documents by Seller or its Representatives, (ii) upon prior written notice to Buyer (if permitted by law), disclosure required by law, rule, regulation (including the requirements of a stock exchange) or order of a court or other regulatory body, (iii) upon prior written notice to Buyer (if permitted by law), disclosure to any Approved Hedge Counterparty to the extent necessary to obtain any Hedging Transaction hereunder, (iv) any disclosures or filing required under SEC or state securities' laws; (v) to the extent required to be included in the financial statements of Seller, Pledgor or Buyer or their respective Affiliates; (vi) to the extent required to exercise any rights or remedies under the Transaction Documents or Purchased Asset Documents; or (vii) to the extent required to consummate and administer a Transaction, provided that, in the case of disclosure by any party pursuant to the foregoing clauses (ii), (iii) and (iv), Seller shall provide Buyer with prior written notice (if permitted by law) to permit Buyer to seek a protective order to take other appropriate action; provided further that, in the case of clause (iv), Seller shall not file any of the Transaction Documents other than this Agreement with the SEC or state securities office unless Seller shall have provided at least thirty (30) days (or such lesser time as may be demanded by the SEC or state securities office) prior written notice of such filing to Buyer. Seller shall cooperate in Buyer's efforts to obtain a protective order or other reasonable assurance that confidential treatment will be accorded the Transaction Documents. If, in the absence of a protective order, Seller or any of its Representatives is compelled as a matter of law to disclose any such information, Seller may disclose to the party compelling disclosure only the part of the Transaction Documents as is required by law to be disclosed (in which case, prior to such disclosure, Seller shall advise and consult with Buyer and its counsel (if permitted by law) as to such disclosure and the nature and wording of such disclosure) and Seller shall use its best efforts to obtain confidential treatment therefor. Buyer acknowledges that this Agreement may be filed with the SEC; provided that Seller shall redact any pricing and other confidential provisions, including, without limitation, the amount of any Upfront Fee, Extension Fee, Applicable Spread and Purchase Percentage from such filed copy of this Agreement.

(b) Seller shall, with respect to all Purchased Assets, comply with the applicable provisions of the Gramm-Leach-Bliley Act of 1999 (the "GLB Act") and any applicable state and local privacy laws pursuant to the GLB Act for financial institutions and applicable state and local privacy laws. Seller agrees to hold Buyer and its Affiliates and each of its officers, directors and employees (each, a "GLB Indemnified Party") harmless from and indemnify any GLB Indemnified Party against all liabilities, losses, damages, judgments, costs and expenses of any kind which may be imposed on, incurred by or asserted against such GLB Indemnified Party relating to or arising out of Seller's violation of the GLB Act or any applicable state or local privacy laws with respect to the Purchased Assets.

(c) No express or implied waiver of any Event of Default by Buyer shall constitute a waiver of any other Event of Default and no exercise of any remedy hereunder by Buyer shall constitute a waiver of its right to exercise any other remedy hereunder. No modification or waiver of any provision of this Agreement and no consent by any party to a departure here from shall be effective unless and until such shall be in writing and duly executed by both of the parties hereto.

(d) Time is of the essence under the Transaction Documents and all Transactions thereunder, and all references to a time shall mean New York time in effect on the date of the action unless otherwise expressly stated in the Transaction Documents.

(e) All rights, remedies and powers of Buyer hereunder and in connection herewith are irrevocable and cumulative, and not alternative or exclusive, and shall be in addition to all other rights, remedies and powers of Buyer whether under law, equity or agreement. In addition to the rights and remedies granted to it in this Agreement to the extent applicable, Buyer shall have all rights and remedies of a secured party under the UCC and any other applicable law.

(f) The Transaction Documents may be executed in counterparts, each of which so executed shall be deemed to be an original, but all of such counterparts shall together constitute but one and the same instrument.

(g) The headings in the Transaction Documents are for convenience of reference only and shall not affect the interpretation or construction of the Transaction Documents.

(h) Each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or be invalid under such 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 Agreement.

(i) This Agreement, the Fee Letter and each Confirmation contains a final and complete integration of all prior expressions by the parties with respect to the subject matter hereof and thereof and shall constitute the entire agreement among the parties with respect to such subject matter, superseding all prior oral or written understandings.

(j) Each party understands that this Agreement is a legally binding agreement that may affect such party's rights. Each party represents to the other that such party has received legal advice from counsel of its choice regarding the meaning and legal significance of this Agreement and that it is satisfied with its legal counsel and the advice received from it.

(k) Should any provision of this Agreement require judicial interpretation, it is agreed that a court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against any Person by reason of the rule of construction that a document is to be construed more strictly against the Person who itself or through its agent prepared the same, it being agreed that all parties have participated in the preparation of this Agreement.

(l) Seller agrees that it shall not assert any claims against Buyer for special, indirect, consequential or punitive damages for the actual use or purported use of proceeds hereunder.

[SIGNATURES COMMENCE ON THE NEXT PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

BUYER:

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

By: __
Name:
Title: Authorized Signatory

SELLER:

ACRC LENDER MS LLC,
a Delaware limited liability company

By: __
Name:
Title:

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: August 2, 2023

/s/ Bryan Donohoe
Bryan Donohoe
Chief Executive Officer

Exhibit 31.2

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

I, Tae-Sik Yoon, certify that:

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

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

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

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

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

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

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

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

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

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

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

Date: August 2, 2023

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

Exhibit 32.1

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

In connection with the Quarterly Report on Form 10-Q of Ares Commercial Real Estate Corporation (the "Company") for the quarter ended June 30, 2023 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), Bryan Donohoe, as Chief Executive Officer of the Company, and Tae-Sik Yoon, as Chief Financial Officer of the Company, each hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of his knowledge:

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

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

Date: August 2, 2023

/s/ Bryan Donohoe
Bryan Donohoe
Chief Executive Officer

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

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