

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, 2022
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
(State or other jurisdiction of
incorporation or organization)

45-3148087
(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	<input type="checkbox"/>	Accelerated filer	<input checked="" type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input type="checkbox"/>
Emerging growth company	<input type="checkbox"/>		

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 July 28, 2022
Common stock, \$0.01 par value	54,438,363

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FORWARD-LOOKING STATEMENTS

Some of the statements contained in this quarterly report constitute forward-looking statements, within the meaning of the Private Securities Litigation Reform Act of 1995 and Section 21E of the Securities Exchange Act of 1934, as amended, 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. This description contains forward-looking statements that involve risks and uncertainties. Actual results could differ significantly from the results discussed in the forward-looking statements due to several factors, including those set forth in “Risk Factors” and elsewhere in this quarterly report on Form 10-Q and in our annual report on Form 10-K for the fiscal year ended December 31, 2021 (“2021 Annual Report”). In addition, some of the statements in this quarterly report constitute forward-looking statements, which relate to future events or the future performance or financial condition of Ares Commercial Real Estate Corporation (“ACRE” and, together with its consolidated subsidiaries, the “Company,” “we,” “us” and “our”). The forward-looking statements contained in this report involve a number of risks and uncertainties, including statements concerning:

- our business and investment strategy;
- our projected operating results;
- the return or impact of current and future investments;
- 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 ongoing impact of the COVID-19 pandemic, on our business and the United States and global economies;
- the ongoing impact of the COVID-19 pandemic on the real estate industry and our borrowers, the performance of the properties securing our loans that may cause deterioration in the performance of our investments and, potentially, principal losses to us;
- the impact of Russia’s invasion of Ukraine and the international community’s response which created, and may continue to create, substantial political and economic disruption, uncertainty and risk;
- 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;
- changes in interest rates, credit spreads and the market value of our investments;

- the impact of the replacement of the London Interbank Offered Rate (“LIBOR”) on our operating results;
- 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;
- 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;
- the state of the United States, European Union and Asian economies generally or in specific geographic regions; 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,” “will,” “should,” “could,” “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 2021 Annual Report and the other information included in our 2021 Annual Report and elsewhere in this quarterly report 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, 2022	December 31, 2021
	(unaudited)	
ASSETS		
Cash and cash equivalents	\$ 25,625	\$ 50,615
Loans held for investment (\$1,026,784 and \$974,424 related to consolidated VIEs, respectively)	2,605,893	2,414,383
Current expected credit loss reserve	(27,613)	(23,939)
Loans held for investment, net of current expected credit loss reserve	2,578,280	2,390,444
Real estate owned held for sale, net	—	36,602
Other assets (\$2,428 and \$2,592 of interest receivable related to consolidated VIEs, respectively; \$65,229 and \$128,589 of other receivables related to consolidated VIEs, respectively)	92,429	154,177
Total assets	<u>\$ 2,696,334</u>	<u>\$ 2,631,838</u>
LIABILITIES AND STOCKHOLDERS' EQUITY		
LIABILITIES		
Secured funding agreements	\$ 853,059	\$ 840,047
Notes payable	—	50,358
Secured term loan	149,107	149,016
Collateralized loan obligation securitization debt (consolidated VIEs)	851,337	861,188
Secured borrowings	22,635	22,589
Due to affiliate	4,562	4,156
Dividends payable	19,198	16,674
Other liabilities (\$875 and \$570 of interest payable related to consolidated VIEs, respectively)	10,436	9,182
Total liabilities	<u>1,910,334</u>	<u>1,953,210</u>
Commitments and contingencies (Note 9)		
STOCKHOLDERS' EQUITY		
Common stock, par value \$0.01 per share, 450,000,000 shares authorized at June 30, 2022 and December 31, 2021 and 54,438,363 and 47,144,058 shares issued and outstanding at June 30, 2022 and December 31, 2021, respectively	537	465
Additional paid-in capital	811,411	703,950
Accumulated other comprehensive income	12,389	2,844
Accumulated earnings (deficit)	(38,337)	(28,631)
Total stockholders' equity	<u>786,000</u>	<u>678,628</u>
Total liabilities and stockholders' equity	<u>\$ 2,696,334</u>	<u>\$ 2,631,838</u>

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,	
	2022	2021	2022	2021
	(unaudited)	(unaudited)	(unaudited)	(unaudited)
Revenue:				
Interest income	\$ 38,621	\$ 30,859	\$ 71,986	\$ 61,564
Interest expense	(13,475)	(11,092)	(25,488)	(23,231)
Net interest margin	25,146	19,767	46,498	38,333
Revenue from real estate owned	—	3,764	2,672	6,421
Total revenue	25,146	23,531	49,170	44,754
Expenses:				
Management and incentive fees to affiliate	3,766	2,951	6,740	5,518
Professional fees	1,100	615	1,878	1,400
General and administrative expenses	1,587	1,195	3,200	2,351
General and administrative expenses reimbursed to affiliate	796	788	1,631	1,540
Expenses from real estate owned	—	3,842	4,309	7,120
Total expenses	7,249	9,391	17,758	17,929
Provision for current expected credit losses	7,768	(3,883)	7,174	(7,123)
Gain on sale of real estate owned	—	—	2,197	—
Income before income taxes	10,129	18,023	26,435	33,948
Income tax expense, including excise tax	98	408	204	593
Net income attributable to common stockholders	\$ 10,031	\$ 17,615	\$ 26,231	\$ 33,355
Earnings per common share:				
Basic earnings per common share	\$ 0.20	\$ 0.43	\$ 0.54	\$ 0.88
Diluted earnings per common share	\$ 0.20	\$ 0.43	\$ 0.53	\$ 0.88
Weighted average number of common shares outstanding:				
Basic weighted average shares of common stock outstanding	50,562,559	41,009,175	48,892,754	37,731,317
Diluted weighted average shares of common stock outstanding	50,999,505	41,294,597	49,336,267	38,025,933
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,	
	2022	2021	2022	2021
	(unaudited)	(unaudited)	(unaudited)	(unaudited)
Net income attributable to common stockholders	\$ 10,031	\$ 17,615	\$ 26,231	\$ 33,355
Other comprehensive income:				
Realized and unrealized gains (losses) on derivative financial instruments	1,931	(146)	9,545	117
Comprehensive income	<u>\$ 11,962</u>	<u>\$ 17,469</u>	<u>\$ 35,776</u>	<u>\$ 33,472</u>

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	Accumulated Other	Accumulated	Total Stockholders'
	Shares	Amount	Paid-in Capital	Comprehensive Income	Earnings (Deficit)	Equity
Balance at December 31, 2020	33,442,332	\$ 329	\$ 497,803	\$ —	\$ (25,117)	\$ 473,015
Sale of common stock	7,000,000	70	100,800	—	—	100,870
Offering costs	—	—	(188)	—	—	(188)
Stock-based compensation	35,509	—	521	—	—	521
Other comprehensive income	—	—	—	263	—	263
Net income	—	—	—	—	15,740	15,740
Dividends declared	—	—	—	—	(14,248)	(14,248)
Balance at March 31, 2021	40,477,841	399	598,936	263	(23,625)	575,973
Sale of common stock	6,500,000	65	101,725	—	—	101,790
Offering costs	—	—	(164)	—	—	(164)
Stock-based compensation	23,280	—	497	—	—	497
Other comprehensive income	—	—	—	(146)	—	(146)
Net income	—	—	—	—	17,615	17,615
Dividends declared	—	—	—	—	(16,528)	(16,528)
Balance at June 30, 2021	47,001,121	464	700,994	117	(22,538)	679,037
Offering costs	—	—	(52)	—	—	(52)
Stock-based compensation	700	—	428	—	—	428
Other comprehensive income	—	—	—	(98)	—	(98)
Net income	—	—	—	—	9,951	9,951
Dividends declared	—	—	—	—	(16,523)	(16,523)
Balance at September 30, 2021	47,001,821	464	701,370	19	(29,110)	672,743
Sale of common stock	137,237	1	2,118	—	—	2,119
Offering costs	—	—	(32)	—	—	(32)
Stock-based compensation	5,000	—	494	—	—	494
Other comprehensive income	—	—	—	2,825	—	2,825
Net income	—	—	—	—	17,154	17,154
Dividends declared	—	—	—	—	(16,675)	(16,675)
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	—	—	—	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	—	—	—	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

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,	
	2022	2021
	(unaudited)	(unaudited)
Operating activities:		
Net income	\$ 26,231	\$ 33,355
Adjustments to reconcile net income to net cash provided by (used in) operating activities:		
Amortization of deferred financing costs	4,058	4,491
Accretion of deferred loan origination fees and costs	(4,938)	(3,911)
Stock-based compensation	1,465	1,018
Depreciation of real estate owned	—	449
Provision for current expected credit losses	7,174	(7,123)
Amortization of derivative financial instruments	(253)	—
Gain on sale of real estate owned	(2,197)	—
Changes in operating assets and liabilities:		
Other assets	(1,930)	(9,346)
Due to affiliate	406	581
Other liabilities	(864)	267
Net cash provided by (used in) operating activities	<u>29,152</u>	<u>19,781</u>
Investing activities:		
Issuance of and fundings on loans held for investment	(523,735)	(463,871)
Principal repayment of loans held for investment	400,429	155,302
Receipt of origination fees	6,794	1,342
Proceeds from sale of real estate owned	38,227	(26)
Payments under derivative financial instruments	2,085	(700)
Net cash provided by (used in) investing activities	<u>(76,200)</u>	<u>(307,953)</u>
Financing activities:		
Proceeds from secured funding agreements	225,192	207,237
Repayments of secured funding agreements	(212,180)	(558,584)
Proceeds from notes payable	—	9,695
Repayments of notes payable	(51,110)	(27,880)
Repayments of secured term loan	—	(50,000)
Payment of secured funding costs	(1,663)	(9,133)
Proceeds from issuance of debt of consolidated VIEs	—	540,471
Repayments of debt of consolidated VIEs	(11,000)	—
Dividends paid	(33,414)	(25,373)
Proceeds from sale of common stock	106,267	202,660
Payment of offering costs	(34)	(26)
Net cash provided by (used in) financing activities	<u>22,058</u>	<u>289,067</u>
Change in cash and cash equivalents	(24,990)	895
Cash and cash equivalents, beginning of period	50,615	74,776
Cash and cash equivalents, end of period	<u>\$ 25,625</u>	<u>\$ 75,671</u>

See accompanying notes to consolidated financial statements.

ARES COMMERCIAL REAL ESTATE CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

As of June 30, 2022

(in thousands, except share and per share data, percentages and as otherwise indicated)
(unaudited)

1. ORGANIZATION

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

The Company operates as one operating segment and is primarily focused on directly originating and managing a diversified portfolio of CRE debt-related investments for the Company’s own account. The Company’s target investments include senior mortgage loans, subordinated debt, preferred equity, mezzanine loans and other CRE investments, including commercial mortgage backed securities. These investments are generally held for investment and are secured, directly or indirectly, by office, multifamily, retail, industrial, lodging, self storage, student housing, residential, senior-living 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, 2021 filed with the SEC.

Refer to the Company’s Annual Report on Form 10-K for the fiscal year ended December 31, 2021 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, 2022.

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 heightened inflation, changes to fiscal and monetary policy, higher interest rates, currency fluctuations, labor shortages and challenges in the supply chain, coupled with the war in Ukraine and the ongoing effects of the novel coronavirus (“COVID-19”) pandemic, 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, 2022, however, uncertainty over the global economy and the Company’s business, makes any estimates and assumptions as of June 30, 2022 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

Accounting Standards Update (“ASU”) No. 2016-13, *Financial Instruments – Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments*, 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”). ASU No. 2016-13 was effective for annual reporting periods beginning after December 15, 2019, including interim periods within that reporting period. ASU No. 2016-13 was adopted by the Company on a modified retrospective basis through a cumulative-effect adjustment to retained earnings as of January 1, 2020. Subsequent period 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 ASU No. 2016-13 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.

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.

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 (defined 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 is 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 other comprehensive income ("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. 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.

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 as compared to its use of debt leverage. The Company includes interest income from its loans 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 (defined in Note 7 included in these consolidated financial statements) in net interest margin. For the three and six months ended June 30, 2022 and 2021, interest expense is comprised of the following (\$ in thousands):

	For the three months ended June 30,		For the six months ended June 30,	
	2022	2021	2022	2021
Secured funding agreements	\$ 6,342	\$ 3,196	\$ 11,469	\$ 7,019
Notes payable (1)	531	279	984	1,473
Securitization debt	5,591	5,136	9,942	9,444
Secured term loan	1,752	797	3,484	2,138
Secured borrowings	296	1,450	588	2,881
Other (2)	(1,037)	234	(979)	276
Interest expense	<u>\$ 13,475</u>	<u>\$ 11,092</u>	<u>\$ 25,488</u>	<u>\$ 23,231</u>

(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 sheets (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

In March 2020, the FASB issued ASU No. 2020-04, *Reference Rate Reform (Topic 848): Facilitation of the Effects of Reference Rate Reform on Financial Reporting*, which provides optional expedients and exceptions for applying GAAP to contracts, hedging relationships, and other transactions affected by reference rate reform if certain criteria are met. The amendments apply only to contracts, hedging relationships, and other transactions that reference the London Interbank Offered Rate ("LIBOR") or another reference rate expected to be discontinued because of reference rate reform. In January 2021, the FASB issued ASU No. 2021-01, *Reference Rate Reform (Topic 848)*, to clarify that certain optional expedients and exceptions in Topic 848 for contract modifications and hedge accounting apply to derivative instruments that use an interest rate for margining, discounting, or contract price alignment that is modified as a result of reference rate reform. ASU No. 2020-04 and ASU No. 2021-01 are effective for all entities and may be adopted retrospectively as of any date from the beginning of any interim period that includes or is subsequent to March 12, 2020 or prospectively to new modifications through December 31, 2022. The Company is currently evaluating the impact of adopting these ASUs on its consolidated financial statements.

In March 2022, the FASB issued ASU 2022-02, *Financial Instruments—Credit Losses (Topic 326): Troubled Debt Restructurings and Financial Instruments—Credit Losses (Topic 326): Troubled Debt Restructurings and Vintage Disclosures*, which eliminates the accounting guidance on troubled debt restructurings (“TDRs”) for creditors in ASC 310-40 and amends the guidance on “vintage disclosures” to require disclosure of current period gross write-offs by year of origination. The ASU also updates the requirements related to accounting for credit losses under Topic 326 and adds enhanced disclosures for creditors with respect to loan refinancing and restructurings for borrowers experiencing financial difficulty. ASU 2022-02 supersedes the accounting guidance for TDRs for creditors in its entirety and requires entities to evaluate all receivable modifications to determine whether a modification made to a borrower results in a new loan or a continuation of the existing loan. The Company elected to adopt the ASU for modifications occurring prospectively beginning in the first quarter of 2022.

3. LOANS HELD FOR INVESTMENT

As of June 30, 2022, the Company’s portfolio included 78 loans held for investment, excluding 128 loans that were repaid, sold or converted to real estate owned since inception. The aggregate originated commitment under these loans at closing was approximately \$3.0 billion and outstanding principal was \$2.6 billion as of June 30, 2022. During the six months ended June 30, 2022, the Company funded approximately \$533.4 million of outstanding principal and received repayments of \$337.1 million of outstanding principal as described in more detail in the tables below. As of June 30, 2022, 91.3% of the Company’s loans have LIBOR or Secured Overnight Financing Rate (“SOFR”) floors, with a weighted average floor of 0.95%, calculated based on loans with LIBOR or SOFR floors. References to LIBOR or “L” are to 30-day LIBOR and 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, 2022 and December 31, 2021 (\$ in thousands):

As of June 30, 2022					
	Carrying Amount (1)	Outstanding Principal (1)	Weighted Average Unleveraged Effective Yield		Weighted Average Remaining Life (Years)
Senior mortgage loans	\$ 2,588,834	\$ 2,607,786	6.2 % (2)	6.3 % (3)	1.5
Subordinated debt and preferred equity investments	17,059	17,662	13.7 % (2)	13.7 % (3)	3.5
Total loans held for investment portfolio	\$ 2,605,893	\$ 2,625,448	6.2 % (2)	6.3 % (3)	1.6

As of December 31, 2021					
	Carrying Amount (1)	Outstanding Principal (1)	Weighted Average Unleveraged Effective Yield		Weighted Average Remaining Life (Years)
Senior mortgage loans	\$ 2,397,655	\$ 2,411,718	5.3 % (2)	5.4 % (3)	1.5
Subordinated debt and preferred equity investments	16,728	17,394	13.7 % (2)	13.7 % (3)	4.0
Total loans held for investment portfolio	\$ 2,414,383	\$ 2,429,112	5.4 % (2)	5.5 % (3)	1.6

- (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, 2022 and December 31, 2021 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, 2022 and December 31, 2021 as weighted by the total outstanding principal balance of each interest accruing loan (excludes loans on non-accrual status as of June 30, 2022 and December 31, 2021).

A more detailed listing of the Company's loans held for investment portfolio based on information available as of June 30, 2022 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	\$151.5	\$151.2	L+3.60%	5.8%	Mar 2023	I/O
Multifamily	NY	128.0	126.4	S+3.90%	6.0%	Jun 2025	I/O
Office	Diversified	114.6	114.5	L+3.65%	5.9%	Jan 2023	I/O
Multifamily	TX	100.0	99.0	S+3.50%	5.5%	Jul 2025	I/O
Industrial	IL	95.7	95.1	L+4.55%	6.8%	May 2024	I/O
Mixed-use	FL	84.0	84.0	L+4.25%	6.0%	Feb 2023	I/O
Office	AZ	77.4	76.7	L+3.50%	5.7%	Oct 2024	I/O
Mixed-use	NY	75.0	74.5	L+3.65%	5.8%	Jul 2024	I/O
Office	NC	69.3	69.2	L+4.25%	7.0%	Mar 2023	(5) P/I (6)
Residential Condominium	FL	69.2	68.8	L+5.25%	7.6%	Jul 2023	I/O
Hotel	OR/WA	68.1	67.7	L+3.45%	6.8%	Nov 2022	(7) I/O
Multifamily	TX	67.2	66.6	L+2.85%	5.0%	Dec 2024	I/O
Multifamily/Office	SC	67.0	66.8	L+2.90%	4.9%	Nov 2024	I/O
Office	NC	65.0	64.5	L+3.55%	5.8%	Aug 2024	I/O
Residential Condominium	NY	64.2	63.4	S+8.95%	12.4%	Oct 2023	I/O (8)
Office	NY	64.1	63.4	L+3.85%	6.0%	Aug 2025	I/O
Office	IL	61.0	60.9	L+3.75%	5.8%	Dec 2022	I/O
Mixed-use	CA	58.1	57.9	(9)	8.6%	Jan 2024	I/O
Office	IL	56.9	56.8	S+3.95%	6.2%	Jun 2023	(10) I/O
Self Storage	NJ	55.5	55.6	L+3.80%	5.5%	Feb 2024	I/O
Hotel	Diversified	50.2	50.2	L+3.60%	6.1%	Sep 2022	P/I (6)
Office	GA	48.2	48.2	L+3.05%	5.7%	Dec 2022	I/O
Hotel	CA	40.0	39.9	L+4.12%	6.4%	Jan 2023	I/O
Hotel	CA	39.2	38.6	S+4.20%	6.3%	Mar 2025	I/O
Mixed-use	CA	37.9	37.8	L+4.10%	6.5%	Mar 2023	I/O
Mixed-use	TX	35.8	35.7	(11)	6.3%	Sep 2022	I/O
Hotel	IL	35.0	30.5	S+4.00%	—% (12)	May 2024	(12) I/O
Student Housing	CA	34.9	34.9	L+3.95%	5.8%	Jul 2023	(13) I/O
Multifamily	SC	34.0	34.0	L+6.50%	10.2%	Sep 2022	I/O
Office	CA	32.6	32.6	L+3.35%	6.0%	Nov 2022	I/O
Multifamily	CA	31.7	31.5	L+2.90%	5.0%	Dec 2025	I/O
Hotel	NY	30.7	30.2	S+4.40%	6.5%	Mar 2026	I/O
Office	IL	30.2	30.1	L+3.80%	6.2%	Jan 2023	I/O
Hotel	MI	30.0	29.7	L+3.95%	5.9%	Dec 2022	(14) I/O
Multifamily	PA	29.3	29.3	L+3.00%	5.0%	Dec 2022	I/O
Office	NC	28.5	28.3	L+3.53%	6.8%	May 2023	I/O
Industrial	FL	25.5	25.4	L+2.90%	4.9%	Dec 2025	I/O
Industrial	CO	24.6	24.4	(15)	9.6%	Feb 2023	I/O
Industrial	NJ	23.3	23.0	L+3.75%	6.2%	May 2024	I/O
Multifamily	WA	23.1	23.0	L+2.90%	4.9%	Nov 2025	I/O
Office	CA	22.9	22.8	L+3.40%	6.0%	Nov 2022	I/O
Multifamily	TX	22.0	21.8	L+2.50%	4.7%	Oct 2024	I/O
Industrial	CA	19.6	19.5	L+3.75%	6.3%	Mar 2023	I/O
Student Housing	AL	19.5	19.4	L+3.85%	6.0%	May 2024	I/O
Office	MA	19.3	18.5	S+3.75%	6.3%	Apr 2025	I/O
Multifamily	WA	18.7	18.7	L+3.00%	5.2%	Mar 2023	I/O
Self Storage	PA	17.4	17.2	L+2.90%	5.0%	Dec 2025	I/O
Residential	CA	14.3	14.3	13.00%	—% (16)	May 2021	(16) I/O
Self Storage	PA	13.8	13.6	L+3.05%	5.2%	Oct 2024	I/O
Self Storage	MD	12.5	12.4	L+3.05%	5.1%	Oct 2024	I/O
Self Storage	FL	10.8	10.8	L+2.90%	5.1%	Dec 2023	I/O
Industrial	TX	10.4	10.3	L+5.25%	7.4%	Dec 2024	I/O
Self Storage	WA	10.2	10.2	L+3.05%	5.1%	Oct 2024	I/O
Industrial	FL	9.5	9.4	L+4.75%	8.1%	Nov 2024	I/O

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Self Storage	MO	9.0	8.9	L+3.05%	5.1%	Oct 2024	I/O
Self Storage	MA	8.5	8.5	L+2.90%	4.9%	Dec 2024	I/O
Industrial	PA	8.0	8.0	L+5.50%	7.7%	Sep 2024	I/O
Self Storage	TX	8.0	8.0	L+2.90%	4.9%	Aug 2024	I/O
Self Storage	MA	7.7	7.6	L+2.90%	4.9%	Nov 2024	I/O
Industrial	PA	7.0	6.9	L+5.90%	8.1%	Nov 2024	I/O
Self Storage	FL	7.0	6.9	L+2.90%	5.1%	Dec 2023	I/O
Industrial	TN	6.7	6.6	L+5.50%	7.7%	Nov 2024	I/O
Self Storage	FL	6.4	6.4	L+2.90%	5.1%	Dec 2023	I/O
Self Storage	MA	6.3	6.3	L+2.90%	4.9%	Oct 2024	I/O
Self Storage	MO	6.3	6.3	L+3.00%	4.9%	Dec 2023	I/O
Industrial	FL	5.9	5.9	S+5.90%	8.0%	Feb 2025	I/O
Self Storage	NJ	5.9	5.9	L+2.90%	5.1%	Jul 2024	I/O
Self Storage	IL	5.6	5.6	L+3.00%	5.1%	Dec 2023	I/O
Self Storage	WI	5.4	5.4	L+2.90%	4.9%	Jul 2024	I/O
Industrial	FL	4.7	4.6	S+5.75%	7.8%	Mar 2025	I/O
Self Storage	FL	4.5	4.5	L+2.90%	4.9%	Jun 2024	I/O
Self Storage	FL	4.4	4.4	L+2.90%	5.0%	Dec 2023	I/O
Self Storage	CO	3.2	3.2	L+2.90%	4.7%	Apr 2024	I/O
Industrial	CO	2.9	2.9	L+6.25%	8.4%	Sep 2024	I/O
Self Storage	TX	2.9	2.9	L+2.90%	4.8%	Sep 2024	I/O
Industrial	AZ	2.7	2.6	L+5.90%	8.1%	Oct 2024	I/O
Industrial	GA	1.3	1.3	L+5.25%	7.4%	Sep 2024	I/O
Subordinated Debt and Preferred Equity Investments:							
Office	NJ	17.7	17.1	12.00%	13.6%	Jan 2026	I/O
Total/Weighted Average		<u>\$2,625.4</u>	<u>\$2,605.9</u>		<u>6.2%</u>		

- (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 LIBOR or SOFR as of June 30, 2022 or the LIBOR or 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, 2022 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) In March 2022, the borrower exercised a one-year extension option in accordance with the loan agreement, which extended the maturity date on the senior North Carolina loan to March 2023.
- (6) Amortization began on the senior North Carolina loan, which had an outstanding principal balance of \$69.3 million as of June 30, 2022 and the senior diversified loan, which had an outstanding principal balance of \$50.2 million as of June 30, 2022, in April 2022 and October 2021, respectively. The remainder of the loans in the Company's portfolio are non-amortizing through their primary terms.
- (7) In May 2022, the Company and the borrower entered into a modification and extension agreement to, among other things, extend the maturity date on the senior Oregon/Washington loan from May 2022 to November 2022.
- (8) This senior mortgage loan refinanced the previously existing \$71.8 million senior mortgage loan that was held by the Company.
- (9) At origination, the California loan was structured as both a senior and mezzanine loan with the Company holding both positions. The senior loan, which had an outstanding principal balance of \$45.0 million as of June 30, 2022, accrues

- interest at a per annum rate of L + 3.80% and the mezzanine loan, which had an outstanding principal balance of \$13.1 million as of June 30, 2022, accrues interest at a per annum rate of 18.00%.
- (10) In May 2022, the Company and the borrower entered into a modification and extension agreement to, among other things, amend the interest rate from L + 3.95% to S + 3.95% and extend the maturity date on the senior Illinois loan from June 2022 to June 2023. The borrower is current on all contractual interest payments.
- (11) The senior Texas loan is split into two separate notes: Note A, which had an outstanding principal balance of \$35.3 million as of June 30, 2022, accrues interest at a per annum rate of L + 3.75% and Note B, which had an outstanding principal balance of \$0.4 million as of June 30, 2022, accrues interest at a per annum rate of L + 10.00%.
- (12) Loan was on non-accrual status as of June 30, 2022 and therefore, there is no Unleveraged Effective Yield as the loan is non-interest accruing. In March 2022, the Company and the borrower entered into a modification and extension agreement to, among other things, amend the interest rate from L + 4.40% to S + 4.00% and extend the maturity date on the senior Illinois loan from May 2022 to May 2024. For the three months ended June 30, 2022, the Company received in cash and recognized \$365 thousand of interest income on the senior Illinois loan and the borrower is current on all contractual interest payments. However, 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.
- (13) In May 2022, the borrower exercised a one-year extension option in accordance with the loan agreement, which extended the maturity date on the senior California loan to July 2023.
- (14) In June 2022, the Company and the borrower entered into a modification and extension agreement to, among other things, extend the maturity date on the senior Michigan loan from July 2022 to December 2022.
- (15) At origination, the Colorado loan was structured as a senior loan and in January 2022, the Company also originated the mezzanine loan. The senior loan, which had an outstanding principal balance of \$20.8 million as of June 30, 2022, accrues interest at a per annum rate of L + 6.75% and the mezzanine loan, which had an outstanding principal balance of \$3.8 million as of June 30, 2022, accrues interest at a per annum rate of S + 8.50%.
- (16) Loan was on non-accrual status as of June 30, 2022 and therefore, there is no Unleveraged Effective Yield as the loan is non-interest accruing. As of June 30, 2022, the senior California loan, which is collateralized by a residential property, is 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. The Company evaluated this loan for impairment and concluded that no impairment charge should be recognized as of June 30, 2022. This conclusion was based in part on: (1) the current estimated fair market value of the underlying collateral property, (2) the estimated value of the contractual right to residual proceeds from the sale of a second residential property and (3) the recourse payment guarantee from two individuals that are the owners of the underlying collateral. The estimated fair market value of the underlying collateral property was determined using the comparable market sales approach.

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 has maintained regular communications with borrowers and sponsors regarding the potential impacts of the COVID-19 pandemic on the Company's loans. Some of the Company's borrowers, in particular, borrowers with properties exposed to the hospitality, student housing and retail industries, indicated that due to the impact of the COVID-19 pandemic, they could be unable to timely execute their business plans, have experienced cash flow pressure, had to temporarily close their businesses or have experienced other negative business consequences. Certain borrowers have requested temporary interest deferral or forbearance or other modifications of their loans. These modifications included deferrals or capitalization of interest, amendments in extension, future funding or performance tests, extension of the maturity date, repurposing of reserves or covenant waivers on loans secured by properties directly or indirectly impacted by the COVID-19 pandemic.

For the six months ended June 30, 2022, the activity in the Company's loan portfolio was as follows (\$ in thousands):

Balance at December 31, 2021	\$	2,414,383
Initial funding		473,200
Origination fees and discounts, net of costs		(7,345)
Additional funding		58,045
Amortizing payments		(1,176)
Loan payoffs		(336,152)
Origination fee accretion		4,938
Balance at June 30, 2022	\$	2,605,893

Except as described above, as of June 30, 2022, all loans held for investment were paying in accordance with their contractual terms. As of June 30, 2022, the Company had two loans held for investment on non-accrual status with a carrying value of \$44.8 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 a current recession given current macroeconomic and geopolitical conditions and the ongoing effects of the COVID-19 pandemic; however, the financial impact on the Company of current circumstances 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, 2022 increased compared to the current estimate of expected credit losses as of March 31, 2022 primarily due to growth in the loan portfolio and other changes to the loan portfolio, partially offset by shorter average remaining loan term and loan payoffs during the three months ended June 30, 2022. The CECL Reserve 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.

As of June 30, 2022, the Company's CECL Reserve for its loans held for investment portfolio is \$32.4 million or 111 basis points of the Company's total loans held for investment commitment balance of \$2.9 billion and is bifurcated between the CECL reserve (contra-asset) related to outstanding balances on loans held for investment of \$27.6 million and a liability for unfunded commitments of \$4.8 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.

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, 2022 was as follows (\$ in thousands):

Balance at March 31, 2022	\$ 20,452
Provision for current expected credit losses	7,161
Write-offs	—
Recoveries	—
Balance at June 30, 2022 ⁽¹⁾	\$ 27,613
Balance at December 31, 2021 ⁽¹⁾	\$ 23,939
Provision for current expected credit losses	3,674
Write-offs	—
Recoveries	—
Balance at June 30, 2022 ⁽¹⁾	\$ 27,613

- (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, 2022 was as follows (\$ in thousands):

Balance at March 31, 2022 ⁽¹⁾	\$	4,201
Provision for current expected credit losses		607
Write-offs		—
Recoveries		—
Balance at June 30, 2022 ⁽¹⁾	\$	4,808
Balance at December 31, 2021 ⁽¹⁾	\$	1,308
Provision for current expected credit losses		3,500
Write-offs		—
Recoveries		—
Balance at June 30, 2022 ⁽¹⁾	\$	4,808

(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, 2022, 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:	2022	2021	2020	2019	2018	Prior	Total
1	\$ 18,937	\$ 28,515	\$ —	\$ 33,966	\$ —	\$ —	\$ 81,418
2	123,646	377,227	—	83,976	—	34,916	619,765
3	260,682	575,742	322,152	263,545	170,004	147,599	1,739,724
4	63,428	—	—	—	101,558	—	164,986
5	—	—	—	—	—	—	—
Total	\$ 466,693	\$ 981,484	\$ 322,152	\$ 381,487	\$ 271,562	\$ 182,515	\$ 2,605,893

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, 2022 and December 31, 2021,

interest receivable of \$12.4 million and \$17.1 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. As such, as of December 31, 2021, the hotel property was classified as real estate owned held for sale in the Company's consolidated balance sheet. For the three months ended March 31, 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. As of December 31, 2021, the assets and liabilities of the hotel property are included within other assets and other liabilities, respectively, in the Company's consolidated balance sheets and include items such as cash, restricted cash, trade receivables and payables and advance deposits. 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.

The following table summarizes the Company's real estate owned as of December 31, 2021 (\$ in thousands):

Land	\$	10,200
Buildings and improvements		24,281
Furniture, fixtures and equipment		4,506
		38,987
Less: Accumulated depreciation		(2,385)
Real estate owned, net	\$	36,602

For the three and six months ended June 30, 2022, the Company did not incur depreciation expense. For the three and six months ended June 30, 2021, the Company incurred depreciation expense of \$225 thousand and \$449 thousand, respectively. Depreciation expense is included within expenses from real estate owned in the Company's consolidated statements of operations.

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, 2022 and December 31, 2021, the outstanding balances and total commitments under the Financing Agreements consisted of the following (\$ in thousands):

	June 30, 2022		December 31, 2021	
	Outstanding Balance	Total Commitment	Outstanding Balance	Total Commitment
Secured Funding Agreements:				
Wells Fargo Facility	\$ 357,514	\$ 450,000 (1)	\$ 399,528	\$ 450,000 (1)
Citibank Facility	273,269	325,000	192,970	325,000
CNB Facility	—	75,000	—	75,000
MetLife Facility	20,648	180,000	20,648	180,000
Morgan Stanley Facility	201,628	250,000	226,901	250,000
Subtotal	\$ 853,059	\$ 1,280,000	\$ 840,047	\$ 1,280,000
Notes Payable	\$ —	\$ —	\$ 51,110	\$ 51,755
Secured Term Loan	\$ 150,000	\$ 150,000	\$ 150,000	\$ 150,000
Total	\$ 1,003,059	\$ 1,430,000	\$ 1,041,157	\$ 1,481,755

- (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 upside 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 upside 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 14, 2022, subject to one 12-month extension at the Company's option, which, if exercised, would extend the funding period to December 14, 2023. The initial maturity date of the Wells Fargo Facility is December 14, 2022, subject to three 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 all three were exercised, would extend the maturity date of the Wells Fargo Facility to December 14, 2025. Advances under the Wells Fargo Facility accrue interest at a per annum rate equal to the sum of one-month LIBOR or SOFR plus a pricing margin range of 1.50% to 2.75%, 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. In January 2022, the Company amended the Citibank Facility to, among other things, extend the initial maturity date and funding availability period to 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 LIBOR or 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, 2022, the Company incurred a non-utilization fee of \$11 thousand. For the three and six months ended June 30, 2021, the Company incurred a non-utilization fee of \$175 thousand and \$334 thousand, respectively. 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 March 2022, the Company exercised a 12-month extension option on the CNB Facility to extend the maturity date to March 10, 2023. Since November 12, 2021, 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%. Prior to November 12, 2021, the interest rate on advances was a per annum rate equal to the sum of, at the Company's option, either (a) LIBOR for a one, two, three, six or, if available to all lenders, 12-month interest period plus 2.65% or (b) a base rate (which is the highest of a prime rate, the federal funds rate plus 0.50%, or one-month LIBOR plus 1.00%) plus 1.00%. 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, 2022, the Company incurred a non-utilization fee of \$70 thousand and \$140 thousand, respectively. For the three and six months ended June 30, 2021, the Company incurred a non-utilization fee of \$41 thousand and \$68 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. The initial maturity date of the MetLife Facility is August 13, 2022, 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 MetLife Facility to August 13, 2024. Advances under the MetLife Facility accrue interest at a per annum rate equal to the sum of one-month LIBOR or SOFR plus a spread of 2.50%, subject to certain exceptions. For a period of nine months subsequent to August 2020, the non-utilization fee of 25 basis points per annum on the average daily available balance of the MetLife Facility, which is owed if less than 65% of the MetLife Facility is utilized, was waived. For the three and six months ended June 30, 2022, the Company incurred non-utilization fee of \$61 thousand and \$121 thousand, respectively. For both the three and six months ended June 30, 2021, the Company incurred a non-utilization fee of \$39 thousand. The non-utilization fee is included within interest expense in the Company's consolidated statements of operations. See Note 17 included in these consolidated financial statements for a subsequent event related to the MetLife Facility.

Morgan Stanley Facility

The Company is party to a \$250.0 million master repurchase and securities contract with Morgan Stanley Bank, N.A. ("Morgan Stanley") (the "Morgan Stanley Facility"). Under the Morgan Stanley Facility, the Company is permitted to sell, and later repurchase, certain qualifying commercial mortgage loans collateralized by retail, office, mixed-use, multifamily, industrial, hospitality, student housing or self-storage properties. Morgan Stanley may approve the mortgage loans that are subject to the Morgan Stanley Facility in its sole discretion. The initial maturity date of the Morgan Stanley Facility is January 16, 2023, 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 Morgan Stanley Facility to January 16, 2025. On March 21, 2022, ACRC Lender MS LLC, a subsidiary of the Company and Morgan Stanley entered into the Second Amendment to Master Repurchase and Securities Contract to modify the interest rate provisions in the Morgan Stanley Facility such that financings under the Morgan Stanley Facility in connection with loans pledged to the Morgan Stanley Facility after December 31, 2021 will utilize SOFR. Advances under the Morgan Stanley Facility generally accrue interest at a per annum rate equal to the sum of one-month LIBOR or SOFR plus a spread ranging from 1.75% to 2.25%, determined by Morgan Stanley, depending upon the mortgage loan sold to Morgan Stanley in the applicable transaction.

Notes Payable

Certain of the Company's subsidiaries were party to two separate non-recourse note agreements (the "Notes Payable") 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. The maturity date of the \$28.3 million note was June 10, 2024, subject to one 6-month extension, which if exercised would have extended the maturity date to December 10, 2024. The loan was subject to prepayment at any time. 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. The initial maturity date of the \$23.5 million note was September 5, 2022, subject to two 12-month extensions, which if exercised would have extended the maturity date to September 5, 2024. 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%.

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"). In November 2021, the Company amended the Secured Term Loan to, among other things, (1) increase the commitment amount to \$150.0 million, which was fully drawn on the closing date of the amendment, net of an original issue discount equal to 0.50% of the commitment amount, (2) extend the maturity date of the Secured Term Loan to November 12, 2026 and (3) update the interest rate on advances under the Secured Term Loan 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. Prior to the November 2021 amendment, advances under the Secured Term Loan accrued interest at a per annum rate equal to the sum of, at the Company's option, one, two, three or six-month LIBOR plus a spread of 5.00%. During the 12-month extension period beginning December 22, 2020, the spread on advances under the Secured Term Loan increased every three months by 0.125%, 0.375% and 0.750% per annum, respectively, beginning after the third-month of the extension period. As of June 30, 2022, the total outstanding principal balance of the Secured Term Loan was \$150.0 million.

The total original issue discount on the Secured Term Loan represents a discount to the debt cost to be amortized into interest expense using the effective interest method over the term of the Secured Term Loan. For both the three and six months ended June 30, 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%. For the three and six months ended June 30, 2021, the estimated per annum effective interest rate of the Secured Term Loan, which was equal to LIBOR plus the spread plus the accretion of the original issue discount and associated costs, was 5.3% and 5.2%, respectively.

7. SECURED BORROWINGS

A subsidiary of the Company is 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 is May 5, 2023, subject to one 12-month extension, which may be exercised at the transferee's option, which, if exercised, would extend the maturity date to May 5, 2024. Advances under the \$24.4 million secured borrowing accrue interest at a per annum rate equal to the sum of one-month LIBOR plus a spread of 2.50%. As of June 30, 2022, the total outstanding principal balance of the secured borrowing was \$22.7 million.

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, 2022 and December 31, 2021 (notional amount in thousands):

As of										
June 30, 2022						December 31, 2021				
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	\$520,000	0.2075%	LIBOR ⁽²⁾	0.8	1	\$700,000	0.2075%	LIBOR ⁽²⁾	1.0
Interest rate caps	0 ⁽³⁾	—	—	—	—	1	220,000	0.5000%	LIBOR	1.0

(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 other comprehensive income in conjunction with the termination of the interest rate cap. In accordance with ASC 815, the realized gain will be 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, 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, 2022	December 31, 2021	June 30, 2022	December 31, 2021
Derivatives designated as hedging instruments:				
Interest rate derivatives	\$ 10,692	2,979	—	—

(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 further discussed in Note 2, the impact of the current macroeconomic and geopolitical conditions on the Company’s business is uncertain. As of June 30, 2022, there were no contingencies recorded on the Company’s consolidated

balance sheets as a result of such conditions or the ongoing effects of the COVID-19 pandemic, however, if global market conditions worsen, it could adversely affect the Company's business, financial condition and results of operations.

As of June 30, 2022 and December 31, 2021, 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, 2022	December 31, 2021
Total commitments	\$ 2,910,504	\$ 2,662,853
Less: funded commitments	(2,625,448)	(2,429,112)
Total unfunded commitments	\$ 285,056	\$ 233,741

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, 2022, the Company is not aware of any legal claims that could materially impact its business, financial condition or results of operations.

10. STOCKHOLDERS' EQUITY

At the Market Stock Offering Program

On November 22, 2019, the Company entered into an equity distribution agreement (the "Equity Distribution Agreement"), pursuant to which the Company offered and sold, from time to time, shares of the Company's common stock, par value \$0.01 per share, having an aggregate offering price of up to \$100.0 million. Subject to the terms and conditions of the Equity Distribution Agreement, sales of common stock, if any, were made in transactions that are deemed to be an "at the market offering" as defined in Rule 415(a)(4) under the Securities Act of 1933, as amended. During the six months ended June 30, 2022, the Company sold an aggregate of 190,369 shares of the Company's common stock under the Equity Distribution Agreement at an average price of \$15.33 per share. The sales generated net proceeds of approximately \$2.9 million.

Equity Offerings

On May 17, 2022, the Company entered into an underwriting agreement (the "Underwriting Agreement"), by and among the Company, ACREM, and Morgan Stanley & Co. LLC, Wells Fargo Securities, LLC, Citigroup Global Markets Inc. and UBS Securities LLC, as joint book running managers for the offering and as representatives of the several underwriters listed therein (collectively, the "Underwriters"). Pursuant to the terms of the Underwriting Agreement, the Company agreed to sell, and the Underwriters agreed to purchase, subject to the terms and conditions set forth in the Underwriting Agreement, an aggregate of 7,000,000 shares of the Company's common stock, par value \$0.01 per share. The public offering closed on May 20, 2022 and generated net proceeds of approximately \$103.2 million, after deducting transaction expenses.

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, 2022:

Schedule of Non-Vested Share and Share Equivalents

	Restricted Stock Grants—Directors	Restricted Stock Grants —Officers and Employees of the Manager	RSUs—Officers and Employees of the Manager	Total
Balance at December 31, 2021	16,640	25,373	497,161	539,174
Granted	24,780	—	—	24,780
Vested	(12,053)	(25,373)	(79,156)	(116,582)
Forfeited	—	—	(5,365)	(5,365)
Balance at June 30, 2022	<u>29,367</u>	<u>—</u>	<u>412,640</u>	<u>442,007</u>

Future Anticipated Vesting Schedule

	Restricted Stock Grants—Directors	Restricted Stock Grants —Officers and Employees of the Manager	RSUs—Officers and Employees of the Manager	Total
2022	13,230	—	4,286	17,516
2023	14,052	—	172,642	186,694
2024	1,668	—	144,160	145,828
2025	417	—	91,552	91,969
2026	—	—	—	—
Total	<u>29,367</u>	<u>—</u>	<u>412,640</u>	<u>442,007</u>

11. EARNINGS PER SHARE

The following information sets forth the computations of basic and diluted earnings per common share for the three and six months ended June 30, 2022 and 2021 (\$ in thousands, except share and per share data):

	For the three months ended June 30,		For the six months ended June 30,	
	2022	2021	2022	2021
Net income attributable to common stockholders	\$ 10,031	\$ 17,615	\$ 26,231	\$ 33,355
Divided by:				
Basic weighted average shares of common stock outstanding:	50,562,559	41,009,175	48,892,754	37,731,317
Weighted average non-vested restricted stock and RSUs	436,946	285,422	443,513	294,616
Diluted weighted average shares of common stock outstanding:	<u>50,999,505</u>	<u>41,294,597</u>	<u>49,336,267</u>	<u>38,025,933</u>
Basic earnings per common share	\$ 0.20	\$ 0.43	\$ 0.54	\$ 0.88
Diluted earnings per common share	<u>\$ 0.20</u>	<u>\$ 0.43</u>	<u>\$ 0.53</u>	<u>\$ 0.88</u>

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, 2022 and 2021 (\$ in thousands):

	For the three months ended June 30,		For the six months ended June 30,	
	2022	2021	2022	2021
Current	\$ 8	\$ 408	\$ 24	\$ 472
Deferred	—	—	—	—
Excise tax	90	—	180	121
Total income tax expense, including excise tax	<u>\$ 98</u>	<u>\$ 408</u>	<u>\$ 204</u>	<u>\$ 593</u>

For the 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. For the three months ended June 30, 2021, the Company did not incur any U.S. federal excise tax expense. For the six months ended June 30, 2021 the Company incurred \$121 thousand for U.S. federal excise tax. Excise tax represents a 4% tax on the sum of a portion of the Company's ordinary income and net capital gains not distributed during the calendar year (including any distribution declared in the fourth quarter and paid following January) plus any prior year shortfall. If it is determined that an excise tax liability exists for the current tax year, the Company will accrue excise tax on estimated excess taxable income as such taxable income is earned. The quarterly expense is calculated in accordance with applicable tax regulations.

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

As of June 30, 2022, tax years 2018 through 2021 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

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.

The following tables summarize the financial assets and liabilities measured at fair value on a recurring basis as of June 30, 2022 and December 31, 2021 (\$ in thousands):

As of June 30, 2022				
	Level 1	Level 2	Level 3	Total
Financial assets:				
Interest rate derivatives	\$ —	\$ 10,692	\$ —	\$ 10,692
Financial liabilities:				
Interest rate derivatives	\$ —	\$ —	\$ —	\$ —
As of December 31, 2021				
	Level 1	Level 2	Level 3	Total
Financial assets:				
Interest rate derivatives	\$ —	\$ 2,979	\$ —	\$ 2,979
Financial liabilities:				
Interest rate derivatives	\$ —	\$ —	\$ —	\$ —

As of June 30, 2022 and December 31, 2021, 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, 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. As of December 31, 2021, the Company did not have any financial assets or liabilities or nonfinancial liabilities required to be recorded at fair value on a nonrecurring basis.

Financial Assets and Liabilities Not Measured at Fair Value

As of June 30, 2022 and December 31, 2021, the carrying values and fair values of the Company's financial assets and liabilities recorded at cost are as follows (\$ in thousands):

	Level in Fair Value Hierarchy	As of			
		June 30, 2022		December 31, 2021	
		Carrying Value	Fair Value	Carrying Value	Fair Value
Financial assets:					
Loans held for investment	3	\$ 2,605,893	\$ 2,604,734	\$ 2,414,383	\$ 2,408,463
Financial liabilities:					
Secured funding agreements	2	\$ 853,059	\$ 853,059	\$ 840,047	\$ 840,047
Notes payable	3	—	—	50,358	51,110
Secured term loan	3	149,107	145,141	149,016	150,000
Collateralized loan obligation securitization debt (consolidated VIEs)	3	851,337	824,874	861,188	863,403
Secured borrowings	3	22,635	22,533	22,589	22,715

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 are recorded at outstanding principal, which is the Company's best estimate of the fair value. The Company determined the fair value of the Notes Payable, Secured Term Loan, collateralized loan obligation ("CLO") securitization debt and Secured Borrowings 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 a 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 the three and six months ended June 30, 2022, the Company incurred incentive fees of \$965 thousand and \$1.3 million, respectively. For the three and six months ended June 30, 2021, the Company incurred incentive fees of \$693 thousand and \$1.4 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 May 1, 2023, 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.

On July 26, 2022, the Company and ACREM entered into an Amended and Restated Management Agreement. See Note 17 for more information.

The following table summarizes the related party costs incurred by the Company for the three and six months ended June 30, 2022 and 2021 and amounts payable to the Company's Manager as of June 30, 2022 and December 31, 2021 (\$ in thousands):

	Incurred				Payable	
	For the three months ended June 30,		For the six months ended June 30,		As of	
	2022	2021	2022	2021	June 30, 2022	December 31, 2021
Affiliate Payments						
Management fees	\$ 2,801	\$ 2,258	\$ 5,417	\$ 4,167	\$ 2,801	\$ 2,613
Incentive fees	965	693	1,323	1,351	965	830
General and administrative expenses	796	788	1,631	1,540	796	703
Direct costs(1)	10	(7)	40	(7)	—	10
Total	<u>\$ 4,572</u>	<u>\$ 3,732</u>	<u>\$ 8,411</u>	<u>\$ 7,051</u>	<u>\$ 4,562</u>	<u>\$ 4,156</u>

(1) For the three and six months ended June 30, 2022 and 2021, 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, 2022 and December 31, 2021, the total outstanding principal balance for co-investments held by the Company was \$204.3 million and \$158.3 million, respectively.

Loan Purchases From Affiliate

An affiliate of the Company's Manager maintains a \$200 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.

15. DIVIDENDS AND DISTRIBUTIONS

The following table summarizes the Company's dividends declared during the six months ended June 30, 2022 and 2021 (\$ in thousands, except per share data):

Date Declared	Record Date	Payment Date	Per Share Amount	Total Amount
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
May 4, 2021	June 30, 2021	July 15, 2021	\$ 0.35 (1)	\$ 16,528
February 17, 2021	March 31, 2021	April 15, 2021	0.35 (1)	14,248
Total cash dividends declared for the six months ended June 30, 2021			\$ 0.70	\$ 30,776

(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, 2022, the FL3 Notes were collateralized by interests in a pool of 18 mortgage assets having a total principal balance of \$494.1 million (the “FL3 Mortgage Assets”) that were closed by a wholly-owned subsidiary of the Company and approximately \$62.9 million of receivables related to repayments of outstanding principal on previous mortgage assets. As of December 31, 2021, the FL3 Notes were collateralized by interests in a pool of 16 mortgage assets having a total principal balance of approximately \$451.6 million that were closed by a wholly-owned subsidiary of the Company and approximately \$105.4 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, 2022, the FL4 Notes were collateralized by interests in a pool of 17 mortgage assets having a total principal balance of approximately \$532.7 million (the “FL4 Mortgage Assets”) that were closed by a wholly-owned subsidiary of the Company and approximately \$2.3 million of receivables related to repayments of outstanding principal on previous mortgage assets. As of December 31, 2021, the FL4 Notes were collateralized by interests in a pool of 17 mortgage assets having a total principal balance of approximately \$522.8 million that were closed by a wholly-owned subsidiary of the Company and approximately \$23.2 million of receivables related to repayments of outstanding principal on previous mortgage assets. During the period ending in April 2024 (the “Companion Participation Acquisition Period”), the FL4 Issuer may use certain principal proceeds from the FL4 Mortgage Assets to acquire additional funded pari-passu participations related to the FL4 Mortgage Assets that meet certain acquisition criteria.

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

In connection with the FL4 CLO Securitization, the FL4 Issuer and FL4 Co-Issuer offered and issued the following classes of FL4 Notes to third party investors: Class A, Class A-S, Class B, Class C, Class D and Class E Notes (collectively, the “FL4 Offered Notes”). A wholly owned subsidiary of the Company retained approximately \$62.5 million of the FL4 Notes and all of the \$64.3 million of preferred equity in the FL4 Issuer, which totaled \$126.8 million. The Company, as the holder of the subordinated FL4 Notes and all of the preferred equity in the FL4 Issuer, has the obligation to absorb losses of the FL4 CLO Securitization, since the Company has a first loss position in the capital structure of the FL4 CLO Securitization. During the three months ended June 30, 2022, the Company paid down \$11.0 million of the FL4 Offered Notes.

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, 2022, the Company’s maximum risk of loss was \$238.2 million, which represents the carrying value of its investments in the CLO Securitizations.

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 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, 2022, except as disclosed below.

On July 25, 2022, the Company exercised a 12-month extension option on the Metlife Facility to extend the maturity date to August 13, 2023.

On July 26, 2022, the Company’s Board of Directors approved a stock repurchase program of up to \$50 million, which is expected to be in effect until July 26, 2023, or until the approved dollar amount has been used to repurchase shares (the “Repurchase Program”). Pursuant to the Repurchase Program, the Company may repurchase 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 the Company’s discretion.

On July 26, 2022, the Company and ACREM entered into an Amended and Restated Management Agreement to incorporate the provisions of prior amendments, the material terms of which have been previously disclosed, update its investment guidelines and to make certain clarifying changes regarding eligible expense reimbursements.

On July 28, 2022, ACRC Lender CO LLC, a wholly owned subsidiary of the Company, as borrower, 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 loan. The loan is secured by a \$133.0 million senior mortgage loan held by the borrower 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 loan is July 28, 2025, subject to two 12-month extensions, each of which may be exercised at the borrower'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 loan accrues interest at a per annum rate equal to the sum of one-month SOFR plus a spread of 2.00%.

The Company's Board of Directors declared a regular cash dividend of \$0.33 per common share and a supplemental cash dividend of \$0.02 per common share for the third quarter of 2022. The third quarter 2022 and supplemental cash dividends will be payable on October 17, 2022 to common stockholders of record as of September 30, 2022.

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 management agreement originally dated April 25, 2012, and amended and restated on July 26, 2022, between us and our Manager (the "Management Agreement"). From the commencement of our operations in late 2011, we have been primarily focused on directly originating and managing a diversified portfolio of CRE debt-related investments for our own account.

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

Developments During the Second Quarter of 2022:

- ACRE originated an \$82.2 million senior mortgage loan on an office property located in Massachusetts.
- ACRE purchased a \$13.8 million senior mortgage loan on a self storage property located in Pennsylvania from a third party.
- ACRE purchased an \$8.0 million senior mortgage loan on a self storage property located in Texas from a third party.
- ACRE purchased a \$7.7 million senior mortgage loan on a self storage property located in Massachusetts from a third party.
- ACRE purchased a \$6.8 million senior mortgage loan on a self storage property located in Massachusetts from a third party.
- ACRE purchased a \$4.5 million senior mortgage loan on a self storage property located in Florida from a third party.
- ACRE originated a \$133.0 million senior mortgage loan on a multifamily property located in New York.
- ACRE originated a \$100.0 million senior mortgage loan on a multifamily property located in Texas.
- ACRE entered into an underwriting agreement (the "Underwriting Agreement") in which ACRE agreed to sell an aggregate of 7,000,000 shares of ACRE's common stock, par value \$0.01 per share. The public offering generated net proceeds of approximately \$103.2 million, after deducting transaction expenses.

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.

Loans Held for Investment Portfolio

As of June 30, 2022, our portfolio included 78 loans held for investment, excluding 128 loans that were repaid, sold or converted to real estate owned since inception. As of June 30, 2022, the aggregate originated commitment under these loans at closing was approximately \$3.0 billion and outstanding principal was \$2.6 billion. During the six months ended June 30, 2022, we funded approximately \$533.4 million of outstanding principal and received repayments of \$337.1 million of outstanding principal. As of June 30, 2022, 91.3% of our loans have LIBOR or SOFR floors, with a weighted average floor of 0.95%, calculated based on loans with LIBOR or SOFR floors. References to LIBOR or “L” are to 30-day LIBOR and 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, 2022, 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, 2022 (\$ in thousands):

	As of June 30, 2022				
	Carrying Amount (1)	Outstanding Principal (1)	Weighted Average Unleveraged Effective Yield		Weighted Average Remaining Life (Years)
Senior mortgage loans	\$ 2,588,834	\$ 2,607,786	6.2 % (2)	6.3 % (3)	1.5
Subordinated debt and preferred equity investments	17,059	17,662	13.7 % (2)	13.7 % (3)	3.5
Total loans held for investment portfolio	<u>\$ 2,605,893</u>	<u>\$ 2,625,448</u>	<u>6.2 % (2)</u>	<u>6.3 % (3)</u>	<u>1.6</u>

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

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 2021 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 25, 2022, we exercised a 12-month extension option on the Metlife Facility to extend the maturity date to August 13, 2023.

On July 26, 2022, our Board of Directors approved a stock repurchase program of up to \$50 million, which is expected to be in effect until July 26, 2023, or until the approved dollar amount has been used to repurchase shares (the “Repurchase Program”). Pursuant to the Repurchase Program, we may repurchase 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.

On July 26, 2022, we and ACREM entered into an Amended and Restated Management Agreement to incorporate the provisions of prior amendments, the material terms of which have been previously disclosed, update its investment guidelines and to make certain clarifying changes regarding eligible expense reimbursements.

On July 28, 2022, ACRC Lender CO LLC, a wholly owned subsidiary of ours, as borrower, 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 loan. The loan is secured by a \$133.0 million senior mortgage loan held by the borrower on a multifamily property located in New York and is fully and unconditionally guaranteed by us pursuant to a Guaranty of Recourse Obligation. The initial maturity date of the loan is July 28, 2025, subject to two 12-month extensions, each of which may be exercised at the borrower’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 loan accrues interest at a per annum rate equal to the sum of one-month SOFR plus a spread of 2.00%.

Our Board of Directors declared a regular cash dividend of \$0.33 per common share and a supplemental cash dividend of \$0.02 per common share for the third quarter of 2022. The third quarter 2022 and supplemental cash dividends will be payable on October 17, 2022 to common stockholders of record as of September 30, 2022.

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, 2022 and 2021 (\$ in thousands):

	For the three months ended June 30,		For the six months ended June 30,	
	2022	2021	2022	2021
Total revenue	\$ 25,146	\$ 23,531	\$ 49,170	\$ 44,754
Total expenses	7,249	9,391	17,758	17,929
Provision for current expected credit losses	7,768	(3,883)	7,174	(7,123)
Gain on sale of real estate owned	—	—	2,197	—
Income before income taxes	10,129	18,023	26,435	33,948
Income tax expense, including excise tax	98	408	204	593
Net income attributable to common stockholders	\$ 10,031	\$ 17,615	\$ 26,231	\$ 33,355

The following tables set forth select details of our consolidated results of operations for the three and six months ended June 30, 2022 and 2021 (\$ in thousands):

Net Interest Margin

	For the three months ended June 30,		For the six months ended June 30,	
	2022	2021	2022	2021
Interest income	\$ 38,621	\$ 30,859	\$ 71,986	\$ 61,564
Interest expense	(13,475)	(11,092)	(25,488)	(23,231)
Net interest margin	\$ 25,146	\$ 19,767	\$ 46,498	\$ 38,333

For the three months ended June 30, 2022 and 2021, net interest margin was approximately \$25.1 million and \$19.8 million, respectively. For the three months ended June 30, 2022 and 2021, interest income of \$38.6 million and \$30.9 million, respectively, was generated by weighted average earning assets of \$2.5 billion and \$2.0 billion, respectively, offset by \$13.5 million and \$11.1 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 \$1.8 billion for the three months ended June 30, 2022 and \$1.5 billion for the three months ended June 30, 2021. The increase in net interest margin for the three months ended June 30, 2022 compared to the three months ended June 30, 2021 primarily relates to an increase in our weighted average earning assets and weighted average borrowings for the three months ended June 30, 2022, the benefit received from our interest rate hedging derivative contracts for the three months ended June 30, 2022 and the impact of the accelerated recognition of deferred fees and prepayment penalties received from borrowers related to loans that were repaid during the three months ended June 30, 2022.

For the six months ended June 30, 2022 and 2021, net interest margin was approximately \$46.5 million and \$38.3 million, respectively. For the six months ended June 30, 2022 and 2021, interest income of \$72.0 million and \$61.6 million, respectively, was generated by weighted average earning assets of \$2.4 billion and \$1.9 billion, respectively, offset by \$25.5 million and \$23.2 million, respectively, of interest expense, unused fees and amortization of deferred loan costs. The weighted average borrowings under the Secured Funding Agreements, Notes Payable (excluding the Note Payable on the hotel property that was recognized as real estate owned in our consolidated balance sheets), the Secured Term Loan, Secured Borrowings and securitization debt were \$1.8 billion for the six months ended June 30, 2022 and \$1.5 billion for the six months ended June 30, 2021. The increase in net interest margin for the six months ended June 30, 2022 compared to the six months ended June 30, 2021 primarily relates to an increase in our weighted average earning assets and weighted average borrowings for the six months ended June 30, 2022, the benefit received from our interest rate hedging derivative contracts for the six months ended June 30, 2022 and the impact of the accelerated recognition of deferred fees and prepayment penalties received from borrowers related to loans that were repaid during the six months ended June 30, 2022.

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 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 three months ended June 30, 2021, revenue from real estate owned was \$3.8 million. For the six months ended June 30, 2022 and 2021, revenue from real estate owned was \$2.7 million and \$6.4 million, respectively. Revenues consisted of room sales, food and beverage sales and other hotel revenues. The decrease in revenue from real estate owned for the six months ended June 30, 2022 compared to the six months ended June 30, 2021 is primarily due to the six months ended June 30, 2022 only including two months of hotel operations. 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,	
	2022	2021	2022	2021
Management and incentive fees to affiliate	\$ 3,766	\$ 2,951	\$ 6,740	\$ 5,518
Professional fees	1,100	615	1,878	1,400
General and administrative expenses	1,587	1,195	3,200	2,351
General and administrative expenses reimbursed to affiliate	796	788	1,631	1,540
Expenses from real estate owned	—	3,842	4,309	7,120
Total expenses	\$ 7,249	\$ 9,391	\$ 17,758	\$ 17,929

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, 2022 compared to the three months ended June 30, 2021 and the cause of the decrease in operating expenses for the six months ended June 30, 2022 compared to the six months ended June 30, 2021.

Related Party Expenses

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. For the three months ended June 30, 2021, related party expenses included \$3.0 million in management and incentive fees due to our Manager pursuant to the Management Agreement, which consisted of \$2.3 million in management fees and \$0.7 million in incentive fees. For the three months ended June 30, 2021, 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, 2022 compared to the three months ended June 30, 2021 primarily relates to an increase in our weighted average stockholders' equity for the three months ended June 30, 2022 as a result of the public offering of 6,500,000 shares of our common stock in June 2021, which generated net proceeds of approximately \$101.6 million and 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 increase in incentive fees for the three months ended June 30, 2022 compared to the three months ended June 30, 2021, primarily relates to our Core Earnings (as defined below) for the twelve months ended June 30, 2022 exceeding the 8% minimum return by a higher margin than the twelve months ended June 30, 2021. "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. Allocable general and administrative expenses due to our Manager for the three months ended June 30, 2022 were consistent with the three months ended June 30, 2021.

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. For the six months ended June 30, 2021, related party expenses included \$5.5 million in management and incentive fees due to our Manager pursuant to the Management Agreement, which consisted of \$4.2 million in management fees and \$1.4 million in incentive fees. For the six months ended June 30, 2021, related party expenses also included \$1.5 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, 2022 compared to the six months ended June 30, 2021 primarily relates to an increase in our weighted average stockholders' equity for the six months ended June 30, 2022 as a result of the public offering of 7,000,000 shares of our common stock in March 2021, which generated net proceeds of approximately \$100.7 million, the public offering of 6,500,000 shares of our common stock in June 2021, which generated net proceeds of approximately \$101.6 million and the public offering of 7,000,000 shares of our common stock in May 2022, which generated net proceeds of approximately \$103.2 million. Incentive fees for the six months ended June 30, 2022 were relatively consistent with the six months ended June 30, 2021. On April 25, 2022, ACRE and ACREM entered into an amendment to the Management Agreement to (a) include a \$2.4 million adjustment to reverse the impact of accumulated depreciation following the sale of the real estate owned property for the three months ended March 31, 2022 and to (b) include a \$2.0 million adjustment to include the realized gain from the termination of the 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. Allocable general and administrative expenses due to our Manager for the six months ended June 30, 2022 were relatively consistent with the six months ended June 30, 2021.

On July 26, 2022, ACRE and ACREM entered into an Amended and Restated Management Agreement. See "Recent Developments" for more information.

Other Expenses

For the three months ended June 30, 2022 and 2021, professional fees were \$1.1 million and \$0.6 million, respectively. The increase in professional fees for the three months ended June 30, 2022 compared to the three months ended June 30, 2021 primarily relates to an increase in our use of third-party professionals due to changes in transaction activity year over year. For the three months ended June 30, 2022 and 2021, general and administrative expenses were \$1.6 million and \$1.2 million, respectively. The increase in general and administrative expenses for the three months ended June 30, 2022 compared to the three months ended June 30, 2021 primarily relates to an increase in stock-based compensation expense due to new restricted stock and restricted stock unit grants awarded after March 31, 2022.

For the six months ended June 30, 2022 and 2021, professional fees were \$1.9 million and \$1.4 million, respectively. The increase in professional fees for the six months ended June 30, 2022 compared to the six months ended June 30, 2021 primarily relates to an increase in our use of third-party professionals due to changes in transaction activity year over year. For the six months ended June 30, 2022 and 2021, general and administrative expenses were \$3.2 million and \$2.4 million, respectively. The increase in general and administrative expenses for the six months ended June 30, 2022 compared to the six months ended June 30, 2021 primarily relates to an increase in stock-based compensation expense due to restricted stock and restricted stock unit awards granted after December 31, 2021.

Expenses From Real Estate Owned

For the three and six months ended June 30, 2022 and 2021, expenses from real estate owned was comprised of the following (\$ in thousands):

	For the three months ended June 30,		For the six months ended June 30,	
	2022	2021	2022	2021
Hotel operating expenses	\$ —	\$ 3,202	\$ 3,631	\$ 5,846
Interest expense on note payable	—	415	678	825
Depreciation expense	—	225	—	449
Expenses from real estate owned	\$ —	\$ 3,842	\$ 4,309	\$ 7,120

For the 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 three months ended June 30, 2021, hotel operating expenses were \$3.2 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 three months ended June 30, 2021, interest expense on our note payable was \$0.4 million. For the three months ended June 30, 2021, depreciation expense was \$0.2 million.

For the six months ended June 30, 2022 and 2021, hotel operating expenses were \$3.6 million and \$5.8 million, respectively. The decrease in hotel operating expenses for the six months ended June 30, 2022 compared to the six months ended June 30, 2021 is primarily due to the six months ended June 30, 2022 only including two months of hotel operations. For the six months ended June 30, 2022 and 2021, interest expense on our note payable was \$0.7 million and \$0.8 million, respectively. The decrease in interest expense on our note payable for the six months ended June 30, 2022 compared to the six months ended June 30, 2021 is primarily attributed to the six months ended June 30, 2022 only including two months of hotel operations. This was partially offset by the accelerated recognition of deferred costs for the six months ended June 30, 2022 due to the repayment of our note payable in conjunction with the sale of the hotel property to a third party on March 1, 2022. 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. For the six months ended June 30, 2021, depreciation expense was \$0.4 million.

Provision for Current Expected Credit Losses

For the three months ended June 30, 2022 and 2021, the provision for current expected credit losses was \$7.8 million and \$(3.9) million, respectively. The increase in the provision for current expected credit losses for the three months ended June 30, 2022 compared to the three months ended June 30, 2021 is primarily due to growth in the loan portfolio and other changes to the loan portfolio, partially offset by shorter average remaining loan term and loan payoffs during the three months ended June 30, 2022.

For the six months ended June 30, 2022 and 2021, the provision for current expected credit losses was \$7.2 million and \$(7.1) million, respectively. The increase in the provision for current expected credit losses for the six months ended June 30, 2022 compared to the six months ended June 30, 2021 is primarily due to growth in the loan portfolio and other changes to the loan portfolio, partially offset by shorter average remaining loan term and loan payoffs during the six months ended June 30, 2022.

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. 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 and geopolitical conditions and the ongoing effects of the COVID-19 pandemic.

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 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. Due to the impact of the COVID-19 pandemic, in 2020 and to a lesser extent for the periods following, we experienced borrowers unable to pay interest and principal payments timely, including at the maturity date of the borrower's loan. 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. Given the impact of the COVID-19 pandemic on the real estate industry and the potential impact on our borrowers, to mitigate the risk of future margin calls we proactively engaged in discussions with certain of our lenders in 2020 and to a lesser extent in periods following to modify the terms of our borrowings on certain assets within these facilities, in order to, among other things, reduce the amounts we are borrowing against such assets and/or increase the borrowing spreads. As a result of current macroeconomic and geopolitical conditions and the ongoing risks of COVID-19, there is no guarantee that borrowers will be able to pay interest and principal payments timely. We may not 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 enhancing our 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. On June 30, 2022, we filed a registration statement on Form S-3 with the SEC, which became effective on July 26, 2022, in order to permit us to offer, from time to time, in one or more offerings or series of offerings up to \$1.25 billion of our common stock, preferred stock, debt securities, subscription rights to purchase shares of our common stock, warrants representing rights to purchase shares of our common stock, preferred stock or debt securities, or units. The specifics of any future offerings, along with the use of proceeds of any securities offered, will be described in detail in a prospectus supplement, or other offering materials, at the time of any offering. 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 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 July 28, 2022, we had approximately \$192 million in liquidity including \$117 million of unrestricted cash and \$75 million of availability under secured funding agreements.

At the Market Stock Offering Program

On November 22, 2019, we entered into an equity distribution agreement (the “Equity Distribution Agreement”), pursuant to which we offered and sold, from time to time, shares of our common stock, par value \$0.01 per share, having an aggregate offering price of up to \$100.0 million. Subject to the terms and conditions of the Equity Distribution Agreement, sales of common stock, if any, were made in transactions that are deemed to be an “at the market offering” as defined in Rule 415(a)(4) under the Securities Act of 1933, as amended. During the six months ended June 30, 2022, the Company sold 190,369 shares of common stock under the Equity Distribution Agreement.

Equity Offerings

On May 17, 2022, we entered into an underwriting agreement (the “Underwriting Agreement”), by and among us, ACREM, and Morgan Stanley & Co. LLC, Wells Fargo Securities, LLC, Citigroup Global Markets Inc. and UBS Securities LLC, as joint book running managers for the offering and as representatives of the several underwriters listed therein (collectively, the “Underwriters”). Pursuant to the terms of the Underwriting Agreement, we agreed to sell, and the Underwriters agreed to purchase, subject to the terms and conditions set forth in the Underwriting Agreement, an aggregate of 7,000,000 shares of our common stock, par value \$0.01 per share. The public offering closed on May 20, 2022 and generated net proceeds of approximately \$103.2 million, after deducting transaction expenses.

Cash Flows

The following table sets forth changes in cash and cash equivalents for the six months ended June 30, 2022 and 2021 (\$ in thousands):

	For the six months ended June 30,	
	2022	2021
Net income	\$ 26,231	\$ 33,355
Adjustments to reconcile net income to net cash provided by (used in) operating activities:	2,921	(13,574)
Net cash provided by (used in) operating activities	29,152	19,781
Net cash provided by (used in) investing activities	(76,200)	(307,953)
Net cash provided by (used in) financing activities	22,058	289,067
Change in cash and cash equivalents	\$ (24,990)	\$ 895

During the six months ended June 30, 2022 and 2021, cash and cash equivalents increased (decreased) by \$(25.0) million and \$0.9 million, respectively.

Operating Activities

For the six months ended June 30, 2022 and 2021, net cash provided by operating activities totaled \$29.2 million and \$19.8 million, respectively. 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 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. For the six months ended June 30, 2021, adjustments to net income related to operating activities primarily included the provision for current expected credit losses of \$7.1 million, accretion of deferred loan origination fees and costs of \$3.9 million, amortization of deferred financing costs of \$4.5 million and change in other assets of \$9.3 million.

Investing Activities

For the six months ended June 30, 2022 and 2021, net cash used in investing activities totaled \$76.2 million and \$308.0 million, respectively. This change in net cash used in investing activities was primarily as a result of the cash used for the origination and funding of loans held for investment exceeding the cash received from principal repayment of loans held for investment and from the sale of real estate owned for the six months ended June 30, 2022.

Financing Activities

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. For the six months ended June 30, 2021, net cash provided by financing activities totaled \$289.1 million and primarily related to proceeds from our Secured Funding Agreements of \$207.2 million, proceeds from the issuance of debt of consolidated VIEs of \$540.5 million and proceeds from the sale of our common stock of \$202.7 million, partially offset by repayments of our Secured Funding Agreements of \$558.6 million, repayments of our Notes Payable of \$27.9 million, repayments of our Secured Term Loan of \$50.0 million and dividends paid of \$25.4 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, 2022				December 31, 2021			
	Total Commitment	Outstanding Balance	Interest Rate	Maturity Date	Total Commitment	Outstanding Balance	Interest Rate	Maturity Date
Secured Funding Agreements:								
Wells Fargo Facility	\$ 450,000	\$ 357,514	Base Rate ⁽¹⁾ +1.50 to 2.75%	December 14, 2022 (2)	\$ 450,000	\$ 399,528	LIBOR+1.50 to 2.75%	December 14, 2022 (2)
Citibank Facility	325,000	273,269	Base Rate ⁽¹⁾ +1.50 to 2.10%	January 13, 2025 (3)	325,000	192,970	LIBOR+1.50 to 2.25%	January 13, 2022 (3)
CNB Facility	75,000	—	SOFR+2.65%	March 10, 2023 (4)	75,000	—	SOFR+2.65%	March 10, 2022 (4)
MetLife Facility	180,000	20,648	Base Rate ⁽¹⁾ +2.10 to 2.50%	August 13, 2022 (5)	180,000	20,648	LIBOR+2.10 to 2.50%	August 13, 2022 (5)
Morgan Stanley Facility	250,000	201,628	Base Rate ⁽¹⁾ +1.50 to 3.00%	January 16, 2023 (6)	250,000	226,901	LIBOR+1.50 to 3.00%	January 16, 2023 (6)
Subtotal	<u>\$ 1,280,000</u>	<u>\$ 853,059</u>			<u>\$ 1,280,000</u>	<u>\$ 840,047</u>		
Notes Payable	\$ —	\$ —	—	— (7)	\$ 51,755	\$ 51,110	LIBOR+3.00 to 3.75%	(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	<u>\$ 1,430,000</u>	<u>\$ 1,003,059</u>			<u>\$ 1,481,755</u>	<u>\$ 1,041,157</u>		

- (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 three 12-month extensions 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 upside fee.
- (3) In January 2022, we amended the Citibank Facility to, among other things, extend the initial maturity date and funding availability period to January 13, 2025, subject to two 12-month extensions, each of which may be exercised at our 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.
- (4) In March 2022, we exercised a 12-month extension option on the secured revolving funding facility with City National Bank (the “CNB Facility”).
- (5) The maturity date of the revolving master repurchase facility with Metropolitan Life Insurance Company (the “MetLife Facility”) is subject to two 12-month extensions at our option provided that certain conditions are met and applicable extension fees are paid. See Note 17 to our consolidated financial statements included in this quarterly report on Form 10-Q for a subsequent event related to the MetLife Facility.
- (6) The maturity date of the master repurchase and securities contract with Morgan Stanley (the “Morgan Stanley Facility”) is subject to two 12-month extensions at our option provided that certain conditions are met and applicable extension fees are paid.
- (7) A consolidated subsidiary of ours was party to a \$23.5 million note agreement (the “Notes Payable”) with the lender referred to therein. In June 2022, the \$23.5 million note was repaid in full and not extended. The outstanding principal

on the note at the time of repayment was \$22.8 million. In March 2022, the \$28.3 million note, which was secured by a hotel property located in New York that was recognized as real estate owned in our consolidated balance sheets, was repaid in full and not extended. The outstanding principal on the note at the time of repayment was \$28.3 million.

- (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, 2022, 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, 2022, the carrying amount and outstanding principal of our CLO Securitizations was \$851.3 million and \$853.8 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.

Secured Borrowings

As of June 30, 2022, the carrying amount and outstanding principal of our secured borrowings was \$22.6 million and \$22.7 million, respectively. See Note 7 to our consolidated financial statements included in this quarterly report on Form 10-Q for additional terms and details of our secured borrowings.

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 market 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 macroeconomic and geopolitical conditions, including the ongoing impact of the COVID-19 pandemic 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 LIBOR or SOFR curve.

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, real estate inflation and financing 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.

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 and other target investments in our business. Our Manager seeks to manage credit risk by performing our 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 this current environment, prepayments may slow down, or borrowers may not be able to repay principal upon the loan maturity or qualify for loan extensions due to macroeconomic and geopolitical conditions, which include rising interest rates, and the ongoing impact of the COVID-19 pandemic. 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 been in regular dialogue with our borrowers and our financing providers to assess this credit risk. See Note 3 to our consolidated financial statements included in this quarterly report on Form 10-Q for a more detailed description of the potential impacts of macroeconomic and geopolitical conditions and the COVID-19 pandemic on our loan investments.

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 related to fluctuations in asset values and cash flows associated with movements in interest rates, 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.

Interest Rate Effect on Net Income

Our operating results depend in large part on differences between the income earned on our assets and our cost of borrowing. The cost of our borrowings generally is based on prevailing market interest rates. During a period of rising interest rates, our borrowing costs generally increase while the yields earned on our leveraged fixed-rate mortgage assets remain static, which could result in a decline in our net interest spread and net interest margin. During a period of declining interest rates, our borrowing costs generally decrease while the yields earned on our leveraged fixed-rate mortgage assets remain static, which could result in an increase in our net interest spread and net interest margin. 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 LIBOR or SOFR as of June 30, 2022, (2) no change in the outstanding principal balance of our loans held for investment portfolio and borrowings as of June 30, 2022 and (3) no change in the notional amount of the interest rate swap agreement entered into as of June 30, 2022 (\$ in millions):

Change in 30-Day LIBOR or SOFR	Increase/(Decrease) in Net Income
Up 100 basis points	\$12.0
Up 50 basis points	\$5.4
LIBOR or SOFR at 0 basis points	\$(3.2)

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 and caps. Further, an increase in short-term interest rates could also have a negative impact on the market value of our target investments. 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 Cap and Floor Risk

We primarily originate or acquire floating rate mortgage assets. These are assets in which the mortgages may be subject to periodic and lifetime interest rate caps and floors, which limit the amount by which the asset's interest yield changes during any given period. However, our borrowing costs pursuant to our Financing Agreements sometimes are not subject to similar restrictions or have different floors and caps. As a result, in a period of increasing interest rates, interest rate costs on our borrowings could increase without limitation by caps, while the interest rate yields on our floating rate mortgage assets could be limited if we do not implement effective caps. In addition, floating rate mortgage assets may be subject to periodic payment caps that result in some portion of the interest being deferred and added to the principal outstanding. This could result in our receipt of less cash income on such assets than we would need to pay the interest cost on our related borrowings. In addition, 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. 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.

Market Risk

The estimated fair values of our investments fluctuate primarily due to changes in interest rates, changes in credit and other factors. Generally, in a rising interest rate environment, the estimated fair value of the fixed-rate securities would be expected to decrease; conversely, in a decreasing interest rate environment, the estimated fair value of the fixed-rate securities would be expected to increase. As market volatility increases or liquidity decreases, the fair value of our investments 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. 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. 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 potential lenders and could cause one or more of our 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. The COVID-19 pandemic has had, and continues to have, particularly adverse impact on industries whose properties serve as collateral for some of our portfolio of loan investments. 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. 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, 2022. Based upon that evaluation and subject to the foregoing, our principal executive officer and principal financial officer concluded that, as of June

30, 2022, 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, 2022 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, 2022, we were not subject to any material pending legal proceedings. If the current macroeconomic and geopolitical conditions worsen, 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 Annual Report on Form 10-K for the year ended December 31, 2021. You should carefully consider the risk factors discussed in Part I, “Item 1A. Risk Factors” in our Annual Report on Form 10-K for the year ended December 31, 2021, which could materially affect our business, financial condition and/or operating results. The risks described in our Annual Report on Form 10-K 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

None.

Item 3. Defaults Upon Senior Securities

None.

Item 4. Mine Safety Disclosures

Not applicable.

Item 5. Other Information

On July 26, 2022, the Company and ACREM entered into an Amended and Restated Management Agreement to incorporate the provisions of prior amendments, the material terms of which have been previously disclosed, update its investment guidelines and to make certain clarifying changes regarding eligible expense reimbursements.

On July 28, 2022, ACRC Lender CO LLC, a wholly owned subsidiary of the Company, as borrower, 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 loan. The loan is secured by a \$133.0 million senior mortgage loan held by the borrower 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 loan is July 28, 2025, subject to two 12-month extensions, each of which may be exercised at the borrower’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 loan accrues interest at a per annum rate equal to the sum of one-month SOFR plus a spread of 2.00%.

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 *	Amended and Restated Bylaws of Ares Commercial Real Estate Corporation. (2)
10.1 *	First Amendment to Ares Commercial Real Estate Corporation Amended and Restated Equity Incentive Plan. (3)
10.2 *	Letter to Amend the Management Agreement, dated April 25, 2022, between Ares Commercial Real Estate Management LLC and Ares Commercial Real Estate Corporation. (4)
10.3	Amended and Restated Management Agreement, dated July 26, 2022, between Ares Commercial Real Estate Management LLC and Ares Commercial Real Estate Corporation.
10.4	Credit and Security Agreement, dated July 28, 2022, by and among Capital One, National Association, as administrative agent and a lender, and ACRC Lender Co LLC, as borrower.
10.5	Guaranty of Recourse Obligations, dated July 28, 2022, by and among Capital One, National Association, as administrative agent, and Ares Commercial Real Estate Corporation, as guarantor.
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 S-8 (File No. 333-181077), filed on May 1, 2012.
- (3) Incorporated by reference to Exhibit A to the Company's definitive proxy statement on Schedule 14A for its 2022 Annual Meeting of Stockholders filed on April 7, 2022.
- (4) Incorporated by reference to Exhibit 10.8 to the Company's Form 10-Q (File No. 001-35517), filed on May 3, 2022.

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: July 29, 2022

By: /s/ Bryan Donohoe

Bryan Donohoe
Chief Executive Officer
(Principal Executive Officer)

Date: July 29, 2022

By: /s/ Tae-Sik Yoon

Tae-Sik Yoon
Chief Financial Officer and Treasurer
(Principal Financial and Accounting Officer)

**AMENDED AND RESTATED MANAGEMENT AGREEMENT
BETWEEN
ARES COMMERCIAL REAL ESTATE CORPORATION
AND
ARES COMMERCIAL REAL ESTATE MANAGEMENT LLC**

This Amended and Restated Management Agreement (this “Agreement”) is made as of July 26, 2022, by and between Ares Commercial Real Estate Corporation, a Maryland corporation (together with its subsidiaries, the “Company”), and Ares Commercial Real Estate Management LLC, a Delaware limited liability company (the “Manager”).

WHEREAS, the Company is a specialty finance company focused on originating, investing in and managing middle-market commercial real estate loans and other commercial real estate-related investments;

WHEREAS, the Company has qualified as a real estate investment trust for federal income tax purposes and will elect to receive the tax benefits afforded by Sections 856 through 860 of the Internal Revenue Code of 1986, as amended (the “Code”); and

WHEREAS, the Company desires to retain the Manager to administer the business activities and day-to-day operations of the Company and to perform services for the Company in the manner and on the terms set forth herein and the Manager wishes to be retained to provide such services.

WHEREAS, the Company and the Manager entered into that certain Management Agreement dated as of April 25, 2012, as amended by First Amendment to Management Agreement dated September 30, 2013, the Second Amendment to Management Agreement dated September 30, 2014 (collectively, the “Prior Agreement”) and that certain letter agreement dated April 25, 2022;

WHEREAS, the parties hereto now wish to amend and restate the Prior Agreement in its entirety.

NOW THEREFORE, the Company and the Manager hereby agree as follows:

Section 1. Definitions.

(a) The following terms shall have the meanings set forth in this Section 1(a):

“Affiliate” means (i) any Person directly or indirectly controlling, controlled by, or under common control with such other Person, (ii) any executive officer or general partner of such other Person, (iii) any member of the board of directors or board of managers (or bodies performing similar functions) of such Person, and (iv) any legal entity for which such Person acts as an executive officer or general partner.

“Agreement” has the meaning set forth in the Preamble.

“Automatic Renewal Term” has the meaning set forth in Section 10(a) hereof.

“Bankruptcy” means, with respect to any Person, (i) the filing by such Person of a voluntary petition seeking liquidation, reorganization, arrangement or readjustment, in any form, of its debts under Title 11 of the United States Code or any other U.S. federal or state or foreign insolvency law, or such Person’s filing an answer consenting to or acquiescing in any such petition, (ii) the making by such Person of any assignment for the

benefit of its creditors, (iii) the expiration of 60 days after the filing of an involuntary petition under Title 11 of the United States Code, an application for the appointment of a receiver for a material portion of the assets of such Person, or an involuntary petition seeking liquidation, reorganization, arrangement or readjustment of its debts under any other U.S. federal or state or foreign insolvency law, *provided* that the same shall not have been vacated, set aside or stayed within such 60 day period or (iv) the entry against such Person of a final and non-appealable order for relief under any bankruptcy, insolvency or similar law now or hereinafter in effect.

“Base Management Fee” means the base management fee, calculated and payable quarterly in arrears, in an amount equal to one-fourth of 1.50% of the Company’s Equity.

“Board” means the board of directors of the Company.

“Business Day” means any day except a Saturday, a Sunday or a day on which banking institutions in New York, New York are not required to be open.

“Claim” has the meaning set forth in Section 8(c) hereof.

“Code” has the meaning set forth in the Recitals.

“Common Stock” means the common stock, par value \$0.01, of the Company.

“Company” has the meaning set forth in the Recitals.

“Company Account” has meaning set forth in Section 4 hereof.

“Company Indemnified Party” has meaning set forth in Section 8(b) hereof.

“Confidential Information” has the meaning set forth in Section 5 hereof. “Core Earnings” means the net income (loss), computed in accordance with GAAP, excluding (i) non-cash equity compensation expense, (ii) the Incentive Compensation, (iii) depreciation and amortization, (iv) any unrealized gains or losses or other non-cash items that are included in net income for the applicable reporting period, regardless of whether such items are included in other comprehensive income or loss, or in net income and (v) one-time events pursuant to changes in GAAP and certain non-cash charges, in each case after discussions between the Manager and the Independent Directors and approved by a majority of the Independent Directors.

For the avoidance of doubt, the exclusion of depreciation and amortization in the calculation of Core Earnings shall only apply to depreciation and amortization related to Target Investments that are structured as debt to the extent that the Company forecloses upon the property or properties underlying such debt.

“Effective Termination Date” has the meaning set forth in Section 10(b) hereof.

“Equity” means:

(i) the sum of (A) 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 (B) 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

(ii) (A) any amount that the Company has paid to repurchase the Common Stock since inception; (B) any unrealized gains and losses and other non-cash items that have impacted stockholders' equity as reported in the Company's financial statements prepared in accordance with GAAP, and (C) one-time events pursuant to changes in GAAP, and certain non-cash items not otherwise described above, in each case after discussions between the Manager and the Independent Directors and approval by a majority of the Independent Directors.

"Equity Incentive Plans" means the equity incentive plans adopted by the Company to provide incentive compensation to attract and retain qualified directors, officers, advisors, consultants and other personnel, including the Manager and its Affiliates and their personnel, and any joint venture affiliates of the Company, including the Company's Amended and Restated 2012 Equity Incentive Plan (as it may be amended from time to time, including by the First Amendment thereto).

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"GAAP" means generally accepted accounting principles in effect in the United States on the date such principles are applied.

"Governing Instruments" means, with regard to any entity, the articles of incorporation or certificate of incorporation and bylaws in the case of a corporation, the certificate of limited partnership (if applicable) and the partnership agreement in the case of a general or limited partnership, the certificate of formation and operating agreement in the case of a limited liability company, the trust instrument in the case of a trust, or similar governing documents in each case as amended.

"Incentive Compensation" means the incentive management fee calculated and payable with respect to each fiscal quarter (or part thereof that this Agreement is in effect) in arrears in an amount, not less than zero, obtained by subtracting:

(a) the sum of any Incentive Compensation earned by the Manager with respect to the first three fiscal quarters of such previous 12-month period from

(b) the product of (i) 20% and (ii) the amount obtained by subtracting (A) the product of (1) the weighted average issue price per share of the Common Stock of all of the Company's public offerings of Common Stock multiplied by the weighted average number of shares of Common Stock outstanding (including, for the avoidance of doubt, any restricted shares of Common Stock, restricted stock units or any shares of Common Stock not yet issued but underlying other awards granted under one or more of the Company's Equity Incentive Plans) in the previous 12-month period, and (2) 8% from (B) Core Earnings of the Company for the previous 12-month period;

provided, however, that no Incentive Compensation shall be payable with respect to any fiscal quarter unless cumulative Core Earnings for the 12 most recently completed fiscal quarters is greater than zero.

For purposes of calculating the Incentive Compensation prior to the completion of a 12-month period during the term of this Agreement, Core Earnings shall be calculated on the basis of the number of days that this Agreement has been in effect on an annualized basis.

If the Effective Termination Date does not correspond to the end of a fiscal quarter, the Manager's Incentive Compensation shall be calculated for the period beginning on the day after the end of the fiscal quarter immediately preceding the Effective Termination Date and ending on the Effective Termination Date, which Incentive Compensation shall be calculated using Core Earnings for the 12-month period ending on the Effective Termination Date.

Incentive Compensation for the quarter ended March 31, 2022 shall be calculated in accordance with that certain letter agreement dated April 25, 2022 between the Company and the Manager.

"Indemnified Party" has the meaning set forth in Section 8(b) hereof.

"Independent Director" means a member of the Board who is "independent" in accordance with the Company's Governing Instruments and the rules of the NYSE or such other securities exchange on which the shares of Common Stock are listed.

"Initial Term" has the meaning set forth in Section 10(a) hereof.

"Investment Committee" means the investment committee formed by the Manager, the members of which shall consist of employees of the Manager and its Affiliates and may change from time to time.

"Investment Company Act" means the Investment Company Act of 1940, as amended.

"Investment Guidelines" means the investment guidelines, a copy of which is attached hereto as Exhibit A, as the same may amended, restated, modified, supplemented or waived pursuant to the approval of a majority of the entire Board (which must include a majority of the Independent Directors) and the Investment Committee.

"Losses" has the meaning set forth in Section 8(a) hereof.

"Manager" has the meaning set forth in the Recitals.

"Manager Change of Control" means, other than as set forth in the immediately following sentence, a change in the direct or indirect (i) beneficial ownership of more than 50% of the combined voting power of the Manager's then outstanding equity interests, or (ii) power to direct or control the management policies of the Manager, whether through the ownership of beneficial equity interests, common directors or officers, by contract or otherwise. A Manager Change of Control shall not include changes resulting from (x) public offerings of the equity interests of the Manager or one of its Affiliates or (y) any assignment of this Agreement by the Manager as permitted hereby and in accordance with the terms hereof.

"Manager Indemnified Party" has the meaning set forth in Section 8(a) hereof.

"Manager Permitted Disclosure Parties" has the meaning set forth in Section 5 hereof.

"Monitoring Services" means monitoring services with respect to the Company's investments, including (i) negotiating servicing agreements, (ii) acting as a liaison between the servicers of the assets and the Company, (iii) review of servicers' delinquency, foreclosure and other reports on assets, (iv) supervising claims filed under

any insurance policies and (v) enforcing the obligation of any servicer to repurchase assets.

“Notice of Proposal to Negotiate” has the meaning set forth in Section 10(c) hereof.

“NYSE” means The New York Stock Exchange.

“Person” means any natural person, corporation, partnership, association, limited liability company, estate, trust, joint venture, any federal, state, county or municipal government or any bureau, department or agency thereof or any other legal entity and any fiduciary acting in such capacity on behalf of the foregoing.

“Portfolio Management Services” means portfolio management services with respect to the Company’s investments, including (i) consulting with the Company on the purchase and sale of, and other opportunities in connection with, the Company’s portfolio of investments, (ii) the collection of information and the submission of reports pertaining to the Company’s investments, interest rates and general economic conditions, (iii) periodic review and evaluation of the performance of the Company’s portfolio of investments, (iv) acting as liaison between the Company and banking, mortgage banking and investment banking institutions and other parties with respect to the purchase, financing and disposition of investments and (iv) other customary functions related to portfolio management.

“Prior Agreement” has the meaning set forth in the Recitals.

“Regulation FD” means Regulation FD as promulgated by the SEC.

“REIT” means a “real estate investment trust” as defined under the Code.

“SEC” means the United States Securities and Exchange Commission.

“Securities Act” means the Securities Act of 1933, as amended.

“Sub-Manager” has the meaning set forth in Section 2(c) hereof.

“Target Investments” means the types of investments described in the Investment Guidelines including any changes to the Investment Guidelines that may be approved by the Manager and the Board from time to time.

“Termination Fee” means a termination fee equal to three times the sum of (i) the average annual Base Management Fee, and (ii) average annual Incentive Compensation, in each case earned by the Manager during the 24-month period immediately preceding the most recently completed fiscal quarter prior to the Effective Termination Date.

“Termination Notice” has the meaning set forth in Section 10(b) hereof.

“Termination Without Cause” has the meaning set forth in Section 10(b) hereof.

(b) As used herein, accounting terms relating to the Company not defined in Section 1(a) hereof and accounting terms partly defined in Section 1(a) hereof, to the extent not defined, shall have the respective meanings given to them under GAAP. As used herein, “fiscal quarters” shall mean the period from January 1 to March 31, April 1 to June 30, July 1 to September 30 and October 1 to December 31 of the applicable year.

(c) The words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and Section references are to this Agreement unless otherwise specified.

(d) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms. The words include, includes and including shall be deemed to be followed by the phrase “without limitation.”

Section 2. Appointment and Duties of the Manager.

(a) The Company hereby appoints the Manager to manage the investments and day to-day operations of the Company, subject at all times to the further terms and conditions set forth in this Agreement and to the supervision of, and such further limitations or parameters as may be imposed from time to time by, the Board. The Manager hereby agrees to use its commercially reasonable efforts to perform each of the duties set forth herein, *provided* that funds are made available by the Company for such purposes as set forth in Section 7 hereof. The appointment of the Manager shall be exclusive to the Manager, except to the extent that the Manager elects, in its sole and absolute discretion, subject to the terms of this Agreement, to cause the duties of the Manager as set forth herein to be provided by third parties.

The Manager, in its capacity as manager of the investments and the operations of the Company, at all times will be subject to the supervision and direction of the Board and will have only such functions and authority as the Board may delegate to it, including managing the Company’s business affairs in conformity with the Investment Guidelines and policies that are approved and monitored by the Board. The Company and the Manager hereby acknowledge the recommendation by the Manager and the approval by the Board, of the Investment Guidelines, including the Company’s investment strategy in the Target Investments. The Company and the Manager hereby acknowledge and agree that, during the term of this Agreement, any proposed changes to the Company’s investment strategy that would modify or expand the Target Investments may only be recommended by the Manager and shall require the approval of the Board and the Manager.

(b) The Manager will be responsible for the day-to-day operations of the Company, and will perform (or cause to be performed) such services and activities relating to the investments and operations of the Company as may be appropriate, which may include:

(i) forming the Investment Committee, which will have the following responsibilities: (A) reviewing investment opportunities presented to it by the Manager and (B) reviewing the Company’s investment portfolio for compliance with the Investment Guidelines at least on a quarterly basis, or more frequently as necessary;

(ii) serving as the Company’s consultant with respect to the periodic review of the Investment Guidelines and other parameters for the Company’s investments, financing activities and operations, any modification to which will be approved by the Board;

(iii) investigating, analyzing and selecting possible investment opportunities and originating, acquiring, financing, retaining, selling, restructuring or disposing of investments consistent with the Investment Guidelines;

(iv) with respect to prospective purchases, sales or exchanges of investments, conducting negotiations on the Company’s behalf with sellers, purchasers and brokers and, if applicable, their respective agents and representatives;

- (v) negotiating and entering into, on the Company's behalf, repurchase agreements, interest rate swap agreements and other agreements and instruments required for the Company to conduct the Company's business;
 - (vi) engaging and supervising, on the Company's behalf and at the Company's expense, independent contractors that provide investment banking, securities brokerage, mortgage brokerage and other financial services, due diligence services, underwriting review services, legal and accounting services, and all other services (including transfer agent and registrar services) as may be required relating to the Company's operations or investments (or potential investments);
 - (vii) coordinating and managing operations of any joint venture or co-investment interests held by the Company and conducting all matters with the joint venture or co investment partners;
 - (viii) providing executive and administrative personnel, office space and office services required in rendering services to the Company;
 - (ix) administering the day-to-day operations and performing and supervising the performance of such other administrative functions necessary to the Company's management as may be agreed upon by the Manager and the Board, including the collection of revenues and the payment of the Company's debts and obligations and maintenance of appropriate computer services to perform such administrative functions;
 - (x) communicating on the Company's behalf with the holders of any of the Company's equity or debt securities as required to satisfy the reporting and other requirements of any governmental bodies or agencies or trading markets and to maintain effective relations with such holders, including website maintenance, logo design, analyst presentations, investor conferences and annual meetings arrangements;
 - (xi) counseling the Company in connection with policy decisions to be made by the Board;
 - (xii) evaluating and recommending to the Board hedging strategies and engaging in hedging activities on the Company's behalf, consistent with such strategies as so modified from time to time, with the Company's qualification as a REIT and with the Investment Guidelines;
 - (xiii) counseling the Company regarding the maintenance of the Company's qualification as a REIT and monitoring compliance with the various REIT qualification tests and other rules set out in the Code and Treasury Regulations thereunder and using commercially reasonable efforts to cause the Company to qualify for taxation as a REIT;
 - (xiv) counseling the Company regarding the maintenance of the Company's exemption from the status of an investment company required to register under the Investment Company Act, monitoring compliance with the requirements for maintaining such exemption and using commercially reasonable efforts to cause the Company to maintain such exemption from such status;
 - (xv) furnishing reports and statistical and economic research to the Company regarding the Company's activities and services performed for the Company by the Manager;
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(xvi) monitoring the operating performance of the Company's investments and providing periodic reports with respect thereto to the Board, including comparative information with respect to such operating performance and budgeted or projected operating results;

(xvii) investing and reinvesting any monies and securities of the Company (including investing in short-term investments pending investment in other investments, payment of fees, costs and expenses or payments of dividends or distributions to the Company's stockholders, partners or members) and advising the Company as to the Company's capital structure and capital raising;

(xviii) causing the Company to retain qualified accountants and legal counsel, as applicable, to assist in developing appropriate accounting procedures and systems, internal controls and other compliance procedures and testing systems with respect to financial reporting obligations and compliance with the provisions of the Code applicable to REITs and, if applicable, taxable REIT subsidiaries, and to conduct quarterly compliance reviews with respect thereto;

(xix) assisting the Company in qualifying to do business in all applicable jurisdictions and to obtain and maintain all appropriate licenses;

(xx) assisting the Company in complying with all regulatory requirements applicable to the Company in respect of the Company's business activities, including preparing or causing to be prepared all financial statements required under applicable regulations and contractual undertakings and all reports and documents, if any, required under the Exchange Act or the Securities Act, or by the NYSE;

(xxi) assisting the Company in taking all necessary action to enable the Company to make required tax filings and reports, including soliciting information from stockholders, partners or members to the extent required by the provisions of the Code applicable to REITs;

(xxii) placing, or arranging for the placement of, all orders pursuant to the Manager's investment determinations for the Company either directly with the issuer or with a broker or dealer (including any affiliated broker or dealer);

(xxiii) handling and resolving all claims, disputes or controversies (including all litigation, arbitration, settlement or other proceedings or negotiations) in which the Company may be involved or to which the Company may be subject arising out of the Company's day-to-day operations (other than with the Manager or its Affiliates), subject to such limitations or parameters as may be imposed from time to time by the Board;

(xxiv) using commercially reasonable efforts to cause expenses incurred by the Company or on the Company's behalf to be commercially reasonable or commercially customary and within any budgeted parameters or expense guidelines set by the Board from time to time;

(xxv) advising the Company with respect to and structuring long-term financing vehicles for the Company's portfolio of assets, and offering and selling securities publicly or privately in connection with any such structured financing;

(xxvi) serving as the Company's consultant with respect to decisions regarding any of the Company's financings, hedging activities or borrowings undertaken by the Company, including (A) assisting the Company in developing criteria for debt and equity

financing that is specifically tailored to the Company's investment objectives, and (B) advising the Company with respect to obtaining appropriate financing for the Company's investments;

(xxvii) providing the Company with Portfolio Management Services and Monitoring Services;

(xxviii) arranging marketing materials, advertising, industry group activities (such as conference participations and industry organization memberships) and other promotional efforts designed to promote the Company's business;

(xxix) using commercially reasonable efforts to cause the Company to comply with all applicable laws; and

(xxx) performing such other services as may be required from time to time for management and other activities relating to the Company's assets and business as the Board shall reasonably request or the Manager shall deem appropriate under the particular circumstances.

(c) The Manager may retain, for and on behalf, and at the sole cost and expense, of the Company, such services of the persons and firms referred to in Section 7(a) hereof as the Manager deems necessary or advisable in connection with the management and operations of the Company; provided that any such agreement shall be on terms and conditions substantially identical to the terms and conditions of this Agreement or otherwise not adverse to the Company. In performing its duties under this Section 2, the Manager shall be entitled to rely reasonably on qualified experts and professionals (including accountants, legal counsel and other professional service providers) hired by the Manager at the Company's sole cost and expense. In addition, the Manager is hereby authorized to enter into one or more sub-advisory agreements with other investment managers (each, a "Sub-Manager") pursuant to which the Manager may obtain the services of the Sub-Manager(s) to assist the Manager in providing the investment advisory services required to be provided by the Manager under Section 2(a) hereof. Specifically, the Manager may retain a Sub-Manager to recommend specific securities or other investments based upon the Company's Investment Guidelines, and work, along with the Manager, in structuring, negotiating, arranging or effecting the acquisition or disposition of such investments and monitoring investments on behalf of the Company, subject to the oversight of the Manager and the Company. The Manager, and not the Company, shall be responsible for any compensation payable to any Sub-Manager. Any sub-management agreement entered into by the Manager shall be in accordance with applicable laws. Nothing in this subsection (c) will obligate the Manager to pay any expenses that are the expenses of the Company under Section 2 hereof.

(d) The Manager shall refrain from any action that, in its sole judgment made in good faith, (i) is not in compliance with the Investment Guidelines, (ii) would adversely and materially affect the qualification of the Company as a REIT under the Code or the Company's status as an entity intended to be exempted or excluded from investment company status under the Investment Company Act, or (iii) would violate any law, rule or regulation of any governmental body or agency having jurisdiction over the Company or of any exchange on which the securities of the Company may be listed or that would otherwise not be permitted by the applicable Governing Instruments. If the Manager is ordered to take any action by the Board, the Manager shall promptly notify the Board if it is the Manager's judgment that such action would adversely and materially affect such status or violate any such law, rule or regulation or Governing Instruments. Notwithstanding the foregoing, neither the Manager nor any of its Affiliates, nor any of their members, stockholders, managers, partners, personnel, officers, directors, employees, consultants and any person providing sub-advisory services to the Manager shall be

liable to the Company, the Board, or the Company's stockholders, partners or members, for any act or omission by the Manager or any of its Affiliates, except as provided in Section 7(d) hereof.

(e) The Company (including the Board) agrees to take all actions reasonably required to permit and enable the Manager to carry out its duties and obligations under this Agreement, including all steps reasonably necessary to allow the Manager to file any registration statement or other filing required to be made under the Securities Act, Exchange Act, the NYSE's Listed Company Manual, Code or other applicable law, rule or regulation on behalf of the Company in a timely manner. The Company further agrees to use commercially reasonable efforts to make available to the Manager all resources, information and materials reasonably requested by the Manager to enable the Manager to satisfy its obligations hereunder, including its obligations to prepare, or cause to be prepared, required financial statements or other information or reports with respect to the Company.

(f) As frequently as the Manager may deem necessary or advisable, or at the direction of the Board, the Manager shall prepare, or, at the sole cost and expense of the Company, cause to be prepared, any reports and other information relating to any proposed or consummated investment as may be reasonably requested by the Company.

(g) The Manager shall prepare, or cause to be prepared, at the sole cost and expense of the Company, all reports, financial or otherwise, with respect to the Company reasonably required by the Board in order for the Company to comply with its Governing Instruments, or any other materials required to be filed with any governmental body or agency, and shall prepare, or cause to be prepared, at the sole cost and expense of the Company, all materials and data necessary to complete such reports and other materials, including an annual audit of the Company's books of account by a nationally recognized independent accounting firm.

(h) The Manager shall prepare, or cause to be prepared, at the sole cost and expense to the Company, regular reports for the Board to enable the Board to review the Company's acquisitions, portfolio composition and characteristics, credit quality, performance and compliance with the Investment Guidelines and policies approved by the Board.

(i) Officers, employees, personnel and agents of the Manager and its Affiliates may serve as directors, officers, agents, nominees or signatories for the Company, to the extent permitted by their Governing Instruments, by this Agreement or by any resolutions duly adopted by the Board. When executing documents or otherwise acting in such capacities for the Company, such persons shall indicate in what capacity they are executing on behalf of the Company. Without limiting the foregoing, while this Agreement is in effect, the Manager will provide the Company with a management team, including a Chief Executive Officer and/or President or similar positions along with appropriate support personnel, to provide the management services to be provided by the Manager to the Company hereunder, who shall devote such of their time to the management of the Company as necessary and appropriate, commensurate with the level of activity of the Company from time to time.

(j) The Manager shall have the power and authority on behalf of the Company to effect investment decisions for the Company, including the execution and delivery of all documents relating to the Company's investments and the placing of orders for other purchase or sale transactions on behalf of the Company. In the event that the Company determines to incur debt financing, the Manager will arrange for such financing on the Company's behalf, subject to the oversight and approval of the Board. If it is necessary for the Manager to make investments on behalf of the Company through a special purpose vehicle, the Manager shall have authority to create or arrange for the creation of such special purpose vehicle and to make such investments through such special purpose vehicle in accordance with the Investment Guidelines.

(k) The Manager, at its sole cost and expense, shall provide personnel for service on the Investment Committee.

(l) The Manager, at its sole cost and expense, shall maintain reasonable and customary “errors and omissions” insurance coverage and other customary insurance coverage in respect of its obligations and activities under, or pursuant to, this Agreement.

(m) The Manager acknowledges receipt of the Company’s Code of Business Conduct and Ethics and Policy on Insider Trading agrees to require the Persons who provide services to the Company to comply with the Code of Business Conduct and Ethics and the Policy on Insider Trading in the performance of such services hereunder or such comparable policies as shall in substance hold such Persons to at least the standards of conduct set forth in the Code of Business Conduct and Ethics and the Policy on Insider Trading.

Section 3. Additional Activities of the Manager; Non-Solicitation; Restrictions.

(a) Except as provided in the last sentence of this Section 3(a) and/or the Investment Guidelines, nothing in this Agreement shall (i) prevent the Manager or any of its Affiliates, officers, directors or employees, from engaging in other businesses or from rendering services of any kind to any other Person or entity, whether or not the investment objectives or policies of any such other Person or entity are similar to those of the Company, (ii) in any way bind or restrict the Manager or any of its Affiliates or any of their members, stockholders, managers, partners, personnel, officers, directors, employees or consultants from buying, selling or trading any securities or commodities for their own accounts or for the account of others for whom the Manager or any of its Affiliates, or any of their members, stockholders, managers, partners, personnel, officers, directors, employees or consultants may be acting, (iii) obligate the Manager to dedicate any of its officers or personnel exclusively to the Company or (iv) obligate the Company’s officers to dedicate any specific portion of their time to the Company’s business. While information and recommendations supplied to the Company shall, in the Manager’s reasonable and good faith judgment, be appropriate under the circumstances and in light of the investment objectives and policies of the Company, they may be different from the information and recommendations supplied by the Manager or any Affiliate of the Manager to others. The Company shall be entitled to equitable treatment under the circumstances in receiving information, recommendations and any other services, but the Company recognizes that it is not entitled to receive preferential treatment as compared with the treatment given by the Manager or any Affiliate of the Manager to others. The Company shall have the benefit of the Manager’s best judgment and effort in rendering services hereunder and, in furtherance of the foregoing, the Manager shall not undertake activities that, in its good faith judgment, will adversely affect the performance of its obligations under this Agreement. Notwithstanding anything to the contrary herein, for so long as the Manager is managing the Company pursuant to this Agreement, neither it nor any of its Affiliates will sponsor or manage any other U.S. publicly traded REIT that invests primarily in the Target Investments (taken as a whole).

(b) In the event of a Termination Without Cause of this Agreement by the Company pursuant to Section 10(b) hereof, for two years after such termination of this Agreement, the Company shall not, without the consent of the Manager, employ or otherwise retain any employee of the Manager or any of its Affiliates or any person who has been employed by the Manager or any of its Affiliates at any time within the two-year period immediately preceding the date on which such person commences employment with or is otherwise retained by the Company. The Company acknowledges and agrees that, in addition to any damages, the Manager shall be entitled to equitable relief for any violation of this Section 3(b) by the Company, including injunctive relief. If any person who is a member, stockholder, manager, partner, personnel, officer, director or employee of the Manager or any of its Affiliates or provides sub-advisory services to the Manager is or becomes a director, officer and/or employee

of the Company and acts as such in any business of the Company, then such member, stockholder, manager, partner, personnel, officer, director and/or employee of the Manager or its Affiliate or person providing sub-advisory services to the Manager shall be deemed to be acting in such capacity solely for the Company, and not as a member, stockholder, manager, partner, personnel, officer, director or employee of the Manager or its Affiliate, a person providing sub-advisory services to the Manager or under the control or direction of the Manager or its Affiliate, even if paid by the Manager or its Affiliate.

Section 4. Bank Accounts. At the direction of the Board, the Manager may establish and maintain one or more bank accounts in the name of the Company (any such account, a “Company Account”), and may collect and deposit into any such account or accounts, and disburse funds from any such account or accounts, under such terms and conditions as the Board may approve; and the Manager shall from time to time render appropriate accountings of such collections and payments to the Board and, upon request, to the auditors of the Company.

Section 5. Records; Confidentiality.

The Manager shall maintain appropriate books of accounts and records relating to services performed hereunder, and such books of account and records shall be accessible for inspection by representatives of the Company at any time during normal business hours upon reasonable advance notice. The Manager shall keep confidential any and all non-public information, written or oral, obtained by it in connection with the services rendered hereunder (“Confidential Information”) and shall not use Confidential Information except in furtherance of its duties under this Agreement or disclose Confidential Information, in whole or in part, to any Person other than (a) to its Affiliates, (b) to its and its Affiliates’ members, stockholders, managers, partners, personnel, officers, directors, employees, consultants, agents, representatives or advisors who need to know such Confidential Information, (c) to appraisers, financing sources and others in the ordinary course of the Company’s business ((a), (b) and (c) collectively, “Manager Permitted Disclosure Parties”), (d) in connection with any governmental or regulatory filings of the Company or disclosure or presentations to Company investors (subject to compliance with Regulation FD), (e) to governmental officials having jurisdiction over the Company, (f) as requested by law or legal process to which the Manager or any Person to whom disclosure is permitted hereunder is a party or (g) with the consent of the Board. The Manager agrees to inform each of its Manager Permitted Disclosure Parties of the non-public nature of the Confidential Information and instruct the Manager Permitted Disclosure Parties to keep such information confidential. Nothing herein shall prevent the Manager from disclosing Confidential Information (i) upon the order of any court or administrative agency, (ii) upon the request or demand of, or pursuant to any law or regulation to, any regulatory agency or authority, (iii) to the extent reasonably required in connection with the exercise of any remedy hereunder, or (iv) to its legal counsel or independent auditors; *provided, however*, that with respect to clauses (i) and (ii), it is agreed that, so long as not legally prohibited, the Manager will provide the Company with prompt written notice of such order, request or demand so that the Company may seek, at its sole expense, an appropriate protective order and/or waive the Manager’s compliance with the provisions of this Agreement. If, failing the entry of a protective order or the receipt of a waiver hereunder, the Manager is required to disclose Confidential Information, the Manager may disclose only that portion of such information that is legally required without liability hereunder; *provided*, that the Manager agrees to exercise its commercially reasonable efforts to obtain reliable assurance that confidential treatment will be accorded such information. Notwithstanding anything herein to the contrary, each of the following shall be deemed to be excluded from provisions hereof: any Confidential Information that (A) is available to the public from a source other than the Manager; (B) is released by the Company to the public or to Persons who are not under similar obligation of confidentiality to the Company; or (C) is obtained by the Manager from a third party that, to the best of the Manager’s knowledge, has not breached an obligation of confidence with respect to the Confidential Information disclosed. The provisions

of this Section 5 shall survive the expiration or earlier termination of this Agreement for a period of one year.

Section 6. Compensation.

(a) For the services rendered under this Agreement, the Company shall pay the Base Management Fee and the Incentive Compensation to the Manager.

(b) The parties acknowledge that the Base Management Fee is intended to compensate the Manager for certain expenses it will incur pursuant to this Agreement that are not otherwise reimbursable under Section 7 hereof, in order for the Manager to provide the Company the investment advisory services and certain general management services rendered under this Agreement.

(c) The Base Management Fee shall be payable in arrears in cash, in quarterly installments commencing with the quarter in which this Agreement is executed. If applicable, the initial and final installments of the Base Management Fee shall be prorated based on the number of days during the initial and final quarter, respectively, that this Agreement is in effect. The Manager shall calculate each quarterly installment of the Base Management Fee, and deliver such calculation to the Company, for informational purposes only and subject in any event to Section 10(b) of this Agreement, within 30 days following the last day of each fiscal quarter. The Company shall pay the Manager each installment of the Base Management Fee in cash within five Business Days after the date of delivery to the Company of such computations.

(d) The Base Management Fee is subject to adjustment pursuant to and in accordance with the provisions of Section 10(c) of this Agreement.

(e) The Incentive Compensation shall be payable in arrears, in quarterly installments commencing with the quarter in which this Agreement is executed. The Manager shall compute each quarterly installment of the Incentive Compensation within 45 days after the end of the fiscal quarter with respect to which such installment is payable. A copy of the computations made by the Manager to calculate such installment shall thereafter, for informational purposes only and subject in any event to Section 10(b) of this Agreement, promptly be delivered to the Board. The Company shall pay the Manager each installment of the Incentive Compensation in cash within five Business Days after the date of delivery to the Board of such computations.

Section 7. Expenses of the Company.

(a) The Company shall pay all of its costs and expenses and shall reimburse the Manager or its Affiliates for expenses of the Manager and its Affiliates incurred on behalf of the Company, excepting those expenses that are specifically the responsibility of the Manager pursuant to this Section 7. Without limiting the generality of the foregoing, it is specifically agreed that the following costs and expenses of the Company shall be paid by the Company and shall not be paid by the Manager or Affiliates of the Manager:

(i) expenses in connection with the issuance and transaction costs incident to the origination, acquisition, disposition and financing of the investments of the Company;

(ii) costs of legal, financial, tax, accounting, servicing, due diligence, consulting, auditing and other similar services rendered for the Company by providers retained by the Manager or, if provided by the Manager's personnel, in amounts that are no greater than those that would be payable to outside professionals or consultants engaged to perform such services pursuant to agreements negotiated on an arm's-length basis;

(iii) the compensation and expenses of the Company's directors, the cost of liability insurance to indemnify the Company's directors and officers and the Company's allocable portion of the fidelity bond, directors and officers/errors and omissions liability insurance, and any other insurance premium;

(iv) costs associated with the establishment and maintenance of any of the Company's credit facilities, other financing arrangements, or other indebtedness of the Company (including commitment fees, accounting fees, legal fees, closing and other similar costs) or any of the Company's securities offerings;

(v) expenses connected with communications to holders of the Company's securities and other bookkeeping and clerical work necessary in maintaining relations with holders of such securities and in complying with the continuous reporting and other requirements of governmental bodies or agencies, including all costs of preparing and filing required reports with the SEC, the costs payable by the Company to any transfer agent and registrar in connection with the listing and/or trading of the Company's securities on any exchange, the fees payable by the Company to any such exchange in connection with its listing, costs of preparing, printing and mailing the Company's annual report to the Company's stockholders, partners or members and proxy materials with respect to any meeting of the Company's stockholders, partners or members;

(vi) costs associated with any computer software or hardware, electronic equipment or purchased information technology services from third-party vendors that is used for the Company;

(vii) expenses incurred by managers, officers, personnel and agents of the Manager for travel on the Company's behalf and other out-of-pocket expenses incurred by managers, officers, personnel and agents of the Manager in connection with the services provided hereunder, including in connection with any purchase, financing, refinancing, sale or other disposition of an investment or establishment and maintenance of any of the Company's securitizations or any of the Company's securities offerings;

(viii) costs and expenses incurred with respect to market information systems and publications, research publications and materials, and settlement, clearing and custodial fees and expenses;

(ix) compensation and expenses of the Company's custodian and transfer agent, if any;

(x) the costs of maintaining compliance with all federal, state and local rules and regulations or any other regulatory agency;

(xi) all federal, state and local taxes and license fees;

(xii) all insurance costs incurred in connection with the operation of the Company's business, including an allocable portion of the costs attributable to insurance that the Manager or its Affiliates carry that cover the Company and its business (but not including costs of the insurance required by Section 2(l) above);

(xiii) costs and expenses incurred in contracting with third parties;

(xiv) all other costs and expenses relating to the Company's business and investment operations, including the costs and expenses of originating, acquiring,

owning, protecting, maintaining, developing and disposing of investments, including appraisal, reporting, audit and legal fees;

(xv) expenses (including the Company's pro rata portion of rent, telephone, printing, mailing, utilities, office furniture, equipment, machinery and other office, internal and overhead expenses) relating to any office(s) or office facilities, including disaster backup recovery sites and facilities, maintained for the Company or the investments of the Company, the Manager or their Affiliates required for the operation of the Company;

(xvi) expenses connected with the payments of interest, dividends or distributions in cash or any other form authorized or caused to be made by the Board to or on account of holders of the Company's securities, including in connection with any dividend reinvestment plan;

(xvii) any judgment or settlement of pending or threatened proceedings (whether civil, criminal or otherwise) against the Company, or against any trustee, director, partner, member or officer of the Company in his capacity as such for which the Company is required to indemnify such trustee, director, partner, member or officer by any court or governmental agency;

(xviii) expenses connected with calculating Core Earnings (including the cost and expenses of any independent valuation firm); and

(xix) all other expenses actually incurred by the Manager (except as otherwise specified herein) that are reasonably necessary for the performance by the Manager of its duties and functions under this Agreement.

(b) The Company shall have no obligation to reimburse the Manager or its Affiliates for the salaries and other compensation of the Manager's investment professionals who provide services to the Company under this Agreement, except that the Company shall reimburse the Manager or its Affiliates, as applicable, for the Company's allocable share of the compensation (whether paid in cash, stock or other forms), including annual base salary, bonus, any related withholding taxes and employee benefits, paid to (i) the Manager's personnel serving as the Company's chief financial officer based on the percentage of his or her time spent managing the Company's affairs and (ii) other corporate finance, tax, accounting, internal audit, legal, risk management, operations, compliance and other non-investment personnel of the Manager and its Affiliates who spend all or a portion of their time managing the Company's affairs. The Company's share of such costs shall be based upon the percentage of time devoted by such personnel of the Manager or its Affiliates to the Company's affairs. The Manager shall provide the Company with such written detail as the Company may reasonably request to support the determination of the Company's share of such costs.

(c) The Manager may, at its option, elect not to seek reimbursement for certain expenses during a given quarterly period, which determination shall not be deemed to construe a waiver of reimbursement for similar expenses in future periods.

(d) Costs and expenses incurred by the Manager on behalf of the Company shall be reimbursed monthly to the Manager. The Manager shall prepare a written statement in reasonable detail documenting the costs and expenses of the Company and those incurred by the Manager on behalf of the Company during each month, and shall deliver such written statement to the Company within 30 days after the end of each month. The Company shall pay all amounts payable to the Manager pursuant to this Section 7(d) in cash within five Business Days after the receipt of the written statement without demand, deduction offset or delay. Cost and expense

reimbursements to the Manager shall be subject to adjustment at the end of each calendar year in connection with the annual audit of the Company. The provisions of this Section 7 shall survive the expiration or earlier termination of this Agreement to the extent such expenses have previously been incurred or are incurred in connection with such expiration or termination.

(e) Notwithstanding anything contained in this Agreement to the contrary, except to the extent that the payment of additional monies is proven by the Company to have been required as a direct result of the Manager's acts or omissions that result in the right of the Company to terminate this Agreement pursuant to Section 12 of this Agreement, the Manager shall not be required to expend money ("Excess Funds") in connection with any expenses that are required to be paid for or reimbursed by the Company pursuant to this Agreement in excess of that contained in any applicable Company Account (as herein defined) or otherwise made available by the Company to be expended by the Manager hereunder. Failure of the Manager to expend Excess Funds out-of-pocket shall not give rise or be a contributing factor to the right of the Company under Section 10(b) of this Agreement to terminate this Agreement due to the Manager's unsatisfactory performance.

Section 8. Limits of the Manager's Responsibility.

(a) The Manager assumes no responsibility under this Agreement other than to render the services called for hereunder in good faith and shall not be responsible for any action of the Board in following or declining to follow any advice or recommendations of the Manager, including as set forth in the Investment Guidelines. The Manager and its Affiliates, and any of their members, stockholders, managers, partners, personnel, officers, directors, employees, consultants and any person providing sub-advisory services to the Manager, will not be liable to the Company, the Board or the Company's stockholders, partners or members for any acts or omissions by any such Person (including errors that may result from ordinary negligence, such as errors in the investment decision making process or in the trade process) performed in accordance with and pursuant to this Agreement, except by reason of acts or omission constituting bad faith, willful misconduct, gross negligence or reckless disregard of their respective duties under this Agreement, as determined by a final non-appealable order of a court of competent jurisdiction. The Company shall, to the full extent lawful, reimburse, indemnify and hold harmless the Manager, its Affiliates, and any of their members, stockholders, managers, partners, personnel, officers, directors, employees, consultants and any person providing sub-advisory services to the Manager (each, a "Manager Indemnified Party"), of and from any and all expenses, losses, damages, liabilities, demands, charges and claims of any nature whatsoever (including reasonable attorneys' fees and amounts reasonably paid in settlement) (collectively "Losses") incurred by the Manager Indemnified Party in or by reason of any pending, threatened or completed action, suit, investigation or other proceeding (including an action or suit by or in the right of the Company or its security holders) arising from any acts or omissions of such Manager Indemnified Party performed in good faith under this Agreement and not constituting bad faith, willful misconduct, gross negligence or reckless disregard of duties of such Manager Indemnified Party under this Agreement.

(b) The Manager shall, to the full extent lawful, reimburse, indemnify and hold harmless the Company, and the directors, officers, stockholders, partners or members of the Company and each Person, if any, controlling the Company (each, a "Company Indemnified Party") and, together with a Manager Indemnified Party, an "Indemnified Party") of and from any and all Losses in respect of or arising from (i) any acts or omissions of the Manager constituting bad faith, willful misconduct, gross negligence or reckless disregard of duties of the Manager under this Agreement or (ii) any claims by the Manager's employees relating to the terms and conditions of their employment by the Manager.

(c) In case any such claim, suit, action or proceeding (a “Claim”) is brought against any Indemnified Party in respect of which indemnification may be sought by such Indemnified Party pursuant hereto, the Indemnified Party shall give prompt written notice thereof to the indemnifying party; *provided, however*, that the failure of the Indemnified Party to so notify the indemnifying party shall not relieve the indemnifying party from any liability that it may have hereunder, except to the extent such failure actually materially prejudices the indemnifying party. Upon receipt of such notice of Claim (together with such documents and information from such Indemnified Party), the indemnifying party shall, at its sole cost and expense, in good faith defend any such Claim with counsel reasonably satisfactory to such Indemnified Party. The Indemnified Party will be entitled to participate but, subject to the next sentence, not control, the defense of any such action, with its own counsel and at its own expense. Such Indemnified Party may elect to conduct the defense of the Claim, if (i) such Indemnified Party reasonably determines that the conduct of its defense by the indemnifying party could be materially prejudicial to its interests, (ii) the indemnifying party refuses to assume such defense (or fails to give written notice to the Indemnified Party within ten (10) days of receipt of a notice of Claim that the indemnifying party assumes such defense), or (iii) the indemnifying party shall have failed, in such Indemnified Party’s reasonable judgment, to defend the Claim in good faith. The indemnifying party may settle any Claim against such Indemnified Party without such Indemnified Party’s consent, *provided*, that (i) such settlement is without any Losses whatsoever to such Indemnified Party, (ii) the settlement does not include or require any admission of liability or culpability by such Indemnified Party and (iii) the indemnifying party obtains an effective written release of liability for such Indemnified Party from the party to the Claim with whom such settlement is being made, which release must be reasonably acceptable to such Indemnified Party, and a dismissal with prejudice with respect to all claims made by the party against such Indemnified Party in connection with such Claim. The applicable Indemnified Party shall reasonably cooperate with the indemnifying party, at the indemnifying party’s sole cost and expense, in connection with the defense or settlement of any Claim in accordance with the terms hereof. If such Indemnified Party is entitled pursuant to this Section 8 to elect to defend such Claim by counsel of its own choosing and so elects, then the indemnifying party shall be responsible for any good faith settlement of such Claim entered into by such Indemnified Party. Except as provided in the immediately preceding sentence, no Indemnified Party may pay or settle any Claim and seek reimbursement therefor under this Section 8.

(d) The provisions of this Section 8 shall survive the expiration or earlier termination of this Agreement.

Section 9. No Joint Venture. The Company and the Manager are not partners or joint venturers with each other and nothing herein shall be construed to make them such partners or joint venturers or impose any liability as such on either of them.

Section 10. Term; Renewal; Termination Without Cause.

(a) This Agreement shall become effective on the date hereof and shall continue in operation, unless terminated in accordance with the terms hereof, until April 25, 2023 (the “Initial Term”). After the Initial Term, this Agreement shall be deemed renewed automatically each year for an additional one-year period (an “Automatic Renewal Term”) unless the Company or the Manager elects not to renew this Agreement in accordance with Section 10(b) or Section 10(d), respectively.

(b) Notwithstanding any other provision of this Agreement to the contrary, upon the expiration of the Initial Term or any Automatic Renewal Term and upon 180 days’ prior written notice to the Manager (the “Termination Notice”), the Company may, without cause, in connection with the expiration of the Initial Term or the then current Automatic Renewal Term, decline to renew this Agreement (any such nonrenewal, a “Termination Without Cause”) upon

the affirmative vote of at least two-thirds of the Independent Directors that (i) there has been unsatisfactory performance by the Manager that is materially detrimental to the Company taken as a whole or (ii) the Base Management Fee and Incentive Compensation payable to the Manager are not fair, subject to Section 10(c) hereof. In the event of a Termination Without Cause, the Company shall pay the Manager the Termination Fee before or on the last day of the Initial Term or such Automatic Renewal Term, as the case may be (the “Effective Termination Date”).

(c) Notwithstanding the provisions of subsection (b) of this Section 10, if the reason for nonrenewal specified in the Company’s Termination Notice is that 2/3 of the Independent Directors have determined that the Base Management Fee or the Incentive Compensation payable to the Manager is unfair, the Company shall not have the foregoing nonrenewal right in the event the Manager agrees that it will continue to perform its duties hereunder during the Automatic Renewal Term that would commence upon the expiration of the Initial Term or then current Automatic Renewal Term at a fee that at least two thirds of the Independent Directors determine to be fair; *provided, however*, the Manager shall have the right to renegotiate the Base Management Fee and/or the Incentive Compensation, by delivering to the Company, not less than 45 days prior to the pending Effective Termination Date, written notice (a “Notice of Proposal to Negotiate”) of its intention to renegotiate the Base Management Fee and/or the Incentive Compensation. Thereupon, the Company and the Manager shall endeavor to negotiate the Base Management Fee and/or the Incentive Compensation in good faith. If the Company and the Manager agree to a revised Base Management Fee, Incentive Compensation or other compensation structure within 45 days following the Company’s receipt of the Notice of Proposal to Negotiate, the Termination Notice from the Company shall be deemed of no force and effect, and this Agreement shall continue in full force and effect on the terms stated herein, except that the Base Management Fee, the Incentive Compensation or other compensation structure shall be the revised Base Management Fee, Incentive Compensation or other compensation structure as then agreed upon by the Company and the Manager. The Company and the Manager agree to execute and deliver an amendment to this Agreement setting forth such revised Base Management Fee, Incentive Compensation, or other compensation structure promptly upon reaching an agreement regarding same. In the event that the Company and the Manager are unable to agree to a revised Base Management Fee, Incentive Compensation, or other compensation structure during such 45 day period, this Agreement shall terminate on the Effective Termination Date and the Company shall be obligated to pay the Manager the Termination Fee upon the Effective Termination Date.

(d) No later than 180 days prior to the expiration of the Initial Term or the then current Automatic Renewal Term, the Manager may deliver written notice to the Company informing it of the Manager’s intention to decline to renew this Agreement, whereupon this Agreement shall not be renewed and extended and this Agreement shall terminate effective on the anniversary date of this Agreement next following the delivery of such notice. The Company is not required to pay to the Manager the Termination Fee if the Manager terminates this Agreement pursuant to this Section 10(d).

(e) Except as set forth in this Section 10, a nonrenewal of this Agreement pursuant to this Section 10 shall be without any further liability or obligation of either party to the other, except as provided in Sections 3(b), 5, 7, 8, 10(b), 12(b), 13, 15(e) and 15(f) hereof.

(f) The Manager shall cooperate with the Company in executing an orderly transition of the management of the Company’s consolidated assets to a new manager.

Section 11. Assignments.

(a) *Assignments by the Manager.* This Agreement shall terminate automatically without payment of the Termination Fee in the event of its assignment, in whole or in part, by the

Manager, unless such assignment is consented to in writing by the Company with the approval of a majority of the Independent Directors. Any permitted assignment (including to an Affiliate of the Manager as set forth below) shall bind the assignee under this Agreement in the same manner as the Manager is bound, and the Manager shall be liable to the Company for all errors or omissions of the assignee under any such assignment. In addition, the assignee shall execute and deliver to the Company a counterpart of this Agreement naming such assignee as the Manager. Notwithstanding anything to the contrary in this Agreement, the Manager may, without the approval of the Company's Independent Directors, (i) assign this Agreement to an Affiliate of the Manager and (ii) delegate to one or more of its Affiliates the performance of any of its responsibilities hereunder so long as it remains liable for any such Affiliate's performance, in each case so long as assignment or delegation does not require the Company's approval under the Investment Company Act (but if such approval is required, the Company shall not unreasonably withhold, condition or delay its consent). Nothing contained in this Agreement shall preclude any pledge, hypothecation or other transfer of any amounts payable to the Manager under this Agreement.

(b) *Assignments by the Company.* This Agreement shall not be assigned by the Company without the prior written consent of the Manager, except in the case of assignment by the Company to another REIT or other organization which is a successor (by merger, consolidation, purchase of assets, or other transaction) to the Company, in which case such successor organization shall be bound under this Agreement and by the terms of such assignment in the same manner as the Company is bound under this Agreement.

Section 12. Termination for Cause.

(a) The Company may terminate this Agreement effective upon 30 days' prior written notice of termination from the Company to the Manager, without payment of any Termination Fee, if (i) the Manager, its agents or its assignees breaches any material provision of this Agreement and such breach shall continue for a period of 30 days after written notice thereof specifying such breach and requesting that the same be remedied in such 30-day period (or 45 days after written notice of such breach if the Manager takes steps to cure such breach within 30 days of the written notice), (ii) there is a commencement of any proceeding relating to the Manager's Bankruptcy or insolvency, including an order for relief in an involuntary bankruptcy case or the Manager authorizing or filing a voluntary bankruptcy petition, (iii) any Manager Change of Control occurs that a majority of the Independent Directors determines is materially detrimental to the Company taken as a whole, (iv) the Manager is dissolved, or (v) the Manager commits fraud against the Company, misappropriates or embezzles funds of the Company, or acts, or fails to act, in a manner constituting bad faith, willful misconduct, gross negligence or reckless disregard in the performance of its duties under this Agreement; *provided, however*, that if any of the actions or omissions described in this clause (v) are caused by an employee, personnel and/or officer of the Manager or one of its Affiliates and the Manager (or such Affiliate) takes all necessary and appropriate action against such person and cures the damage caused by such actions or omissions within 30 days of the Manager's actual knowledge of its commission or omission, the Company shall not have the right to terminate this Agreement pursuant to this Section 12(a)(v).

(b) The Manager may terminate this Agreement effective upon 60 days' prior written notice of termination to the Company in the event that the Company shall default in the performance or observance of any material term, condition or covenant contained in this Agreement and such default shall continue for a period of 30 days after written notice thereof specifying such default and requesting that the same be remedied in such 30-day period. The Company is required to pay to the Manager the Termination Fee if the termination of this Agreement is made pursuant to this Section 12(b).

(c) The Manager, at its sole option, may terminate this Agreement if the Company becomes required to register as an investment company under the Investment Company Act, with such termination deemed to occur immediately before such event, in which case the Company shall not be required to pay the Termination Fee.

Section 13. Actions Upon Termination. From and after the effective date of termination of this Agreement pursuant to Sections 10, 11, or 12 hereof, the Manager shall not be entitled to compensation for further services hereunder, but shall be paid all compensation accruing to the date of termination and, if terminated pursuant to Section 12(b) hereof or not renewed pursuant to Section 10(b) hereof (subject to Section 10(c) hereof), the Termination Fee. Upon any such termination, the Manager shall forthwith:

(a) after deducting any accrued compensation and reimbursement for its expenses to which it is then entitled, pay over to the Company all money collected and held for the account of the Company pursuant to this Agreement;

(b) deliver to the Board a full accounting, including a statement showing all payments collected by it and a statement of all money held by it, covering the period following the date of the last accounting furnished to the Board with respect to the Company; and

(c) deliver to the Board all property and documents of the Company then in the custody of the Manager.

Section 14. Release of Money or Other Property Upon Written Request.

The Manager agrees that any money or other property of the Company held by the Manager shall be held by the Manager as custodian for the Company, and the Manager's records shall be appropriately and clearly marked to reflect the ownership of such money or other property by the Company. Upon the receipt by the Manager of a written request signed by a duly authorized officer of the Company requesting the Manager to release to the Company any money or other property then held by the Manager for the account of the Company under this Agreement, the Manager shall release such money or other property to the Company within a reasonable period of time, but in no event later than 60 days following such request. Upon delivery of such money or other property to the Company, the Manager shall not be liable to the Company, the Board, or the Company's stockholders, partners or members for any acts or omissions by the Company in connection with the money or other property released to the Company in accordance with this Section 14. The Company shall indemnify the Manager and its Affiliates, and any of their members, stockholders, managers, partners, personnel, officers, directors, employees, consultants and any person providing sub-advisory services to the Manager against any and all Losses that arise in connection with the Manager's proper release of such money or other property to the Company in accordance with the terms of this Section 14. Indemnification pursuant to this provision shall be in addition to any right of the Manager and its Affiliates, and any of their members, stockholders, managers, partners, personnel, officers, directors, employees, consultants and any person providing sub-advisory services to the Manager to indemnification under Section 7(d) hereof.

Section 15. Miscellaneous.

(a) *Notices.* All notices, requests and demands to or upon the respective parties hereto to be effective shall be in writing (including by facsimile), and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered against receipt or upon actual receipt of (i) personal delivery, (ii) delivery by reputable overnight courier, (iii) delivery by facsimile transmission with telephonic confirmation or (iv) delivery by registered or certified mail, postage prepaid, return receipt requested, addressed as set forth

below (or to such other address as may be hereafter notified by the respective parties hereto in accordance with this Section 15):

The Company: Ares Commercial Real Estate Corporation
245 Park Avenue, 42nd floor
New York, NY 10167
Attention: Chief Executive Officer
Fax: (310) 388-3041

with a copy to: Ares Commercial Real Estate Corporation
245 Park Avenue, 42nd floor

New York, NY 10167

Attention: General Counsel
Fax: (310) 388-3041
Kirkland & Ellis LLP
2049 Century Park E # 3200
Los Angeles, CA 90067
Attention: Monica J. Shilling
Fax: (310) 552-5900

The Manager: Ares Commercial Real Estate Management LLC
245 Park Avenue, 44th floor
New York, NY 10167

Attention: Chief Executive Officer
Fax: (310) 388-3041
with a copy to: Ares Commercial Real Estate Management LLC
2000 Avenue of the Stars, 12th Floor,
Los Angeles, CA 90067
Attention: General Counsel
Fax: (310) 388-3041

Kirkland & Ellis LLP
2049 Century Park E # 3200
Los Angeles, CA 90067
Attention: Monica J. Shilling
Fax: (310) 552-5900

(b) *Binding Nature of Agreement; Successors and Assigns.* This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and permitted assigns as provided herein.

(c) *Integration.* This Agreement contains the entire agreement and understanding among the parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements, understandings, inducements and conditions, express or implied, oral or written, of any nature whatsoever with respect to the subject matter hereof (including the Prior Agreement). The express terms hereof control and supersede any course of performance and/or usage of the trade inconsistent with any of the terms hereof.

(d) *Amendments.* This Agreement, and any terms hereof, may not be amended, supplemented or modified except in an instrument in writing executed by the parties hereto

(e) *GOVERNING LAW.* THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK. EACH OF THE PARTIES HERETO IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND THE UNITED STATES DISTRICT COURT FOR ANY DISTRICT WITHIN SUCH STATE FOR THE PURPOSE OF ANY ACTION OR JUDGMENT RELATING TO OR ARISING OUT OF THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY AND TO THE LAYING OF VENUE IN SUCH COURT.

(f) *WAIVER OF JURY TRIAL.* EACH PARTY HERETO ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND, THEREFORE, EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY ACTION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT.

(g) *No Waiver; Cumulative Remedies.* No failure to exercise and no delay in exercising, on the part of a party hereto, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law. No waiver of any provision hereunder shall be effective unless it is in writing and is signed by the party granting such waiver.

(h) *Section Headings.* The section and subsection headings in this Agreement are for convenience in reference only and shall not be deemed to alter or affect the interpretation of any provisions hereof.

(i) *Counterparts.* This Agreement may be executed by the parties to this Agreement on any number of separate counterparts (including by facsimile), and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

(j) *Severability.* Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

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IN WITNESS WHEREOF, each of the parties hereto has executed this Management Agreement as of the date first written above.

Ares Commercial Real Estate Corporation

By: /s/ Anton Feingold
Name: Anton Feingold
Title General Counsel, Vice President and Secretary

Ares Commercial Real Estate Management LLC

By: /s/ Anton Feingold
Name: Anton Feingold
Title Authorized Signatory

Exhibit A

Investment Guidelines

1. Our investments will be in our target investments, which will include senior mortgage loans, subordinated debt, preferred equity, mezzanine loans and other commercial real estate (CRE) investment opportunities, including loans and securities, such as commercial mortgage-backed securities, loans to real estate or hospitality companies, debtor-in-possession loans and selected other income producing equity investments, such as triple net lease equity;
2. Pending indication of appropriate investments in our target investments, our Manager may invest our available cash in interest-bearing, short-term investments, including money market accounts or funds, commercial mortgage-backed securities (CMBS) or corporate bonds, that are consistent with maintaining our qualification as a REIT;
3. No investment will be made that would cause us to fail to qualify as a REIT;
4. No investment will be made that would cause us or any of our subsidiaries to be required to be registered as an investment company under the Investment Company Act; and
5. All investments require the approval of the Investment Committee.

These Investment Guidelines may be amended, restated, modified, supplemented or waived by the Board (which must include a majority of the Independent Directors) and the Investment Committee without the approval of the Company's stockholders.

CAPITAL ONE, NATIONAL ASSOCIATION
(as Administrative Agent and a Lender)

**THE PERSONS WHO ARE OR HEREAFTER
BECOME PARTIES, AS LENDERS, TO THIS AGREEMENT**
(as Lenders)

and

ACRC LENDER CO LLC,
a Delaware limited liability company
(Borrower)

CREDIT AND SECURITY AGREEMENT

Dated as of: July 28, 2022

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CREDIT AND SECURITY AGREEMENT

This Credit and Security Agreement (as amended, restated, supplemented and otherwise modified from time to time, this “**Agreement**”) is entered into as of July 28, 2022, by and among **CAPITAL ONE, NATIONAL ASSOCIATION (“CONA”)**, as Administrative Agent and collateral agent for the Lenders (as defined herein) (in such capacity and together with its successors and permitted assigns in such capacity, the “**Administrative Agent**”), **THE PERSONS WHO ARE OR HEREAFTER BECOME PARTIES TO THIS AGREEMENT AS “LENDERS”** (together with their successors and permitted assigns, each a “**Lender**” and collectively, the “**Lenders**”), and **ACRC LENDER CO LLC**, a Delaware limited liability company (“**Borrower**”).

RECITALS

A. Borrower, as assignee of ACRC Lender LLC, a Delaware limited liability company, has entered into the Loan and Security Agreement, dated as of May 26, 2022 (as the same may be amended, restated, supplemented and otherwise modified from time to time in accordance with this Agreement, the “**Underlying Loan Agreement**”), with SHI-III Briarcliff REIT, LLC, a Delaware limited liability company (the “**Underlying Loan Borrower**” pursuant to which Borrower made available to the Underlying Loan Borrower a first mortgage loan (together with any renewals, extensions, or refinancings thereof, the “**Underlying Loan**”) in the principal amount of \$133,000,000, secured by the Underlying Loan Borrower’s interest in the Project (as defined herein).

B. The Underlying Loan is evidenced by the [Promissory Note], dated as of May 26, 2022, in the face amount of \$133,000,000, payable by the Underlying Loan Borrower to the order of Borrower, as assignee of ACRC Lender LLC, a Delaware limited liability company, (as amended, restated, replaced, supplemented and otherwise modified from time to time in accordance with this Agreement, the “**Underlying Loan Note**”).

C. Borrower has requested, and CONA, as initial Lender, has agreed, subject to the terms, covenants and conditions contained herein, to make a loan to Borrower secured by, among other things, the Underlying Loan, all as more particularly set forth herein and the other Credit Documents.

Accordingly, the parties hereto agree as follows:

ARTICLE 1 DEFINITIONS

Section 1.1 Certain Definitions. As used herein, the following terms shall have the following meanings (all terms defined in this **Section 1.1** or in other provisions of this Agreement in the singular will have the same meanings when used in the plural and *vice versa*):

“**Accepted Servicing Practices**” means those mortgage servicing practices of prudent mortgage lending institutions that service mortgage loans of the same type as the Underlying Loan in the jurisdiction in which the Project is located.

“**ACH**” has the meaning assigned in **Section 2.6(c)**.

“**ACH Authorization Form**” means the authorization, in form and substance acceptable to Administrative Agent, executed by Borrower authorizing ACH debits from Borrower’s

account designated therein for the payment of Debt Service and escrow payments required under Section 2.6 hereof.

“Adjusted Expenses” means, with respect to the Project, the actual operating expenses incurred by the Underlying Loan Borrower (or its property manager) in connection with the operation of the Project (excluding any rent and interest paid and depreciation recorded by the Underlying Loan Borrower, and sales, use, occupancy and other taxes) on a stabilized accrual basis for the previous twelve (12) month period, including the following (but without double counting) (as reasonably adjusted by Administrative Agent): (a) recurring expenses as determined under GAAP, (b) real estate taxes, (c) management fees (whether paid or not) in an amount equal to the greater of (i) actual management fees paid in such period and (ii) 5% of effective gross income, and (d) a replacement reserve (whether reserved or not) of not less than \$40,000 per annum, all as adjusted by Lender in Lender's sole discretion for projected capital expenditures, but in all events excluding (i) income taxes or other charges in the nature of income taxes, (ii) any expenses (including legal, accounting and other professional fees, expenses and disbursements) incurred in connection with the making of the Loan or the sale, exchange, transfer, financing, or refinancing of all or any portion of the Property or in connection with the recovery of insurance proceeds or condemnation awards which are applied to prepay the Note, (iii) any expense which would otherwise be considered within Operating Expenses pursuant to the provisions above but is paid directly by any tenant deposits, (iv) leasing commissions, (v) interest and principal due on the Loan and deposits into reserves required under the Loan Documents, (vi) capital expenditures, and (vii) depreciation or amortization of capital expenditures and similar non-cash expense items.

“Adjusted Net Operating Income” or **“ANOI”** means for any period, Underlying Loan Borrower's Adjusted Revenue for such period minus Underlying Loan Borrower's Adjusted Expenses for such period, based upon the financial reports provided by Underlying Loan Borrower and furnished by Borrower to Administrative Agent under Article 5 and approved by Administrative Agent in its reasonable discretion.

“Adjusted Revenue” means, with respect to the Project, all actual revenue derived from the ownership and operation of the Project, calculated on a trailing three (3) month basis and then annualized, excluding (a) nonrecurring income (including proceeds from the sale or refinancing of the Project or any personal property by Underlying Loan Borrower and the proceeds of any casualty insurance or condemnation award) and non-property related income (as determined by Administrative Agent in its sole discretion); (b) income from tenants that (a) are more than sixty (60) or more days past due; or (b) have been thirty (30) or more days delinquent four (4) or more times during the immediately prior twelve (12) month period; and (c) other revenue not to exceed 4.0% of estimated gross income based upon collections for the immediately prior twelve (12) month period under GAAP. If actual occupancy of the Project exceeds 92%, Adjusted Revenue shall be proportionately reduced assuming an occupancy of 92%.

“Administrative Agent” has the meaning assigned in the Preamble to this Agreement.

“Affected Lender” has the meaning assigned in Section 2.12(a).

“Affiliate” shall mean, when used with respect to the Borrower, the Guarantor and any Subsidiary of the Guarantor, and when used with respect to any other specified Person, any other Person directly or indirectly Controlling, Controlled by, or under common Control with, such Person.

“Agent Parties” has the meaning assigned in Section 9.14.

“Agreement” has the meaning assigned in the Recitals.

“**Anti-Terrorism Laws**” has the meaning assigned in Section 4.13(f).

“**Applicable Margin**” means (a) when the Contract Rate is determined by reference to a Benchmark, 2.00% per annum, or (b) when the Contract Rate is determined by reference to the Base Rate, a spread (which may be positive or negative), which spread will approximate the Contract Rate calculated based on the Benchmark immediately prior to the implementation of the Base Rate.

“**Appraisal**” means an appraisal of the Project, contracted by Borrower without expense to Administrative Agent or any Lender, prepared by an independent third-party appraiser certified in the State in which the land included in the Project is located, which appraisal must comply in all respects with the standards for real estate appraisal established pursuant to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, and must otherwise be in form and substance satisfactory to Administrative Agent. Notwithstanding the foregoing, while an Event of Default is in existence, Administrative Agent shall have the right to contract for an appraisal of the Project, at Borrower’s expense.

“**Approved Fund**” means, with respect to Administrative Agent or any Lender, any Person (other than a natural Person) that (a) is or will be engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business and (b) is advised, managed or co-managed by (i) Administrative Agent or such Lender, (ii) any Affiliate of Administrative Agent or such Lender or (iii) any Person (other than an individual) or any Affiliate of any Person (other than an individual) that administers or manages Administrative Agent or such Lender.

“**Assignment and Assumption**” means an assignment and assumption agreement duly executed by the parties thereto in connection with the assignment of all or any portion of the Loan in accordance with Section 10.3, to be in a form acceptable to Administrative Agent.

“**Bank Secrecy Act**” means the Bank Secrecy Act, 31 U.S.C. Section 5311, *et seq.*

“**Bankruptcy Code**” means Title 11 of the United States Code (11 U.S.C. § 101, *et seq.*), as amended.

“**Bankruptcy Party**” has the meaning assigned in Section 7.7.

“**Base Rate**” means, for any day, a floating interest rate per annum equal to the highest of (a) the rate of interest from time to time announced by CONA at its principal office as its prime commercial lending rate (it being understood that such prime commercial rate is a reference rate and does not necessarily represent the lowest or best rate being charged by CONA to any customer and such rate is set by CONA based upon various factors, including CONA’s costs and desired return, general economic conditions and other factors); and (b) the sum of one half of one percent (0.50%) per annum and the Federal Funds Rate (which shall not be less than the Floor). Any change in the Base Rate due to a change in any of the foregoing shall be effective on the effective date of such change in CONA’s prime commercial lending rate, the Federal Funds Rate or SOFR.

“**Benchmark**” means, initially, **Term SOFR**; provided that if a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have occurred with respect to or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement Rate to the extent that such Benchmark Replacement Rate has become effective pursuant to Section 2.10(a).

“Benchmark Replacement Adjustment” means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement Rate, 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 Administrative Agent and Borrower giving due consideration to any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of the Benchmark with the applicable Unadjusted Benchmark Replacement Rate by a Relevant Governmental Body or 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 the Benchmark with the applicable Unadjusted Benchmark Replacement Rate for U.S. dollar-denominated syndicated credit facilities at such time.

“Benchmark Replacement Conforming Changes” means, with respect to any Benchmark Replacement Rate, any technical, administrative or operational changes (including changes to the definition of “Business Day,” timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that Administrative Agent decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement Rate and to permit the administration thereof by Administrative Agent in a manner substantially consistent with market practice (or, if Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if Administrative Agent determines that no market practice for the administration of such Benchmark Replacement Rate exists, in such other manner of administration as Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Credit Documents).

“Benchmark Replacement Date” the earlier to occur of the following events with respect to the then-current Benchmark:

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

(b) in the case of clause (c) of the definition of “Benchmark Transition Event,” the date of the public statement or publication of information referenced therein.

“Benchmark Replacement Rate” the sum of: (a) the alternate benchmark rate that has been selected by Administrative Agent and Borrower giving due consideration to (i) any selection or recommendation of a replacement rate or the mechanism for determining such a rate by a Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a rate of interest as a replacement for the then-current Benchmark for U.S. dollar-denominated syndicated credit facilities plus (b) the Benchmark Replacement Adjustment; provided that, if the Benchmark Replacement Rate as so determined would be less than the Floor, the Benchmark Replacement Rate will be deemed to be the Floor for the purposes of this Agreement.

“Benchmark Transition Event” means the occurrence of one or more of the following events with respect to the then-current Benchmark:

(a) 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 (or such component thereof), permanently or

indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide such Benchmark (or such component thereof);

(b) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), 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 (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide such Benchmark (or such component thereof) permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide such Benchmark (or such component thereof); or

(c) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such Benchmark (or such component thereof) are no longer representative.

“Benchmark Transition Start Date” means (a) in the case of a Benchmark Transition Event, the earlier of (i) the applicable Benchmark Replacement Date and (ii) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the 90th day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than 90 days after such statement or publication, the date of such statement or publication) and (b) in the case of an Early Opt-in Election, the date specified by Administrative Agent or the Required Lenders, as applicable, by notice to Borrower, Administrative Agent (in the case of such notice by the Required Lenders) and the Lenders.

“Benchmark Unavailability Period” means the period (if any) (a) beginning at the time that a Benchmark Replacement Date pursuant to clauses (a) or (b) of that definition has occurred if, at such time, no Benchmark Replacement Rate has replaced the then-current Benchmark for all purposes hereunder and under any Credit Document in accordance with Section 2.10 and (b) ending at the time that a Benchmark Replacement Rate has replaced the then-current Benchmark for all purposes hereunder and under any Credit Document in accordance with Section 2.10.

“Beneficial Ownership Certification” means a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation.

“Beneficial Ownership Regulation” means 31 C.F.R. § 1010.230.

“Borrower” has the meaning assigned in the Preamble to this Agreement. If any Affiliate of Borrower acquires title to the Project, “Borrower” shall include both initial Borrower and such Affiliate.

“Borrower Formation Documents” has the meaning assigned in Section 4.1(b).

“Borrower Party” means Borrower or the Guarantor.

“Breakage Amount” means an amount, as reasonably calculated by any Lender, equal to the amount of any losses, expenses and liabilities (including any loss and lost opportunity cost in

connection with the re-employment of such funds) that such Lender or any of its Affiliates sustains as a result of any payment of the Loan (or any portion thereof) on any day that is not a Payment Date (regardless of the source of such prepayment and whether voluntary, by acceleration or otherwise).

“Business Day” means any day other than a Saturday, Sunday, or a public holiday or the equivalent for banks generally under the applicable federal law and if no applicable federal law exists, then the applicable state law. In addition (a) when a Business Day is to be determined in connection with (i) notices and determinations in respect of the Benchmark, or (ii) any funding, conversion, continuation, accrual period or payment (including prepayments) of the Loan during any period in which the Loan bears interest at the Benchmark, such day must also be a U.S. Government Securities Business Day, and (b) if any Payment Date (or other date on which any payment is required under this Agreement or any other Credit Document) shall be due on a day that is not a U.S. Government Securities Business Day, such payment shall be made or shall be debited on the next succeeding U.S. Government Securities Business Day, however, the accrual period and the amount of payment shall remain unchanged notwithstanding the adjustment to the date of payment.

“Cash Equivalents” means, as to any Person: (a) securities issued or directly and fully and unconditionally guaranteed or insured by the United States or any agency or instrumentality thereof (but only so long as the full faith and credit of the United States is pledged in support thereof) having maturities of not more than twelve months from the date of acquisition; and (b) securities issued by any state of the United States or any political subdivision of any such state or any public instrumentality thereof having maturities of not more than ninety (90) days from the date of acquisition and having one of the two highest ratings from either S&P or Moody’s.

“Change in Law” means the occurrence, after the Closing Date, of any of the following: (a) the adoption of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the interpretation or application thereof by any Governmental Authority, or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith, and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted, issued or implemented.

“Change of Control” means that Sponsor, at any time and for any reason, ceases to directly or indirectly own at least 100% of the equity interests of, and Control, each of Borrower and Guarantor.

“CIP Regulations” has the meaning assigned in Section 9.17.

“Closing Date” means the date the Loan is funded by the Lenders.

“Closing Date Title Policy” means, individually, each of following Loan Policy of Title Insurance issued by Title Company to Borrower on the Closing Date: Loan Policy of Title Insurance bearing Policy No. NY10424.

“Code” means the Internal Revenue Code of 1986, as amended, and as it may be further amended from time to time, any successor statutes thereto, and applicable U.S. Department of Treasury regulations issued pursuant thereto in temporary or final form.

“**Collateral**” has the meaning assigned in Section 3.1(a).

“**Collections Account**” means a Deposit Account maintained in the name of Borrower with the Administrative Agent.

“**Commitment**” means, as to each Lender, the obligation of such Lender to make a portion of the principal amount of the Loan in an aggregate amount up to but not exceeding the amount set opposite the name of such Lender on Schedule 1.1(a) attached hereto under the caption “Commitment” or, in the case of a Person that becomes a Lender pursuant to an assignment permitted under Section 10.3, as specified in the respective Assignment and Assumption pursuant to which such assignment is effected, in either case, as such percentage may be modified by any Assignment and Assumption. Following funding of the Loan, “Commitment” means, with respect to any Lender at any time, the outstanding principal amount of the Loan owing to such Lender at such time, plus any unfunded Commitment of such Lender.

“**Compliance Authority**” has the meaning assigned in Section 4.13(f).

“**Compliance Certificate**” means the compliance certificate in the form of Exhibit A.

“**CONA**” has the meaning assigned in the Preamble to this Agreement.

“**Contract Rate**” means (a) initially, a floating rate of interest equal to Term SOFR plus the Applicable Margin and (b) during any period in which the Benchmark is not Term SOFR, a floating rate of interest equal to the Benchmark Replacement Rate (or, if applicable, the Base Rate) plus, in each case, the Applicable Margin.

“**Control**” means, when used with respect to any specified Person, the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities or other beneficial interests, by contract, by its position with such Person as general partner or managing member, or otherwise; and the terms “Controlling” and “Controlled” have the meanings correlative to the foregoing.

“**Conversion Conditions**” shall mean the conditions precedent to a Conversion of the Project from security for the Underlying Loan to a REO Project, subject to a REO Mortgage for the benefit of Administrative Agent and the Conversion of the Loan into a Mortgage Loan, as follows:

(a) Administrative Agent shall have approved the Conversion in its sole discretion;

(b) Administrative Agent shall have obtained, at Borrower’s sole cost and expense, a current Appraisal of the Project acceptable to Administrative Agent that demonstrates a ratio of the outstanding principal balance of the Loan to the as-is appraised value of the Project of not more than 54% (or, if greater than 54%, Borrower shall have made a prepayment of principal in an amount sufficient to result in a ratio of 54%);

(c) Borrower shall have furnished to Administrative Agent, at Borrower’s sole cost and expense, a current environmental assessment of the Project prepared by a consultant accepted by Administrative Agent and in form and substance satisfactory to Administrative Agent, and Administrative Agent shall have approved the findings of such assessment and the condition of the Project;

(d) Borrower shall have furnished to Administrative Agent, at Borrower's sole cost and expense, a current property condition report for the Project prepared by a consultant accepted by Administrative Agent and in form and substance satisfactory to Administrative Agent, and Administrative Agent shall have approved the findings of such report and the condition of the Project;

(e) Borrower (and, with respect to the guaranty and environmental indemnity, Guarantor) shall have executed and delivered loan documents related to the Project, pursuant to which the Loan will be converted into a traditional senior loan secured by the REO Mortgage, which documents: (i) are substantially similar to the Underlying Loan Documents (provided that the economic terms and other terms personal to Borrower (e.g., transfer provisions) shall match those of the Loan), and shall include a loan agreement, updated guaranty reflecting usual and customary non-recourse carveouts and an environmental indemnity (which updated guaranty and environmental indemnity shall each include, without limitation, the so-called "Gradsy" waivers or the equivalent under New York law, if applicable), and a REO Mortgage and (ii) provide for a maturity date that is 180 days following the date on which Project became a REO Project;

(f) Title Company shall be irrevocably committed to issue to Administrative Agent a title insurance policy insuring the first priority lien of the REO Mortgage securing the Loan (subject only to the Permitted Encumbrances);

(g) Delivery of evidence of insurance for the REO Project reasonably acceptable to Administrative Agent;

(h) Administrative Agent shall have satisfactorily complied with all "know your customer", flood insurance and similar regulatory requirements; and

(i) Borrower shall have paid to Administrative Agent all of its reasonable expenses related to the Conversion (including reasonable legal fees and expenses).

"Convert", **"Conversion"** or **"Converted"** means (a) with respect to the Project, the conversion of the Project securing the Underlying Loan into REO Project, whether by means of foreclosure, deed-in-lieu of foreclosure or otherwise; and (b) with respect to the Loan, the conversion of the Indebtedness to a Mortgage Loan.

"Covered Entity" has the meaning assigned in Section 4.13(f).

"Credit Documents" means the following, collectively, (a) this Agreement, (b) the Notes, (c) the Mortgage Assignment, (d) the power of attorney executed and delivered by Borrower to Administrative Agent, (e) the Guaranty, (f) each Deposit Account Control Agreement; (g) the Servicer Acknowledgment; (h) all other documents evidencing, securing, governing or otherwise pertaining to the Loan, and (j) all amendments, modifications, renewals, substitutions and replacements of any of the foregoing.

"Debt" means, for any Person, without duplication: (a) all indebtedness of such Person for borrowed money, for amounts drawn under a letter of credit, or for the deferred purchase price of property for which such Person or any of its assets is liable, (b) all unfunded amounts under a loan agreement, letter of credit or other credit facility for which such Person or any of its assets would be liable or subject, if such amounts were advanced under the credit facility, (c) all amounts required to be paid by such Person as a guaranteed payment to partners or a preferred or special dividend, including any mandatory redemption of shares or interests (but excluding in all circumstances regular distributions of cash flow from operations), (d) all indebtedness of the types referred to in clauses (a), (b), (c), (e), and (f) of this definition guaranteed by such Person,

directly or indirectly, (e) all obligations under leases that constitute capital leases for which such Person or any of its assets is liable or subject and (f) all obligations of such Person under interest rate swaps, caps, floors, collars and other interest hedge agreements, in each case whether such Person or any of its assets is liable or subject contingently or otherwise, as obligor, guarantor or otherwise, or in respect of which obligations such Person otherwise assures a creditor against loss.

“Debt Service” means, as of any Determination Date or other specified testing date, for the twelve (12) month period immediately preceding (or, if specified in the applicable provision set forth herein, following) such date, the aggregate interest, principal (if applicable) and other payments due under the Loan and under any other Permitted Debt of Borrower expressly approved by Administrative Agent (but not including payments applied to escrows or reserves required by Administrative Agent or the Lenders), plus the principal payments that would be due and payable during such period for a hypothetical, amortizing loan in the principal amount of the Loan outstanding as of the applicable calculation date, calculated using a thirty (30) year amortization schedule with an assumed interest rate equal to 5.0% per annum. If Debt Service for a period of twelve (12) months (or other calculation period) is not available, Administrative Agent shall annualize the Debt Service for such period of time as is available.

“Debt Service Coverage Ratio” means the ratio of (a) the sum of (i) Adjusted Net Operating Income calculated as of the specified Determination Date (or other specified testing date), plus (ii) any funds then held in the Debt Service Reserve to (b) Debt Service calculated as of such date.

“Debt Service Reserve” has the meaning assigned in Section 2.5(a).

“Default Rate” means the lesser of (a) the maximum rate of interest allowed by applicable law and (b) 5% per annum in excess of the Contract Rate.

“Defaulting Lender” means a Lender that (a) has given written notice to Borrower, Administrative Agent, or any other Lender that it will fail to fund any amounts to be funded by such Lender after the Closing Date under this Agreement or otherwise fails to fund such amount under this Agreement; (b) is in default for failing to make payments under one or more syndicated credit facilities (unless subject to a good faith dispute); (c) has declared (or the holding company of such Lender has declared) bankruptcy or is otherwise involved in a liquidation proceeding and Administrative Agent has determined such Lender is reasonably likely to become a Defaulting Lender; or (d) is the subject of a receivership.

“Deposit Account” means a “deposit account” (as defined in Article 9 of the UCC), an investment account or other account in which funds are held or invested for credit to or for the benefit of Borrower.

“Deposit Account Control Agreement” means an agreement, in form and substance satisfactory to Administrative Agent, among the applicable Deposit Account holder, Administrative Agent and the depository institution at which the Deposit Account described therein is established, sufficient to grant Administrative Agent “control” (for purposes of Article 9 of the UCC) of the Deposit Account described therein.

“Determination Date” means September 30, 2022, and the last day of each calendar quarter thereafter.

“Division/Series Transaction” means with respect to Borrower, a transaction that (a) divides Borrower into two or more Persons or (b) creates, or reorganizes into, one or more series, in each case, as contemplated under the laws of the State of Delaware.

“**Dollars**” and the sign “\$” each mean the lawful money of the United States of America.

“**Draw Request**” means a disbursement request in the form attached as Exhibit C hereto.

“**Early Opt-in Election**” means the occurrence of:

(a) (i) a determination by Administrative Agent or (ii) a notification by the Required Lenders to Administrative Agent (with a copy to Borrower) that the Required Lenders have determined that U.S. dollar-denominated syndicated or bilateral credit facilities being executed at such time, or that include language similar to that contained in Section 2.10 are being executed or amended, as applicable, to incorporate or adopt a new benchmark interest rate to replace the then-current Benchmark; or

(b) (i) the election by Administrative Agent or (ii) the election by the Required Lenders to declare that an Early Opt-in Election has occurred and the provision, as applicable, by Administrative Agent of written notice of such election to Borrower and the Lenders or by the Required Lenders of written notice of such election to Administrative Agent.

“**Electronic Copy**” has the meaning assigned in Section 10.31.

“**Electronic Signature**” means (a) the signing party’s manual signature on a signature page, converted by the signing party (or its agent) to facsimile or digital form (such as a .pdf file) and received from the customary email address or customary facsimile number of the signing party (or its counsel or representative), or other mutually agreed-upon authenticated source; or (b) the signing party’s digital signature executed using a mutually agreed-upon digital signature service provider and digital signature process.

“**Environmental Laws**” means any federal, state or local law (whether imposed by statute, ordinance, rule, regulation, administrative or judicial order, or common law), now or hereafter enacted, governing health, safety, industrial hygiene, the environment or natural resources, or Hazardous Materials, including such laws (a) governing or regulating the use, generation, storage, removal, recovery, treatment, handling, transport, disposal, control, release, discharge of, or exposure to, Hazardous Materials, (b) governing or regulating the transfer of property upon a negative declaration or other approval of a Governmental Authority of the environmental condition of such property, or (c) requiring notification or disclosure of releases of Hazardous Materials or other environmental conditions whether or not in connection with a transfer of title to or interest in property.

“**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.

“**Erroneous Payment**” has the meaning assigned in Section 2.6(g).

“**Event of Default**” has the meaning assigned in Article 7.

“**Excluded Taxes**” has the meaning assigned in Section 2.14(a).

“**FATCA**” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version of FATCA made after the Closing Date) and any current or future regulations (whether final, temporary or proposed) or official interpretations thereof.

“Federal Flood Insurance” means, for any Improvements (including any personal property) located in a Special Flood Hazard Area, federal or private insurance reasonably satisfactory to Administrative Agent, in either case, that (a) meets the requirements of FEMA and other applicable federal agencies, (b) includes a deductible not to exceed \$50,000 and (c) has a coverage amount equal to the lesser of (i) the insurable value of the Improvements and any personal property located at [a/the] Project as determined by Administrative Agent or (ii) the maximum policy limits set under the National Flood Insurance Program.

“FEMA” means the Federal Emergency Management Agency, a component of the U.S. Department of Homeland Security that administers the National Flood Insurance Program.

“Financial Institution” means a United States Financial Institution as defined in 31 U.S.C. § 5312, as amended from time to time.

“First Extended Maturity Date” means July 28, 2026.

“First Extension Option” has the meaning assigned in Section 2.3(c).

“Floor” shall be the floor (or however so described) in the Underlying Loan.¹

“GAAP” means generally accepted accounting principles of the Accounting Principles Board of the American Institute of Certified Public Accountants and the Financial Accounting Standards Board that are applicable on the date indicated and consistently applied.

“Government Lists” means (a) the Specially Designated Nationals and Blocked Persons Lists maintained by OFAC, (b) any other list of terrorists, terrorist organizations or narcotics traffickers maintained pursuant to any of the Rules and Regulations of OFAC that Administrative Agent notified Borrower is included in “Government Lists”, or (c) any similar lists maintained by the United States Department of State, the United States Department of Commerce or any other Governmental Authority or pursuant to any Executive Order of the President of the United States of America that Administrative Agent notified Borrower is included in “Government Lists”.

“Governmental Approvals” means, collectively, all consents, licenses and permits and all other authorizations or approvals required from any Governmental Authority (a) with respect to Borrower, to operate its business as contemplated by this Agreement and (b) with respect to Underlying Loan Borrower, to operate the Project.

“Governmental Authority” means any federal, state, county or municipal government or political subdivision thereof, any governmental or quasi-governmental agency, authority, board, bureau, commission, department, instrumentality or public body (including the State Regulator), or any court, administrative tribunal, or public body.

“Guarantor” means Ares Commercial Real Estate Corporation.

“Guarantor Compliance Certificate” means the compliance certificate in the form of Exhibit B.

“Guaranty” means the Guaranty of Recourse Obligations, dated as of the Closing Date, executed by Guarantor in favor of Administrative Agent for the benefit of the Lenders, as amended, ratified, supplemented or otherwise modified from time to time.

¹ Equal SOFR at Closing Date

“Hazardous Materials” means (a) petroleum or chemical products, whether in liquid, solid, or gaseous form, or any fraction or by-product thereof, (b) asbestos or asbestos-containing materials, (c) polychlorinated biphenyls (pcbs), (d) radon gas, (e) underground storage tanks, (f) any explosive or radioactive substances, (g) lead or lead-based paint, (h) any other substance, material, waste or mixture which is or shall be listed, defined, or otherwise determined by any Governmental Authority to be hazardous, toxic, dangerous or otherwise regulated, controlled or giving rise to liability under any Environmental Laws, (i) any excessive moisture, mildews, mold or other fungi in quantities or concentrations that could reasonably be expected to pose a risk to human health or the environment, or negatively impact the value of the Project or (j) any elements, material, compounds, mixtures, chemicals, wastes, pollutants, contaminants or substances known to cause cancer or reproductive toxicity, that, because of its quantity, concentration or physical or chemical characteristics, exposure is limited or regulated by any Governmental Authority having jurisdiction over human health and safety, natural resources or the environment, or which poses a significant present or potential hazard to human health and safety, or to the environment, if released into the workplace or the environment.

“Healthcare Investigations” means (a) any inquiries, investigations, probes, audits or proceedings by any Governmental Authorities concerning the compliance of the business affairs, practices, licensing or reimbursement entitlements of an Underlying Loan Borrower or operator of the Project with applicable Healthcare Laws (including inquiries involving the Comprehensive Error Rate Testing and any inquiries, investigations, probes, audits or proceedings initiated by a Fiscal Intermediary/Medicare Administrative Contractor, Medicaid Integrity Contractor, Recovery Audit Contractor, Program Safeguard Contractor, Zone Program Integrity Contractor, State Attorney General, Office of Inspector General, U.S. Department of Health and Human Services, Department of Justice or similar governmental agencies or contractors for such agencies), (b) any whistleblower suits, or suits brought by any third party or any patient, employee or resident pursuant to federal or state “false claims acts” and Medicaid, Medicare or state fraud or abuse laws, (c) any notice of violation of Healthcare Laws at a level that under Healthcare Laws requires the immediate or accelerated filing of a plan of correction with a Governmental Authority and (d) any notice that the Project is to be added or has been added to the CMS Special Focus Facility list.

“Healthcare Laws” means (a) all applicable state and federal statutes, codes, ordinances, orders, rules, and regulations (i) relating to health information as defined at 45 C.F.R. 160.103 (“**Protected Health Information**”), including HIPAA, as amended by HITECH and the respective rules and regulations promulgated thereunder, and all other applicable state and federal laws regarding the privacy and security of Protected Health Information, (ii) accreditation standards of the State Regulator and (iii) governing the establishment, construction, ownership, operation, licensure, use or occupancy of the Project or any part thereof as an assisted living and memory care facility, including all conditions of participation pursuant to Medicare or Medicaid certification (if applicable); (b) 42 U.S.C. Section 1320a-7(b) (Criminal Penalties for Acts Involving Federal Health Care Programs), commonly referred to as the “Federal Anti-Kickback Statute”; (c) 42 U.S.C. Section 1395nn (Limitation on Certain Physician Referrals), commonly referred to as the “Stark Statute”; and (d) 31 U.S.C. Section 3729-33, and commonly referred to as the “False Claims Act”.

“Hedge Agreement” means, collectively, any and all interest rate swap agreements, interest rate cap agreements, interest rate collar agreements or other similar agreements designed to provide protection against fluctuations in interest or currency exchange rates.

“HIPAA” means the Health Insurance Portability and Accountability Act of 1996, as amended.

“HIPAA Compliance Date” has the meaning assigned in [Section 6.17\(a\)](#).

“HIPAA Compliance Plan” has the meaning assigned in Section 6.17(a).

“HIPAA Compliant” has the meaning assigned in Section 6.17(a).

“Improvements” means the buildings and other improvements that are part of the Project.

“Indebtedness” means all payment obligations of Borrower or any other Borrower Party to Administrative Agent or to any Lender under the Loan or any of the Credit Documents, including any and all interest, whether or not accruing after the filing of any petition in bankruptcy or the commencement of any insolvency, reorganization or similar proceeding, and whether or not a claim for post-filing or post-petition interest is allowed in any such proceeding.

“Indemnified Matters” has the meaning assigned in Section 10.5(a).

“Indemnified Person” has the meaning assigned in Section 10.5(a).

“Insurance Policies” means, with respect to the Project, (a) a standard extended coverage and all-risk insurance policy insuring against damage by fire and other hazards for the full insurable value of the Project on a replacement cost claim recovery basis and (and Federal Flood Insurance, if the related Improvements are located in a federally-designated special flood area), (b) commercial general liability insurance with respect to the Project for both injury to or death of a person and for property damage per occurrence, and (c) umbrella liability coverage in the amount and to the extent reasonably required by Administrative Agent (taking into account the commercially reasonable availability of such coverages in certain states).

“Initial Maturity Date” means July 28, 2025.

“Investment” means, with respect to any Person, any investment in another Person, whether by acquisition, lease, by making any loan or advance, by becoming obligated with respect to guaranty or similar contingent liability in respect of obligations of such other Person.

“Lender” has the meaning assigned in the introductory paragraph hereof.

“Lender Transferee” has the meaning assigned in Section 10.3(b).

“Liabilities” means all claims, actions, suits, judgments, damages, losses, liability, obligations, responsibilities, fines, penalties, sanctions, costs, fees, taxes, commissions, charges, disbursements and expenses, in each case of any kind or nature (including interest accrued thereon or as a result thereof and fees, charges and disbursements of financial, legal and other advisors and consultants), whether joint or several, whether or not indirect, contingent, consequential, actual, punitive, treble or otherwise.

“Lien” means any interest, or claim thereof, in the Collateral securing an obligation owed to, or a claim by, any Person other than the owner of the Collateral, whether such interest is based on common law, statute or contract, including the lien or security interest arising from a deed of trust, mortgage, assignment, encumbrance, pledge, security agreement, conditional sale or trust receipt or a lease, consignment or bailment for security purposes. The term “Lien” shall include reservations, exceptions, encroachments, easements, rights of way, covenants, conditions, restrictions, leases and other title exceptions and encumbrances affecting the Project.

“Loan” means the loan, in the principal amount of \$105,000,000, made available to Borrower by Lenders pursuant to the terms and conditions of this Agreement.

“Material Action” means (a) to file any insolvency or reorganization case or proceeding, (b) to institute proceedings to have Borrower or any other Borrower Party be adjudicated bankrupt or insolvent, to institute proceedings under any applicable insolvency law, (c) to seek any relief under any law relating to relief from debts or the protection of debtors, (d) to consent to the filing or institution of bankruptcy or insolvency proceedings against Borrower or any other Borrower Party, (e) to file a petition seeking, or a consent to, reorganization or relief with respect to Borrower or any other Borrower Party under any applicable federal or state law relating to bankruptcy or insolvency, (f) to seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official of or for Borrower or any other Borrower Party or a substantial part of its respective property, (g) to make any assignment for the benefit of creditors of Borrower or any other Borrower Party, (h) the admission in writing by Borrower or any other Borrower Party of such Person’s inability to pay its debts generally as they become due or (i) to take action in furtherance of any of the foregoing.

“Material Adverse Effect” means, as determined by Administrative Agent in its reasonable discretion, (a) with respect to Borrower and Guarantor, taken as a whole, a material adverse effect on (i) the condition (financial or otherwise), operations, business, assets, liabilities or prospects of a Borrower Party, (ii) the ability of a Borrower Party to perform any material obligation required of them under the Credit Documents, (iii) the ability of Borrower or any operator to operate all or a material portion of a REO Project or (iv) the rights and remedies of Administrative Agent and the Lenders under the Credit Documents Borrower to perform any material obligation under the Underlying Loan Documents.

“Material Lease” means a commercial lease for more than 2,000 square feet.

“Material Remedy” means any of the following: (a) any judicial or non-judicial foreclosure proceeding, including the exercise of any power of sale; (b) any foreclosure or strict foreclosure proceeding under the UCC; (c) the taking of possession of the Project; (d) the acquisition of title to the Project or of the direct or indirect equity interests in Underlying Loan Borrower by deed, assignment or transfer in lieu of foreclosure; and (e) the appointment (or the filing of any request for the appointment of) a receiver.

“Maturity Date” means the earlier of (a) the Scheduled Maturity Date or (b) the date on which the entire Loan is required to be paid in full, by acceleration or otherwise, under this Agreement or any of the other Credit Documents.

“Medicaid” means Title XIX of the Social Security Act, which was enacted in 1965 to provide a cooperative federal-state program for low income and medically indigent persons, which is partially funded by the federal government and administered by the states.

“Medicare” means Title XVIII of the Social Security Act, which was enacted in 1965 to provide a federally funded and administered health program for the aged and certain disabled persons.

“Minimum Debt Service Coverage Ratio” means, as of the applicable Determination Date, the Debt Service Coverage Ratio, based upon Adjusted Net Operating Income for the twelve (12) calendar month period ending on such Determination Date, equal to or in excess of following:

<u>Determination Date</u>	<u>Minimum Debt Service Coverage Ratio</u>
September 30, 2024	1.40 to 1.00
December 31, 2024	1.47 to 1.00
March 31, 2025	1.55 to 1.00
June 30, 2025 through June 30, 2026	1.60 to 1.00
September 30, 2026	1.66 to 1.00

“**Minimum Project Yield**” means, as of the applicable Determination Date, the Project Yield, based upon Adjusted Net Operating Income for the twelve (12) calendar month period ending on such Determination Date, equal to or in excess of following:

<u>Determination Date</u>	<u>Minimum Project Yield</u>
September 30, 2024	9.00%
December 31, 2024	9.50%
March 31, 2025	10.00%
June 30, 2025 through June 30, 2026	10.30%
September 30, 2026	10.70%

“**Mortgage Assignment**” means, individually and collectively, the assignments of the Underlying Loan Mortgages executed by Borrower, in blank.

“**Mortgage Loan**” means a traditional senior mortgage loan secured by a REO Mortgage on the REO Project.

“**National Flood Insurance Program**” means the program created by the U.S. Congress pursuant to the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as revised by the National Flood Insurance Reform Act of 1994, and as the same may be further amended, modified or supplemented, and including the regulations issued thereunder, that, among other things, mandates the purchase of flood insurance to cover real property improvements and contents located in Special Flood Hazard Areas in participating communities and may provide protection to property owners through a federal insurance program.

“**Non-U.S. Lender Party**” means each of Administrative Agent, the Lenders and each participant, in each case that is not a U.S. Person.

“**Note**” means the Promissory Note, dated as of the Closing Date, in the principal amount of \$105,000,000 made by Borrower and payable to the order of CONA, as initial Lender, and any promissory note delivered in substitution or exchange therefor, in each case as may be amended, restated, replaced, supplemented or otherwise modified in accordance with the terms hereof.

“**Obligations**” means the Indebtedness and any and all existing and future debts, liabilities and obligations of every kind or nature at any time owing by Borrower or any other Borrower Party to Administrative Agent and Lenders or any Affiliate of a Lender, whether under this Agreement or any other Credit Document, whether joint or several, related or unrelated,

primary or secondary, matured or contingent, due or to become due (including debts, liabilities and obligations obtained by assignment), and whether principal, interest, fees, indemnification obligations hereunder or expenses (specifically including interest accruing after the commencement of any bankruptcy, insolvency or similar proceeding with respect to Borrower or any other Borrower Party, whether or not a claim for such post-commencement interest is allowed), including any extensions, modifications, substitutions, increases and renewals of the Loan; the payment of all amounts advanced by Administrative Agent, any Lender, any Affiliate of a Lender to preserve, protect and enforce rights hereunder and in the Collateral; and all expenses incurred by Administrative Agent, any Lender or any Affiliate of a Lender.

“**OFAC**” means the Office of Foreign Assets Control, Department of the Treasury.

“**Origination Fee**” has the meaning assigned in Section 2.1(b).

“**Other Taxes**” has the meaning assigned in Section 2.14(c).

“**Participant**” has the meaning assigned in subsection (i) of Section 10.3(d).

“**Participant Register**” has the meaning assigned in subsection (iii) of Section 10.3(d).

“**Patriot Act**” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (Public Law 107-56), as the same may be amended from time to time, and corresponding provisions of future laws related thereto.

“**Payment Date**” means the third Business Day following each payment date for the Underlying Loan.

“**Payment Notice**” has the meaning assigned in Section 2.6(g).

“**Payment Recipient**” has the meaning assigned in Section 2.6(g).

“**Permit**” means, with respect to any Person, any permit, approval, authorization, license, registration, certificate (including certificates of occupancy), concession, grant, franchise, variance or permission from, and any other contractual obligations with, any Governmental Authority, in each case whether or not having the force of law and applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“**Permitted Debt**” means Indebtedness to Administrative Agent and Lenders in connection with the Loan or otherwise pursuant to the Credit Documents.

“**Permitted Encumbrances**” means (a) Liens for real property taxes, water charges, sewer rates and assessments not yet delinquent, (b) Liens arising by operation of law such as materialmen, mechanics, carriers, workmen, repairmen and similar Liens, arising in the ordinary course of business which are discharged by payment, bonding or otherwise or which are being contested in good faith by the Underlying Loan Borrower in accordance with the Underlying Loan Documents, (c) covenants, conditions and restrictions, rights of way, easements and other matters of public record with respect to the Project that are approved by Borrower in accordance with Accepted Servicing Practices, (d) Liens and encumbrances set forth in the applicable Closing Date Title Policy, (e) rights of existing or future tenants as tenants only, pursuant to leases, and (f) without duplication, all “Permitted Exceptions” (as such term is defined in the Underlying Loan Agreement).

“Permitted Investments” means (a) the Underlying Loan; (b) Cash Equivalents; and (c) any Hedge Agreement made pursuant to Section 2.9.

“Permitted Liens” means (a) Liens in favor of Administrative Agent (for the benefit of itself and the Lenders) securing the Obligations, and (b) such other matters as Administrative Agent may from time to time consent in writing.

“Permitted Transfer” has the meaning assigned in Section 6.1(c).

“Person” means any individual, corporation, partnership, joint venture, association, joint stock company, trust, trustee, estate, limited liability company, unincorporated organization, real estate investment trust, government or any agency or political subdivision thereof, or any other form of entity.

“Platform” means any electronic system, including Intralinks®, ClearPar® and any other internet or extranet-based site, whether such electronic system is owned, operated or hosted by Administrative Agent, any of their respective Related Persons or any other Person, providing for access to data protected by passcodes or other security system.

“Post-Closing Obligations” has the meaning assigned in Section 10.38.

“Potential Default” means the occurrence of any event or condition which, with the giving of notice, the passage of time, or both, would constitute an Event of Default.

“Prepayment Fee” has the meaning assigned in the Underlying Loan Agreement.

“Press Release” has the meaning assigned in Section 10.23.

“Principal Payment” means, with respect to the Underlying Loan, any payment or prepayment of principal received in respect thereof (including (a) 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 related Underlying Loan Borrower or the Project, (b) prepayments that result from the application of Underlying Loan Cash Collateral to the outstanding principal balance of the Underlying Loan and (c) prepayments that result from the exercise of remedies by the Borrower).

“Primary License” means, with respect to the Project or Person operating the Project, as the case may be, the certificate of need, permit or license to operate as an assisted living or memory care facility, as the case may be, and each Medicaid/Medicare/TRICARE provider agreement.

“Prohibited Assignee” shall mean any of the Persons listed on Exhibit D attached to this Agreement.

“Prohibited Person” means any Person:

(a) listed in the Annex to, or otherwise subject to the provisions of, the Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (the **“Executive Order”**);

(b) that is owned or Controlled by, or acting for or on behalf of, any person or entity that is listed to the Annex to, or is otherwise subject to the provisions of, the Executive Order;

(c) with whom any Lender is prohibited from dealing or otherwise engaging in any transaction by any terrorism or money laundering law, including the Executive Order;

(d) who is known to Borrower to commit, threaten or conspire to commit or support “terrorism”, as defined in the Executive Order;

(e) that is named as a “specially designated national and blocked person” on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website, <http://www.treas.gov/ofac/t11sdn.pdf> or at any replacement website or other replacement official publication of such list;

(f) that is named on the consolidated list of asset freeze targets by the United Nations, the European Union and the United Kingdom (maintained by the Asset Freezing Unit of the United Kingdom Treasury: <http://www.hm-treasury.gov.uk/financialsanctions>);

(g) that is named on the most current lists pertaining to EU-Regulations Nos. 2580/2001 or 881/2002;

(h) that violates any of the criminal laws of the United States of America or of any of the several states, or commits any act that would be a criminal violation if committed within the jurisdiction of the United States of America or any of the several states, relating to terrorism or the laundering of monetary instruments, including any offense under (i) the criminal laws against terrorism; (ii) the criminal laws against money laundering, (iii) the Bank Secrecy Act, as amended, (iv) the Money Laundering Control Act of 1986, as amended, (v) the Trading with the Enemy Act, as amended, (vi) the International Emergency Economic Powers Act or (vii) the Patriot Act; or

(i) who is known to Borrower to be an Affiliate of or affiliated with a Person listed above.

“**Prohibited Transfer**” has the meaning assigned in Section 6.1(a).

“**Project**” means the senior housing project more particularly described on Schedule 1.1(c) hereto.

“**Project Yield**” means the ratio (expressed as a percentage), as of any particular date, of (a) Adjusted Net Operating Income calculated as of the specified Determination Date (or other specified testing date), to (b) the outstanding principal balance of the Loan as of such date.

“**Proportionate Share**” means, with respect to each Lender, the percentage set forth opposite such Lender’s name on Schedule 1.1(a) attached hereto under the caption “Lender’s Proportionate Share” or in the Assignment and Assumption (in accordance with the terms of this Agreement) pursuant to which such Lender became a party hereto, in any case, as such percentage may be modified in the most recent Assignment and Assumption (in accordance with the terms of this Agreement) to which such Lender is a party. The aggregate Proportionate Shares of all Lenders shall equal 100%.

“**Records**” shall mean all documents, records, agreements, instruments, information and reports and data generated by other media for the storage of information maintained by Borrower or any other Person or entity with respect to the Underlying Loan other than information that is proprietary to Borrower or privileged. Records shall include, as applicable, subject to the above, the Underlying Loan Note, the Underlying Loan Mortgage, the Underlying Loan Files, the credit

files related to the Underlying Loan and any other instruments necessary to document or service the Underlying Loan.

“**Register**” has the meaning specified in Section 2.11(b).

“**Related Persons**” means, with respect to any Person, each of such Person’s Affiliates, officers, directors, employees, agents, trustees, representatives, attorneys, accountants, and each insurance, environmental, legal, financial and other advisor and other consultants and agents of or to such Person or any of its Affiliates, together with, if such Person is the Administrative Agent, each other Person or individual designated, nominated or otherwise mandated by or helping the Administrative Agent pursuant to and in accordance with Section 10.1 or any comparable provision of any Credit Document

“**Relevant Governmental Body**” means the Board of Governors of Federal Reserve System or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of Federal Reserve System or the Federal Reserve Bank of New York or any successor thereto.

“**Remargin Amount**” means an amount that, if applied to the outstanding principal balance of the Loan as of the applicable Determination Date, would be sufficient to result, on a pro forma basis, in a Project Yield equal to the Minimum Project Yield.

“**REO Project**” means the Project following its Conversion to direct ownership by Borrower (or, if permitted by Administrative Agent, an Affiliate of Borrower).

“**REO Mortgage**” means a mortgage, deed of trust or deed to secure debt (as the case may be), in form and substance satisfactory to Administrative Agent, made by Borrower (or, if permitted by Administrative Agent, an Affiliate of Borrower) in favor of Administrative Agent and encumbering the REO Project.

“**Reportable Compliance Event**” has the meaning assigned in Section 4.13(f).

“**Required Lenders**” means, at any time, Lenders whose aggregate Pro Rata Shares at such time are in excess of 50%; provided, however, that (a) the Commitment of, and the portion of Obligations held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders; and (b) Required Lenders must at all times include two Lenders that are not Affiliates, unless at any time (i) there is only one Lender, (ii) all Lenders are Affiliates or (iii) there are only two Lenders and one of the Lenders is a Defaulting Lender..

“**Requirements of Law**” means, with respect to the Project or Person, the common law and all federal, state, local, foreign, multinational or international laws, statutes, codes, treaties, standards, rules and regulations, guidelines, ordinances, orders, judgments, writs, injunctions, decrees (including administrative or judicial precedents or authorities) and the interpretation or administration thereof by, and other determinations, directives, requirements or requests of, any Governmental Authority, in each case whether or not having the force of law, that are applicable to or binding upon the Project or Person or any of its property or to which such Person or any of its property is subject, as the same may be amended from time to time.

“**Residential Units**” means, collectively, (a) each skilled nursing bed, Alzheimer’s unit or assisted living unit authorized under the Primary License and (b) each independent living unit located at the Project.

“**Resolution Plan**” has the meaning assigned in Section 6.16(g).

“Restricted Party” means (i) Borrower, (ii) any other Borrower Party, (iii) any Affiliated Manager, (iv) any Guarantor, (v) any shareholder, partner, member or non-member manager of Borrower, and (vi) any Person owning a direct or indirect legal or beneficial interest in any Person described in items (i) through (v) above.

“Restricted Payment” means, as to any Person: (a) any dividend or other distribution by such Person (whether in cash, securities or other property) with respect to any equity interests of such Person; (b) any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such equity interest; (c) any payment of principal or interest or any purchase, redemption, retirement, acquisition or defeasance with respect to any Debt of such Person which is subordinated to the payment of the Obligations; (d) the acquisition for value by such Person of any equity interests issued by such Person or any other Person that Controls such Person; (e) with respect to any REO Project, any management, servicing or other similar fees payable to any Affiliate of Borrower; and (f) any other transaction that has a similar effect as clauses (a) through (e) of this definition.

“Sanctioned Country” has the meaning assigned in Section 4.13(f).

“Sanctioned Person” has the meaning assigned in Section 4.13(f).

“Scheduled Maturity Date” means, as applicable, the Initial Maturity Date, or, if the Initial Maturity Date is properly extended in accordance with Section 2.3(c), the First Extended Maturity Date, or if the First Extended Maturity Date is properly extended in accordance with Section 2.3(c), the Second Extended Maturity Date.

“Second Extended Maturity Date” means July 28, 2027.

“Second Extension Option” has the meaning assigned in Section 2.3(c).

“Secured Parties” means, individually or collectively, as the case may be, the Lenders, Administrative Agent and their respective Affiliates and each such Person’s Related Persons.

“Servicer” means ACRC Capital LLC, which has been engaged by Borrower to service the Underlying Loan in accordance with the Servicing Agreement.

“Servicer Default” means (a) the failure of Servicer to (i) make any payment, transfer or deposit required of Servicer to be made under the Servicing Agreement or the Servicer Acknowledgment with respect to the Underlying Loan and the continuance of such failure for five (5) Business Days, or (ii) perform any of its other obligations in accordance with the terms and provisions of the Servicer Acknowledgment, that continues unremedied for a period of thirty (30) days after the first to occur of (A) the date on which written notice of such failure requiring the same to be remedied shall have been given to the Servicer by Administrative Agent or the Borrower and (B) the date on which the Servicer becomes aware thereof; or (b) a petition under the Bankruptcy Code or any similar Requirement of Law shall be filed by or against Servicer (and in the case of an involuntary petition in bankruptcy, such petition is not discharged within sixty (60) days of its filing), or a custodian, receiver or trustee for Servicer is appointed, or Servicer makes an assignment for the benefit of its creditors, or is adjudged insolvent by any state or federal court of competent jurisdiction, or Servicer admits its insolvency or inability to pay its debts as they become due or an attachment or execution is levied against Servicer.

“Servicer Acknowledgment” mean the letter agreement, dated as of the Closing Date, by and among Borrower, CONA and the Servicer, as initial Servicer.

“Servicing Agreement” means, as of the Closing Date, the Servicing Agreement, dated as of January 1, 2015, among the Servicer, Ares Commercial Real Estate Servicer LLC, as special servicer, and Borrower.

“Servicing Records” shall have the meaning provided in Section 6.18(c) hereof.

“Servicing Rights” shall mean contractual, possessory or other rights of Borrower to administer, service or subservice the Underlying Loan (or to possess any Servicing Records relating thereto), including: (a) the rights to service or subservice the Underlying Loan; (b) the right to receive compensation for such servicing or subservicing, including the right to receive and retain the related servicing fee or subservicing fee and all other fees with respect to the Underlying Loan; and (c) all rights, powers and privileges incidental to the foregoing, together with all Servicing Records relating thereto.

“Significant Underlying Loan Modification” means (a) during any period in which an Underlying Loan Event of Default is in existence, any forbearance, modification, amendment or amendment and restatement of the Underlying Loan Documents and (b) during any period in which no Underlying Loan Event of Default is in existence, any forbearance, modification, amendment or amendment and restatement of the Underlying Loan that:

(a) (i) reduces the principal amount of the Underlying Loan, other than with respect to a dollar-for-dollar principal payment permitted by the terms of this Agreement, or (ii) reduces the interest rate payable by the Underlying Loan Borrower, provides for interest that is paid-in-kind or otherwise reduces or delays the debt service payable by the Underlying Loan Borrower;

(b) increases the principal amount of the Underlying Loan (other than increases that are derived from protective advances);

(c) except as expressly permitted by the terms of the Underlying Loan Documents as in effect on the Closing Date, extends or modifies the maturity date specified in the Underlying Loan Documents;

(d) changes the frequency of scheduled payments of principal and interest in respect of the Underlying Loan, modifies the amortization schedule of the Underlying Loan or modifies the prepayment provisions with respect to the Underlying Loan;

(e) subordinates the lien priority of any Underlying Loan Mortgage (or any other agreement securing the Underlying Loan) or the payment priority of the Underlying Loan;

(f) except as expressly permitted by the terms of the Underlying Loan Documents as in effect on the Closing Date, (i) releases any collateral for the Underlying Loan, or (ii) releases, or reduces the obligations of, any guarantor with respect to any guaranty or other obligation under the Underlying Loan;

(g) waives, amends or modifies any cash management or reserve account requirements of the Underlying Loan other than changes required under the related Underlying Loan Documents;

(h) waives any due-on-sale or due-on-encumbrance provisions of the Underlying Loan Documents;

(i) waives, amends or modifies any insurance requirements of the Underlying Loan under the Underlying Loan Documents;

(j) except as expressly permitted by the terms of the Underlying Loan Documents as in effect on the Closing Date, permits the encumbrance of the Project or the direct or indirect ownership interest in Underlying Loan Borrower in connection with a subordinate mortgage or mezzanine financing or permits any preferred equity investment;

(k) waives any default under the Underlying Loan Documents prior to the delivery of any notice or the expiration of any applicable cure periods;

(l) lengthens any amortization period, reduces, forgives, waives or defers any indebtedness due under the Underlying Loan Documents, including payments of any amounts of principal, interest, prepayment, or other fees and charges due and outstanding under the Underlying Loan (provided, that Borrower may waive late fees or charges and default interest if consistent with Accepted Servicing Practices), other than, with respect to a reduction in principal, if proportionate principal payment is made to the Loan in accordance with Section 2.4 below in connection therewith;

(n) waives any financial reporting requirements or any financial covenants imposed upon the Underlying Loan Borrower or guarantor under the Underlying Loan Documents (provided, that Borrower may grant extensions (not to exceed ten (10) days) with respect to the outside delivery dates for any such financial reporting requirements (to the extent consistent with Accepted Servicing Practices));

(o) approves any Transfer (as defined in the Underlying Loan Documents) of the Project or any direct or indirect in Underlying Loan Borrower (other than Transfers expressly permitted in the Underlying Loan Documents), or modifies or amends in any material respect the definition of "Transfer" in the Underlying Loan Documents;

(p) [reserved];

(q) amends, modifies or waives any condition to the extension of the maturity date of the Underlying Loan; or

(e) constitutes the agreement by Borrower or any Servicer to do any of the foregoing.

"Single Purpose Entity" means corporation, limited partnership or limited liability company that, at all times since its formation and all times thereafter, except to the extent approved by Administrative Agent in writing:

(a) was and will be organized solely for the purpose of holding, directly or indirectly and subject to this Agreement, the Underlying Loan or, in the event of an Conversion, the acquisition, ownership, leasing, management, development and improvement of the REO Project;

(b) has not engaged and will not engage in any business unrelated to the Underlying Loan (or, if applicable, the REO Project);

(c) has not had and will not have any assets other than those related to the Underlying Loan (or, if applicable, the REO Project);

(d) has not engaged, sought or consented to and will not engage in, seek or consent to any dissolution, winding up, liquidation, consolidation, merger, asset sale (except as expressly permitted by this Agreement), transfer of partnership or membership interests or the like (except as expressly permitted by this Agreement), or amendment of its limited partnership agreement, articles of incorporation, articles of organization, certificate of formation or operating agreement (as applicable) (except as expressly permitted by this Agreement);

(e) has remained and intends to remain solvent and has maintained and intends to maintain adequate capital in light of its contemplated business operations;

(f) has not failed and will not fail to correct any known misunderstanding regarding the separate identity of such entity;

(g) has maintained and will maintain its accounts, books and records separate from any other Person and (if not consolidated into the return of its constituent parent) will file its own tax returns;

(h) has maintained and will maintain its books, records, resolutions and agreements as official records;

(i) has not commingled and will not commingle its funds or assets with those of any other Person;

(f) has held and will hold its assets in its own name;

(g) has conducted and will conduct its business in its name only, and has not and will not use any trade name;

(h) has maintained and will maintain its financial statements (unless included in the constituent financial statements of its parent), accounting records and other entity documents separate from any other Person;

(i) has paid and will pay its own liabilities, including the salaries of its own employees, out of its own funds and assets;

(j) has observed and will observe in all material respects all partnership, corporate or limited liability company formalities, as applicable;

(k) has and will have no Debt other than the Permitted Debt;

(l) has not and will not assume or guarantee or become obligated for the debts of any other Person or hold out its credit as being available to satisfy the obligations of any other Person;

(m) has not and will not acquire obligations or securities of its partners, members or shareholders;

(n) has allocated and will allocate fairly and reasonably shared expenses, including shared office space, and uses separate stationery, invoices and checks;

(o) except in connection with the Loan, has not pledged and will not pledge its assets for the benefit of any other Person;

(p) has held itself out and identified itself and will hold itself out and identify itself as a separate and distinct entity under its own name and not as a division or part of any other Person;

(q) has maintained and 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 other Person;

(r) except in connection with the Underlying Loan, has not made and will not make loans to any Person;

(s) has not identified and will not identify its partners, members or shareholders, or any Affiliate of any of them, as a division or part of it;

(t) has not entered into or been a party to, and will not enter into or be a party to, any transaction with its partners, members, shareholders or Affiliates except in the ordinary course of its business and on terms which are intrinsically fair and are no less favorable to it than would be obtained in a comparable arm's-length transaction with an unrelated third party;

(u) has and will have no obligation, while an Event of Default is in existence, to indemnify its partners, officers, directors, or members, as the case may be, or has such an obligation that is fully subordinated to the Loan and will not constitute a claim against it if cash flow in excess of the amount required to pay the Loan is insufficient to pay such obligation; and

(v) will consider the interests of its creditors in connection with all corporate, partnership or limited liability company actions, as applicable.

“**Social Security Act**” means 42 U.S.C. 401 *et seq.*, as enacted in 1935, and amended, restated or otherwise supplemented thereafter from time to time and all rules and regulations promulgated thereunder.

“**SOFR**” means, for any Business Day, a rate per annum equal to the secured overnight financing rate for such Business Day as published by the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate) on the website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org> (or any successor source for the secured overnight financing rate identified as such by the administrator of the secured overnight financing rate from time to time) on the immediately succeeding Business Day.

“**Specially Designated National and Blocked Persons**” means those Persons that have been designated by executive order or by the sanction regulations of OFAC as Persons with whom U.S. Persons may not transact business or must limit their interactions to types approved by OFAC.

“**Sponsor**” means Ares Commercial Real Estate Corporation.

“**Special Flood Hazard Area**” means an area that FEMA has designated as an area subject to special flood hazards, the current standard for which is at least a 1.0% chance of a flood equal to or exceeding the base flood elevation (a 100-year flood) in any given year as per the applicable flood maps.

“**SPV**” means any special purpose funding vehicle identified as such in a writing by any Lender to Administrative Agent.

“State Regulator” means the applicable state department of health or other applicable state regulatory agency having jurisdiction over healthcare facilities or enforcement or administration of the Healthcare Laws affecting healthcare facilities in any state.

“Subsidiary” of a Person means any other Person of which a majority of the Equity Interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of a Borrower Party.

“Substitute Lender” has the meaning assigned in Section 2.12(a).

“Taxes” has the meaning assigned in Section 6.2.

“Term SOFR” means, for any Business Day, the Term SOFR Reference Rate for a one month tenor on the day (such day, the **“Periodic Term SOFR Determination Day”**) that is two (2) Business Days prior to the Closing Date and, thereafter, two (2) Business Days prior to the first Business Day of each month, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding 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 Business Day is not more than three (3) Business Days prior to such Periodic Term SOFR Determination Day; provided, however, that if Term SOFR determined as provided above shall ever be less than the Floor, then Term SOFR shall be deemed to be the Floor.

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

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

“Title Company” means Stewart Title Insurance Company, together with its successors.

“Transfer” means (a) any Division/Series Transaction and (b) any direct or indirect sale, transfer, conveyance, mortgage, grant of Lien or other interest, bargain, installment sale, lease, encumbrance, pledge, assignment, grant of any options with respect to, or any other transfer or disposition of (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) of all or any portion of the direct or indirect legal or beneficial ownership of, or any interest in, (i) all or any part of the Collateral (including any legal or beneficial direct or indirect interest therein), (ii) any Project or any part thereof or (ii) any Restricted Party including any agreement to transfer or cede to another Person any voting management or approved rights, or any other rights, appurtenant to such legal or beneficial ownership or other interest.

“UCC” means the Uniform Commercial Code as from time to time in effect in the State of New York; provided that, if, by reason of mandatory provisions of any applicable Requirement of Law, any of the attachment, perfection or priority of Administrative Agent’s or

any other Lender's security interest in any Collateral is governed by the Uniform Commercial Code of a jurisdiction other than the State of Illinois/New York, "UCC" shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such attachment, perfection or priority and for purposes of the definitions related to or otherwise used in such provisions.

"**Underlying Loan**" has the meaning assigned in the Recitals to this Agreement.

"**Underlying Loan Agreement**" has the meaning assigned in the Recitals to this Agreement.

"**Underlying Loan Borrower**" has the meaning assigned in the Recitals to this Agreement. The term "Underlying Loan Borrower" includes the successors in interest of the Underlying Loan Borrower.

"**Underlying Loan Cash Collateral**" means all funds deposited with Borrower pursuant to Section 2, 5 of the Underlying Loan Agreement, all proceeds of any letters of credit delivered by (or on behalf of) Underlying Loan Borrower to Borrower under the Underlying Loan Agreement, all deposits to the Interest and Carry Reserve (as defined in the Underlying Loan Agreement), the Replacement Reserve (as defined in the Underlying Loan Agreement), the Excess Cash Reserve (as defined in the Underlying Loan Agreement) the Interest Rate Protection Reserve (as defined in the Underlying Loan Agreement), the Entitlement Obligation Reserve (as defined in the Underlying Loan Agreement) and all other funds from time to time deposited by (or on behalf of) Underlying Loan Borrower with Servicer or Borrower to secure the Underlying Loan.

"**Underlying Loan Collections**" shall mean, with respect to the Underlying Loan at any time, any payment or other cash distribution thereon of principal, interest, fees, or proceeds of or other cash distributions thereon (including casualty or condemnation proceeds), that, in each case, are not required under the related Underlying Loan Documents to be reserved, impounded, escrowed, readvanced or applied for the benefit of the related Underlying Loan Borrower or the Project.

"**Underlying Loan Interest Holdback**" means a portion of the Underlying Loan in the amount of \$5,000,000.00 reserved by Borrower for future disbursement in accordance with the terms of the Underlying Loan Agreement.

"**Underlying Loan Documents**" means the Underlying Loan Agreement, the Underlying Loan Note, the Underlying Loan Mortgage, and all of the other documents evidencing the obligation of an Underlying Loan Borrower or delivered by an Underlying Loan Borrower in connection with the Underlying Loan and all documents related to the creation, perfection, or maintenance of Liens given to secure such Underlying Loan, as the same may be supplemented, modified, amended, restated or replaced from time to time and including those documents set forth in **Schedule 1.1(b)**.

"**Underlying Loan Event of Default**" means any event of default that occurs under any Underlying Loan Document that remains in existence beyond any applicable notice or cure period.

"**Underlying Loan File**" shall mean, as to the Underlying Loan, all documents and instruments evidencing the Underlying Loan (including the Underlying Loan Documents) excluding non-material correspondence among the Underlying Loan Borrower and Borrower.

“Underlying Loan Impairment Default” means the occurrence of any of the following: (a) a payment default under the Underlying Loan Documents that remains in existence for at least ten (10) Business Days following the expiration of any applicable notice or cure period specified in the Underlying Loan Agreement, (b) a filing by Underlying Loan Borrower of a voluntary bankruptcy proceeding, (c) the commencement of any involuntary bankruptcy proceeding against Underlying Loan Borrower that is not dismissed or withdrawn within 60 days following the filing thereof; and (d) the occurrence of any other event of default under the Underlying Loan Documents that remains in existence for 60 days following expiration of any applicable notice, grace or cure period specified in the Underlying Loan Documents.

“Underlying Loan Mortgage” means the mortgage executed by the Underlying Loan Borrower to secure the obligations under the Underlying Loan Documents, as the same may be supplemented, modified, amended, restated or replaced from time to time. If a separate assignment of leases and rents is executed by the Underlying Loan Borrower, the term “Underlying Loan Mortgage” includes both the mortgage, deed of trust, deed to secure debt (or other similar document, as applicable) and the related assignment of leases and rents.

“Underlying Loan Note” has the meaning assigned in the Recitals to this Agreement.

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

“U.S. Lender Party” means each of Administrative Agent, the Lenders and each participant of a Lender, in each case that is a U.S. Person.

“U.S. Person” means any United States citizen, any entity organized under the laws of the United States or its constituent states or territories, or any entity, regardless of where organized, having its principal place of business within the United States or any of its territories.

“Unadjusted Benchmark Replacement Rate” means the Benchmark Replacement Rate excluding the Benchmark Replacement Adjustment.

“Withholding Taxes” has the meaning assigned in Section 2.14(a).

Section 1.2 Definitions. All terms defined in Section 1.1 above or otherwise in this Agreement shall, unless otherwise defined therein, have the same meanings when used in any other Credit Document, or any certificate or other document made or delivered pursuant hereto. The words “hereof”, “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole. The words “include” and “include(s)” when used in this Agreement and the other Credit Documents each means “include(s), without limitation,” and the word “including” means “including, but not limited to” and “including, without limitation.” The word “or” when used in this Agreement and the other Credit Documents has the inclusive meaning represented by the phrase “and/or”, unless the usage would clearly indicate otherwise.

Section 1.3 Phrases. When used in this Agreement and the other Credit Documents, the phrases “satisfactory to Administrative Agent,” “satisfactory to Lenders,” and “satisfactory to Required Lenders” shall mean “in form and substance satisfactory to the applicable Person in all respects”, the phrases “with Administrative Agent’s consent,” “with the Lenders’ consent,” and “with the Required Lenders’ consent,” or “with Administrative Agent’s approval,” “with the Lenders’ approval,” and “with the Required Lenders’ approval” shall mean such consent or approval at such Person’s or Persons’ sole discretion, and the phrases “acceptable to

Administrative Agent,” “acceptable to Lenders,” and “acceptable to the Required Lenders” shall mean acceptable to such Person or Persons at his, her or their sole discretion unless otherwise specified in this Agreement.

Section 1.4 UCC Terms. Unless otherwise specified herein, the following terms have the meanings ascribed to them in the UCC, provided that if such term shall be defined differently in multiple divisions or articles of the UCC, the definitions for such terms specified in Article or Division 9 of the UCC shall control: “Accounts,” “Account Debtor,” “Chattel Paper,” “Contracts,” “Deposit Accounts,” “Documents,” “Equipment,” “Fixtures,” “General Intangibles,” “Goods,” “Health-Care Insurance Receivable,” “Instruments,” “Inventory,” “Investment Property,” “Letter-Of-Credit Rights,” “Payment Intangible,” “Securities Account,” “Software” and “Supporting Obligations”.

Section 1.5 Construction. Unless the context requires otherwise, (a) any definition of or reference to any agreement, instrument or other document shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Credit Document), (b) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (c) all references in a Credit Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Credit Document in which such references appear, and (d) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time. All references herein to a “fiscal” year or quarter or other period refer to a calendar year or quarter or other period unless otherwise specifically set forth.

Section 1.6 Accounting Terms and Definitions. Except as otherwise expressly provided herein, all accounting terms used herein shall be interpreted, and all financial statements and certificates and reports as to financial matters required to be delivered to Administrative Agent hereunder, shall be prepared, in accordance with GAAP.

ARTICLE 2 LOAN TERMS

Section 2.1 The Loan; Loan Origination Fee.

(a) Generally. The Loan contemplated under this Agreement shall be funded in one or more advances in accordance with this Section 2.1 and repaid by Borrower in accordance with this Agreement and the Notes. Each Lender severally, but not jointly, agrees to make its Proportionate Share of the Loan in Dollars to Borrower in the amount of such Lender’s Commitment in accordance with the terms of this Section. The aggregate amount of all advances of the Loan on a cumulative basis shall not exceed the Maximum Commitment Amount. The Loan is not a revolving credit loan, and any portion of the Loan that is repaid may not be reborrowed.

(b) Closing Date Advance. On the Closing Date, upon satisfaction of the applicable conditions to advance described in Schedule 2.1, Lenders shall advance to Borrower, in a single advance, a portion of the Loan in the principal amount of \$105,000,000.00.

(c) Origination Fee. On the Closing Date, Borrower shall pay to Lenders an upfront fee in the amount of 0.50% of the principal amount of the Loan (the “Origination Fee”). The

Origination Fee shall be fully earned when due and shall not be subject to reduction or be refundable under any circumstances.

Section 2.2 Interest Rate; Late Charge. The outstanding principal balance of the Loan shall bear interest at a floating rate of interest equal to the Contract Rate. If Borrower fails to pay any installment of interest or principal due with respect to the Loan within five (5) days after the date on which the same is due, excluding the final payment due on the Maturity Date, Borrower shall pay to Administrative Agent, for the account of the Lenders, a late charge on such past due amount, as liquidated damages and not as a penalty, equal to five percent (5%) of such amount, but not in excess of the maximum amount of interest allowed by applicable law. Administrative Agent shall pay to each Lender (other than a Defaulting Lender) its portion of the late charge based on each Lender's Proportionate Share of the Loan in accordance with Section 2.3. The foregoing late charge is intended to compensate each Lender for the expenses incident to handling any such delinquent payment and for the losses incurred by each Lender as a result of such delinquent payment. Borrower agrees that, considering all of the circumstances existing on the date this Agreement is executed, the late charge represents a reasonable estimate of the costs and losses each Lender will incur by reason of late payment. Borrower and each Lender further agree that proof of actual losses would be costly, inconvenient, impracticable and extremely difficult to fix. Acceptance of the late charge shall not constitute a waiver of the Event of Default arising from the overdue installment, and shall not prevent any Lender from exercising any other rights or remedies available to such Lender with respect to such Event of Default. While any Event of Default exists, the Loan shall bear interest at the Default Rate.

Section 2.3 Terms of Payment. The Loan shall be payable as follows:

(a) **Interest.** Commencing on the Payment Date in August, 2022, and on each Payment Date thereafter through and including the Payment Date immediately prior to the Scheduled Maturity Date, Borrower shall pay to Administrative Agent for the account of Lenders, interest in arrears computed at the Contract Rate on the outstanding principal balance of the Loan.

(b) **Maturity.** On the Maturity Date, Borrower shall pay to Administrative Agent, for the account of the Lenders, all outstanding principal, accrued and unpaid interest, default interest, late charges and any and all other amounts due under the Credit Documents.

(c) **Extension of Scheduled Maturity Date.**

(i) Borrower shall have the right and option (the "**First Extension Option**") to extend the Initial Maturity Date to the First Extended Maturity Date, subject to satisfaction of the following conditions:

(A) Borrower shall have notified Administrative Agent in writing of the exercise of the First Extension Option no earlier than one hundred twenty (120) days and no later than forty (40) days prior to the then Scheduled Maturity Date, which notice may be revoked at Borrower's option upon written notice to Administrative Agent.

(B) On the date of such written notice and on the Initial Maturity Date, no Potential Default or Event of Default shall be in existence, the Project Yield shall equal or exceed the Minimum Project Yield, and the Debt Service Coverage Ratio shall equal or exceed the Minimum Debt Service Coverage Ratio;

(C) The Underlying Loan Borrower shall have satisfied the conditions precedent set forth in the Underlying Loan Documents to the extension of the

maturity date of the Underlying Loan, and the maturity date of the Underlying Loan shall have been extended to a date that is no earlier than the First Extended Maturity Date;

(D) the representations and warranties of Borrower and Guarantor in the Credit Documents shall be true and correct in all material respects on and as of the Initial Maturity Date as then in effect with the same effect as if made on such date, and Administrative Agent shall have received a certificate of an authorized agent of Borrower and Guarantor to such effect; and

(E) Prior to the Initial Maturity Date, Borrower shall have paid to Administrative Agent (for the account of Lenders) an extension fee equal to 0.25% of the then outstanding principal balance of the Loan.

(ii) Borrower shall have the right and option (the “**Second Extension Option**”) to extend the First Extended Maturity Date to the Second Extended Maturity Date, subject to satisfaction of the following conditions:

(A) Borrower shall have notified Administrative Agent in writing of the exercise of the Second Extension Option no earlier than one hundred twenty (120) days and no later than forty (40) days prior to the then Scheduled Maturity Date[, which notice may be revoked at Borrower’s option upon written notice to Administrative Agent.

(B) On the date of such written notice and on the First Extended Maturity Date, no Potential Default or Event of Default shall be in existence, the Project Yield shall equal or exceed the Minimum Project Yield, and the Debt Service Coverage Ratio shall equal or exceed the Minimum Debt Service Coverage Ratio;

(C) The Underlying Loan Borrower shall have satisfied the conditions precedent set forth in the Underlying Loan Documents to the extension of the maturity date of the Underlying Loan, and the maturity date of the Underlying Loan shall have been extended to a date that is no earlier than the Second Extended Maturity Date;

(D) the representations and warranties of Borrower and Guarantor in the Credit Documents shall be true and correct in all material respects on and as of the First Extended Maturity Date as then in effect with the same effect as if made on such date, and Administrative Agent shall have received a certificate of an authorized agent of Borrower and Guarantor to such effect; and

(E) Prior to the First Extended Maturity Date, Borrower shall have paid to Administrative Agent (for the account of Lenders) an extension fee equal to 0.25% of the then outstanding principal balance of the Loan.

Section 2.4 Prepayment.

(a) **Voluntary Prepayment.** The outstanding principal balance of the Loan may be voluntarily prepaid in whole or in part at any time following written notice (which notice may be delivered by electronic mail) to Administrative Agent of such prepayment. If Borrower provides such notice, Borrower shall pay to Administrative Agent, together with such principal payment, all accrued interest on such principal amount, any applicable Breakage Amount, and all other outstanding amounts then due and unpaid under the Credit Documents and, if such prepayment is

a full prepayment, all other amounts required to be paid on the Maturity Date pursuant to Section 2.3(b).

(b) **Mandatory Prepayments.** Borrower shall make the following principal payments for application to the outstanding principal balance of the Loan, in each case without notice or demand therefor, except as expressly provided in this Section 2.4(b) to the contrary:

(i) Borrower shall pay to Administrative Agent (contemporaneously with the making of the corresponding Principal Payment) an amount equal to 79% (or, if an Event of Default is then in existence, 100%) of each Principal Payment received (excluding Principal Payments relating to casualty or condemnation proceeds, which shall be applied in accordance with Subsection 2.4(b)(ii) below).

(ii) If Borrower receives any Principal Payment relating to casualty or condemnation proceeds that Borrower elects to apply toward repayment of the Underlying Loan, Borrower shall pay to Administrative Agent (contemporaneously with Borrower's receipt of the corresponding Principal Payment) an amount equal to 79% (or, if an Event of Default is then in existence, 100%) of the such Principal Payment.

(iii) Borrower shall pay to Administrative Agent an amount equal to 100% of any proceeds arising from the exercise of remedies by Borrower.

(iv) If, as of any Determination Date, the Project Yield is less than the applicable Minimum Project Yield, Borrower shall pay to Administrative Agent an amount equal to the applicable Remargin Amount within fifty-five (55) days following Administrative Agent's written request therefor.

Each payment required pursuant to this Section 2.4(b) shall be accompanied by all interest accrued on the amount so prepaid at the Contract Rate (or, if applicable, the Default Rate) through the date of prepayment and all other amounts then due and payable under this Agreement.

(c) **Treatment of Principal Payments Applied to Protective Advances.** Protective advances made by Borrower under the Underlying Loan Documents shall be paid following repayment in full of the Loan.

(d) **Breakage Amount.** Upon any payment of the Loan (or any portion thereof) on any day that is not a Payment Date (regardless of the source of such prepayment and whether voluntary, by acceleration or otherwise), Borrower shall pay to Administrative Agent, for the account of Lenders, the Breakage Amount.

(e) **Prepayment on a Business Day.** Any prepayment made under this Section 2.4 may be made only on a U.S. Governmental Securities Business Day (and, if tendered on a day other than a U.S. Governmental Securities Business Day, shall be applied on the immediately succeeding U.S. Governmental Securities Business Day).

Section 2.5 Debt Service Reserve.

(a) **Establishment of Debt Service Reserve.** The parties hereby agree that, on the Closing Date, a reserve shall be established under this Agreement by Borrower with Administrative Agent, which reserve shall be held by Administrative Agent and shall serve as Collateral for the Obligations (such reserve, "**Debt Service Reserve**").

(b) Deposits to Debt Service Reserve. If, as of any Determination Date, the Debt Service Coverage Ratio (calculated in accordance with Section 2.5(c)) is less than the covenant amount set forth in Section 6.13 for such Determination Date, Borrower shall deposit with Administrative Agent, on or before the date that is fifteen (15) days following the applicable Determination Date, an amount that, if added to Adjusted Revenue, would result in a Debt Service Coverage Ratio equal to the covenant amount set forth in Section 6.13 for such Determination Date, for deposit into the Debt Service Reserve.

(c) Calculation of Debt Service Reserve Deposits. For purposes of this Section 2.5, (i) Adjusted Expenses shall be for the six month period ending on the applicable Determination Date and shall not be annualized; (ii) Debt Service shall be for the six month period ending on the applicable Determination Date and shall not be annualized; (iii) Adjusted Revenue shall be for the six (6) month period ending on the applicable Determination Date and shall not be annualized; and (iv) Adjusted Revenue shall be increased by the amounts on deposit, in each case as of the applicable Determination Date, in the Debt Service Reserve and, provided such reserve is held in a Deposit Account maintained by Borrower that is subject to a Deposit Account Control Agreement in favor of Administrative Agent, the Underlying Loan Debt Service Reserve.

(d) Use of Funds. The Debt Service Reserve shall not be available to Borrower for payment of debt service or any other amount payable by Borrower under this Agreement or any other Credit Document. While an Event of Default is in existence, Administrative Agent, at its option, may (and at the direction of the Required Lenders shall) apply any sums then present in the Funds to the Obligations in accordance with Section 2.6(a).

(e) General Provisions. Borrower hereby pledges to Administrative Agent and the Lenders, and grants to Administrative Agent (for the benefit of the Lenders), a security interest in, any and all monies now or hereafter deposited into the Debt Service Reserve as security for the Obligations. The Lenders and Borrower acknowledge that the funds on deposit in the Debt Service Reserve shall be held without interest in Administrative Agent's name, may be commingled with the general funds of Administrative Agent and are not held for the benefit of Borrower. All costs and expenses incurred by Administrative Agent in connection with the administration of the Debt Service Fund shall be paid by Borrower promptly upon demand or, at Administrative Agent's sole discretion, deducted from the Debt Service Reserve. Any amounts remaining in the Debt Service Reserve at the time of payment and performance in full of the Obligations shall be promptly disbursed to the Borrower, provided no Event of Default is then in existence.

Section 2.6 Application and Return of Payments.

(a) Waterfall. Provided no Event of Default is in existence, all payments received by Administrative Agent under the Credit Documents shall be applied, (i) first, to pay Obligations in respect of any cost or expense reimbursements, fees or indemnities then due to Administrative Agent pursuant to this Agreement, any Credit Document; (ii) second, to pay Default Rate interest or late charges (if any then due and payable); (iii) third, to pay interest then due and payable calculated at the Contract Rate; (iv) fourth, to principal payments, if any, due under the Loan; (v) fifth, to any reserves, escrows or other impounds required to be maintained pursuant to the Credit Documents; and (vi) sixth, to the ratable payment of all other Obligations. While an Event of Default is in existence, all payments shall be applied in such order as Administrative Agent shall determine in its sole discretion. Notwithstanding anything herein to the contrary, if, at any time during the existence of an Event of Default or acceleration of the Obligations or on or after the Maturity Date, Administrative Agent applies any payments received or the proceeds of any Collateral to principal payments on the Loan, Administrative Agent shall apply such payments or proceeds pro rata between such principal payments on the Loan.

(b) **Application of Payments Generally.** All prepayments of the principal amount of the Loan shall be applied to reduce the remaining installments of such outstanding principal amounts of the Loan in the inverse order of maturity. If sufficient amounts are not available to repay all outstanding Obligations then due described in any priority level set forth in this Section 2.6, the available amounts shall be applied, unless otherwise expressly specified herein, to such Obligations ratably based on the proportion of the Secured Parties' interest in such Obligations. Any priority level set forth in this Section 2.6 that includes interest shall include all such interest, whether or not accruing after the filing of any petition in bankruptcy or the commencement of any insolvency, reorganization or similar proceeding, and whether or not a claim for post-filing or post-petition interest is allowed in any such proceeding.

(c) **Payments.** Borrower shall make each payment under any Credit Document not later than 11:00 a.m. (Eastern Standard or Daylight Savings time) on the day when due to Administrative Agent by (i) during any period in which Newpoint is the Servicer, wire transfer or (ii) if Newpoint is not the Servicer, Automated Clearing House ("**ACH**") transfer initiated by Administrative Agent pursuant to an ACH Authorization Form executed by Borrower following the termination of Newpoint as Servicer to the following account (or at such other account or by such other means to such other address as Administrative Agent shall have notified Borrower in writing within a reasonable time prior to the date on which such payment is due) in immediately available Dollars and without setoff or counterclaim:

Bank: Capital One Bank
ABA No.: 065000090
Account Number: 21100-10002129-38395
Account Name: Specialty Finance
Reference: *

Administrative Agent shall cause to be distributed immediately available funds relating to the payment of principal, interest or fees to the Lenders, in accordance with the application of payments set forth in Section 2.6(a), promptly after receipt or deemed receipt, but not later than one Business Day following receipt (or deemed receipt) by Administrative Agent. Administrative Agent shall have no obligation to make any payments to a Lender except out of amounts received or applied by Administrative Agent with respect to the Loan, and only if and to the extent payable in accordance with said Section 2.6(a). Payments received by Administrative Agent after 11:00 a.m. (Eastern Standard or Daylight Savings time) shall be deemed to be received on the next Business Day.

(d) **Computation of Interest and Fees.** All computations of interest and of fees shall be made by Administrative Agent on the basis of a fraction, the denominator of which is three hundred sixty (360) and the numerator of which is the actual number of days elapsed from (and including) the date of the initial disbursement under the Loan or the date of the preceding Payment Date, as the case may be, to (but not including) the date of the next Payment Date or the Maturity Date, as the case may be. Each determination of an interest rate or the amount of a fee hereunder shall be made by Administrative Agent and shall be conclusive, binding and final for all purposes, absent manifest error.

(e) **Payments Due on Non-Business Days.** Whenever any payment hereunder shall be stated to be due on a day that is not a U.S. Government Securities Business Day, the due date for such payment shall be extended to the next succeeding U.S. Government Securities Business Day, as provided in the definition of "Business Day".

(f) **Advancing Payments; Return of Payments.**

(i) Unless Administrative Agent has received notice from Borrower prior to the date on which any payment is due hereunder that Borrower will not make such payment in full, Administrative Agent may assume that Borrower has made such payment in full to Administrative Agent on such date and Administrative Agent may, in reliance upon such assumption, cause to be distributed to each Lender on such due date an amount equal to the amount then due such Lender.

(ii) If Administrative Agent pays an amount to a Lender under this Agreement in the belief or expectation that a related payment has been or will be received by Administrative Agent from the Borrower and such related payment is not received by Administrative Agent, then Administrative Agent will be entitled to recover such amount from such Lender on demand without setoff, counterclaim, defense, or deduction of any kind.

(iii) If Administrative Agent determines at any time that any amount received by Administrative Agent under this Agreement or any other Credit Document must be returned to any Borrower Party or paid to any other Person pursuant to any insolvency law or otherwise, then, notwithstanding any other term or condition of this Agreement or any other Credit Document, Administrative Agent will not be required to distribute any portion thereof to any Lender. In addition, each Lender will repay to Administrative Agent on demand any portion of such amount that Administrative Agent has distributed to such Lender, together with interest at such rate, if any, as Administrative Agent is required to pay to any Borrower or such other Person, without setoff, counterclaim or deduction of any kind, and Administrative Agent will be entitled to set-off against future distributions to such Lender any such amounts (with interest) that are not repaid on demand.

(g) **Erroneous Payments.**

(i) If the Administrative Agent notifies a Lender or other Secured Party, or any Person who has received funds on behalf of a Lender or other Secured Party (any such Lender, other Secured Party or other recipient, a “**Payment Recipient**”), that the Administrative Agent has determined in its sole discretion that any funds received by such Payment Recipient from the Administrative Agent or any of its Affiliates were erroneously transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Lender, other Secured Party or other Payment Recipient on its behalf) (any such funds, whether transmitted or received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an “**Erroneous Payment**”) and demands in writing the return of such Erroneous Payment (or a portion thereof), such Erroneous Payment shall at all times remain the property of the Administrative Agent and held in trust for the benefit of the Administrative Agent, and such Lender or other Secured Party shall (or, with respect to any Payment Recipient who received such funds on its behalf, shall cause such Payment Recipient to) promptly, but in no event later than two (2) Business Days thereafter, return to the Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received), together with interest thereon in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Administrative Agent in same day funds at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect. A notice of the Administrative Agent to any Payment Recipient under this Section 2.6(g)(i) shall be conclusive, absent manifest error.

(ii) Without limiting immediately preceding Section 2.6(g)(i), each Payment Recipient hereby further agrees that if it receives a payment, prepayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise) from the Administrative Agent (or any of its Affiliates) (A) that is in a different amount than, or on a different date from, that specified in a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment (a "**Payment Notice**"), (B) that was not preceded or accompanied by a Payment Notice, or (C) that such Payment Recipient otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part) in each case, then (1) in the case of immediately preceding clauses (A) or (B), an error shall be presumed to have been made (absent written confirmation from the Administrative Agent to the contrary) or (2) an error has been made (in the case of immediately preceding clause (C)), in each case, with respect to such payment, prepayment or repayment.

(iii) Each Lender and Secured Party hereby authorizes the Administrative Agent to set off, net and apply any and all amounts at any time owing to such Lender or Secured Party under any Credit Document, or otherwise payable or distributable by the Administrative Agent to such Lender or Secured Party from any source, against any amount due to the Administrative Agent under Section 2.6(g)(i) above or under the indemnification provisions of this Agreement.

(iv) Borrower hereby agrees that (A) if an Erroneous Payment (or portion thereof) is not recovered from any Payment Recipient that has received such Erroneous Payment (or portion thereof) for any reason, the Administrative Agent shall be contractually subrogated (irrespective of whether the Administrative Agent may be equitably subrogated) to all the rights of such Lender or other Secured Party under the Loan Documents with respect to such amount, (B) an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower or any other Borrower Party, except, in each case, to the extent such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Administrative Agent from the Borrower or any other Borrower Party for the purpose of making such Erroneous Payment, and (B) to the extent that an Erroneous Payment was in any way or at any time credited as a payment or satisfaction of any of the Obligations, the Obligations or part thereof that were so credited, and all rights of the applicable Lender, other Secured Party or Administrative Agent, as the case may be, shall be reinstated and continue in full force and effect as if such payment or satisfaction had never been received; provided, however, the amount of such Erroneous Payment that is comprised of funds received by the Administrative Agent from the Borrower or any other Borrower Party for the purpose of making such Erroneous Payment shall be credited as a payment or satisfaction of the Obligations and the Obligations or part thereof that were so credited shall not be reinstated.

(v) To the extent permitted by Requirements of Law, no Payment Recipient shall assert any right or claim to an Erroneous Payment, and hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Erroneous Payment received, including without limitation waiver of any defense based on "discharge for value" or any similar doctrine.

(vi) Each party's obligations, agreements and waivers under this Section 2.6(g) shall survive the resignation or replacement of the Administrative Agent, or any transfer of rights or obligations by, or the replacement of, a Lender or other

Secured Party, the termination of any Commitment or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Credit Document.

Section 2.7 Uses of Loan Proceeds. Borrower shall use the proceeds of the Loan solely for the purpose of making the Underlying Loan. The proceeds of the Underlying Loan are intended and will be used for business and/or commercial purposes and are not intended and will not be used for personal, family or household purposes.

Section 2.8 Capital Adequacy; Increased Costs; Illegality.

(a) If any Change in Law increases or would have the effect of increasing the amount of capital, reserves or other funds required to be maintained by such Lender and thereby reducing the rate of return on such Lender's capital as a consequence of its obligations hereunder, then Borrower shall from time to time, upon demand by such Lender, pay to such Lender, additional amounts sufficient to compensate such Lender for such reduction. A certificate as to the amount of that reduction and showing the basis of the computation thereof submitted by the affected Lender to Borrower shall, absent manifest error, be final, conclusive and binding for all purposes. Each Lender agrees that, as promptly as practicable after it becomes aware of any circumstances referred to above which would result in any such increased cost, such Lender shall, to the extent not inconsistent with such Lender's internal policies of general application, use reasonable commercial efforts to minimize costs and expenses incurred by it and payable to it by Borrower pursuant to this Section 2.8(a).

(b) If, due to any Change in Law, there shall be any increase in the cost to any Lender of agreeing to make or making, funding or maintaining the Loan, then Borrower shall from time to time, upon demand by such Lender, pay to such Lender additional amounts sufficient to compensate such Lender for such increased cost. A certificate as to the amount of such increased cost, submitted to Borrower by such Lender, shall be conclusive and binding on Borrower for all purposes, absent manifest error. Each Lender agrees that, as promptly as practicable after it becomes aware of any circumstances referred to above which would result in any such increased cost, such Lender shall, to the extent not inconsistent with such Lender's internal policies of general application, use reasonable commercial efforts to minimize costs and expenses incurred by it and payable to it by Borrower pursuant to this Section 2.8(b).

(c) Notwithstanding anything to the contrary contained herein (but subject to the terms of Section 2.10), if after the Closing Date, (i) any Change in Law shall make it unlawful, or any central bank or other Governmental Authority shall assert that it is unlawful, for any Lender to agree to make or to make or to continue to fund or maintain its Loan Commitment bearing interest computed by reference to the then current Benchmark, or (ii) the then current Benchmark is discontinued or is otherwise no longer available (temporarily or otherwise), then (A) with respect to the occurrence described in subsection (i) above, unless such Lender is able to make or to continue to fund or to maintain its Loan Commitment at another office of such Lender without, in such Lender's opinion, adversely affecting it or its Loan Commitment or the income obtained therefrom, on notice thereof and demand therefor by such Lender to Borrower, (1) the obligation of such Lender to agree to make or to make or to continue to fund or maintain its Loan Commitment shall terminate and (2) Borrower shall prepay in full such Lender's Proportionate Share of the Loan, together with interest accrued thereon, within thirty (30) days following such Lender's demand for payment unless such Lender elects to use the Base Rate as a replacement index, plus an Applicable Margin (which may be negative) to approximate the Contract Rate before such change in law or regulation and (B) with respect to the occurrence described in subsection (ii) above, Administrative Agent will use the Base Rate as a replacement index, plus an Applicable Margin (which may be negative) to approximate the Contract Rate. If any Lender elects to use the Base Rate as contemplated by subsection (A) above or if subsection

(B) above is applicable, Administrative Agent will notify Borrower of the Base Rate and the Applicable Margin to be used and the same shall be applied to the Loan effective as of the date such Lender or Administrative Agent determined that the then current Benchmark was no longer available (temporarily or otherwise), as applicable.

Section 2.9 Interest Rate Protection. Borrower shall not enter into any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement or other similar agreement pertaining to fluctuations in interest rates, or any swaps, caps or collar agreements or similar arrangements providing for protection against fluctuations in currency exchange rates, either generally or under specific contingencies, other than a Hedge Agreement approved by Administrative Agent, and not for speculative purposes. The Collateral shall not be pledged or encumbered in any manner to secure any obligation under a Hedge Agreement.

Section 2.10 Effect of Benchmark Transition Event.

(a) **Benchmark Replacement Rate.** Notwithstanding anything to the contrary herein or in any other Credit Document, upon the occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, Administrative Agent and Borrower may amend this Agreement to replace the then-current Benchmark with a Benchmark Replacement Rate. Any such amendment with respect to a Benchmark Transition Event will become effective at 5:00 p.m. on the fifth (5th) Business Day after Administrative Agent has posted such proposed amendment to all Lenders and Borrower so long as Administrative Agent has not received, by such time, written notice of objection to such amendment from Lenders comprising the Required Lenders. Any such amendment with respect to an Early Opt-in Election will become effective on the date that Lenders comprising the Required Lenders have delivered to Administrative Agent written notice that such Required Lenders accept such amendment. No replacement of the then-current Benchmark with a Benchmark Replacement Rate pursuant to this Section 2.10(a) will occur prior to the applicable Benchmark Transition Start Date.

(b) **Benchmark Replacement Conforming Changes.** In connection with the implementation of a Benchmark Replacement Rate, Administrative Agent 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 Credit Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement.

(c) **Notices; Standards for Decisions and Determinations.** Administrative Agent will promptly notify Borrower and the Lenders of (i) any occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date and Benchmark Transition Start Date, (ii) the implementation of any Benchmark Replacement Rate, (iii) the effectiveness of any Benchmark Replacement Conforming Changes and (iv) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by Administrative Agent or Lenders pursuant to this Section 2.10(c), including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party hereto, except, in each case, as expressly required pursuant to this Section 2.10(c).

(d) **Benchmark Unavailability Period.** During the existence of a Benchmark Unavailability Period, the Loan will bear interest at the Base Rate, plus the Applicable Margin.

(e) Conflict with Other Sections. In the event of a conflict between the terms of this Section 2.10 and the terms of Section 2.8 or any other section of this Agreement, the terms of this Section 2.10 shall control.

Section 2.11 Evidence of Debt

(a) **Records of Lenders**. Each Lender shall maintain, in accordance with its usual practice, accounts evidencing the Indebtedness of Borrower to each Lender resulting from the Proportionate Share of the Loan of such Lender from time to time outstanding, including the amounts of principal and interest payable and paid to such Lender from time to time under this Agreement. In addition, with respect to each Lender having sold a participation interest in any of the Obligations owing to it, such Lender, acting as agent of Borrower solely for this purpose and solely for tax purposes, shall establish and maintain at its address referred to in Section 10.1 (or at such other address as Administrative Agent shall notify Borrower) a record of ownership, in which such Lender shall register by book entry (i) the name and address of each such participant (and each change thereto, whether by assignment or otherwise) and (ii) the rights, interest or obligation of each such participant in any Obligation owing to such Lender, in any Commitment or any portion of the Loan and in any right of such Lender to receive any payment hereunder.

(b) **Records of Administrative Agent**. Administrative Agent, acting solely for this purpose as an agent of Borrower, shall maintain at one of its offices in the United States a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loan owing to, each Lender pursuant to the terms hereof from time to time (the “**Register**”). The entries in the Register shall be conclusive absent manifest error; provided, however, that no error in such account and no failure of any Lender or Administrative Agent to maintain any such account shall affect the obligations of any Borrower Party to repay the Loan in accordance with its terms. Borrower, Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(c) **Registered Obligations**. Notwithstanding anything to the contrary contained in this Agreement, the Loan (including any Notes evidencing the Loan) shall constitute a registered obligation, the right, title and interest of the Lenders and their assignees in and to the Loan shall be transferable only upon notation of such transfer in the Register and no assignment thereof shall be effective until recorded therein. This Section 2.11 and Section 10.3 shall be construed so that the Loan is at all times maintained in “registered form” within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code and any related regulations (and any successor provisions).

(d) **Replacement Notes**. Upon receipt of an acceptable affidavit and indemnity of Lender as to the loss, theft, destruction or mutilation of any Note, and, in the case of any such mutilation, upon receipt of such Note, Borrower will issue, in lieu thereof, a replacement note in the same principal amount thereof and otherwise of like tenor.

Section 2.12 Substitution of Lenders

(a) If any Lender that is not an Affiliate of Administrative Agent (an “**Affected Lender**”), makes a claim under Section 2.8 or notifies Borrower and Administrative Agent pursuant to Section 2.8 that it becomes illegal for such Lender to continue to fund or maintain its Proportionate Share of the Loan using the then-current Benchmark, Borrower may either pay in full such Affected Lender with respect to amounts due with the consent of Administrative Agent

or substitute for such Affected Lender any Lender or any Affiliate or Approved Fund of any Lender or any other Person acceptable (which acceptance shall not be unreasonably withheld or delayed) to Administrative Agent (in each case, a “**Substitute Lender**”).

(b) To substitute such Affected Lender or pay in full the Obligations owed to such Affected Lender, Borrower shall deliver a notice to Administrative Agent and such Affected Lender. The effectiveness of such payment or substitution shall be subject to the delivery to Administrative Agent by Borrower (or, as may be applicable in the case of a substitution, by the Substitute Lender) of (i) payment for the account of such Affected Lender, of, to the extent accrued through, and outstanding on, the effective date for such payment or substitution, all Obligations owing to such Affected Lender (including those that will be owed because of such payment and all Obligations that would be owed to such Lender if it was solely a Lender), and (ii) in the case of a substitution, (A) payment by the Substitute Lender of the assignment fee set forth in Section 10.3 and (B) an Assignment and Assumption.

(c) Upon satisfaction of the conditions set forth in clause (b) above, Administrative Agent shall record such substitution or payment in the Register, whereupon (i) in the case of any payment in full, such Affected Lender’s Commitment shall be terminated and (ii) in the case of any substitution, (A) the Affected Lender shall sell and be relieved of, and the Substitute Lender shall purchase and assume, all rights and claims of such Affected Lender under the Credit Documents with respect to the Loan, except that the Affected Lender shall retain such rights expressly providing that they survive the repayment of the Obligations and the termination of the Commitment, (B) the Substitute Lender shall become a “Lender” hereunder having a Commitment in the amount of such Affected Lender’s Commitment and (C) the Affected Lender and the applicable Substitute Lender shall execute and deliver to Administrative Agent an Assignment and Assumption to evidence such substitution and deliver any Note in its possession; provided, however, that the failure of any Affected Lender to execute any such Assignment and Assumption or deliver any such Note shall not render such sale and purchase (or the corresponding assignment) invalid.

Section 2.13 Pro Rata Treatment; Sharing of Payments

(a) Pro Rata Treatment. (i) Each advance of the Loan from the Lenders under Section 2.1 shall be made by the Lenders, and any termination of the obligation to make an advance of the Loan shall be applied to the respective Commitments of the Lenders, based on their Proportionate Share; (ii) each payment or prepayment of principal of the Loan by Borrower shall be made for account of the Lenders based on their Proportionate Share; and (iii) each payment of interest on the Loan by Borrower shall be made for account of the Lenders pro rata in accordance with the amounts of interest on the Loan then due and payable to the respective Lenders.

(b) Sharing of Payments, Etc.

(i) If any Lender shall obtain from any Borrower payment of any principal of or interest on the Loan owing or payment of any other amount under this Agreement or any other Credit Document through the exercise of any right of set off, banker’s lien or counterclaim or similar right or otherwise (other than from Administrative Agent as provided herein), and, as a result of such payment, such Lender shall have received a greater percentage of the principal of or interest on the Loan or such other amounts then due hereunder or thereunder by Borrower to such Lender than the percentage received by any other Lender, it shall promptly purchase from such other Lenders participations in (or, if and to the extent specified by such Lender, direct interests in) the Loan or such other amounts, respectively, owing to such other Lenders (or in interest due thereon, as the case may be) in such amounts, and make such other adjustments from time to time as

shall be equitable, to the end that all the Lenders shall share the benefit of such excess payment (net of any expenses that may be incurred by such Lender in obtaining or preserving such excess payment) pro rata in accordance with the unpaid principal of and/or interest on the Loan or such other amounts, respectively, owing to each of the Lenders. To such end, all the Lenders shall make appropriate adjustments among themselves (by the resale of participations sold or otherwise) if such payment is rescinded or must otherwise be restored.

(ii) Borrower agrees that any Lender so purchasing such a participation (or direct interest) may exercise all rights of set off, banker's lien, counterclaim or similar rights with respect to such participation as fully as if such Lender were a direct holder of the Loan or other amounts (as the case may be) owing to such Lender in the amount of such participation.

(iii) Nothing contained herein shall require any Lender to exercise any such right or shall affect the right of any Lender to exercise, and retain the benefits of exercising, any such right with respect to any other indebtedness or obligation of Borrower. If, under any applicable bankruptcy, insolvency or other similar law, any Lender receives a secured claim in lieu of a set off to which this Section 2.13(b) applies, such Lender shall, to the extent practicable, exercise its rights in respect of such secured claim in a manner consistent with the rights of the Lenders entitled under this Section 2.13(b) to share in the benefits of any recovery on such secured claim.

Section 2.14 Withholding Taxes.

(a) **Payments Free and Clear of Withholding Taxes.** Each payment by Borrower under any Credit Document shall be made free and clear of all present or future taxes, levies, imposts, deductions, charges or withholdings and all liabilities with respect thereto (and without deduction for any of them) (collectively, but excluding the taxes set forth in clauses (i) through (iv) below, the "**Withholding Taxes**") other than for (i) taxes imposed on or measured by net income (including branch profits taxes) and franchise taxes, in each case, (a) imposed as a result of Lender being organized under the laws of, or having its principal office or its applicable lending office located in, the jurisdiction imposing such tax (or any political subdivision thereof) or (b) that are Other Connection Taxes, (ii) United States federal withholding taxes imposed on amounts payable to or for the account of Lender with respect to an applicable interest in the Loan (or, if applicable, Commitment) pursuant to a law in effect on the date on which (i) Lender acquires such interest in the Loan (or, if applicable, Commitment) (other than pursuant to an assignment request by Borrower under Section 2.12) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.14(b), amounts with respect to such taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (iii) taxes that are directly attributable to the failure (other than as a result of a change in any Requirements of Law) by any Lender to deliver the documentation required to be delivered pursuant to Section 2.14(f) below and (iv) any United States federal withholding Taxes imposed under FATCA (the taxes described in subsections (i) through (iv) of this Section 2.14(a) herein called "**Excluded Taxes**"). "**Other Connection Taxes**" means, with respect to Lender, taxes imposed as a result of a present or former connection between Lender and the jurisdiction imposing such tax (other than connections arising from Lender 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 Credit Document, or sold or assigned an interest in any Loan or Credit Document).

(b) **Gross-Up.** If any Taxes shall be required by any Requirements of Law to be deducted from or in respect of any amount payable under any Credit Document to any Lender

and such Taxes are Withholding Taxes, (i) such amount payable shall be increased as necessary to ensure that, after all required deductions for Withholding Taxes are made (including deductions applicable to any increases to any amount under this Section 2.14), such Lender receives the amount it would have received had no such deductions been made, (ii) the relevant Borrower Party shall make such deductions, (iii) the relevant Borrower Party shall timely pay the full amount deducted to the relevant taxing authority or other authority in accordance with applicable Requirements of Law and (iv) within 30 days after such payment is made, Borrower shall deliver to Administrative Agent an original or certified copy of a receipt evidencing such payment.

(c) **Other Taxes.** In addition, Borrower agrees to pay, and authorizes Administrative Agent to pay in its name, any stamp, documentary, intangible, excise or property tax, charges or similar levies imposed by any applicable Requirements of Law or Governmental Authority and all Liabilities with respect thereto (including by reason of any delay in payment thereof), in each case arising from the execution, delivery or registration of, or otherwise with respect to, any Credit Document or any transaction contemplated therein (collectively, “**Other Taxes**”). Within thirty (30) days after the date of any payment of Withholding Taxes or Other Taxes by any Borrower Party, Borrower shall furnish to Administrative Agent, at its address referred to in Section 10.1, the original or a certified copy of a receipt evidencing payment thereof.

(d) **Indemnification.** Borrower shall reimburse and indemnify, within thirty (30) days after receipt of demand therefor (with copy to Administrative Agent), each Lender for all Withholding Taxes and Other Taxes (including any Withholding Taxes and Other Taxes imposed by any jurisdiction on amounts payable under this Section 2.14) paid by such Lender and any Liabilities (other than Liabilities specifically excluded in this Section 2.14) arising therefrom or with respect thereto, whether or not such Withholding Taxes or Other Taxes were correctly or legally asserted. A certificate of the Lender (or of Administrative Agent on behalf of such Lender) claiming any compensation under this clause (d), setting forth in reasonable detail the basis for and calculation of the amounts to be paid thereunder and delivered to Borrower with copy to Administrative Agent, shall be conclusive, binding and final for all purposes, absent manifest error. In determining such amount, Administrative Agent and such Lender may use any reasonable averaging and attribution methods.

(e) **Mitigation.** Any Lender claiming any additional amounts payable pursuant to this Section 2.14 shall use its reasonable efforts (consistent with its internal policies and Requirements of Law) to change the jurisdiction of its lending office if such a change would reduce any such additional amounts (or any similar amount that may thereafter accrue) and would not, in the sole determination of such Lender, be otherwise disadvantageous to such Lender.

(f) **Tax Forms.**

(i) Each Non-U.S. Lender Party that, at any of the following times, is entitled to an exemption from United States withholding Tax or, after a change in any Requirements of Law, is subject to such withholding Tax at a reduced rate under an applicable Tax treaty, shall (w) on or prior to the date such Non-U.S. Lender Party becomes a “**Non-U.S. Lender Party**” hereunder, (x) on or prior to the date on which any such form or certification expires or becomes obsolete, (y) after the occurrence of any event requiring a change in the most recent form or certification previously delivered by it pursuant to this clause (i) and (z) from time to time if requested in writing by Borrower or Administrative Agent (or, in the case of a participant or SPV, the relevant Lender), provide Administrative Agent and Borrower with two completed originals of each of the following, as applicable: (A) Forms W-8ECI (claiming exemption from U.S. withholding tax because the income is effectively connected with a U.S. trade or

business), W-8BEN or W-8BEN-E (claiming exemption from, or a reduction of, U.S. withholding tax under an income tax treaty) and/or W-8IMY (together with appropriate forms, certifications and supporting statements) or any successor forms, (B) in the case of a Non-U.S. Lender Party claiming exemption under Sections 871(h) or 881(c) of the Code, Form W-8BEN or W-8BEN-E (claiming exemption from U.S. withholding tax under the portfolio interest exemption) or any successor form and a certificate in form and substance acceptable to Administrative Agent that such Non-U.S. Lender Party is not (1) a “bank” within the meaning of Section 881(c)(3)(A) of the Code, (2) a “10 percent shareholder” of Borrower within the meaning of Section 881(c)(3)(B) of the Code or (3) a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code or (C) any other applicable document prescribed by the IRS certifying as to the entitlement of such Non-U.S. Lender Party to such exemption from United States withholding tax or reduced rate with respect to all payments to be made to such Non-U.S. Lender Party under the Credit Documents. Unless Borrower and Administrative Agent have received forms or other documents satisfactory to them indicating that payments under any Credit Document to or for a Non-U.S. Lender Party are not subject to United States Withholding Tax or are subject to such tax at a rate reduced by an applicable tax treaty, the Borrower Parties and Administrative Agent shall withhold amounts required to be withheld by applicable Requirements of Law from such payments at the applicable statutory rate.

(ii) Each U.S. Lender Party shall (A) on or prior to the date such U.S. Lender Party becomes a “U.S. Lender Party” hereunder, (B) on or prior to the date on which any such form or certification expires or becomes obsolete, (C) after the occurrence of any event requiring a change in the most recent form or certification previously delivered by it pursuant to this Section 2.14(f) and (D) from time to time if requested in writing by Borrower or Administrative Agent (or, in the case of a participant, the relevant Lender), provide Administrative Agent and Borrower (or, in the case of a participant, the relevant Lender) with two completed originals of Form W-9 (certifying that such U.S. Lender Party is entitled to an exemption from U.S. backup withholding tax) or any successor form.

(iii) Each Lender having sold a participation in any of its Obligations shall collect from such participant the documents described in this clause (f) and provide them to Administrative Agent.

(iv) If a payment made to a Lender would be subject to United States federal withholding Tax imposed by FATCA if such Lender fails to comply with the applicable reporting requirements of FATCA, such Lender shall deliver to Administrative Agent and Borrower any documentation under any Requirements of Law or reasonably requested in writing by Administrative Agent or Borrower sufficient for Administrative Agent or Borrower to comply with its obligations under FATCA and to determine that such Lender has complied with its obligations under FATCA or to determine the amount to deduct and withhold from such payment

(g) **Refunds.** If a Lender has received a refund of (or tax credit with respect to) any Withholding Taxes or Other Taxes as to which it has been indemnified by Borrower or with respect to which Borrower has paid additional amounts pursuant to this Section 2.14, it shall pay over such refund (or the benefit realized as a result of such tax credit) to Borrower (but only to the extent of indemnity payments made, or additional amounts paid, by Borrower under this Section 2.14 with respect to the Withholding Taxes or Other Taxes giving rise to such refund), net of all out of pocket expenses of the Lender (including any Withholding Taxes imposed with respect to such refund) as is determined by the Lender in good faith, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided, that Borrower, upon the written request of the Lender, agree to repay as soon as

reasonably practicable the amount paid over to Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Lender if the Lender is required to repay such refund to such Governmental Authority. This Section 2.14 shall not be construed to require the Lender to make available its tax returns (or any other information relating to its Withholding Taxes or Other Taxes which it deems in good faith to be confidential) to Borrower or any other person.

(h) **Survival.** Each party's obligations under this Section 2.14 shall survive the resignation or replacement of Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitment and the repayment, satisfaction or discharge of all obligations under any Credit Document.

Section 2.15 Underlying Loan Collections; Deposit Account.

(a) All Underlying Loan Collections shall be deposited into the Collections Deposit Account within two (2) Business Days of receipt.

(b) While an Event of Default is in existence, Administrative Agent shall have the right, at its option, to (i) direct the applicable depository institution to transfer all amounts then on deposit in the Collections Account to Administrative Agent, (ii) terminate the Servicer, (iii) exercise remedies under the Deposit Account Control Agreement governing the Collections Account and (iv) direct Borrower to transfer all Underlying Loan Collections and all other amounts paid by Underlying Loan Borrower (including impound and reserve payments) to Administrative Agent, and Administrative Agent shall have the right to apply such amounts to the Obligations (excluding reserves and impounds, which shall be applied in accordance with the terms of the Underlying Loan Documents).²

(c) Borrower agrees that it shall be solely responsible for any fees and charges in effect from time to time and charged by the applicable depository institution in connection with the Collections Account, and that Administrative Agent shall have no liability therefor. Borrower hereby indemnifies and agrees to hold Administrative Agent solely in its capacity as Administrative Agent hereunder and not in its capacity as the applicable depository institution (which shall be governed by the Deposit Account Control Agreement) harmless from any and all liabilities, claims, losses and demands whatsoever, including reasonable attorneys' fees and expenses, arising from or relating to actions of Administrative Agent pursuant to this Section or the Deposit Account Control Agreement, except to the extent of the gross negligence or willful misconduct of Administrative Agent as determined by the final non-appealable decision of a court of competent jurisdiction.

(d) If any Underlying Loan Collections are not deposited in accordance with the terms of this Agreement, but are received directly by Borrower in violation of this Agreement, such collections shall be held in trust for the benefit of Administrative Agent pursuant to an express trust created hereby and immediately deposited, in the form received, into the Collections Account.

(e) Borrower acknowledges and agrees that compliance with the terms of this Section is essential, and that Administrative Agent and Lenders will suffer immediate and irreparable injury and have no adequate remedy at law if Borrower fails to honor the terms hereof. Accordingly, in addition to all other rights and remedies of Administrative Agent and Lenders hereunder, upon such failure by Borrower or while an Event of Default is in existence, Administrative Agent shall have the right to (i) seek specific performance of Borrower's obligations under this Section, and any other equitable relief as Administrative Agent may deem

² Need to understand cash flow through Servicer

necessary or appropriate, and Borrower waives any requirement for the posting of a bond in connection with such equitable relief, or (ii) as the irrevocably made, constituted and appointed true and lawful attorney for Borrower, by the signature or other act of any of Administrative Agent's officers (without requiring any of them to do so), direct Underlying Loan Borrower to pay the Underlying Loan Collections to the applicable depository institution, for deposit into the Collections Account, or to Administrative Agent.

(f) Borrower shall not, and Borrower shall not suffer or permit any other Borrower Party to, (i) withdraw any amounts from the Collections Account except in accordance with the terms hereof, (ii) change the procedures or sweep instructions under the agreements governing the Collections Account or (iii) send to or deposit in the Collections Account any funds other than Underlying Loan Collections made and proceeds of other Collateral. Borrower shall, and shall cause each Borrower Party to, if requested to do so by Administrative Agent, cooperate with Administrative Agent in the identification and reconciliation on a monthly basis of all amounts received in or required to be deposited into the Collections Account.

(g) All Underlying Loan Cash Collateral shall be retained by Borrower in the Collections Account (or a subaccount established thereunder) until applied to the outstanding principal balance of the Underlying Loan or disbursed to the Underlying Loan Borrower in accordance with the Underlying Loan Documents.

(h) Any letter of credit furnished by Underlying Loan Borrower shall be in form and substance reasonably acceptable to Administrative Agent, shall be issued by an issuer that is reasonably acceptable to Administrative Agent, shall be assignable without payment of any fee by the beneficiary thereunder and, promptly upon Administrative Agent's written request while an Event of Default is in existence, shall be transferred to Administrative Agent.

ARTICLE 3 SECURITY AGREEMENT; COLLATERAL

Section 3.1 Grant of Security Interest

(a) As security for the timely payment of the Indebtedness in accordance with this Agreement and the Notes and for the payment and performance of all of the Obligations, Borrower hereby grants to Administrative Agent, for the benefit of the Lenders, a first priority security interest in all of Borrower's present and future estate, right, title and interest in and to the following described Collateral, whether now owned or hereafter acquired (collectively, the "**Collateral**"):

- (i) the Underlying Loan;
- (ii) the Underlying Loan Documents, and all renewals, extensions, modifications and replacements of any of them;
- (iii) all Records relating to the Underlying Loan;
- (iv) all Underlying Loan Files relating to the Underlying Loan;
- (v) all Underlying Loan Collections;

(vi) all collection, escrow, reserve, collateral or lock-box accounts and all amounts and property from time to time on deposit therein, to the extent of Borrower's or the holder's interest therein, and provided such amounts relate to the Underlying Loan, all

accounts into which debt service under the Underlying Loan is paid being collaterally assigned to Administrative Agent as security for the Loan;

(vii) all rights of Borrower under any letter of credit, guarantee, warranty, indemnity or other credit support or enhancement that relate to the Underlying Loan;

(viii) any other contract rights, accounts (including any interest of Borrower in escrow accounts), payments, letters of credit, rights to payment (including payments of interest or finance charges) and general intangibles to the extent the foregoing relates to the Underlying Loan, and any other assets relating to the Underlying Loan;

(ix) any Hedge Agreements associated with the Underlying Loan;

(x) any and all other collateral for the Underlying Loan;

(xi) all rights, liens, security interests, guarantees, insurance agreements and assignments accruing or to accrue to the benefit of Borrower in respect of the Underlying Loan; all of Borrower's rights, powers, privileges, benefits and remedies under each and every paper now or hereafter securing, insuring, guaranteeing or otherwise relating to or delivered in connection with the Underlying Loan, including all guarantees, lien priority agreements, security agreements, deeds of trust, collateral assignments, subordination agreements, negative pledge agreements, loan agreements, management agreements, development agreements, design professional agreements, payment, performance or completion bonds, title and casualty insurance policies and mortgage guaranty or insurance contracts; all of Borrower's rights, to the extent assignable, in, to and under any and all commitments issued by or any lender, investor or securities issuer to refinance, guarantee, purchase or insure in the Underlying Loan or refinance the Underlying Loan, together with the proceeds arising from or pursuant to any and all such commitments; all rights under every Insurance Policy relating to the Project[s] securing the Underlying Loan for the benefit of the creditor of the Underlying Loan, the proceeds of all errors and omissions insurance policies and all rights under any blanket hazard insurance policies to the extent they relate to any Underlying Loan or its security; all insurance (including casualty insurance, pool insurance and title insurance proceeds) or condemnation proceeds (or payments in lieu of condemnation) paid or payable with respect to any Underlying Loan and/or any of the property securing payment of any Underlying Loan or covered by any related instrument;

(xii) all books, records, files, papers, documents, instruments, surveys, certificates, correspondence, appraisal reports, accounting records and other records, information and data relating to the Underlying Loan or any of the Underlying Loan Documents or any of the other Collateral described or referred to above, including any of the foregoing necessary or useful for Borrower or any other servicer to service or administer the Underlying Loan or the Underlying Loan Documents;

(xiii) the nonexclusive right to use (in common with Borrower and other Persons holding valid and enforceable rights thereto) Borrower's data and information (including any virtual data, if applicable) relating to the Underlying Loan as provided to Administrative Agent by Borrower;

(xiv) all Underlying Loan Cash Collateral;

(xv) all "accounts", "chattel paper", "deposit accounts", "documents", "equipment", "general intangibles" (including "payment intangibles"), "goods", "inventory", "instruments", "investment property", "letters of credit", "letter of credit

rights”, “securities”, “securities entitlements” and “supporting obligations”, as each as defined in the UCC; and

(xvi) all accessions or additions to, substitutions for and proceeds of any and all of the foregoing, together with all renewals and replacements of any of the foregoing.

(b) The possession by Administrative Agent, or any designee or agent of Administrative Agent, of the Collateral shall be deemed to be possession by the secured party for purposes of perfecting the security interest pursuant to the UCC.

Section 3.2 Custody of Underlying Loan Documents.

(a) On or before to the Closing Date, Borrower shall deliver (or shall have made arrangements satisfactory to Administrative Agent for the promptly delivery of) the Underlying Loan File to Administrative Agent or its custodian, which shall include the following documents pertaining to the Underlying Loan:

(i) The original Underlying Loan Note, with an original undated allonge affixed to such Underlying Loan Note and endorsing such Underlying Loan Note: “Pay to the order of “_____” and signed in the name of Borrower;

(ii) Each of the Underlying Loan Documents set forth on Schedule 1.1(b) attached hereto, as an original or a copy, all as indicated on Schedule 1.1(b); and

(iii) An original of each of the Mortgage Assignment, duly executed by Borrower in blank (as applicable), and in form and substance acceptable for recording (as applicable).

(b) Borrower hereby acknowledges that Administrative Agent may (but shall not be required to) deliver any or all of the documents listed on Schedule 1.1(b) attached hereto, and any other documents or materials received by Administrative Agent from Borrower or its agents or representatives, to a custodial service provider used by Administrative Agent from time to time (and selected by Administrative Agent in its reasonable discretion).

(c) From time to time, as required under Section 6.20(f), Borrower shall forward to Administrative Agent (or its designee) additional original documents or additional documents evidencing any assumption, modification, consolidation or extension of the Underlying Loan approved or entered into in accordance with the terms of this Agreement.

(d) With respect to any documents that have been delivered or are being delivered to recording offices for recording and have not been returned to Borrower in time to permit their delivery hereunder at the time required, in lieu of delivering such original documents, Borrower shall deliver to Administrative Agent a 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. Borrower shall deliver such original documents to Administrative Agent promptly after they are received. Any Underlying Loan Files not delivered to Administrative Agent (or its designee) and shall be held by Borrower or its designee for the benefit of Administrative Agent as the holder of a first priority security interest therein. Borrower or its designee shall maintain a copy of the Underlying Loan File and the originals of the Underlying Loan File not delivered to Administrative Agent or its designee. The possession of the Underlying Loan File by Borrower or its designee is at the will of Administrative Agent for the sole purpose of servicing the Underlying Loan, and such retention and possession by Borrower or its designee is in a custodial capacity only and may be revoked by Administrative Agent at any time.

Section 3.3 Further Assurances Concerning Collateral; Additional Collateral.

(a) In furtherance of the foregoing, Borrower hereby agrees to perform, or cause to be performed, such acts and duly to authorize, execute, acknowledge, deliver, file and record (or cause such actions to be taken with respect to) such financing statements, assignments, security agreements, deeds of trust, mortgages, letter of credit assignments, bond powers and supplements, modifications or amendments to any of them, and such other documents as Administrative Agent may reasonably request in order to establish and preserve the priority of, perfect and protect the Liens granted or intended to be granted to Administrative Agent in and to any and all such Collateral and to preserve and protect Administrative Agent's rights in respect of all present and future Collateral for the Obligations.

(b) Borrower hereby authorizes Administrative Agent to file a UCC-1 financing statement naming Borrower as debtor and Administrative Agent as secured party, and identifying the Collateral as "all assets of the debtor" or words to that effect.

(c) If any amount payable under or in connection with the Underlying Loan shall be or become evidenced by any promissory note (other than the Underlying Loan Note), other instrument or chattel paper (as each of the foregoing is defined under the UCC), such promissory note, instrument or chattel paper shall be promptly delivered to Administrative Agent or its designee, duly endorsed in a manner reasonably satisfactory to Administrative Agent or if any collateral or other security shall subsequently be delivered to Borrower in connection with the Collateral Loan, Borrower shall promptly deliver or forward such item of collateral or other security to Administrative Agent, together with such instruments of assignment as are necessary as Administrative Agent may reasonably request.

Section 3.4 Rights After Occurrence of Event of Default. After the occurrence of any Event of Default, and without limitation of its remedies under Article 8, Administrative Agent shall have the right (but not obligation) to:

(a) in its discretion, to demand, sue for, collect or receive and receipt for (in its own name, in the name of Borrower or otherwise) any money or property at any time payable or receivable on account of any of the Collateral, in consideration of its transfer or in exchange for it;

(b) to direct (and to take any and all other steps necessary to cause) the Underlying Loan Borrower to pay over directly to Administrative Agent for the account of Borrower (instead of to Borrower or any other Person) all sums from time to time due to Borrower;

(c) to direct (and to take any and all other steps necessary to cause) the Custodian to release the Underlying Loan Documents to Administrative Agent;

(d) to direct (and to take any and all other steps necessary to cause) the Servicer to pay over directly to Administrative Agent for the account of Borrower (instead of to Borrower or any other Person) all sums from time to time due to Borrower and to take any and all other actions that Borrower or Administrative Agent has the right to take under the Servicer Acknowledgement, including termination of the Servicing Agreement as to Borrower; and

(e) to request in writing that Borrower forthwith pay to Administrative Agent at its principal office all amounts thereafter received by Borrower upon or in respect of any of the Collateral, advising Administrative Agent as to the sources of such funds, and if Administrative Agent does so request, then Borrower shall diligently and continuously thereafter comply with such request.

All amounts so received and collected by Administrative Agent shall be applied by Administrative Agent in accordance with Section 2.6(a) hereof.

Section 3.5 Proceeds. While an Event of Default is in existence, upon the request of Administrative Agent all proceeds of Collateral received by Borrower consisting of cash, checks and other near-cash items shall be (a) held by Borrower in trust for Administrative Agent, segregated from other funds of Borrower, and, within two (2) Business Days of receipt by Borrower, shall be turned over to Administrative Agent in the exact form received by such party (duly endorsed by Borrower to Administrative Agent, if required, in order to be negotiated by Administrative Agent) or (b) unless otherwise directed by Administrative Agent, tendered to Servicer for payment to Administrative Agent in accordance with the Servicer Acknowledgment. Any and all such proceeds received by Administrative Agent (whether from Borrower or otherwise) shall first be applied in accordance with the Underlying Loan Documents and any excess proceeds to which Borrower would otherwise be entitled under the Underlying Loan Documents may, in the sole discretion of Administrative Agent, be held by Administrative Agent as collateral security for, and/or then or at any time thereafter may be applied by Administrative Agent against, the Indebtedness and the other Obligations (whether matured or unmatured), such application to be in such order as Administrative Agent shall elect. For purposes hereof, proceeds shall include, but not be limited to, all principal and interest payments, all prepayments and payoffs, insurance claims, condemnation awards, sale proceeds, real estate owned rents and any other income and all other amounts received with respect to the Collateral.

Section 3.6 Limitation on Duties Regarding Preservation of Collateral. Administrative Agent's duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession, under Section 9-207 of the UCC or otherwise, shall be to deal with it in the same manner as Administrative Agent deals with similar property for its own account. Neither Administrative Agent nor any of its directors, officers or employees shall be liable for failure to demand, collect or realize upon all or any part of the Collateral or for any delay in doing so, except to the extent arising from Administrative Agent's gross negligence or willful misconduct, in each case as determined by the final non-appealable decision of a court of competent jurisdiction, and none of Administrative Agent nor any of its directors, officers or employees shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of Borrower or otherwise.

Section 3.7 Powers Coupled with an Interest. All authorizations and agencies herein contained with respect to the Collateral are irrevocable and powers coupled with an interest.

Section 3.8 Return of Collateral at End of Commitment. If all monetary Obligations shall have been fully paid and satisfied, then Administrative Agent shall release (or instruct the Custodian to release) the Collateral to Borrower or its designee promptly upon written request made by Borrower and at its cost, whereupon such released Collateral shall no longer be pledged to Administrative Agent, and Borrower shall promptly receipt (or shall cause its designee to promptly receipt) for such released Collateral in writing to Administrative Agent. Acceptance by Borrower of any Collateral delivered to it pursuant to any provision of this Agreement (whether or not the recipient issues a receipt for it) or shipping by Administrative Agent in substantial compliance with shipping instructions given by Borrower or its designee shall be a complete and full acquittance for the Collateral so delivered or shipped, and Administrative Agent shall thereby be released and discharged from any and all liability or responsibility for it first arising then or thereafter (except liability for Administrative Agent's own gross negligence or willful misconduct, in each case.)

Section 3.9 Conversion of Project to REO Project.

(a) Following the approval by Administrative Agent pursuant to Section 6.20(g), Borrower may enforce the Underlying Loan Documents and convert [a/the] Project to REO Property upon satisfaction of the Conversion Conditions concurrently with Borrower's completion of foreclosure (whether judicial or non-judicial) of the mortgage securing the Underlying Loan or other acquisition, directly or indirectly, of title to the Project through a deed in lieu of foreclosure or, if approved by Administrative Agent pursuant to Section 6.20(a), by acquisition by an Enforcement Entity of the equity interests in the Underlying Loan Borrowers.

(b) If the approved Resolution Plan permits Borrower to enforce the Underlying Loan Documents, the following provisions shall apply:

(i) Borrower shall take action as the holder of the Underlying Loan Documents in its own name, or, if approved by Administrative Agent in writing, in the name of a newly created enforcement entity ("**Enforcement Entity**") formed by Borrower to take title to the Project;

(ii) At the foreclosure sale, Borrower or the Enforcement Entity, as applicable, may bid in such amount as Borrower elects (taking into account the amount of the Underlying Loan and all other amounts owed by Borrower or such Enforcement Entity under the Underlying Loan Documents), and if Borrower or the Enforcement Entity is the successful bidder or if Borrower or the Enforcement Entity takes title to the Project and the Conversion Conditions are satisfied, Borrower or the Enforcement Entity, as applicable, shall concurrently grant to Lender pursuant to REO Mortgage a first priority lien in and to the Project and all other assets of the Underlying Loan Borrower (subject to the Permitted Encumbrances); and

(iii) In connection with the enforcement of the Underlying Loan Documents by the Borrower or Enforcement Entity, Administrative shall cooperate with such efforts and shall execute and deliver (at Borrower's cost and expense) such documents as reasonably necessary to effect such enforcement. If enforcement occurs by exercise of a pledge of equity interests in the Underlying Loan Borrower, each of Borrower and the Enforcement Entity, as co-borrowers, shall execute and deliver the loan documents contemplated in the definition of Conversion Conditions.

ARTICLE 4 REPRESENTATIONS AND WARRANTIES

Borrower represents, warrants and covenants to Administrative Agent and Lenders, as of the Closing Date and, unless otherwise specified, as of the date of each Compliance Certificate delivered to Administrative Agent pursuant to Section 5.2 hereof that:

Section 4.1 Organization; Formation Documents.

(a) Organization, etc. Borrower is a limited liability company duly organized, validly existing and in good standing under the laws of the state of its formation or existence and is in compliance in all material respects, with all Requirements of Law applicable to doing business in the state in which the Project is located. Borrower is not a "foreign person" within the meaning of §1445(f)(3) of the Code. Borrower and each other Borrower Party has only one state of incorporation or organization. All other information regarding Borrower and each other Borrower Party set forth on Schedule 4.1, including the location of the chief executive office of Borrower, the location where borrower keeps its books and records (including all of Borrower's records related to the Collateral) and the ownership structure of Borrower and its constituent entities, is true and correct as of the Closing Date.

(b) **Formation Documents.** A true and complete copy of the organizational documents of Borrower and each other Borrower Party and any and all amendments thereto (collectively, the “**Borrower Formation Documents**”) has been furnished to Administrative Agent. The Borrower Formation Documents constitute the entire agreement regarding Borrower are binding upon and enforceable against each of the members of Borrower in accordance with their respective terms. No breach exists under the Borrower Formation Documents and no condition exists which, with the giving of notice or the passage of time, would constitute a breach under the Borrower Formation Documents.

Section 4.2 Validity of Credit Documents. The execution, delivery and performance by Borrower and Guarantor of the Credit Documents to which they are party: (a) are duly authorized and do not require the consent or approval of any other party or Governmental Authority that has not been obtained and (b) will not violate any law in any material respect or result in the imposition of any Lien, charge or encumbrance upon the assets of any such party, except as contemplated by the Credit Documents. The Credit Documents constitute the legal, valid and binding obligations of Borrower and each Borrower Party who is a party to such Credit Documents, enforceable in accordance with their respective terms, subject to applicable bankruptcy, insolvency, or similar laws generally affecting the enforcement of creditors’ rights. The Credit Documents are not subject to, and Borrower has not asserted, any right of rescission, set-off, counterclaim or defense, including the defense of usury. No exercise of any of the terms of the Credit Documents or the Environmental Indemnity Agreement, or any right thereunder, will render any Credit Document unenforceable.

Section 4.3 Liabilities; Litigation.

(a) **Financial Statements.** The financial statements delivered to Administrative Agent by Borrower and each other Borrower Party are true and correct as of the date such financial statements were prepared with no material change since the date of preparation. Except as disclosed in such financial statements and in the searches obtained by Administrative Agent, there are no liabilities (fixed or contingent) affecting Borrower or any other Borrower Party (excluding contingent liabilities of Guarantor).

(b) **Contemplated Actions.** No Borrower Party, is contemplating either the filing of a petition by it under state or federal bankruptcy or insolvency laws or the liquidation of all or a major portion of its assets or property, and none of Borrower or, to Borrower’s knowledge, any other Borrower Party has knowledge of any Person contemplating the filing of any such petition against it.

(c) **Litigation.** There are no actions, suits or other proceedings at law or in equity by or before any Governmental Authority now pending or threatened against or affecting Borrower or the Project, which, if adversely determined, might materially adversely affect the condition (financial or otherwise) or business of Borrower (including the ability of Borrower to carry out its obligations under the Credit Documents), or the use, value, condition or ownership of the Projects.

Section 4.4 Other Agreements; Defaults. Neither Borrower nor any other Borrower Party is a party to any agreement or instrument or subject to any court order, injunction, permit, or restriction that could reasonably be expected to have a Material Adverse Effect on Borrower. None of Borrower, or any other Borrower Party is in violation of any agreement which violation could reasonably be expected to have a Material Adverse Effect on Borrower.

Section 4.5 Compliance with Laws. Neither Borrower nor any other Borrower Party is in violation of any provision of any law, or any judgment, award, rule, regulation, order,

decree, writ or injunction of any court, other Governmental Authority or public regulatory body that could reasonably be expected to have a Material Adverse Effect on Borrower.

Section 4.6 ERISA; Employees.

(a) As of the Closing Date and throughout the term of the Loan, (i) Borrower is not and will not be an “employee benefit plan” as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, and (ii) the assets of Borrower do not and will not constitute “plan assets” of one or more such plans for purposes of Title I of ERISA.

(b) As of the Closing Date and throughout the term of the Loan (i) Borrower is not and will not be a “governmental plan” within the meaning of Section 3(3) of ERISA and (ii) the transactions contemplated by this Agreement do not and will not violate any state statutes, applicable to Borrower, that regulate investments of and fiduciary obligations with respect to governmental plans and that are similar to Section 406 of ERISA and Section 4975 of the Internal Revenue Code.

(c) Borrower has no employees.

Section 4.7 Margin Stock; Use of Proceeds. No part of proceeds of the Loan will be used for purchasing or acquiring any “margin stock” within the meaning of Regulations T, U or X of the Board of Governors of the Federal Reserve System. Borrower confirms that Borrower is acting on its own behalf and for its own benefit. The Loan has been requested by Borrower and the proceeds of the Loan shall be utilized by Borrower for its own account and for the sole purpose of making the Underlying Loan.

Section 4.8 Forfeiture. There has not been committed by any Borrower Party or any other person involved with the operation or Borrower’s business any act or omission affording the federal government or any state or local government the right of forfeiture as against the Collateral or any part thereof or any monies paid in performance of Borrower’s obligations under any of the Credit Documents. Borrower hereby covenants and agrees not to commit, permit or suffer to exist any act or omission affording such right of forfeiture.

Section 4.9 Tax Filings. Each Borrower Party has filed (or has obtained effective extensions for filing) all federal, state and local tax returns required to be filed and have paid or made adequate provision for the payment of all federal, state and local taxes, charges and assessments payable by such Borrower Party, respectively. Each Borrower Party believes that its respective tax returns properly reflect the income and taxes of such Borrower Party for the periods covered thereby, subject only to reasonable adjustments required by the Internal Revenue Service or other applicable tax authority upon audit.

Section 4.10 Fraudulent Transfer. Borrower has not obtained the Loan or entered into any Credit Document with the actual intent to hinder, delay, or defraud any creditor, and Borrower has received reasonably equivalent value in exchange for its obligations under the Credit Documents. After giving effect to the transactions contemplated by the Credit Documents and the advance of the Underlying Loan, the fair saleable value of Borrower’s assets exceeds and will, immediately following the execution and delivery of the Credit Documents, exceed Borrower’s total probable liabilities, including subordinated, unliquidated, disputed or contingent liabilities, including the maximum amount of its contingent liabilities or its debts as such debts become absolute and matured. Borrower’s assets do not and, immediately following the Closing Date and each advance of the proceeds of the Loan will not, constitute unreasonably small capital to carry out their business as conducted or as proposed to be conducted. Borrower does not intend to, and does not believe that it will, incur debts and liabilities (including contingent

liabilities and other commitments) beyond its ability to pay such debts as they mature (taking into account the timing and amounts to be payable on or in respect of obligations of Borrower).

Section 4.11 Full and Accurate Disclosure.

(a) No statement of fact made by or on behalf of any Borrower Party in this Agreement, in any of the other Credit Documents contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained herein or therein not misleading, nor has there been any material adverse change in any condition, fact, circumstance or event that would make the financial statements, rent rolls, reports, certificates or other documents submitted in connection with the Loan inaccurate, incomplete or otherwise misleading in any material respect. There is no fact presently known to Borrower that has not been disclosed to Administrative Agent which could reasonably be expected to have a Material Adverse Effect. All information supplied by Borrower regarding the Collateral is accurate and complete in all material respects. All evidence of Borrower's and each other Borrower Party's identity provided to Administrative Agent and Lenders is genuine, and all related information is accurate.

(b) As of the Closing Date, the information included in the Beneficial Ownership Certification is true and correct in all respects.

Section 4.12 Single Purpose Entity/Separateness. Borrower (a) is a Single Purpose Entity in accordance with the terms of Borrower's operating agreement in effect and approved by Administrative Agent as of the date hereof; (b) does not hold any Investments other than Permitted Investments; and (c) has not made any loans or other advances of money to any Person other than the Underlying Loan.

Section 4.13 Anti-Money Laundering/International Trade Law Compliance; Patriot Act.

(a) No Covered Entity (i) is a Sanctioned Person; (ii) has any of its assets in a Sanctioned Country or in the possession, custody or control of a Sanctioned Person; or (iii) does business in or with, or derives any of its operating income from investments in or transactions with, any Sanctioned Country or Sanctioned Person in violation of any law, regulation, order or directive enforced by any Compliance Authority.

(b) The proceeds of the Loan will not be used to fund any operations in, finance any investments or activities in, or, make any payments to, a Sanctioned Country or Sanctioned Person in violation of any law, regulation, order or directive enforced by any Compliance Authority.

(c) The funds used to repay the Loan are not derived from any unlawful activity.

(d) Each Covered Entity is in compliance with, and no Covered Entity engages in any dealings or transactions prohibited by, any laws of the United States, including but not limited to any Anti-Terrorism Laws.

(e) Borrower covenants and agrees that it shall immediately notify Administrative Agent in writing upon the occurrence of a Reportable Compliance Event.

(f) As used herein: "**Anti-Terrorism Laws**" means any laws relating to terrorism, trade sanctions programs and embargoes, import/export licensing, money laundering, or bribery, all as amended, supplemented or replaced from time to time; "**Compliance Authority**," means each and all of the (a) U.S. Treasury Department/Office of Foreign Assets Control, (b) U.S.

Treasury Department/Financial Crimes Enforcement Network, (c) U.S. State Department/Directorate of Defense Trade Controls, (d) U.S. Commerce Department/Bureau of Industry and Security, (e) U.S. Internal Revenue Service, (f) U.S. Justice Department, and (g) U.S. Securities and Exchange Commission; “**Covered Entity**” means Guarantor, Borrower, and their subsidiaries; “**Reportable Compliance Event**” means that any Covered Entity becomes a Sanctioned Person, or is indicted, arraigned, investigated or custodially detained, or receives an inquiry from regulatory or law enforcement officials, in connection with any Anti-Terrorism Law or any predicate crime to any Anti-Terrorism Law, or self-discovers facts or circumstances implicating any aspect of its operations with the actual or possible violation of any Anti-Terrorism Law; “**Sanctioned Country**” means a country subject to a sanctions program maintained by any Compliance Authority; and “**Sanctioned Person**” means any individual person, group, regime, entity or thing listed or otherwise recognized as a specially designated, prohibited, sanctioned or debarred person or entity, or subject to any limitations or prohibitions (including but not limited to the blocking of property or rejection of transactions), under any order or directive of any Compliance Authority or otherwise subject to, or specially designated under, any sanctions program maintained by any Compliance Authority.

(g) No Borrower Party nor any partner in any Borrower Party or member of such partner nor any owner of a direct or indirect interest in any Borrower Party (i) is listed on any Government Lists or (ii) is a Prohibited Person.

(h) No Borrower Party nor any partner in any Borrower Party or member of such partner nor, to Borrower’s knowledge, any owner of a direct or indirect interest in any Borrower Party (i) has been previously indicted for or convicted of any felony involving a crime or crimes of moral turpitude or (ii) is currently under investigation by any Governmental Authority for alleged criminal activity.

Section 4.14 Collateral; Collateral Security.

(a) Borrower is the sole legal and equitable owner and holder of the Underlying Loan Note[s] and all related Underlying Loan Documents, free and clear of all Liens, excluding Permitted Liens. Borrower has not assigned, pledged, or otherwise conveyed or encumbered any interest in the Collateral to any Person (other than Lender). Borrower has full right, power and authority to pledge and assign such Collateral free and clear of any interest or claim of any third party or any Affiliate of Borrower but subject to the terms of the Underlying Loan Documents.

(b) Borrower has complied and will continue to comply with all material Requirements of Law relating to each item of Collateral.

(c) Each item of Collateral is genuine and what it purports to be.

(d) There are no participation agreements affecting Borrower’s interest in the Underlying Loan.

(e) The provisions of this Agreement and the other Credit Documents are effective to create in favor of Lender a valid security interest in all right, title and interest of Borrower in, to and under the Collateral.

(f) Upon receipt by Administrative Agent of the Underlying Loan File related to the Underlying Loan and (ii) upon the filing of UCC financing statements naming Lender as “Secured Party” and Borrower as “Debtor” and describing the related Collateral, as necessary, Administrative Agent shall have a fully perfected first priority security interest in all of Borrower’s right, title and interest in, to and under such Collateral.

Section 4.15 Underlying Loan.

(a) The Underlying Loan Documents and any other documents required to be delivered by Borrower or Guarantor under this Agreement for the Underlying Loan have been delivered to Administrative Agent in accordance with Section 3.2 (or arrangements have been made for such delivery).

(b) As of the Closing Date, Schedule 1.1(b) contains a complete and correct description of each Underlying Loan Document. Except as set forth on Schedule 1.1(b) (as the same may be supplemented from time to time), there are no letters of credit that have been delivered by the Underlying Loan Borrower to Borrower.

(c) Each of the Underlying Loan Note, the Underlying Loan Mortgage and the other Underlying Loan Documents executed by the Underlying Loan Borrower in connection with the Underlying Loan is a legal, valid and binding obligation of the Underlying Loan Borrower (subject to any non-recourse provisions therein and any state anti-deficiency or market value limit deficiency legislation), enforceable in accordance with its terms, except (i) that certain provisions contained in the Underlying Loan Documents are or may be unenforceable in whole or in part under applicable state or federal laws, but neither the application of any such laws to any such provision nor the inclusion of any such provisions renders any of the Underlying Loan Documents invalid as a whole and the Underlying Loan Documents, taken as a whole, are enforceable to the extent necessary and customary for the practical realization of the rights and benefits afforded thereby, and (ii) as such enforcement may be limited by bankruptcy, insolvency, receivership, reorganization, moratorium, redemption, liquidation or other laws relating to or affecting the enforcement of creditors' rights generally, or by general principles of equity (regardless of whether such enforcement is considered in a proceeding in equity or at law). The Underlying Loan Note and the Underlying Loan Mortgage contain no provision limiting the right or ability of Borrower to assign the Underlying Loan. There is no valid offset, defense, counterclaim or right of rescission available to Underlying Loan Borrower with respect to the Underlying Loan.

(d) Except as permitted hereunder, no terms of any Underlying Loan Mortgage, Underlying Loan Note or other Underlying Loan Documents have been waived, impaired, modified, altered, satisfied, canceled, subordinated or rescinded by Borrower in any material respect. The Project (nor any portion thereof) has not] released from the lien of the related Underlying Loan Mortgage, and no Underlying Loan Borrower has been released by Borrower or Guarantor from its obligations under the applicable Underlying Loan Documents.

(e) The Underlying Loan and the Underlying Loan File are in compliance in all material respects with the requirements of all Requirements of Law.

(f) As of the Closing Date, the outstanding principal balance under the Underlying Loan Note is \$128,000,000.00. Except for the Underlying Loan \$5,000,000.00 Holdback, which shall not be advanced on the Closing Date and shall be available for advance upon satisfaction of the conditions specified in the Underlying Loan Agreement, the proceeds of the Underlying Loan have been fully advanced.

(g) Borrower has delivered to Lender true, correct and complete copies of all Appraisals, property condition reports, Phase I environmental site assessments, Phase II environmental site assessments (if applicable), and all other environmental assessments and reports received by Borrower with respect to the Project in connection with the closing of the Underlying Loan. Except as disclosed in any such Phase I environmental site assessments, Phase II environmental site assessments (if applicable) or other environmental assessments and reports provided to Borrower, Borrower has not received written notification of potential or known

liability from any Governmental Authority relating to any Hazardous Materials on or affecting the Project or any violation of any Environmental Laws arising from the ownership or operation of the Project, including relating to wetlands or the past or present contamination, presence, use, storage, handling, transportation, treatment, disposal, or release of Hazardous Materials.

(h) Neither Borrower nor any of its Affiliates have consented to any subordinate lien encumbering the Project and, with the exception of the Underlying Loan, to Borrower's knowledge, the Project does not secure the repayment of any mortgage loan or any Indebtedness other than the Underlying Loan and the Permitted Encumbrances. To Borrower's knowledge, there is no mezzanine debt related to the Project. Neither Borrower nor its Affiliates holds any preferred equity interest in the Underlying Loan Borrower.

(i) Each Underlying Loan Mortgage is insured pursuant to the applicable Closing Date Title Policy. Borrower has not done, by act or omission, anything that would materially impair the coverage under the Closing Date Title Policy, and no claims have been made under the Closing Date Title Policy. Borrower has not failed to disclose any fact to the issuer of the Closing Date Title Policy that, if not disclosed, would reasonably be anticipated to have a Material Adverse Effect on Borrower's rights under the Closing Date Title Policy. Based solely upon Borrower's review of the applicable Closing Date Title Policy, the Lien of each Underlying Loan Mortgage is a first priority mortgage lien (subject only to the Permitted Encumbrances) and there are no mortgages, deeds of trust, or similar instruments encumbering the Project that are senior to the Lien of the applicable Underlying Loan Mortgage. To Borrower's knowledge, there are no Liens affecting the Project other than those set forth in the Closing Date Title Policy, those granted to Borrower under the Underlying Loan Documents and those granted to Administrative Agent under this Agreement and the other Credit Documents. There exists, either independently or as part of each Underlying Loan Mortgage, an Assignment of Leases.

(j) To Borrower's knowledge, all taxes, governmental assessments and other outstanding governmental charges (including water and sewage charges) due with respect to the Project have been paid prior to delinquency, or, if the appropriate amount of such taxes or charges is subject to a good faith dispute, the unpaid taxes or charges are covered by an escrow of funds or other security sufficient to pay such tax or charge and reasonably estimated interest and penalties, if any, thereon. For purposes of this representation and warranty, real property taxes and assessments shall not be considered due and payable until the date on which interest and/or penalties would be payable thereon.

(k) To Borrower's knowledge, except as disclosed to Administrative Agent in writing, there is no proceeding pending or threatened in writing for the total or partial condemnation of the Project.

(l) All escrow deposits and payments required pursuant to the Underlying Loan (including capital improvements and environmental remediation reserves, if any) are in the possession, or under the control, of Borrower.

(m) The servicing and collection of the Underlying Loan by Servicer complies in all material respects with all applicable laws and regulations and Accepted Servicing Practices.

(n) Except as disclosed to Administrative Agent in writing, there is (i) no material default, breach, violation or event of acceleration existing under the Underlying Loan, or (ii) no event (other than payments due but not yet delinquent) which, with the passage of time or with notice and the expiration of any grace or cure period, would constitute a material default, breach, violation or event of acceleration, which default, breach, violation or event of acceleration, in the case of either clause (i) or (ii), would reasonably be anticipated to materially and adversely affects the value of the Underlying Loan or the value, use or operation of the Project.

(o) Except as disclosed to Administrative Agent in writing, neither the Project, nor any portion thereof, is the subject of, and Underlying Loan Borrower is not a debtor in, any state or federal bankruptcy, insolvency or similar proceeding.

(p) No advance of funds has been made by Borrower to the Underlying Loan Borrower other than pursuant to the applicable Underlying Loan Documents.

(q) To Borrower's knowledge, the Project is in good condition and is generally fit for the use to which it is currently being put. To Borrower's knowledge, except as disclosed to Administrative Agent in writing, the Project has not suffered material fire, flood, storm, earthquake, or water damage or a similar casualty, except for those that are fully covered fully covered by Insurance Policies (except for a reasonable deductible). If any such damage has occurred, to Borrower's knowledge, the Underlying Loan Borrower is undertaking reasonable steps to repair or rebuild and any such damage is in fact practically repairable or rebuildable.

(r) To Borrower's knowledge, there is no pending, filed or threatened (in writing) action, suit or proceeding, arbitration or governmental investigation involving the Underlying Loan Borrower or the Project an adverse outcome of which would reasonably be expected to materially and adversely affect (i) title to the Project, (ii) the validity or enforceability of any Underlying Loan Mortgage, (iii) Underlying Loan Borrower's ability to perform its obligations under the related Underlying Loan Documents, (iv) the current principal use, operation or value of the Project (or any of them), or (v) the principal benefit of the security intended to be provided by the Underlying Loan Documents, or (vi) the current ability of the Project to generate net cash flow sufficient to service the Underlying Loan.

(s) Borrower has delivered to Administrative Agent all financial statements, operating statements and other reports required to be provided by Underlying Loan Borrower under the Underlying Loan Documents. Borrower has no reason to believe that any such statements or reports are untrue or incorrect in any material manner.

(t) To Borrower's knowledge, the Underlying Loan Borrower is not a Prohibited Person. Neither Borrower nor any of its Affiliates holds any equity interest in Underlying Loan Borrower.

(u) **Schedule 1.1(c)** accurately sets forth, to Borrower's knowledge, (i) the number and, if specified, the expiry date and holder of each Primary License required to operate the Project as an assisted living and memory care facility, (ii) the name of the property manager, (iii) whether the Project is held and operated in a "propco/opco" structure and (iv) the number of Residential Units at the Project.

(v) The Project is (i) covered by Insurance Policies in amounts determined by Borrower to be appropriate in light of the value and risk profile of the Project, and (ii) name Borrower or Servicer as the insured under a standard mortgagee clause. The Project located in a Special Flood Hazard Area, the Underlying Loan Borrower has obtained Federal Flood insurance as required by the National Flood Insurance Program.

Section 4.16 No Change in Facts or Circumstances; Disclosure. To Borrower's knowledge, there has been no change in any condition, fact, circumstance or event that would make the financial statements, reports, certificates or other documents submitted in connection with the Loan inaccurate, incomplete or otherwise misleading in any material respect, in each case as of the date the same were submitted, or that otherwise could reasonably be anticipated to have a Material Adverse Effect on Borrower.

All of the representations and warranties in this Article 4 and elsewhere in the Credit Documents (a) shall survive the funding or repayment of the Loan and (b) shall be deemed to have been relied upon by Administrative Agent and the Lenders notwithstanding any investigation heretofore or hereafter made by Administrative Agent or any Lender or on their respective behalves.

ARTICLE 5 FINANCIAL REPORTING

Section 5.1 Financial Statements. Borrower shall furnish to Administrative Agent and shall cause each other Borrower Party to furnish to Administrative Agent such financial statements and other financial information as Administrative Agent or any Lender may require pursuant to this Article 5 and such other financial information as Administrative Agent or any Lender may reasonably request from time to time (which written request may be made through electronic mail). All such financial statements shall show all material contingent liabilities and shall accurately and fairly present the results of operations and the financial condition of Borrower at the dates and for the period indicated, shall be in scope and detail reasonably satisfactory to Administrative Agent and shall otherwise be sufficient to permit Administrative Agent to calculate and/or verify Borrower's calculation of the Project Yield and Adjusted Net Operating Income and Guarantor's compliance with the financial covenants contained in the Guaranty.

(a) **Financial Information.** In furtherance of the foregoing, Borrower will furnish to Administrative Agent (or cause to be furnished to Administrative Agent) the following financial information and reports with respect to Borrower and/or the Collateral (as applicable), in each case in form and format and providing information satisfactory to Administrative Agent in its discretion:

(i) as soon as available and in any event within sixty (60) days after the end of each calendar quarter, internally prepared quarterly financial statements (including income statements and balance sheets) prepared for Guarantor that fairly present the financial condition for Guarantor for such period and year-to-date; provided that the financial statements required to be delivered pursuant to this clause (i) shall be deemed delivered by publicly filing quarterly reports with EDGAR (or its successor or replacement);

(ii) as soon as available and in any event within one hundred twenty (120) days after the end of each calendar year, annual audited financial statements prepared for Guarantor prepared by a firm of independent public accountants reasonably satisfactory to Administrative Agent; provided that the financial statements required to be delivered pursuant to this clause (ii) shall be deemed delivered by publicly filing quarterly reports with EDGAR (or its successor or replacement);

(iii) Borrower shall enforce the financial reporting requirements of the Underlying Loan in a commercially reasonable manner in accordance with Accepted Servicing Practices, and shall forward copies of (A) a rent roll and other required monthly final statements furnished by Underlying Loan Borrower within fifteen (15) days after the end of each month; (B) all annual financial reporting information furnished by Underlying Loan Borrower (and any guarantor of the Underlying Loan) not later than March of each fiscal quarter of Borrower and within one hundred twenty (120) days after the end of each fiscal year; and (C) all notices of default from or to the Underlying Loan Borrower or material correspondence in connection with a proposed Significant Underlying Loan Modification, within five (5) Business Days after receipt or sending, as the case may be;

(iv) as soon as available and in any event within forty-five (45) days after the end of each calendar quarter, a reconciliation of current amounts held in any escrow accounts under the Underlying Loan and a copy of the Servicer report which will contain the accounting of all payments received, both in the payments account as well as escrow and reserve accounts;

(v) within five (5) days after receipt from the Underlying Loan Borrower, a copy of the compliance certificate the Underlying Loan Borrower pursuant to the Underlying Loan Agreement, accompanied by the financial statements required to be delivered in connection therewith pursuant to the Underlying Loan Agreement;

(vi) such additional information, reports or statements regarding Borrower and Guarantor as Administrative Agent may from time to time reasonably request.

(b) **Certification of Financial Statements**. Each financial statement provided by Borrower or Guarantor hereunder shall be in scope and detail reasonably satisfactory to Administrative Agent and certified by the chief financial representative of Borrower. Borrower will maintain a system of accounting established and administered in accordance with sound business practices to (i) permit preparation of financial statements on an accrual basis consistent with industry standards and substantially in accordance with GAAP and (ii) provide the information required to be delivered to Administrative Agent hereunder.

(c) **Other Reports and Notices**. Borrower shall deliver to Administrative Agent the following additional reports and notices:

(i) within five (5) days after receipt from the Underlying Loan Borrower, copies of all financial statements, bank reconciliations, budgets, accounts receivable aging reports, rent rolls, schedules of resident agreements, business plans and other financial information furnished by Underlying Loan Borrower to Borrower from time to time under the Underlying Loan Documents;

(ii) within five (5) days after receipt, copies of all final engineering or environmental reports furnished by Underlying Loan Borrower or obtained by Borrower with respect to the Project and any notices furnished by Underlying Loan Borrower or otherwise received by Borrower from any environmental authority having jurisdiction over the Project with respect to a condition existing or alleged to exist or emanate from or at the Project;

(iii) within ten (10) days following Administrative Agent's written request, evidence satisfactory to Administrative Agent of payment of premiums under the Insurance Policies;

(iv) within ten (10) days following Administrative Agent's written request, evidence satisfactory to Administrative Agent of payment of all real estate taxes and assessments with respect to the Project;

(v) promptly following the written request of Administrative Agent, such other reports in respect of the Collateral, the Underlying Loan Borrower or the Project (such as leasing reports or the like), in such detail and at such times as Administrative Agent in its reasonable discretion may require;

(vi) promptly, and in any event within three (3) Business Days following the date upon which Borrower discovers (or receives notice of) the existence of an

Underlying Loan Event of Default, written notice describing such Underlying Loan Event of Default in reasonable detail;

(vii) promptly, and in any event within three (3) Business Days following delivery thereof, a copy of each notice of default delivered by Borrower under the Underlying Loan Documents to Underlying Loan Borrower;

(viii) promptly, and in any event within three (3) Business Days following the date upon which Borrower discovers (or receives notice of) that any Primary License required to operate the Project as an assisted living or memory care facility has been terminated, suspended or revoked, or will not be renewed;

(ix) promptly, and in any event within three (3) Business Days following the date upon which Borrower discovers (or receives notice of) the existence of any ban on admissions at the Project;

(x) promptly, and in any event within three (3) Business Days of Borrower becoming aware thereof, written notice with respect to (i) any material damage, whether insured or uninsured, incurred at the Project; (ii) the Project has become the subject of a condemnation or eminent domain proceeding, or if any such proceeding is threatened in writing; (iii) any threatened or pending legal, judicial or regulatory proceedings, including any dispute between Underlying Loan Borrower and any Governmental Authority, that could materially and adversely affect Underlying Loan Borrower or the Project; and (iv) the imposition of any type of restrictions or suspensions on any Primary License required to operate the Project as a memory care facility (and, with respect to those portions of the Project operated as an assisted living facility on the Closing Date, as an assisted living facility) or the evacuation of residents from the Project for 24 hours or more;

(xi) promptly, and in any event within three (3) Business Days of Borrower becoming aware of the existence of any adverse survey of the Project resulting in an "Immediate Jeopardy" citation or any Healthcare Investigation, written notice providing the following information with respect to such citation or Healthcare Investigation: (A) a copy of the survey and/or a description of the Healthcare Investigation, (B) number of records requested, (C) dates of service, (D) dollars at risk, (E) date records submitted, (F) determinations, findings, results and denials (including number, percentage and dollar amount of claims denied, (G) additional remedies (state or federal) proposed or imposed (including, civil money penalties, denial of payment for new admissions, administrative state penalties or, if applicable, any termination of any Medicare or Medicaid participation or provider agreement, (H) status update, including appeals, and (I) any other pertinent information related thereto; and

(xii) promptly following any request therefor, information and documentation reasonably requested by Administrative Agent or any Lender for purposes of compliance with applicable "know your customer" requirements under the Patriot Act or other applicable anti-money laundering laws.

Section 5.2 Compliance Certificate.

(a) Within forty-five (45) days after the end of each calendar quarter, Borrower shall deliver a fully completed Compliance Certificate executed by an officer of Borrower (or of its manager or managing member), which Compliance Certificate shall be accompanied by the quarterly financial statements required under Section 5.1(a). If requested by Administrative

Agent, Borrower shall furnish such additional back-up documentation as Administrative Agent may reasonably require confirming the representations made in such Compliance Certificate.

(b) Within forty-five (45) days after the end of each calendar quarter, Borrower shall deliver a fully completed Guarantor Compliance Certificate executed by an officer of Guarantor (or of its general partner, manager or managing member, as the case may be). If requested by Administrative Agent, Borrower shall obtain from Guarantor and furnish to Administrative Agent such additional back-up documentation as Administrative Agent may reasonably require confirming the representations made in such Compliance Certificate.

Section 5.3 Accounting Principles. All financial statements shall be prepared in accordance with GAAP (or such other accounting basis reasonably acceptable to Administrative Agent). Notwithstanding the foregoing, all financial statements delivered hereunder shall be prepared, and all financial covenants contained herein shall be calculated, without giving effect to any election under Statement of Financial Accounting Standards 159 (or any similar accounting principle) permitting a Person to value its financial liabilities at the fair value thereof.

Section 5.4 Access and Inspection Rights. Borrower shall permit Administrative Agent to examine such records, books and papers of Borrower once each calendar year upon reasonable notice during normal business hours that reflect upon the financial condition of Borrower or Guarantor and or relate to the Underlying Loan. If Borrower fails to forward the financial statements required in this Article 5 within thirty (30) days after written request, or during any period in which an Event of Default is in existence, Administrative Agent shall have the right to audit Borrower's records, books and papers at Borrower's expense. Administrative Agent, at its option, may accompany Borrower during any periodic inspection by Borrower of the Project, and Borrower shall inform Administrative in advance of any such periodic inspections.

Section 5.5 Books and Records/Audits. Borrower shall keep and maintain or cause to be kept and maintained at all times at its offices at the address disclosed on Schedule 4.1, or such other place as Administrative Agent may approve in writing, complete and accurate books of accounts and records with respect to the Underlying Loan and the administration thereof and to provide the financial statements required to be provided to Administrative Agent pursuant to Section 5.1 above. Administrative Agent and its designated agents shall have the right to inspect and copy any of the foregoing and all Records relating to the Underlying Loan in the possession or under the control of Borrower, subject to compliance with Healthcare Laws. Additionally, if an Event of Default exists or if Administrative Agent or any Lender has a reasonable basis to believe that Borrower's records are materially inaccurate, Administrative Agent and each Lender may, subject to compliance with Healthcare Laws, conduct a joint audit and determine, in such Person's reasonable discretion, the accuracy of such records and computations.

Section 5.6 Appraisals. Without limitation of any other provision of this Agreement requiring or permitting Administrative Agent to obtain an Appraisal, Administrative Agent may obtain an Appraisal of each Project from time to time in its discretion. Except as otherwise provided in this Agreement, Borrower shall not be responsible for the cost of such Appraisal[s] unless an Underlying Loan Event of Default or Event of Default is in existence at the time such Appraisal is requested or if a Lender is required to obtain such Appraisals under Requirements of Law.

Section 5.7 Underlying Loan Information. Borrower shall deliver to Administrative Agent such additional information regarding Borrower, its business, and the Underlying Loan within thirty (30) days after receipt of Administrative Agent's request therefor, including, if requested by Administrative Agent, copies of the regular monthly bank statements of Borrower or provided to Borrower by the Underlying Loan Borrower (if any) and such other information

relating to the Borrower's operating accounts and cash management accounts and reserves maintained with Servicer as shall reasonably be requested by Administrative Agent, in each case, to the extent such bank has the operational ability to do so, by providing Administrative Agent with internet access to such statements or information. Notwithstanding anything to the contrary in this Section 5, with respect to a Lender request for or any requirement that Borrower provide information concerning the Underlying Loan, unless the Underlying Loan Borrower is expressly required to provide such information pursuant to the Underlying Loan Documents, Borrower shall be required only to use commercially reasonable efforts to obtain such information. Borrower shall enforce the financial reporting requirements of the Underlying Loan in accordance with Accepted Servicing Practices.

ARTICLE 6 COVENANTS

Borrower covenants and agrees with each Lender and Administrative Agent as follows:

Section 6.1 Transfers or Encumbrance of Collateral or Property.

(a) Borrower shall not cause or permit a Transfer (in each case, a "**Prohibited Transfer**") without the prior written consent of Administrative Agent, except as otherwise provided in this Section 6.1.

(b) A Prohibited Transfer shall include, but not be limited to, (i) an installment sale agreement wherein Borrower agrees to sell the Collateral or any part thereof for a price to be paid in installments; (ii) if a Restricted Party is a corporation, any merger, consolidation or Transfer of such corporation's stock or the creation or issuance of new stock in one or a series of transactions; (iii) if a Restricted Party is a limited or general partnership or joint venture, any merger or consolidation or the change, removal, resignation or addition of a general partner or the Transfer of the partnership interest of any general or limited partner or any profits or proceeds relating to such partnership interests or the creation or issuance of new partnership interests; (iv) if a Restricted Party is a limited liability company, any merger or consolidation or the change, removal, resignation or addition of a managing member or non-member manager (or if no managing member, any member) or the Transfer of the membership interest of any member or any profits or proceeds relating to such membership interest; (v) if a Restricted Party is a trust or nominee trust, any merger, consolidation or the Transfer of the legal or beneficial interest in a Restricted Party or the creation or issuance of new legal or beneficial interests; and (vi) any sale, syndication, participation or assignment of the Underlying Loan (other than to Administrative Agent and the Lenders).

(c) Notwithstanding the provisions of Sections 6.1(a) and (b), none of the following Transfers shall be deemed to be a Prohibited Transfer (each such Transfer, together with a Prohibited Transfer that is consented to by Administrative Agent is a "**Permitted Transfer**" and collectively, the "**Permitted Transfers**"): (i) a transfer by devise or descent or by operation of law upon the death of a member, partner or shareholder of a Restricted Party; (ii) the Transfer, in one or a series of transactions after the date hereof, of not more than forty-nine percent (49%) of the stock, limited partnership interests or non-managing membership interests (as the case may be) in a Restricted Party; provided, however, any such Transfer shall be subject to the following additional conditions: (A) no such Transfer shall result in a change in Control in the Restricted Party, (B) no Transfer shall be made to any Prohibited Person or any Person that is not in compliance with Section 4.12, (C) Administrative Agent shall receive not less than thirty (30) days prior written notice of such proposed Transfer; (iii) any Transfer of the stock in any publicly traded company whose shares are listed on the New York Stock Exchange or such other nationally recognized stock exchange; and (iv) subject to this Agreement, Transfers of interests in the Project (including leases of the Project or the Underlying Loan Borrower[s] permitted

under the Underlying Loan Agreement. For the avoidance of doubt, any Transfer that results in a Person owning in excess of forty-nine percent (49%) of the stock, limited partnership interests or non-managing membership interests (as the case may be) in a Restricted Party shall be deemed a Prohibited Transfer.

(d) Upon Administrative Agent's request, Borrower shall deliver all appropriate papers, certificates and affidavits requested by Administrative Agent that evidence the organization, good standing, qualification to do business and tax status of the transferee, which papers, certificates and affidavits shall include certified copies of all documents relating to the organization and formation of transferee and of the entities, if any, which are partners or members of transferee and updated organizational charts reflecting such transfer, as well as all documents and information requested by Administrative Agent to confirm that such proposed transfer will satisfy the requirements of this Agreement, and sufficient for Administrative Agent and each Lender to undertake and review background checks and to satisfy such "know-your-customer" background checks and procedures as may be required to be performed by it pursuant to Requirements of Law or the policies of Administrative Agent or any Lender and to confirm that after giving effect to such Transfer that no Person holding 10% or more of the direct or indirect interests in Borrower and/or rights to distributions from Borrower, Borrower's manager or Borrower's member(s) shall be a Prohibited Person or otherwise a Person with whom Administrative Agent or any Lender would be prohibited, pursuant to Requirements of Law or the policies of Administrative Agent or any Lender, to engage in the transactions under the Credit Documents. Notwithstanding the foregoing, the requirements of this Section 6.1(d) shall not apply to any Transfer of less than a 10% direct or indirect beneficial interest in Borrower.

(e) All out of pocket expenses incurred by Administrative Agent and Lenders in connection with a Permitted Transfer or a request for a consent to a Prohibited Transfer, whether or not Administrative Agent consents to the Prohibited Transfer, shall be payable by Borrower. Neither Administrative Agent nor any Lender shall be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Indebtedness immediately due and payable upon a Prohibited Transfer made without Administrative Agent's consent. This provision shall apply to each and every Prohibited Transfer, whether or not Administrative Agent has consented to any previous Prohibited Transfer.

Section 6.2 Taxes. Borrower shall pay and discharge or cause to be paid and discharged, before delinquency, or adequately reserve for the payment of, all taxes, assessments and governmental charges or levies (the "**Taxes**") imposed upon it or upon its income and profits or upon the Underlying Loan, except for any such Taxes or other claims as are contested in good faith by appropriate proceedings diligently conducted and with respect to which adequate reserves are provided. Borrower shall file on a timely basis all federal, state and local tax and information returns, reports and any other information statements or schedules required to be filed by or in respect of it, or timely file extensions thereof.

Section 6.3 Maintain Priority and Perfection of Lender's Lien. Borrower shall do such things as applicable law requires to maintain Administrative Agent's Lien on the Collateral as a perfected first priority Lien at all times.

Section 6.4 Property Manager. Administrative Agent has approved the property manager engaged by the Underlying Loan Borrower to manage the Project and the property management agreement between Underlying Loan Borrower and such property manager. Following the Closing Date, without the prior written consent of Administrative Agent (which consent shall be subject to the same standard specified for Borrower's consent to such matters under the Underlying Loan Documents), Borrower shall not approve amendment to any management agreement or consent to any replacement of any such property manager, to the

extent Borrower's consent to the foregoing is required under the Underlying Loan Documents. This Section 6.4 shall not impose a consent requirement on Borrower if Underlying Loan Borrower is permitted to act/refrain from acting without Borrower's consent pursuant to the Underlying Loan Documents.

Section 6.5 Records Concerning Collateral. The originals of the Underlying Loan Notes and all other Underlying Loan Documents shall at all times be held by Administrative Agent. Borrower shall maintain, at its principal office, and upon request shall make available to Administrative Agent, all other documents, instruments, and agreements relating to any Collateral, and all files, surveys, certificate, correspondence, appraisals, accounting records and other information relating to the Collateral that are held by or under the direction or control of Borrower or any of its Affiliates and that have not already been provided to Administrative Agent.

Section 6.6 Taxes on Security. Borrower shall pay all taxes, charges, filing, registration and recording fees, excises and levies payable with respect to the Note or the Liens created or secured by the Credit Documents, other than income, franchise and doing business taxes imposed on Administrative Agent or any Lender. If there shall be enacted any law (a) affecting any Lien on the Collateral, or (b) changing existing laws of taxation of debts secured by collateral similar to the Collateral, or changing the manner of collecting any such taxes, Borrower shall promptly pay to Administrative Agent, on demand, all taxes, costs and charges for which Administrative Agent or any Lender is or may be liable as a result thereof; however, if such payment would be prohibited by law or would render the Loan usurious, then instead of collecting such payment, Administrative Agent may declare all amounts owing under the Credit Documents to be immediately due and payable within forty-five (45) days following receipt of such notice by Borrower.

Section 6.7 Legal Existence; Name, Etc.

(a) Borrower shall preserve, maintain and keep in full force and effect its entity status, franchises, rights and privileges under the laws of the state of its formation, and all qualifications, licenses and permits applicable to the ownership, use and operation of its business. Neither Borrower nor any general partner, manager or managing member of Borrower shall wind up, liquidate, dissolve, reorganize, merge, or consolidate with or into any Person, or permit any subsidiary or Affiliate of Borrower to do so. Borrower shall be a Single Purpose Entity.

(b) Borrower shall conduct business only in its own name. Borrower shall not (i) change its name from that indicated in the public record of its jurisdiction of organization, (ii) change its location (within the meaning of Section 9-307 of the UCC) or (iii) change its name, identity or corporate structure so as to make any financing statement seriously misleading, unless in any such case it shall (x) have given prior notice to Administrative Agent, which notice shall be marked in bold face type, stating that "**FAILURE TO RE-FILE UCC FINANCING STATEMENT WILL RESULT IN LOSS OF PERFECTION OF SECURITY INTEREST**", not less than thirty (30) days prior to the taking of any such action and (y) shall have taken such actions as Administrative Agent may reasonably request to continue its perfected status in the Collateral with the same priority.

Section 6.8 Further Assurances. Borrower shall promptly (a) cure any defects in the execution and delivery of the Credit Documents, (b) provide, and cause each Borrower Party to provide, Administrative Agent such available additional information and documentation on Borrower's and each Borrower Party's legal or beneficial ownership, policies, procedures and sources of funds as Administrative Agent deems necessary or prudent to enable Administrative Agent and each Lender to comply with Anti-Money Laundering Laws as now in existence or

hereafter amended and (c) execute and deliver, or cause to be executed and delivered, all such other documents, agreements and instruments as Administrative Agent may reasonably request to (i) further evidence and more fully describe the Collateral for the Loan, (ii) to correct any omissions in the Credit Documents or (iii) to perfect, protect or preserve any liens created under any of the Credit Documents, or to make any recordings, file any notices, or obtain any consents, as may be necessary or appropriate in connection therewith. Borrower grants Administrative Agent an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Administrative Agent and the Lenders under the Credit Documents, at law and in equity. From time to time upon the request of Administrative Agent, Borrower shall deliver to Administrative Agent a schedule of the name, legal domicile address and jurisdiction of organization, if applicable, for each Borrower Party and each holder of a legal interest in Borrower.

Section 6.9 Estoppel Certificates Regarding Loan. Borrower, within ten (10) days after request therefor, shall furnish to Administrative Agent a written statement, duly acknowledged, setting forth the amount due on the Loan, the terms of payment of the Loan, the date to which interest has been paid, whether any offsets or defenses exist against the Loan and, if any are alleged to exist, the nature thereof in detail, and such other matters as Administrative Agent reasonably may request.

Section 6.10 Notice of Certain Events. Borrower shall promptly notify Administrative Agent of:

(a) any Potential Default or Event of Default promptly, but in any event within three (3) Business Days, after any executive officer of Borrower obtains knowledge thereof, together with a statement as to what steps are being taken to cure such Potential Default or Event of Default (in such detail as Administrative Agent may reasonably require);

(b) within three (3) Business Days of receipt thereof by Borrower, (i) any notice of default received by Borrower under other obligations material to Borrower's business, including any notices of violations of any laws, regulations, codes or ordinances; (ii) any threatened (in writing) or pending legal, judicial or regulatory proceedings, including any dispute between Borrower and any Governmental Authority, materially adversely affecting Borrower or any other Borrower Party; and (iii) any change in the information provided in the Beneficial Ownership Certification that would result in a change or an addition to the list of beneficial owners identified in such certification. In addition to the notices required under clause (i) or (ii) of the foregoing, Borrower shall also promptly provide Administrative Agent with copies of the notices referred to therein.

Section 6.11 Use of Proceeds. Borrower shall use the proceeds of the Loan for proper business purposes. No portion of the proceeds of the Loan shall be used by Borrower in any manner that might cause the borrowing or the application of such proceeds to violate Regulation D, Regulation T or Regulation X or any other regulation of the Board of Governors of the Federal Reserve System or to violate the Securities Act of 1933 or the Securities Exchange Act of 1934.

Section 6.12 Compliance with Laws and Contractual Obligations.

(a) Borrower will comply with (i) the requirements of all applicable laws, rules, regulations and orders of any Governmental Authority and (ii) the obligations, covenants and conditions contained in all other material contractual obligations of Borrower, and as they relate to the Collateral.

(b) Borrower will obtain and maintain all licenses, qualifications and permits now held or hereafter required to be held by Borrower for which the loss, suspension, revocation or failure to obtain or renew, could reasonably be expected to have a Material Adverse Effect upon the financial condition of Borrower or the ability of Borrower to conduct its business as in compliance with the requirements of the Credit Documents and Requirements of Law.

Section 6.13 Financial Covenants.

(a) **Project Yield.** As of each Determination Date, the Project Yield shall equal or exceed the Minimum Project Yield required as of such Determination Date.

(b) **Debt Service Coverage Ratio.** As of each Determination Date, the Debt Service Coverage Ratio shall equal or exceed the Minimum Debt Service Coverage Ratio required as of such Determination Date.

(c) **Option to Prepay.** If, as of any Determination Date, Borrower is not in compliance with Section 6.13(a), such failure shall not constitute an Event of Default unless Borrower, within 55 days following such Determination Date, makes a prepayment of principal in an amount equal to the greater of (i) 79% (or, if an Event of Default is then in existence, 100%) of the corresponding prepayment made by Underlying Loan Borrower and (ii) an amount that, if applied to the outstanding principal balance of the Loan as of such Determination Date, would have enabled Borrower to comply with the applicable covenant.

Section 6.14 Transactions With Affiliates. Without the prior written consent of Administrative Agent, Borrower shall not engage in any transaction with an Affiliate of Borrower, except as expressly contemplated by this Agreement and except on an arm's-length basis on terms which are intrinsically fair and no less favorable than would be available for unaffiliated third parties, and pursuant to written, enforceable agreements.

Section 6.15 Liens. Borrower shall not create, incur, assume or suffer to exist any Lien upon any Collateral other than the Permitted Liens.

Section 6.16 Investments. Borrower shall not make any Investments except for Permitted Investments.

Section 6.17 Loans. Borrower Parties shall not make any loans or other advances of money to any Person, except the Underlying Loan.

Section 6.18 Formation of Subsidiaries. Borrower shall not form any Subsidiaries.

Section 6.19 Restricted Payments. Borrower shall not declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, other than Restricted Payments made to the members of Borrower if and only if each of the following conditions is satisfied at the time of, and after giving effect to, any such Restricted Payment: (i) such Restricted Payment is permitted by Requirements of Law; (ii) no Event of Default is in existence, or would result from the making of such Restricted Payment; and (iii) the Borrower is in pro forma compliance with the financial covenants in Section 6.13 after giving effect to such Restricted Payment.

Section 6.20 Covenants Concerning Collateral.

(a) Borrower shall administer the Underlying Loan using Borrower's good faith business judgment and otherwise in accordance with Accepted Servicing Practices. Borrower shall enforce the obligations of Underlying Loan Borrower under the Underlying Loan

Documents (including the obligation of Underlying Loan Borrower to deliver the financial statements and compliance certificates required under the Underlying Loan Documents in the form and on the date required thereunder). Borrower shall enforce the obligations of Servicer under the Servicing Agreement (with respect to the Underlying Loan).

(b) As of the Closing Date, the Interest and Carry Reserve shall contain at least \$5,000,000.00. Without the prior consent of Administrative Agent, Borrower shall not release any funds from the Interest and Carry Reserve except in strict compliance with Section 3.1(a) of the Underlying Loan Agreement and shall enforce the obligation of Underlying Loan Borrower to make any deposits to the Underlying Loan Interest and Carry Reserve required under such section.

(c) Borrower shall not make any future advances (excluding protective advances in order to maintain the Project and to preserve its liens evidenced by the Underlying Loan Documents in accordance with the Accepted Servicing Practices and advances from the Underlying Loan Interest Holdback) under the Underlying Loan Documents to the Underlying Loan Borrower, in each case without the prior written consent of Administrative Agent. Borrower shall not (and shall not permit any Affiliate of Borrower to) make a protective advance, supplemental loan or equity contribution to Underlying Loan Borrower or any Affiliate of Underlying Loan Borrower for the purpose of providing funds to Underlying Loan Borrower that will be used to pay debt service under the Underlying Loan Documents.

(d) During any period in which an Underlying Loan Event of Default is in existence, Borrower shall keep Administrative Agent reasonably informed as to Borrower's administration of the Underlying Loan under which such Underlying Loan Event of Default is in existence and shall confer with Administrative Agent, at Administrative Agent's request, in connection with the development of a strategy for resolving such Underlying Loan Event of Default. Borrower shall diligently enforce its legal rights (as selected by Borrower in its good faith business judgment and otherwise in its sole discretion) with respect to such default.

(e) Without the prior written consent of Administrative Agent, Borrower shall not enter into any Significant Underlying Loan Modification or grant any consent to a departure from or waiver of any material provision of any Underlying Loan Document.

(f) Borrower shall provide Administrative Agent with the original (or, if original signatures are not obtained, the definitive copy) amendment and modification to, and each waiver or consent under, the Underlying Loan Documents within ten (10) Business Days after execution and delivery thereof. Any letter of credit delivered to Borrower by Underlying Loan Borrower shall be delivered to Administrative Agent within ten (10) Business Days following Borrower's receipt thereof.

(g) Within forty-five (45) days following the occurrence of an Underlying Loan Event of Default, Borrower shall deliver to Administrative Agent a proposed plan for resolving such Underlying Loan Event of Default (each such plan, a "**Resolution Plan**"), which shall include a description of the action that Borrower intends to take with respect to such Underlying Loan Event of Default (and may, if the intended action is a waiver of such Underlying Loan Event of Default or an amendment of the Underlying Loan Event Documents, be in the form of a request for consent to the proposed waiver or amendment, as the case may be, to the extent required under Section 6.20(e)) and a description of any remedy (including any Material Remedy, if applicable) that Borrower intends to exercise, and, if such Resolution Plan contemplates a Material Remedy, shall be accompanied by (i) a current environmental report and (ii) a current Appraisal of the Project. Each Resolution Plan shall be subject to the prior written consent of Administrative Agent, and, upon the approval of such Resolution Plan by Administrative Agent, Borrower shall promptly implement the same and shall thereafter proceed

with diligence to undertake and completion the actions or exercise the remedies contemplated thereunder. In no event shall Borrower implement a Resolution Plan without the prior written consent of Administrative Agent. Borrower shall keep Administrative Agent informed of developments and progress under (as well as changes and modifications to) the Resolution Plan and consult with Administrative Agent, at Administrative Agent's request, in connection therewith. For the avoidance of doubt, in no event shall the existence of any payment default under the Underlying Loan excuse Borrower from making any payment of principal or interest hereunder, as the same becomes due and payable.

(h) No Affiliate of Borrower shall become a maker, mortgagor, guarantor, or other person obligated with respect to any Underlying Loan (provided, however, that an Affiliate of Borrower shall be permitted to obtain Control of Underlying Loan Borrower by exercising its rights under any equity pledge securing the Underlying Loan) or become a property manager for [any/the] Project.

(i) Borrower will not create, incur, grant, assume or suffer to exist any Lien on any of the Collateral, other than in favor of Administrative Agent pursuant to this Agreement, or except as the result of actions of Underlying Loan Borrower that do not require the consent of Borrower, provided, however, that if such consent by Borrower is required, the same standard of consent so required shall apply to Administrative Agent as well.

(j) Borrower shall not approve any Material Lease of the Project without the prior consent of Administrative Agent, which consent shall not be unreasonably withheld.

(k) Borrower shall not permit a Prohibited Person to become an obligor with respect to any Underlying Loan.

(l) Borrower shall not retain any Person other than Servicer to service the Underlying Loan without the prior written consent of Administrative Agent, which consent may be conditioned upon, among other things, Administrative Agent's review and approval of the proposed servicing agreement and the execution and delivery by servicer of such acknowledgments and agreements (such as an agreement to comply with the instructions of Administrative Agent while an Event of Default is in existence) as Administrative Agent may reasonably require.

(m) Borrower shall not consent to (and shall make commercially reasonable efforts to prohibit Underlying Loan Borrower from undertaking) any of the following actions: (i) any transfer of the Primary License required to operate the Project as an assisted living and memory care facility (other than to Borrower, an Affiliate of Borrower or a receiver in connection with the exercise of a Material Remedy); (ii) any rescission, withdrawal, revocation or amendment of any such Primary License in such a manner that results in a material adverse effect on the rates charged or otherwise diminish or impair the nature, tenor or scope of such Primary License; (iii) any reduction of the Project's authorized units/beds capacity or the number of Residential Units permitted under such Primary License or otherwise approved by the State Regulator, if applicable; (iv) any change of any Residential Unit used for memory care to a Residential Unit used for assisted living or independent living purposes; (v) any transfer of all or any part of the Project's Residential Units to another site or location; or (vi) any voluntarily transfer (or encouraging of any transfer) by any resident of the Project to any other facility, unless such transfer is (A) at the request of the resident, (B) for reasons relating to the health, required level of medical care or safety of the resident to be transferred or the residents remaining at the facility or (C) as a result of the disruptive behavior of the transferred resident that is detrimental to the facility.

Section 6.21 Insurance

(a) Borrower shall maintain, or cause to be maintained, insurance coverage with respect to employee dishonesty, forgery or alteration, theft, disappearance and destruction, robbery and safe burglary, property (other than money and securities) and computer fraud in an appropriate aggregate amount, but not to exceed \$5,000,000 and (ii) if required by Administrative Agent, a fidelity bond, or equivalent, in respect of its officers, employees and agents, with respect to any claims made in connection with all or any portion of the Collateral. Borrower shall notify Administrative Agent of any material change in the terms of any such fidelity bond or insurance policies.

(b) Borrower shall use commercially reasonable efforts to enforce the Underlying Loan Documents with respect to Underlying Loan Borrower's obligation to maintain all insurance coverage required by the applicable Underlying Loan Documents, including any flood hazard insurance in such amounts as may be required by the applicable Underlying Loan Documents. Borrower shall monitor the flood zone status of the Project and, if the Project shall become located within a Special Flood Hazard Area, shall use commercially reasonable efforts to enforce the Underlying Loan Documents with respect to Underlying Loan Borrower's obligation to cause flood hazard insurance to be maintained with respect to the Project in the amount required by the Underlying Loan Documents.

(c) If the Underlying Loan Borrower fails to maintain any insurance coverage required under the applicable Underlying Loan Documents, prior to the lapse of any such Insurance Policies then maintained by or for the benefit of the Underlying Loan Borrower and otherwise in accordance with Accepted Servicing Practices, Borrower shall use commercially reasonable efforts to obtain and maintain (i) special form coverage on the Project in amounts maintained in accordance with Accepted Servicing Practices and (ii) such other insurance as provided in the related Underlying Loan Documents, including, without limitation, flood hazard insurance with respect to the Project located within a Special Flood Hazard Area, in an amount sufficient to meet the requirements of applicable law and governmental regulation.

Section 6.22 Forfeiture. Borrower shall (a) not knowingly engage in any conduct or activity that could subject its assets to forfeiture or seizure or (b) subject to applicable law and the Underlying Loan Documents and in accordance with commercially reasonable practices, endeavor to stop any conduct or activity on the Project that would be reasonably likely to subject [the/such] Project to forfeiture or seizure.

Section 6.23 Patriot Act Compliance. Borrower shall comply with the Patriot Act and all applicable requirements of Governmental Authorities having jurisdiction over the Borrower Parties, including those relating to money laundering and terrorism. Administrative Agent shall have the right to audit any Borrower Party's compliance with the Patriot Act and all applicable requirements of Governmental Authorities having jurisdiction over any Borrower Party, including those relating to money laundering and terrorism. If Borrower fails to comply with the Patriot Act or any such requirements of Governmental Authorities, then Administrative Agent may, at its option, cause Borrower to comply therewith and any and all reasonable costs and expenses incurred by Administrative Agent in connection therewith shall be secured by the Collateral and shall be immediately due and payable.

Section 6.24 Servicing.

(a) Borrower covenants to maintain or cause the Underlying Loan to be serviced by Servicer in conformity with Accepted Servicing Practices.

(b) Unless otherwise approved by Administrative Agent, [Newpoint] shall be the sole Servicer of the Underlying Loan, and Borrower shall not replace the Servicer or terminate the Servicing Agreement as to the Underlying Loan.

(c) Borrower acknowledges that Administrative Agent is the collateral assignee of all Servicing Rights and 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 the Underlying Loan (the “**Servicing Records**”) and Borrower shall safeguard all Servicing Records so long as the Underlying Loan is subject to this Agreement and, at Administrative Agent’s request while an Event of Default is in existence, shall promptly deliver all such Servicing Records to Administrative Agent or its designee.

(d) While an Event of Default is in existence, Borrower shall provide a copy of each report and notice relating to the Underlying Loan sent to Borrower to be sent to Administrative Agent concurrently therewith.

(e) Borrower agrees that it shall be solely responsible for any and all fees and charges in effect from time to time and charged by Servicer in connection with the servicing of the Underlying Loan, and that Administrative Agent shall have no liability therefor. Borrower hereby indemnifies and agrees to hold Administrative Agent harmless from any and all liabilities, claims, losses and demands whatsoever, including reasonable attorneys’ fees and expenses, arising from or relating to any instruction given by Administrative Agent during any period in which an Event of Default is in existence or connection with the exercise of remedies by Administrative Agent, except to the extent of the gross negligence or willful misconduct of Administrative Agent.

ARTICLE 7 EVENTS OF DEFAULT

Each of the following shall constitute an Event of Default hereunder and under the Loan:

Section 7.1 Payments. Failure of Borrower (a) to pay any regularly scheduled installment of principal or interest within five (5) days of (and including) the date when due; (b) to make any mandatory principal prepayment (including any Remargin Payment) when due and payable (under Section 2.4(b) or otherwise); (c) to pay in full all Obligations outstanding (i) on the Maturity Date (whether by acceleration or otherwise), (ii) if the Conversion Conditions are not satisfied, upon Borrower’s acquisition of title to [a/the] Project or (iii) if the approved Resolution Plan contemplates the appointment of a receiver, within forty-five (45) days following the date on which such receiver is appointed; or (d) failure to pay any other amount due and payable under this Agreement or any other Credit Document within ten (10) days following invoice therefor.

Section 7.2 Prohibited Transfer. The occurrence of any Prohibited Transfer or Change of Control.

Section 7.3 Covenants. Borrower’s failure to perform, observe or comply with any of the agreements, covenants or provisions contained in this Agreement or in any of the other Credit Documents (other than those agreements, covenants and provisions referred to elsewhere in this Article 7), and, if such failure is susceptible of cure, the continuance of such failure for ten (10) days after written notice by Administrative Agent to Borrower (subject to any shorter period for curing any failure by Borrower as specified in any of the other Credit Documents), provided that Borrower shall have an additional thirty (30) days (subject to any shorter period as may be specified for curing such failure in any of the other Credit Documents) to cure such failure if (a) such failure does not involve the failure to make payments on a monetary obligation; (b) such failure is susceptible of cure but cannot reasonably be cured within the initial thirty (30) day period; and (c) Borrower is diligently undertaking to cure such default and commenced such cure

within the initial ten (10) day period. The notice and cure provisions of this Section 7.3 do not apply to the other Events of Default described in this Article 7 or to Borrower's failure to perform, observe or comply with any of the agreements, covenants or provisions referenced elsewhere in this Article 7 (for which no notice and cure period shall apply).

Section 7.4 Representations and Warranties. Any representation or warranty made in any Credit Document or the Compliance Certificate proves to be untrue in any material respect when made or deemed made.

Section 7.5 First Priority Lien. Administrative Agent shall fail at any time to have a valid, perfected, first priority (as applicable) security interest in the Collateral or Administrative Agent's security interest on any portion of the Collateral becomes unenforceable or otherwise impaired.

Section 7.6 Final Judgment. A final judgment by any competent court in the United States of America for the payment of money shall have been rendered against (i) Borrower in the amount of \$150,000 or more or (ii) Guarantor in an amount, individually or in the aggregate, which equals or exceeds \$10,000,000 or more, and remain undischarged or unpaid for a period of thirty (30) days, during which period execution of such judgment is not effectively stayed.

Section 7.7 Involuntary Bankruptcy or Other Proceeding. Commencement of an involuntary case or other proceeding against Borrower or any other Borrower Party (each, a "**Bankruptcy Party**") which seeks liquidation, reorganization or other relief with respect to it or its debts or other liabilities under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeks the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any of its property, and such involuntary case or other proceeding shall remain undismissed or unstayed for a period of sixty (60) days; or an order for relief against a Bankruptcy Party shall be entered in any such case under the Bankruptcy Code.

Section 7.8 Voluntary Petitions, etc. Commencement by a Bankruptcy Party of a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its Debts or other liabilities under any bankruptcy, insolvency or other similar law or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official for it or any of its property, or consent by a Bankruptcy Party to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or the making by a Bankruptcy Party of a general assignment for the benefit of creditors, or the failure by a Bankruptcy Party, or the admission by a Bankruptcy Party in writing of its inability, to pay its debts generally as they become due, or any action by a Bankruptcy Party to authorize or effect any of the foregoing.

Section 7.9 Certain Covenants. Borrower's failure to (a) maintain its status as a Single Purpose Entity; (b) comply with its obligations under Section 2.15 within two (2) Business Days following the date on which a Borrower becomes aware of such non-compliance; (c) comply with Section 6.13 (subject to Section 6.13(d)), Section 6.14, Section 6.15, Section 6.16, Section 6.17, Section 6.18, Section 6.19, Section 6.20, Section 6.21 or Section 6.24; (d) complete the actions contemplated under a Resolution Plan that does not contemplate the exercise of foreclosure or acceptance of a deed-in-lieu of foreclosure within forty-five (45) days following the approval of such Resolution Plan by Administrative Agent; (e) acquire title to the Project under a Resolution Plan that contemplates foreclosure or acceptance of a deed-in-lieu of foreclosure within one hundred twenty (120) days following the approval of such Resolution Plan by Administrative Agent; or (f) provide Administrative Agent with ten (10) days subsequent written notice of any change of the state of Borrower's formation, Borrower's form of organization, Borrower's chief executive office or Borrower's name.

Section 7.10 Financial Information. Borrower's failure to deliver financial statements, the Compliance Certificate, the Guarantor Compliance Certificate and other reports as required by Article 5 and the continuance of such failure for ten (10) days after the required delivery date.

Section 7.11 Default Under Guaranty. The occurrence of a default under the Guaranty, if such default is not cured within the applicable grace or cure periods provided therein.

Section 7.12 [Reserved].

Section 7.13 Default Under Deposit Account Control Agreement or Servicer Default. The occurrence of an event of default under any Deposit Account Control Agreement which remains uncured beyond any applicable grace or cure periods provided therein or the occurrence of a Servicer Default.

Section 7.14 Repudiation. Borrower or any Guarantor shall repudiate or purport to disavow its obligations under any of the Credit Documents or shall contest their validity or enforceability. For the avoidance of doubt, if Borrower or Guarantor believes in good faith that it has performed an obligation, Borrower or Guarantor's presentation of evidence of such performance shall not be deemed a repudiation of such obligations.

Section 7.15 Security Interest. Administrative Agent's security interest in any of the Collateral shall become unperfected, of less than first priority, unenforceable or otherwise impaired and Borrower shall fail to cure the same on or before thirty (30) days after Borrower first learns thereof from any source.

Section 7.16 Post-Closing Requirements. The failure to satisfy the Post-Closing Obligations within the time periods set forth on Schedule 10.38.

Section 7.17 Sale of Project. In connection with the exercise of remedies by Borrower, the credit bid or acceptance by Borrower of less than the amount approved by Administrative Agent for the Project.

ARTICLE 8 REMEDIES

Section 8.1 Remedies - Insolvency Events. Upon the occurrence of any Event of Default described in Section 7.7 or 7.8, all amounts due under the Credit Documents immediately and automatically shall become due and payable, any unfunded portion of the Commitments shall automatically terminate and without written notice and without presentment, demand, protest, notice of protest or dishonor, notice of intent to accelerate the maturity thereof, notice of acceleration of the maturity thereof, or any other notice of default of any kind, all of which are hereby expressly waived by Borrower; however, if the Bankruptcy Party under Section 7.7 or 7.8 is other than Borrower, then all amounts due under the Credit Documents shall become immediately due and payable at Administrative Agent's election, in Administrative Agent's sole discretion.

Section 8.2 Remedies - Other Events. Except as set forth in Section 8.1 above, while any Event of Default exists, Administrative Agent may, and at the direction of the Required Lenders shall, (a) by written notice to Borrower, declare the entire Loan to be immediately due and payable without presentment, demand, protest, notice of protest or dishonor, notice of intent to accelerate the maturity thereof, notice of acceleration of the maturity thereof, or other notice of default of any kind, all of which are hereby expressly waived by Borrower, and (b) exercise all

rights and remedies therefor under the Credit Documents (including any Deposit Account Control Agreement) and at law or in equity. Notwithstanding anything to the contrary contained in the Credit Documents, the enforcement of the obligations of Borrower and the Borrower Parties under the Credit Documents and the exercise of rights and remedies thereunder shall be undertaken solely by Administrative Agent in its capacity as agent for the Lenders.

Section 8.3 Administrative Agent's Rights. At any time after any Event of Default has occurred and is in existence, without limiting the general rights and remedies granted under Section 8.2, Administrative Agent, in Administrative Agent's discretion or with the approval or at the direction of the Required Lenders, may also do any of the following:

(a) Foreclose upon or otherwise enforce its security interest in and Lien on the Collateral, or on such portions or elements of it as Administrative Agent shall elect to proceed against from time to time.

(b) Deliver written notice to Underlying Loan Borrower instructing Underlying Loan Borrower to make all payments under the Underlying Loan Documents to a deposit account designated by Administrative Agent, and to apply such amounts to the outstanding principal balance of the Loan and any other amounts owing by Borrower hereunder as Administrative Agent shall determine in its sole and absolute discretion.

(c) Instruct Borrower or any Servicer to pay all Underlying Loan Collections to Administrative Agent. All such Underlying Loan Collections received by Administrative Agent shall be retained by Administrative Agent and applied by Administrative Agent to the aggregate outstanding principal balance and any other amounts owing by Borrower hereunder as Administrative Agent shall determine in its sole and absolute discretion.

(d) Obtain physical possession of the Servicing Records and the Underlying Loan Files, and Borrower shall deliver to Administrative Agent such assignments as Administrative Agent shall request and in form and substance reasonably acceptable to Administrative Agent. Administrative Agent shall be entitled to specific performance of all agreements of Borrower contained in this Agreement.

(e) Exercise the rights set forth in Section 6.20(e).

(f) At Administrative Agent's option and in its sole discretion, settle, compromise, or release, in whole or in part, any amounts owing on the Collateral or any portion of the Collateral, on terms acceptable to Administrative Agent; enforce payment and performance and prosecute any action or proceeding with respect to any and all Collateral; and where any such Collateral is in default, foreclose on and enforce Liens or security interests in, such Collateral by any available judicial procedure or without judicial process and sell property acquired as a result of any such foreclosure.

(g) At Administrative Agent's option and in its sole discretion, act, or contract with one or more third Persons to act, as servicer of each item of Collateral requiring servicing and perform all obligations required in connection with any servicing agreements to which Borrower is a party, and Borrower hereby agrees to pay such third Persons' fees to the extent (if any) that Administrative Agent is unable, despite reasonable efforts made by Administrative Agent in light of the necessity that there be no material break in the continuity of servicing, to contract for such servicing and performance of such obligations for fees equal to or less than the fees under such servicing agreements.

(h) Exercise all rights and remedies of a secured creditor under the UCC, as adopted in the State of New York and any other relevant state, including selling the interests of Borrower

in the Collateral at public or private sale. Administrative Agent shall give Borrower not less than ten (10) days' written notice of any such public sale or of the date after which private sale may be held. Borrower agrees that ten (10) days' written notice shall be reasonable notice. At any such sale any or all of the Collateral may be sold as an entirety or in separate parts, as Administrative Agent may determine. Administrative Agent may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for the sale, and such sale may be made at any time or place to which the same may be so adjourned. Administrative Agent is authorized at any such sale, if Administrative Agent deems it advisable so to do, to restrict the prospective bidders or purchasers to Persons who will represent and agree that they are purchasing the Collateral for their own account for investment and not with a view to the distribution or resale of any of the Collateral. Borrower specifically agrees that any such sale, whether public or private, of any Collateral pursuant to the commitment of any investor to purchase such Collateral that was obtained by (or with the approval of) Borrower will be commercially reasonable, and if such sale is for the price provided for in such commitment, then such sale shall be held to be for value reasonably equivalent to the value of the Collateral so sold. Upon any such sale, Administrative Agent shall have the right to deliver, assign and transfer to the purchaser thereof the Collateral so sold. Each purchaser at any such sale shall hold the property sold absolutely free from any claim or right of whatsoever kind, including any equity or right of redemption, stay or appraisal which Borrower have or may have under any rule of law or statute now existing or hereafter adopted. In case of any sale of all or any part of the Collateral on credit or for future delivery, the Collateral so sold may be retained by Administrative Agent until the selling price is paid by the purchaser, but Administrative Agent shall not incur any liability in case of such purchaser's failure to take up and pay for the Collateral so sold and, in case of any such failure, such Collateral may again be sold upon like notice. However, instead of exercising the power of sale herein conferred upon it, although only with the approval or at the direction of the Required Lenders, Administrative Agent may proceed by a suit or suits at law or in equity to collect all amounts due upon the Collateral or to foreclose the pledge and sell the Collateral or any portion of it under a judgment or decree of a court or courts of competent jurisdiction, or both. Nothing in this Agreement shall be construed as Borrower's waiver of, or agreement to waive, any requirement imposed by applicable law that any sale of the Collateral be commercially reasonable.

(i) If the Underlying Loan Borrower has failed to maintain the Insurance Policies, and Borrower has not obtained replacement coverage, Administrative Agent, at its option and at Borrower's sole cost and expense, obtain insurance coverage for the Project[s] on terms and conditions satisfactory to Administrative. The expenses incurred by Administrative Agent in connection with the foregoing, and the premiums payable in connection with such replacement insurance policies, shall constitute Obligations and shall be secured by the Collateral.

(j) Exercise any other rights and remedies available at law.

Section 8.4 Deposit Accounts. During any period in which an Event of Default is in existence, Administrative Agent may exercise its rights under each Deposit Account Control Agreement and apply the funds on deposit therein for payment of debt service, impounds, escrows, reserves and other amounts required to be paid to Administrative Agent or Lenders under the Credit Documents as the same become due and payable and, upon acceleration of the Loan, to the Indebtedness and the other Obligations.

Section 8.5 No Liability of Administrative Agent or Lenders. Neither Administrative Agent nor any of the Lenders shall incur any liability as a result of the sale of the Collateral, or any part of it, at any private sale. Borrower hereby waives any claims it may have against Administrative Agent or the Lenders arising by reason of the fact that the price at which the Collateral may have been sold at such private sale was less than the price that might have

been obtained at a public sale, less than the price that might have been obtained had the Collateral been sold pursuant to a purchase commitment for it obtained by Borrower, even if Administrative Agent accepts the first offer received and does not offer the Collateral to more than one offeree.

Section 8.6 Waivers by Borrower. Borrower waives any right to require Administrative Agent or any Lender to (a) proceed against any Person, (b) proceed against or exhaust any of the Collateral or pursue its rights and remedies as against the Collateral in any particular order, or (c) pursue any other remedy in its power. Except to the extent, if any, required by applicable law, Administrative Agent shall not be required to take any steps necessary to preserve any rights of Borrower against holders of Underlying Loan Mortgages or security interests prior in lien to the Lien of any Underlying Loan Mortgage included in the Collateral, to preserve rights against prior parties or to preserve rights against other parties to purchase commitments or servicing agreements.

Section 8.7 Rights of Administrative Agent to Take Actions. Administrative Agent and the Lenders may, but shall not be obligated to, advance any sums or do any act or thing necessary to uphold and enforce the Lien and priority of any Lien instrument included in the Collateral or the security intended to be afforded by it, including payment of delinquent taxes or assessments and insurance premiums, or to preserve or reinstate any hedging arrangements or mechanisms. All advances, charges, costs and expenses, including reasonable attorneys' fees and disbursements, incurred or paid by Administrative Agent in exercising any right, power or remedy conferred by this Agreement or any of the other Credit Documents, or in its enforcement, together with interest thereon, at the Contract Rate from the time of demand for its payment until ten (10) days thereafter, and at the Default Rate from ten (10) days after demand until repaid, shall become a part of principal balance outstanding under the Notes (pro rata with the respective principal balances of the Notes at the time of expenditure) and shall be secured by all security for the Notes.

Section 8.8 No Waiver. No failure on the part of Administrative Agent or any Lender to exercise, and no delay in exercising, any right, power or remedy provided under any of the Credit Documents, at law or in equity shall operate as a waiver of it, nor shall any single or partial exercise by Administrative Agent or any Lender of any right, power or remedy provided under any of the Credit Documents, at law or in equity preclude any other or further exercise of it or the exercise of any other right, power or remedy. The remedies herein provided are cumulative and are not exclusive of any remedies provided at law or in equity.

ARTICLE 9 ADMINISTRATIVE AGENT

Section 9.1 Appointment and Duties.

(a) Each Lender hereby appoints CONA (together with any successor Administrative Agent pursuant to Section 9.9) as Administrative Agent hereunder and authorizes Administrative Agent to (i) execute and deliver the Credit Documents and accept delivery thereof on its behalf from Borrower or any other Borrower Party, (ii) take such action on its behalf and to exercise all rights, powers and remedies and perform the duties as are expressly delegated to Administrative Agent under such Credit Documents, and (iii) exercise such powers as are reasonably incidental thereto.

(b) Without limiting the generality of clause (a) above, Administrative Agent shall have the sole and exclusive right and authority (to the exclusion of the Lenders), and is hereby authorized, to (i) act as the disbursing and collecting agent for the Lenders with respect to all payments and collections arising in connection with the Credit Documents (including in any

proceeding described in Section 7.7 or Section 7.8 or any other bankruptcy, insolvency or similar proceeding), and each Person making any payment in connection with any Credit Document to any Secured Party is hereby authorized to make such payment to Administrative Agent, (ii) file and prove claims and file other documents necessary or desirable to allow the claims of the Secured Parties with respect to any Obligation in any proceeding described in Section 7.7 or Section 7.8 or any other bankruptcy, insolvency or similar proceeding (but not to vote, consent or otherwise act on behalf of such Secured Party), (iii) act as collateral agent for each Secured Party for purposes of the perfection of all Liens created by such agreements and all other purposes stated therein, (iv) manage, supervise and otherwise deal with the Collateral, (v) take such other action as is necessary or desirable to maintain the perfection and priority of the Liens created or purported to be created by the Credit Documents, (vi) except as may be otherwise specified in any Credit Document, exercise all remedies given to Administrative Agent and the other Secured Parties with respect to the Collateral, whether under the Credit Documents, applicable law or otherwise, (vii) execute any amendment, consent or waiver under the Credit Documents on behalf of any Lender that has consented in writing to such amendment, consent or waiver; provided that Administrative Agent hereby appoints, authorizes and directs each Lender to act as collateral sub-agent for Administrative Agent and the Lenders for purposes of the perfection of all Liens with respect to the Collateral, including any deposit account maintained by Borrower with, and cash and cash equivalents held by, such Lender, and may further authorize and direct the Lenders to take further actions as collateral sub-agents for purposes of enforcing such Liens or otherwise to transfer the Collateral subject thereto to Administrative Agent, and each Lender hereby agrees to take such further actions to the extent, and only to the extent, so authorized and directed and (viii) provide each Lender within ten (10) Business Days following receipt, copies of the reports and financial information received from Borrower under Article 5 and notices of default delivered by or received by Administrative Agent under this Agreement.

(c) Administrative Agent (i) is acting solely on behalf of the Lenders (except to the limited extent provided in Section 2.11(b)) with respect to the Register and in Section 9.10), with duties that are entirely administrative in nature, notwithstanding the use of the defined term “Administrative Agent”, the terms “agent”, “administrative agent” and “collateral agent” and similar terms in any Credit Document to refer to Administrative Agent, which terms are used for title purposes only, (ii) is not assuming any obligation under any Credit Document other than as expressly set forth therein or any role as agent, fiduciary or trustee of or for any Lender or any other Secured Party and (iii) shall have no implied functions, responsibilities, duties, obligations or other liabilities under any Credit Document, and each Lender hereby waives and agrees not to assert any claim against Administrative Agent based on the roles, duties and legal relationships expressly disclaimed in clauses (i) through (iii) above.

(d) The relationship between Administrative Agent and each Lender is a contractual relationship only, and nothing herein shall be deemed to impose on Administrative Agent any obligations other than those for which express provision is made herein or in the other Credit Documents. Administrative Agent may employ agents and attorneys, and may delegate all or any part of its obligations hereunder, to third parties and shall not be responsible for the negligence or misconduct of any such agents, attorneys in fact or third parties selected by it in good faith. Administrative Agent may deem and treat the payee of a Note as the holder thereof for all purposes hereof unless and until a notice of the assignment or transfer thereof shall have been filed with Administrative Agent, any such assignment or transfer to be subject to the provisions of Section 10.3. The provisions of this Article 9 are solely for the benefit of Administrative Agent and the Lenders, and Borrower shall not have any rights as a third-party beneficiary of any of the provisions hereof and Administrative Agent and the Lenders may modify, amend or waive such provisions of this Article 9 in their sole and absolute discretion.

Section 9.2 Binding Effect. Each Lender agrees that (a) any action taken by Administrative Agent or the Required Lenders (or, if expressly required hereby, a greater

proportion of the Lenders) in accordance with the provisions of the Credit Documents, (b) any action taken by Administrative Agent in reliance upon the instructions of Required Lenders (or, where so required, such greater proportion) and (c) the exercise by Administrative Agent or the Required Lenders (or, where so required, such greater proportion) of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all of the Secured Parties.

Section 9.3 Use of Discretion.

(a) Administrative Agent shall not be required to exercise any discretion or take, or to omit to take, any action, including with respect to enforcement or collection, except any action it is required to take or omit to take (i) under any Credit Document or (ii) pursuant to instructions from the Required Lenders (or, where expressly required by the terms of this Agreement, a greater proportion of the Lenders).

(b) Notwithstanding clause (a) of this Section 9.3, Administrative Agent shall not be required to take, or to omit to take, any action (i) unless, upon demand, Administrative Agent receives an indemnification satisfactory to it from the Lenders (or, to the extent applicable and acceptable to Administrative Agent, any other Secured Party) against all Liabilities that, by reason of such action or omission, may be imposed on, incurred by or asserted against Administrative Agent or any Related Person thereof or (ii) that is, in the opinion of Administrative Agent or its counsel, contrary to any Credit Document or any applicable Requirement of Law.

Section 9.4 Delegation of Rights and Duties. Administrative Agent may, upon any term or condition it specifies, delegate or exercise any of its rights, powers and remedies under, and delegate or perform any of its duties or any other action with respect to, any Credit Document by or through any trustee, co-agent, employee, attorney-in-fact and any other Person (including any Secured Party). Any such Person shall benefit from this Article 9 to the extent provided by Administrative Agent.

Section 9.5 Liability. None of Administrative Agent and its Related Persons shall be liable for any action taken or omitted to be taken by any of them under or in connection with any Credit Document, and each Lender and Borrower (on its own behalf and on behalf of the other Borrower Parties) hereby waives and shall not assert any right, claim or cause of action based thereon, except to the extent of liabilities resulting primarily from the gross negligence or willful misconduct of Administrative Agent or, as the case may be, such Related Person (each as determined in a final, non-appealable judgment by a court of competent jurisdiction) in connection with the duties expressly set forth herein. Without limiting the foregoing, Administrative Agent:

(a) shall have no duties or responsibilities except those expressly set forth in this Agreement and in the other Credit Documents, and shall not by reason of this Agreement, or any other Credit Document, be a trustee for any Lender;

(b) shall not be responsible or otherwise incur liability for any action or omission taken in reliance upon the instructions of the Required Lenders or for the actions or omissions of any of its Related Persons selected with reasonable care (other than employees, officers and directors of Administrative Agent, when acting on behalf of Administrative Agent);

(c) shall not be responsible to any Secured Party for the due execution, legality, validity, enforceability, effectiveness, genuineness, sufficiency or value of, or the attachment, perfection or priority of any Lien created or purported to be created under or in connection with, any Credit Document;

(d) makes no warranty or representation, and shall not be responsible, to any Secured Party for any statement, document, information, representation or warranty made or furnished by or on behalf of any Related Person or any Borrower Party in connection with any Credit Document or any transaction contemplated therein or any other document or information with respect to any Borrower Party, whether or not transmitted or (except for documents expressly required under any Credit Document to be transmitted to the Lenders) omitted to be transmitted by Administrative Agent, including as to completeness, accuracy, scope or adequacy thereof, or for the scope, nature or results of any due diligence performed by Administrative Agent in connection with the Credit Documents; and

(e) shall not have any duty to ascertain or to inquire as to the performance or observance of any provision of any Credit Document, whether any condition set forth in any Credit Document is satisfied or waived, as to the financial condition of any Borrower Party or as to the existence or continuation or possible occurrence or continuation of any Potential Default or Event of Default and shall not be deemed to have notice or knowledge of such occurrence or continuation unless it has received a notice from Borrower, any Lender describing such Potential Default or Event of Default clearly labeled “notice of default” (in which case Administrative Agent shall promptly give notice of such receipt to all Lenders).

For each of the items set forth in clauses (a) through (e) above, each Lender hereby waives and agrees not to assert any right, claim or cause of action it might have against Administrative Agent based thereon.

Section 9.6 Administrative Agent Individually. Administrative Agent and its Affiliates may make loans and other extensions of credit to, acquire stock and stock equivalents of, engage in any kind of business with, Borrower or any other Borrower Party or Affiliate thereof as though it were not acting as Administrative Agent and may receive separate fees and other payments therefor. To the extent Administrative Agent or any of its Affiliates makes any Loan or otherwise becomes a Lender hereunder, it shall have and may exercise the same rights and powers hereunder and shall be subject to the same obligations and liabilities as any other Lender and the terms “Lender,” and “Required Lender,” and any similar terms shall, except where otherwise expressly provided in any Credit Document, include Administrative Agent or such Affiliate, as the case may be, in its individual capacity as Lender or as one of the Required Lenders, respectively.

Section 9.7 Lender Credit Decision. Each Lender acknowledges that it shall, independently and without reliance upon Administrative Agent, any other Lender or any of their Related Persons or upon any document solely or in part because such document was transmitted by Administrative Agent or any of its Related Persons, conduct its own independent investigation of the financial condition and affairs of Borrower and each other Borrower Party and make and continue to make its own credit decisions in connection with entering into, and taking or not taking any action under, any Credit Document or with respect to any transaction contemplated in any Credit Document, in each case based on such documents and information as it shall deem appropriate. Except for documents expressly required by any Credit Document to be transmitted by Administrative Agent to the Lenders, Administrative Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of Borrower or any other Borrower Party or any Affiliate of Borrower or any other Borrower Party that may come into the possession of Administrative Agent or any of its Related Persons.

Section 9.8 Resignation of Administrative Agent.

(a) Administrative Agent may resign at any time by delivering notice of such resignation to the Lenders and Borrower, effective on the date set forth in such notice or, if no

such date is set forth therein, upon the date such notice shall be effective. If Administrative Agent delivers any such notice, the Required Lenders shall have the right to appoint a successor Administrative Agent. If, within 30 days after the retiring Administrative Agent having given notice of resignation, no successor Administrative Agent has been appointed by the Required Lenders that has accepted such appointment, then the retiring Administrative Agent may, on behalf of the Lenders, appoint a successor Administrative Agent from among the Lenders.

(b) Effective immediately upon its resignation, (i) the retiring Administrative Agent shall be discharged from its duties and obligations under the Credit Documents, (ii) the Lenders shall assume and perform all of the duties of Administrative Agent until a successor Administrative Agent shall have accepted a valid appointment hereunder, (iii) the retiring Administrative Agent and its Related Persons shall no longer have the benefit of any provision of any Credit Document other than with respect to any actions taken or omitted to be taken while such retiring Administrative Agent was, or because such Administrative Agent had been, validly acting as Administrative Agent under the Credit Documents and (iv) subject to its rights under Section 9.3, the retiring Administrative Agent shall take such action as may be reasonably necessary to assign to the successor Administrative Agent its rights as Administrative Agent under the Credit Documents. Effective immediately upon its acceptance of a valid appointment as Administrative Agent, a successor Administrative Agent shall succeed to, and become vested with, all the rights, powers, privileges and duties of the retiring Administrative Agent under the Credit Documents.

(c) Administrative Agent may be removed as Administrative Agent upon the request of all Lenders (other than Affiliates of Administrative Agent) upon the determination by a court of competent jurisdiction that Administrative Agent has committed actions constituting gross negligence or willful misconduct under this Agreement. The provisions of subsection (b) above shall apply upon such removal.

Section 9.9 Additional Secured Parties. The benefit of the provisions of the Credit Documents directly relating to the Collateral or any Lien granted thereunder shall extend to and be available to any Secured Party that is not a Lender as long as, by accepting such benefits, such Secured Party agrees, as among Administrative Agent and all other Secured Parties, that such Secured Party is bound by (and, if requested by Administrative Agent, shall confirm such agreement in a writing in form and substance acceptable to Administrative Agent) this Article 9, Section 10.7 (Right of Setoff; Sharing of Payments), Section 2.13(b) (Sharing of Payments, Etc.) and Section 10.35 (Non-Public Information; Confidentiality; Disclosure) and the decisions and actions of Administrative Agent and the Required Lenders (or, where expressly required by the terms of this Agreement, a greater proportion of the Lenders) to the same extent a Lender is bound; provided, however, that, notwithstanding the foregoing, (a) such Secured Party shall be bound by Section 9.12 only to the extent of Liabilities, costs and expenses with respect to or otherwise relating to the Collateral held for the benefit of such Secured Party, in which case the obligations of such Secured Party thereunder shall not be limited by any concept of Proportionate Share or similar concept, (b) except as set forth specifically herein, each of Administrative Agent and each Lender shall be entitled to act at its sole discretion, without regard to the interest of such Secured Party, regardless of whether any Obligation to such Secured Party thereafter remains outstanding, is deprived of the benefit of the Collateral, becomes unsecured or is otherwise affected or put in jeopardy thereby, and without any duty or liability to such Secured Party or any such Obligation and (c) except as set forth specifically herein, such Secured Party shall not have any right to be notified of, consent to, direct, require or be heard with respect to, any action taken or omitted in respect of the Collateral or under any Credit Document.

Section 9.10 Reliance by Administrative Agent. Administrative Agent shall be entitled to rely upon any certification, notice or other communication (including any thereof by telephone, facsimile, telegram or cable) reasonably believed by it to be genuine and correct and

to have been signed or sent by or on behalf of the proper Person or Persons, and upon advice and statements of legal counsel, independent accountants and other experts selected by Administrative Agent. As to any matters not expressly provided for by this Agreement or any other Credit Document, Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, hereunder or thereunder in accordance with instructions given by the Required Lenders, and any action taken or failure to act pursuant thereto shall be binding on all of the Lenders.

Section 9.11 Rights as a Lender. With respect to CONA's Loan Commitment, if any, and the advances of the Loan made by it, CONA (and any successor acting as Administrative Agent) in its capacity as a Lender hereunder shall have the same rights and powers hereunder as any other Lender and may exercise the same as though it were not acting as Administrative Agent, and the term "Lender" or "Lenders" shall, unless the context otherwise indicates, include Administrative Agent in its individual capacity. CONA (and any successor acting as Administrative Agent) and its Affiliates may (without having to account therefor to any Lender) lend money to, make investments in and generally engage in any kind of lending, trust or other business with Borrower (and any of its Affiliates) as if it were not acting as Administrative Agent, and CONA and its Affiliates may accept fees and other consideration from Borrower for services in connection with this Agreement or otherwise without having to account for the same to the Lenders.

Section 9.12 Standard of Care; Indemnification. In performing its duties under the Credit Documents, Administrative Agent will exercise the same degree of care as Administrative Agent normally exercises in connection with similar loans held for its own account, but Administrative Agent shall have no further responsibility to any Lender except as expressly provided herein and except for its own gross negligence or willful misconduct which resulted in actual loss to such Lender, and, except to such extent, Administrative Agent shall have no responsibility to any Lender for the failure by Administrative Agent to comply with any of Administrative Agent's obligations to Borrower under the Credit Documents or otherwise. The Lenders agree to indemnify Administrative Agent (to the extent not reimbursed under Sections 10.5 or 10.11, but without limiting the obligations of Borrower under Sections 10.5 or 10.11) ratably in accordance with each Lender's Proportionate Share, for any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind and nature whatsoever that may be imposed on, incurred by or asserted against Administrative Agent (including by any Lender) arising out of or by reason of any investigation in or in any way relating to or arising out of this Agreement or any other Credit Document or any other documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby (including the costs and expenses that Borrower is obligated to pay under Section 10.11, but excluding, unless an Event of Default is in existence, normal administrative costs and expenses incident to the performance of its agency duties hereunder) or the enforcement of any of the terms hereof or thereof or of any such other documents, provided that no Lender shall be liable for any of the foregoing to the extent they arise from Administrative Agent's breach of its standard of care set forth in the first sentence of this Section.

Section 9.13 Failure to Act. Except for actions expressly required of Administrative Agent hereunder, and under the other Credit Documents, Administrative Agent shall in all cases be fully justified in failing or refusing to act hereunder and thereunder unless it shall receive further assurances to its satisfaction from the Lenders of their indemnification obligations under Section 9.12 against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action."

Section 9.14 The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE

ACCURACY OR COMPLETENESS OF ANY MATERIALS OR INFORMATION PROVIDED BY OR ON BEHALF OF BORROWER OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM ANY MATERIALS OR INFORMATION PROVIDED BY OR ON BEHALF OF BORROWER. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH ANY MATERIALS OR INFORMATION PROVIDED BY OR ON BEHALF OF BORROWER OR THE PLATFORM. In no event shall Administrative Agent or any of its Related Persons (collectively, the “**Agent Parties**”) have any liability to Borrower, any Lender, or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of Borrower’s or Administrative Agent’s transmission of any materials or information provided by or on behalf of Borrower through the internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; provided, however, that in no event shall any Agent Party have any liability to Borrower, any Lender or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

Section 9.15 Liability of Administrative Agent. Administrative Agent shall not have any liabilities or responsibilities to Borrower on account of the failure of any Lender (other than Administrative Agent in its capacity as a Lender) to perform its obligations hereunder or to any Lender on account of the failure of Borrower to perform its obligations hereunder, under any other Credit Document.

Section 9.16 USA Patriot Act Notice; Compliance. In order for Administrative Agent to comply with the USA Patriot Act of 2001 (Public Law 107-56), prior to any Lender that is organized under the laws of a jurisdiction outside of the United States of America becoming a party hereto, Administrative Agent may request, and such Lender shall provide to Administrative Agent, its name, address, tax identification number or such other identification information as shall be necessary for Administrative Agent to comply with federal law.

Section 9.17 No Reliance on Administrative Agent’s Customer Identification Program. Each Lender acknowledges and agrees that neither such Lender, nor any of its Affiliates, participants or assignees, may rely on Administrative Agent to carry out such Lender’s, Affiliate’s, participant’s or assignee’s customer identification program, or other obligations required or imposed under or pursuant to the Patriot Act or the regulations thereunder, including the regulations contained in 31 CFR 1020.220 (as hereafter amended or replaced, the “**CIP Regulations**”), or any other Anti-Terrorism Law, including any programs involving any of the following items relating to or in connection with Borrower or any other loan parties, their Affiliates or their agents, the Credit Documents or the transactions hereunder or contemplated hereby: (i) any identity verification procedures, (ii) any recordkeeping, (iii) comparisons with Government Lists, (iv) customer notices, or (v) other procedures required under the CIP Regulations or such other Anti-Terrorism Law.

ARTICLE 10 MISCELLANEOUS

Section 10.1 Notices.

(a) Any notice required or permitted to be given under this Agreement shall be in writing and either shall be mailed by certified mail, postage prepaid, return receipt requested, or

sent by overnight air courier service, or personally delivered to a representative of the receiving party, or, if a facsimile number or e-mail address is provided for such Person below, sent by facsimile or e-mail (provided an identical notice is also sent simultaneously by mail, overnight courier, or personal delivery as otherwise provided in this Section 10.1), as applicable. All such communications shall be mailed, sent or delivered, addressed to the party for whom it is intended at its address set forth below.

If to Borrower:

245 Park Avenue, 42nd Floor
New York, New York 10167
Attention: Capital Markets and Legal
Email: ssasidharan@aresmgmt.com;
AREGDEBTLEGAL@aresmgmt.com

With a copy to: Latham & Watkins LLP

1271 Avenue of the Americas
New York, New York 10020
Attention: Loren N. Finegold
Telephone: (212) 906-1327
Email: loren.finegold@lw.com

If to Administrative

Agent/Lender: Capital One, National Association
77 West Wacker Drive, 10th Floor
Chicago, Illinois 60601
Attention: Jason LaGrippe
Facsimile: (888) 722-5146
Reference: Ares Briarcliff

with a copy to: Capital One, National Association

77 West Wacker Drive, 10th Floor
Chicago, Illinois 60601
Attention: Jeffrey M. Muchmore, Managing Director
Facsimile: (855) 332-1699
Reference: Ares Briarcliff

with a copy to: Capital One, National Association

5804 Trailridge Drive
Austin, Texas 78731
Attention: Diana Pennington, Chief Counsel-
Healthcare Real Estate
Facsimile: (855) 438-1132
Reference: Ares Briarcliff

Any notice or request so addressed and sent by United States registered or certified mail or overnight courier shall be deemed to be given on the earliest of (a) when actually delivered, (b) on the first Business Day after deposit with an overnight air courier service, or (c) on the third Business Day after deposit in the United States mail, postage prepaid, in each case to the address of the intended addressee. Any notice or request so delivered in person shall be deemed to be given when receipted for by, or actually received by Administrative Agent, a Lender, or Borrower, as the case may be. If given by facsimile, a notice or request shall be deemed given and received when the facsimile is transmitted to the party's facsimile number specified above and confirmation of complete receipt is received by the transmitting party during normal business hours or on the next Business Day if not confirmed during normal business hours, and

an identical notice is also sent simultaneously by mail, overnight courier, or personal delivery as otherwise provided in this Section 10.1. If given by electronic mail, a notice shall be deemed given and received when the electronic mail is transmitted to the recipient's electronic mail address specified above and electronic confirmation of receipt (either by reply from the recipient or by automated response to a request for delivery receipt) is received by the sending party during normal business hours or on the next Business Day if not confirmed during normal business hours, and an identical notice is also sent simultaneously by mail, overnight courier or personal delivery as otherwise provided in this Section 10.1. Except for facsimile and electronic mail notices sent as expressly described above, no notice hereunder shall be effective if sent or delivered by electronic means. Either party may designate a change of address by written notice to the other by giving at least ten (10) days prior written notice of such change of address.

(b) Notices and other communications to the Lenders hereunder may be delivered or furnished by posting on the Platform or by other electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by Administrative Agent, provided that the foregoing shall not apply to notices to any Lender if such Lender has notified Administrative Agent that it is incapable of receiving notices by electronic communication. Administrative Agent or Borrower may, in their discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by them, provided that approval of such procedures may be limited to particular notices or communications. Each Lender agrees that notice to it (as provided in the next sentence) specifying that any notice or other communication has been posted to the Platform shall constitute effective delivery of such communication to such Lender for purposes of the Credit Documents. Each Lender agrees (i) to notify Administrative Agent in writing (which could be in the form of electronic communication) from time to time of such Lender's email address to which the foregoing notice may be sent by electronic transmission and (ii) that the foregoing notice may be sent to such email address.

(c) Unless Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

Section 10.2 Amendments and Waivers.

(a) No amendment or waiver of any provision of any Credit Document and no consent to any departure by Borrower or any other Borrower Party therefrom shall be effective unless the same shall be in writing and signed (1) in the case of an amendment, consent or waiver to cure any ambiguity, omission, defect or inconsistency or granting a new Lien for the benefit of the Secured Parties or extending an existing Lien over additional property, by Administrative Agent and Borrower, (2) in the case of any other waiver or consent, by the Required Lenders (or by Administrative Agent with the consent of the Required Lenders) and (3) in the case of any other amendment, by the Required Lenders (or by Administrative Agent with the written consent of the Required Lenders) and Borrower; provided that no amendment, consent or waiver described in clause (2) or (3) above shall be effective, unless in writing and signed by each Lender (or by Administrative Agent with the consent of the Lenders), in addition to any other Person the signature of which is otherwise required pursuant to any Credit Document, and such amendment, consent or waiver does any of the following:

(i) waives any condition precedent to the effectiveness of this Agreement, except any condition referring to any other provision of any Credit Document;

(ii) increases the Commitment of any Lender or subjects any Lender to any additional obligation or otherwise increases the principal amount of the Loan;

(iii) reduces (including through release, forgiveness, assignment or otherwise) (A) the principal amount of, the interest rate on, or any obligation of Borrower to repay (whether or not on a fixed date), any outstanding amount under the Loan owing to Lenders or (B) any fee or accrued interest payable to any Lender; provided that this clause (iii) does not apply to (x) any change to any provision increasing any interest rate or fee while an Event of Default is in existence or to any payment of any such increase or (y) any modification to any financial covenant set forth herein or in the Guaranty or in in any definition set forth therein or principally used therein;

(iv) waives or postpones any scheduled maturity date or other scheduled date fixed for the payment, in whole or in part, of principal of or interest on the Loan (including any agreement to forbear that would have the same effect) or fee owing to such Lender or for the reduction of such Lender's Commitment; provided that this clause (iv) does not apply to any change to mandatory prepayments, including those required under Section 2.4(b), or to the application of any payment, including as set forth in Section 2.9;

(v) releases all or substantially all of the Collateral or any Guarantor from its guaranty of any Obligation of Borrower;

(vi) reduces or increases the proportion of Lenders required for the Lenders (or any subset thereof) to take any action hereunder or change the definition of the terms "Required Lenders" or "Proportionate Share"; or

(vii) amends Section 2.13(b) (Sharing of Payments, Etc.) or this Section 10.2;

(b) Anything herein to the contrary notwithstanding, (A) any waiver of any payment applied pursuant to Section 2.6 (Application of Payments) to, and any modification of the application of any such payment to the Loan shall require the consent of the Required Lenders, (B) no amendment, waiver or consent shall affect the rights or duties under any Credit Document of, or any payment to, Administrative Agent (or otherwise modify any provision of Article 9 or the application thereof), and (C) (1) no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except that (x) the Commitment of such Lender may not be increased or extended without the consent of such Lender, (y) the outstanding balance of such Lender's Proportionate Share of the Loan may not be forgiven without the consent of such Lender, and (z) the interest rate on the Loan cannot be reduced unless the Defaulting Lender is treated the same as all other Lenders; (2) each Lender is entitled to vote as such Lender sees fit on any bankruptcy or insolvency reorganization plan that affects the Loan; (3) each Lender acknowledges that the provisions of Section 1126(c) of the Bankruptcy Code supersedes the unanimous consent provisions set forth herein; and (4) the Required Lenders may consent to allow a Borrower Party to use cash collateral in the context of a bankruptcy or insolvency proceeding.

(c) Each waiver or consent under any Credit Document (including the Guaranty) shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on Borrower or any other Borrower Party shall entitle such Person to any notice or demand in the same, similar or other circumstances. No failure on the part of any Secured Party to exercise, and no delay in exercising, any right hereunder shall operate as a

waiver thereof, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right. If the consent of any Lender is required with respect to any amendment or waiver of any Credit Document under the terms of this Section 10.2, each Lender will respond to any such request in a commercially reasonable manner and timeframe.

(d) A Lender shall be deemed to have consented to any matter (including any waiver, consent or amendment) for which its approval is required under this Agreement unless such Lender objects by written notice to Administrative Agent within five (5) Business Days following Administrative Agent's written request for such approval.

Section 10.3 Assignments and Participations; Binding Effect.

(a) **Binding Effect.** Subject to the provisions of this Section 10.3, this Agreement shall be binding upon and inure to the benefit of Administrative Agent, the Lenders and Borrower and their respective successors and permitted assigns, provided that neither Borrower nor any other Borrower Party shall, without the prior written consent of Administrative Agent and Lenders, assign any of its rights, duties or obligations hereunder to any other Person.

(b) **Assignments by the Lenders.** Each Lender (other than a Defaulting Lender) may sell, transfer, negotiate or assign all or a portion of its rights and obligations hereunder (including all or a portion of its Loan Commitment and its rights and obligations with respect to the Loan) to (i) any existing Lender (other than a Defaulting Lender), (ii) any Affiliate or Approved Fund of any existing Lender (so long as such Person would not, upon acceptance of such rights and obligations hereunder, constitute a Defaulting Lender) or (iii) any other Person (other than Borrower, Guarantor or an Affiliate thereof) acceptable (which acceptance shall not be unreasonably withheld or delayed) to Administrative Agent (each such transferee, assignee or purchaser herein called a "**Lender Transferee**"); provided, however, so long as no Event of Default has occurred and is continuing, no Lender may participate or assign any of its rights under this Agreement to a Prohibited Assignee; provided further that the aggregate outstanding principal amount (determined as of the effective date of the applicable Assignment and Assumption) of the Loan subject to any such transfer, sale or assignment shall be in a minimum amount of \$1,000,000, unless such transfer, sale or assignment is made to an existing Lender or an Affiliate or Approved Fund of any existing Lender, is of the assignor's (together with its Affiliates and Approved Funds) entire interest in the Loan or is made with the prior consent of Administrative Agent and provided, further, that notwithstanding anything in the Loan Documents to the contrary, any such sale, transfer, negotiation or assignment shall be at no cost or expense to Borrower (provided, however, that Borrower shall be solely responsible for the costs and expenses, if any, of any legal counsel engaged by Borrower in connection therewith). A Defaulting Lender may not sell, transfer, negotiate or assign all or a portion of its rights and obligations hereunder except with Administrative Agent's consent or at Administrative Agent's direction. A Defaulting Lender (or Person that would constitute a Defaulting Lender upon acceptance of rights and obligations hereunder) may not be the recipient of the sale, transfer, negotiation or assignment of any rights or obligations hereunder except with the consent of Administrative Agent.

(c) **Assignment Procedures.** The parties to each transfer, sale or assignment made in reliance on clause (b) above shall execute and deliver to Administrative Agent an Assignment and Assumption via an electronic settlement system designated by Administrative Agent (or if previously agreed with Administrative Agent, via a manual execution and delivery of the Assignment and Assumption) evidencing such transfer, sale or assignment, together with any existing Note subject to such transfer, sale or assignment (or any affidavit of loss therefor acceptable to Administrative Agent), any tax forms or other forms required to be delivered by Administrative Agent, and payment of an assignment fee in the amount of \$3,500, provided that

(1) if a transfer, sale or assignment by a Lender is made to an Affiliate or an Approved Fund of such assigning Lender, then no assignment fee shall be due in connection with such transfer, sale or assignment, and (2) if transfer, sale or assignment by a Lender is made to an assignee that is not an Affiliate or Approved Fund of such assignor Lender, and concurrently to one or more Affiliates or Approved Funds of such assignee, then only one assignment fee of \$3,500 (unless waived by Administrative Agent), shall be due in connection with such transfer, sale or assignment. Upon receipt of all the foregoing, and conditioned upon such receipt and, if such assignment is made in accordance with Section 10.3(b), upon Administrative Agent consenting to such Assignment and Assumption, from and after the effective date specified in such Assignment and Assumption, Administrative Agent shall record or cause to be recorded in the Register the information contained in such Assignment and Assumption.

(d) Participations.

(i) A Lender may sell or agree to sell to one or more other Persons (each a “**Participant**”) a participation in all or any part of the Proportionate Share of the Loan held by it, or in its Loan Commitment, provided that such Participant shall not have any rights or obligations under this Agreement or any Note or any other Credit Document (the Participant’s rights against such Lender in respect of such participation to be those set forth in the agreements executed by such Lender and the applicable Participant). All amounts payable by Borrower to any Lender under Section 2.6 in respect of its Proportionate Share and its Loan Commitment shall be determined as if such Lender had not sold or agreed to sell any participations in the Loan and its Loan Commitment, and as if such Lender were funding its Proportionate Share of the Loan (if applicable) and its Loan Commitment in the same way that it is funding its Proportionate Share of the Loan and its Loan Commitment in which no participations have been sold.

(ii) Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in subsections (i) through (vii) of Section 10.2(a) that affects such Participant.

(iii) Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant’s interest in the Loan or other obligations under the Credit Documents (the “**Participant Register**”); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant’s interest in any commitments, loans, letters of credit or its other obligations under any Credit Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) Effect of Assignment. Subject to the recording of an Assignment and Assumption by Administrative Agent in the Register pursuant to Section 2.11(b), (i) the assignee thereunder

shall become a party hereto and, to the extent that rights and obligations under the Credit Documents have been assigned to such assignee pursuant to such Assignment and Assumption, shall have the rights and obligations of a Lender, (ii) any applicable Note shall be transferred to such assignee through such entry and (iii) the assignor thereunder shall, to the extent that rights and obligations under this Agreement have been assigned by it pursuant to such Assignment and Assumption, relinquish its rights (except for those surviving the termination of the Loan Commitments and the payment in full of the Obligations) and be released from its obligations under the Credit Documents, other than those relating to events or circumstances occurring prior to such assignment (and, in the case of an Assignment and Assumption covering all or the remaining portion of an assigning Lender's rights and obligations under the Credit Documents, such Lender shall cease to be a party hereto except that each Lender agrees to remain bound by Article 9, Section 10.7 (Right of Setoff; Sharing of Payments) and Section 10.35 (Non-Public Information; Confidentiality; Disclosure).

(f) Certain Pledges. In addition to the assignments and participations permitted under the foregoing provisions of this Section 10.3 (but without being subject thereto):

(i) Any Lender may (without notice to Borrower, Administrative Agent or any other Lender and without payment of any fee) assign and pledge all or any portion of its Proportionate Share of the Loan and its Note to any Federal Reserve Bank as collateral security pursuant to Regulation A and any operating circular issued by such Federal Reserve Bank, and such Proportionate Share of the Loan and Note shall be fully transferable as provided therein. No such assignment shall release the assigning Lender from its obligations hereunder.

(ii) Any Lender may pledge its Proportionate Share of the Loan and its Note to any Person that has provided a credit facility or source of liquidity to such Lender. No such pledge shall release the assigning Lender from its obligations hereunder. Any subsequent assignment upon the exercise of pledge remedies shall be subject to the terms of Section 10.3(b).

(g) Provision of Information to Assignees and Participants. A Lender may furnish any information concerning Borrower or any of its Affiliates in the possession of such Lender from time to time to Lender Transferees and Participants (including prospective Lender Transferees and Participants)

(h) No Assignments to Borrower or Affiliates. Anything in this Section 10.3 to the contrary notwithstanding, no Lender may assign or participate any interest in any Loan held by it hereunder to Borrower or any of its Affiliates without the prior written consent of each Lender.

Section 10.4 Renewal, Extension or Rearrangement. Subject to Section 10.9, all provisions of the Credit Documents shall apply with equal effect to each and all promissory notes and amendments thereof hereinafter executed which in whole or in part represent a renewal, extension, increase or rearrangement of the Loan.

Section 10.5 Indemnities

(a) Borrower shall protect, defend, indemnify and save harmless Administrative Agent and each Lender, their respective shareholders, directors, officers, employees and agents (each, an "**Indemnified Person**") from and against all Liabilities imposed upon or incurred by or asserted against any Indemnified Person, whether brought by a third party or any Borrower Party, by reason of (i) credit having been extended, suspended or terminated under this Agreement and the other Credit Documents and the administration of such credit, and in connection with or arising out of the transactions contemplated hereunder and thereunder and

any actions or failures to act in connection therewith; (ii) following Borrower's acquisition of title to [a/the] Project and delivery of the REO Mortgage with respect thereto (it being understood and agreed by Administrative Agent and Lenders that, for the purposes of this clause (ii) only, recourse for any such liability shall be limited to Borrower and its assets (and shall be without recourse to Guarantor)): (A) ownership of [the/such] Project or any interest therein or receipt of any rents and the exercise of rights and remedies thereunder; (B) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about [the/such] Project or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (C) any use, nonuse or condition in, on or about [the/such] Project or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; and (D) performance of any labor or services or the furnishing of any materials or other property in respect of [the/such] Project or any part thereof; (iii) the failure of any Person to file timely with the Internal Revenue Service an accurate Form 1099-B, Statement for Recipients of Proceeds from Real Estate, Broker and Barter Exchange Transactions, which may be required in connection with this Agreement, or to supply a copy thereof in a timely fashion to the recipient of the proceeds of the transaction in connection with which this Agreement is made; (iv) any securities filing of, or with respect to, Borrower, any other Borrower Party or [the/such] Project; (v) any commitment letter, proposal letter or term sheet with any Person and any contractual obligation entered into in connection with any Platform; (vi) any actual or prospective investigation, litigation or other proceeding, whether or not brought by any such Indemnified Person or any of its Related Persons, any holders of securities or creditors, whether or not any such Indemnified Person, Related Person, holder or creditor is a party thereto, and whether or not based on any securities or commercial law or regulation or any other Requirements of Law or theory thereof, including common law, equity, contract, tort or otherwise; (vii) all sums paid by Administrative Agent pursuant to Section 8.6, or (viii) any other act, event or transaction related, contemplated in or attendant to any of the foregoing (collectively, the "**Indemnified Matters**" and, each, an "**Indemnified Matter**"); provided, however, that Borrower shall have no liability under this Section 10.5 to any Indemnified Person with respect to any Indemnified Matter, and no Indemnified Person shall have any liability with respect to any Indemnified Matter other than (to the extent otherwise liable), to the extent such liability has resulted from the gross negligence or willful misconduct of such Indemnified Person, as determined by a court of competent jurisdiction in a final non-appealable judgment or order, any actions or omissions of the Underlying Loan Borrower or, except as otherwise expressly set forth in clause (ii) above, in any manner relating to the Project[s]. Furthermore, Borrower (on its own behalf and on behalf of each other Borrower Party) waives and agrees not to assert against any Indemnified Person any right of contribution with respect to any Liabilities that may be imposed on, incurred by or asserted against any Related Person.

(b) Any indemnification or other protection provided to any Indemnified Person pursuant to any Credit Document and all representations and warranties made in any Credit Document shall (i) survive the termination of the Loan Commitment and the payment in full of other Obligations, and (ii) inure to the benefit of any Person that at any time held a right thereunder (as an Indemnified Person or otherwise) and, thereafter, its successors and permitted assigns.

(c) In no event shall any Indemnified Person be liable on any theory of liability for any special, indirect, consequential or punitive damages (including any loss of profits, business or anticipated savings). Borrower (on its own behalf and on behalf of the other Borrower Parties) hereby waives, releases and agrees not to sue upon any such claim for any special, indirect, consequential or punitive damages, whether or not accrued and whether or not known or suspected to exist in its favor.

Section 10.6 Debtor-Creditor Relationship. The relationship between the Lenders and Administrative Agent, on the one hand, and Borrower, on the other hand, is solely that of

debtor and creditor. No Secured Party has any fiduciary relationship or duty to any Borrower Party arising out of or in connection with, and there is no agency, tenancy or joint venture relationship between the Secured Parties and Borrower and any other Borrower Party by virtue of, any Credit Document or any transaction contemplated therein.

Section 10.7 Right of Setoff; Sharing of Payments.

(a) Each of Administrative Agent, each Lender, and each Affiliate (including each branch office thereof) of any of them is hereby authorized, without notice or demand (each of which is hereby waived by Borrower), at any time and from time to time while an Event of Default is in existence and to the fullest extent permitted by applicable Requirements of Law, to set off and apply any and all deposits (whether general or special, time or demand, provisional or final) at any time held and other indebtedness, claims or other obligations at any time owing by Administrative Agent, such Lender, or any of their respective Affiliates to or for the credit or the account of Borrower against any Obligation of any Borrower Party now or hereafter existing, whether or not any demand was made under any Credit Document with respect to such Obligation and even though such Obligation may be unmaturing. Each of Administrative Agent and each Lender agrees promptly to notify Borrower and Administrative Agent after any such setoff and application made by such Lender or its Affiliates; provided, however, that the failure to give such notice shall not affect the validity of such setoff and application. The rights under this Section 10.7 are in addition to any other rights and remedies (including other rights of setoff) that Administrative Agent, the Lenders, and their Affiliates and other Secured Parties may have.

(b) If any Lender, directly or through an affiliate or branch office thereof, obtains any payment of any Obligation of Borrower or any other Borrower Party (whether voluntary, involuntary or through the exercise of any right of setoff or the receipt of any Collateral or "proceeds" (as defined under the applicable UCC) of Collateral) other than pursuant to Section 2.8 (Capital Adequacy; Increased Costs; Illegality) and Section 2.9 (Interest Rate Protection) and Section 2.4(d) (Breakage Amount) and such payment exceeds the amount such Lender would have been entitled to receive if all payments had gone to, and been distributed by, Administrative Agent in accordance with the provisions of the Credit Documents, such Lender shall purchase for cash from other Secured Parties such participations in their Obligations as necessary for such Lender to share such excess payment with such Secured Parties to ensure such payment is applied as though it had been received by Administrative Agent and applied in accordance with this Agreement (or, if such application would then be at the discretion of Borrower, applied to repay the Obligations in accordance herewith); provided, that (i) if such payment is rescinded or otherwise recovered from such Lender in whole or in part, such purchase shall be rescinded and the purchase price therefor shall be returned to such Lender without interest and (ii) such Lender shall, to the fullest extent permitted by applicable Requirements of Law, be able to exercise all its rights of payment (including the right of setoff) with respect to such participation as fully as if such Lender were the direct creditor of Borrower in the amount of such participation.

Section 10.8 Marshaling; Payments Set Aside. No Secured Party shall be under any obligation to marshal any property in favor of any Borrower Party or any other party or against or in payment of any Obligation. To the extent that any Secured Party receives a payment from any Borrower Party, from the proceeds of the Collateral, from the exercise of its rights of setoff, any enforcement action or otherwise, and such payment is subsequently, in whole or in part, invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party, then to the extent of such recovery, the obligation or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor, shall be revived and continued in full force and effect as if such payment had not occurred.

Section 10.9 Limitation on Interest. It is the intention of the parties hereto to conform strictly to applicable usury laws. Accordingly, all agreements between Borrower, Administrative Agent and Lenders with respect to the Loan are hereby expressly limited so that in no event, whether by reason of acceleration of maturity or otherwise, shall the amount paid or agreed to be paid to Administrative Agent and any Lender or charged by Administrative Agent or any Lender for the use, forbearance or detention of the money to be lent hereunder or otherwise, exceed the maximum amount allowed by law. If the Loan would be usurious under applicable law (including the laws of the State of Illinois and the laws of the United States of America), then, notwithstanding anything to the contrary in the Credit Documents: (a) the aggregate of all consideration which constitutes interest under applicable law that is contracted for, taken, reserved, charged or received under the Credit Documents shall under no circumstances exceed the maximum amount of interest allowed by applicable law, and any excess shall be credited on the Note by the holder thereof (or, if the Indebtedness evidenced by the Note has been paid in full, refunded to Borrower); and (b) if maturity is accelerated by reason of an election by Administrative Agent, or in the event of any prepayment, then any consideration which constitutes interest may never include more than the maximum amount allowed by applicable law. In such case, excess interest, if any, provided for in the Credit Documents or otherwise, to the extent permitted by applicable law, shall be amortized, prorated, allocated and spread from the date of advance until payment in full so that the actual rate of interest is uniform through the term hereof. If such amortization, proration, allocation and spreading is not permitted under applicable law, then such excess interest shall be canceled automatically as of the date of such acceleration or prepayment and, if theretofore paid, shall be credited on the Note (or, if the Indebtedness evidenced by the Note has been paid in full, refunded to Borrower). The terms and provisions of this Section 10.9 shall control and supersede every other provision of the Credit Documents. The Credit Documents are contracts made under and shall be construed in accordance with and governed by the laws of the State of Illinois, except that if at any time the laws of the United States of America permit Administrative Agent or the Lenders to contract for, take, reserve, charge or receive a higher rate of interest than is allowed by the laws of the State of Illinois (whether such federal laws directly so provide or refer to the law of any state), then such federal laws shall to such extent govern as to the rate of interest which Administrative Agent or the Lenders may contract for, take, reserve, charge or receive under the Credit Documents.

Section 10.10 Invalid Provisions. If any provision of any Credit Document is held to be illegal, invalid or unenforceable, such provision shall be fully severable; the Credit Documents shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part thereof; the remaining provisions thereof shall remain in full effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance therefrom; and in lieu of such illegal, invalid or unenforceable provision there shall be added automatically as a part of such Credit Document a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible to be legal, valid and enforceable.

Section 10.11 Reimbursement of Expenses. Any action taken by any Borrower Party under or with respect to any Credit Document, even if required under any Credit Document or at the request of any Secured Party, shall be at the expense of such Borrower Party, and no Secured Party shall be required under any Credit Document to reimburse any Borrower Party therefor except as expressly provided therein. In addition, Borrower agrees to pay or reimburse upon demand (a) Administrative Agent for all reasonable out-of-pocket costs and expenses incurred by it or any of its Related Persons in connection with the investigation, development, preparation, negotiation, syndication, execution, interpretation or administration of, any modification of any term of or termination of, any Credit Document, any commitment or proposal letter therefor, any other document prepared in connection therewith or the consummation and administration of any transaction contemplated therein (including periodic audits in connection therewith and environmental audits and assessments), in each case including the reasonable fees, charges and disbursements of legal counsel to Administrative Agent or such Related Persons, fees, costs and

expenses incurred in connection with Intralinks® or any other Platform and allocated to the Loan by Administrative Agent in its sole discretion and fees, charges and disbursements of the auditors, appraisers, printers and other of their Related Persons retained by or on behalf of any of them or any of their Related Persons, charges for wire transfers and check processing charges, charges for security delivery fees, charges for overnight delivery, recording fees, treasury, management and other service fees and overdraft charges, (b) Administrative Agent and each Lender for all reasonable costs and expenses incurred by them or any of their Related Persons in connection with internal audit reviews, field examinations, financial investigation, and Collateral examinations, including any tax service company (which shall be reimbursed, in addition to the out-of-pocket costs and expenses of such examiners, at the per diem rate per individual charged by Administrative Agent for its examiners), (c) each of Administrative Agent, its Related Persons, and each Lender for all costs and expenses incurred in connection with (i) any refinancing or restructuring of the credit arrangements provided hereunder in the nature of a “work-out”, (ii) the enforcement or preservation of any right or remedy with respect to any Obligation, the Collateral or under any Credit Document, or any other related right or remedy or (iii) the commencement, defense, conduct of, intervention in, or the taking of any other action with respect to, any proceeding (including any bankruptcy or insolvency proceeding) related to any Borrower Party, any Credit Document, any Obligation or related transaction (or the response to and preparation for any subpoena or request for document production relating thereto), including fees and disbursements of counsel (including allocated costs of internal counsel), (d) costs incurred in connection with settlement of condemnation and casualty awards, premiums for title insurance and endorsements thereto, and (e) fees and costs for UCC and litigation searches and background checks.

Section 10.12 Approvals; Third Parties; Conditions. All approval rights retained or exercised by Administrative Agent or the Lenders with respect to Leases, contracts, plans, studies and other matters are solely to facilitate Administrative Agent’s and the Lenders’ credit underwriting, and shall not be deemed or construed as a determination that Administrative Agent or the Lenders have passed on the adequacy thereof for any other purpose and may not be relied upon by Borrower or any other Person. This Agreement is for the sole and exclusive use of Administrative Agent (and its successors and permitted assigns), the Lenders (and their successors and permitted assigns and participants), and Borrower and may not be enforced, nor relied upon, by any Person other than Administrative Agent (and its successors and permitted assigns), the Lenders (and their successors and permitted assigns and participants), and Borrower. All conditions of the obligations of Administrative Agent and the Lenders hereunder, including the obligation to make advances, are imposed solely and exclusively for the benefit of Administrative Agent and the Lenders, their successors and assigns, and no other Person shall have standing to require satisfaction of such conditions or be entitled to assume that any Lender will refuse to make advances in the absence of strict compliance with any or all of such conditions, and no other Person shall, under any circumstances, be deemed to be a beneficiary of such conditions, any and all of which may be freely waived in whole or in part by any Lender at any time in such Lender’s sole discretion.

Section 10.13 Administrative Agent and Lenders Not in Control; No Partnership. None of the covenants or other provisions contained in this Agreement shall, or shall be deemed to, give Administrative Agent or the Lenders the right or power to exercise Control over the affairs or management of Borrower, the power of Administrative Agent and the Lenders being limited to the rights to exercise the remedies referred to in the Credit Documents. No covenant or provision of the Credit Documents is intended, nor shall it be deemed or construed to, and Administrative Agent, Lenders and Borrower disclaim any intention to, create a partnership, joint venture, agency or common interest in profits or income among Administrative Agent and the Lenders or any of them, on the one hand, and Borrower, on the other hand, or to create an equity interest in the Project[s] in Administrative Agent or any Lender. None of Administrative Agent nor any Lender undertakes or assumes any responsibility or duty to Borrower or to any other

Person with respect to the Project[s] or the Loan, except as expressly provided in the Credit Documents; and notwithstanding any other provision of the Credit Documents: (a) none of Administrative Agent or any Lender are, and shall not be construed as, a partner, joint venturer, alter ego, manager, Controlling person or other business associate or participant of any kind of Borrower or Borrower's stockholders, members, or partners and Administrative Agent and the Lenders do not intend to ever assume such status; (b) Administrative Agent and the Lenders shall in no event be liable for any Debts, expenses or losses incurred or sustained by Borrower; and (c) Administrative Agent and the Lenders shall not be deemed responsible for or a participant in any acts, omissions or decisions of Borrower or Borrower's stockholders, members, or partners.

Section 10.14 [Intentionally Omitted].

Section 10.15 Time of the Essence. Time is of the essence with respect to this Agreement.

Section 10.16 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Administrative Agent, the Lenders, and Borrower and their respective successors and assigns, provided that neither Borrower nor any other Borrower Party shall, without the prior written consent of the Lenders, assign any of its rights, duties or obligations hereunder.

Section 10.17 Waivers.

(a) No course of dealing on the part of Administrative Agent or the Lenders or their respective officers, employees, consultants or agents, nor any failure or delay by Administrative Agent or any Lender with respect to exercising any right, power or privilege of Administrative Agent or the Lenders under the Credit Documents, shall operate as a waiver thereof.

(b) Borrower hereby waives any right under the UCC or any other applicable law to receive notice or copies of any filed or recorded financing statements, amendments thereto, continuations thereof or termination statements and releases and excuses Administrative Agent and each Lender from any obligation under the UCC or any other applicable law to provide notice or a copy of any such filed or recorded documents.

Section 10.18 Cumulative Rights; Joint and Several Liability. Rights and remedies of Administrative Agent (on behalf of the Lenders) under the Credit Documents shall be cumulative, and the exercise or partial exercise of any such right or remedy shall not preclude the exercise of any other right or remedy. If more than one person or entity has executed this Agreement as "Borrower," the obligations of all such persons or entities hereunder shall be joint and several.

Section 10.19 [Intentionally Omitted].

Section 10.20 Singular and Plural. Words used in this Agreement and the other Credit Documents, in the singular, where the context so permits, shall be deemed to include the plural and vice versa. The definitions of words in the singular in this Agreement and the other Credit Documents shall apply to such words when used in the plural where the context so permits and vice versa.

Section 10.21 Exhibits and Schedules. The exhibits and schedules attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein.

Section 10.22 Titles of Articles, Sections and Subsections. All titles or headings to articles, sections, subsections or other divisions of this Agreement, the other Credit Documents or the exhibits hereto and thereto are only for the convenience of the parties and shall not be construed to have any effect or meaning with respect to the other content of such articles, sections, subsections or other divisions, such other content being controlling as to the agreement between the parties hereto.

Section 10.23 Promotional Material. Borrower authorizes Administrative Agent and any Lender to issue press releases, advertisements and other promotional materials in connection with Administrative Agent's or such Lender's own promotional and marketing activities and such materials may describe the Loan in general terms or in detail and Administrative Agent's and such Lender's participation therein in the Loan. All references to Administrative Agent or any Lender contained in any press release, advertisement or promotional material issued by Borrower shall be approved in writing by Administrative Agent in advance of issuance.

Section 10.24 Survival. All of the representations, warranties, covenants, and indemnities hereunder, under the indemnification provisions of the other Credit Documents, shall survive the repayment in full of the Loan and the release of the liens evidencing or securing the Loan, and shall survive the transfer (by sale, foreclosure, conveyance in lieu of foreclosure or otherwise) of any or all right, title and interest in and to the Collateral to any party, whether or not an Affiliate of Borrower.

Section 10.25 WAIVER OF JURY TRIAL. TO THE MAXIMUM EXTENT PERMITTED BY LAW, BORROWER, ADMINISTRATIVE AGENT, AND EACH LENDER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER VERBAL OR WRITTEN) OR ACTION OF ANY PARTY OR ANY EXERCISE BY ANY PARTY OF THEIR RESPECTIVE RIGHTS UNDER THE CREDIT DOCUMENTS OR IN ANY WAY RELATING TO THE LOAN OR THE PROJECT[S] (INCLUDING ANY ACTION TO RESCIND OR CANCEL THIS AGREEMENT, AND ANY CLAIM OR DEFENSE ASSERTING THAT THIS AGREEMENT WAS FRAUDULENTLY INDUCED OR IS OTHERWISE VOID OR VOIDABLE). THIS WAIVER IS A MATERIAL INDUCEMENT FOR ADMINISTRATIVE AGENT AND EACH LENDER TO ENTER INTO THIS AGREEMENT.

Section 10.26 Waiver of Punitive or Consequential Damages. None of Administrative Agent, any Lender nor Borrower or any Borrower Party shall be responsible or liable to the other or to any other Person for any punitive, exemplary or consequential damages which may be alleged as a result of the Loan or the transaction contemplated hereby, including any breach or other default by any party hereto. Borrower represents and warrants to Administrative Agent and each Lender that as of the Closing Date neither Borrower nor any Borrower Party has any claims against Administrative Agent or any Lender in connection with the Loan.

Section 10.27 Governing Law. UNLESS OTHERWISE NOTED THEREIN TO THE CONTRARY, THE CREDIT DOCUMENTS AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES THEREUNDER SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF ILLINOIS (WITHOUT GIVING EFFECT TO ILLINOIS' PRINCIPLES OF CONFLICTS OF LAW) AND APPLICABLE UNITED STATES FEDERAL LAW.

Section 10.28 Entire Agreement. This Agreement and the other Credit Documents embody the entire agreement and understanding between Administrative Agent and each Lender

and Borrower and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, the Credit Documents may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties. If any conflict or inconsistency exists between the term sheet and any of the Credit Documents, the terms of the Credit Documents shall control.

Section 10.29 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one document.

Section 10.30 Consents and Approvals. To the extent that Administrative Agent, Lenders or Required Lenders provide any consent or approval as provided for in this Agreement, such consent shall be limited to the specific matter approved and shall not be construed to (a) relieve Borrower from compliance with all of the other terms and obligations of this Agreement, or (b) constitute a consent to any further similar action (as to which a prospective consent or approval shall be required and may not necessarily be granted), or (c) constitute a consent to any other obligation to which any Lender may be a party.

Section 10.31 Effectiveness of Electronic Signatures. This Agreement and any consent, waiver, amendment, supplement or other modification hereto, may be executed in counterparts and by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument. This Agreement and each of the other Credit Documents may be delivered by facsimile transmission, by electronic mail, or by other electronic transmission, in portable document format (.pdf), facsimile format, or other electronic format, all with the same force and effect as if the same was a fully executed and delivered original counterpart. Each party (a) agrees that it will be bound by its own Electronic Signature (as such term is defined immediately below), (b) accepts the Electronic Signature of each other party, and (c) agrees that such Electronic Signatures shall be the legal equivalent of manual signatures. The Administrative Agent may, at its option, create one or more copies of this Agreement or any other Credit Document in an electronic form ("**Electronic Copy**"), which shall be deemed created in the ordinary course of the Administrative Agent's business, and destroy the original paper document. The Administrative Agent may also require that any such documents and signatures be confirmed by a manually signed original thereof; provided, however, that the failure to request or deliver the same shall not limit the effectiveness of any permitted facsimile, portable document format (.pdf), electronic record or Electronic Signature. The words "execution," "executed," "signed," "signature," and words of like import in this paragraph shall be deemed to include Electronic Signatures and the use and keeping of records in electronic form, each of which shall have the same legal effect, validity and enforceability as manually executed signatures and the use of paper records and paper-based recordkeeping systems, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, state laws based on the Uniform Electronic Transactions Act, the New York State Electronic Signatures and Records Act, the Illinois Electronic Commerce Security Act, or any other similar state laws.

Section 10.32 Venue. EACH PARTY HERETO HEREBY CONSENTS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE COUNTY OF COOK, STATE OF ILLINOIS AND IRREVOCABLY AGREES THAT, SUBJECT TO ADMINISTRATIVE AGENT'S ELECTION, ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER CREDIT DOCUMENTS SHALL BE LITIGATED IN SUCH COURTS. EACH PARTY HERETO EXPRESSLY SUBMITS AND CONSENTS TO THE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NON

CONVENIENS. BORROWER HEREBY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE UPON BORROWER BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, ADDRESSED TO BORROWER, AT THE ADDRESS SET FORTH IN THIS AGREEMENT AND SERVICE SO MADE SHALL BE DEEMED COMPLETE TEN (10) DAYS AFTER THE SAME HAS BEEN POSTED.

Section 10.33 Important Information Regarding Procedures for Requesting Credit Each of Administrative Agent and Lenders hereby notifies the Borrower Parties that in order to comply with the Patriot Act, each Lender may be required to obtain, verify and record information that identifies the Borrower and Guarantor, which information includes the name, address, tax identification number and other information regarding the Borrower and Guarantor that will allow such Lender to identify the Borrower and Guarantor in accordance with the Patriot Act. This notice is given in accordance with the requirements of the Patriot Act and is effective as to each Lender.

Section 10.34 Method of Payment All amounts payable under this Agreement and the other Credit Documents must be paid by Borrower in accordance with Section 2.6(c). Payments in the form of cash, money order, third party payment, cashier's check, a check drawn on a foreign bank or non-bank financial institution, or any form of payment other than those provided in the preceding sentence will not be accepted.

Section 10.35 Non-Public Information; Confidentiality; Disclosure Borrower authorizes Administrative Agent and each Lender to disclose information about Borrower and any other Borrower Party that Administrative Agent or such Lender may at any time possess to any Affiliate of a Lender or Administrative Agent, whether such information was supplied by Borrower or otherwise obtained by Administrative Agent or the Lender; provided to the extent Administrative Agent or any Lender receives material non-public information hereunder concerning Borrower, the Borrower Parties, and their Affiliates, Administrative Agent and Lenders agree to use such information in compliance with all relevant policies, procedures and contractual obligations and applicable Requirements of Laws (including United States federal and state security laws and regulations).

Section 10.36 Component Notes Administrative Agent, without in any way limiting Administrative Agent's other rights hereunder, in its sole and absolute discretion, shall have the right at any time to require Borrower to execute and deliver "component" notes (including senior and junior notes) in replacement of the Notes as evidence of the Loan, which notes may be paid in such order of priority as may be designated by Administrative Agent, provided that (i) the aggregate principal amount of such "component" notes shall equal the outstanding principal balance of the Loan immediately prior to the creation of such "component" notes, plus any committed but unfunded Loan proceeds, (ii) the weighted average interest rate of all such "component" notes shall on the date created equal the interest rate which was applicable to the Loan immediately prior to the creation of such "component" notes, (iii) the Debt Service on all such "component" notes shall on the date created equal the Debt Service which was due under the Loan immediately prior to the creation of such component notes and (iv) the other terms and provisions of each of the "component" notes shall be identical in substance and substantially similar in form to the Credit Documents. Borrower, at its cost and expense, shall cooperate with all reasonable requests of Administrative Agent in order to establish the "component" notes and shall execute and deliver such documents as shall reasonably be required by Administrative Agent in connection therewith, all in form and substance reasonably satisfactory to Administrative Agent, including the severance of security documents if requested. If Borrower fails to execute and deliver such documents to Administrative Agent within five (5) Business Days following such request by Administrative Agent, Borrower hereby absolutely and irrevocably appoints Administrative Agent as its true and lawful attorney, coupled with an

interest, in its name and stead to make and execute all documents necessary or desirable to effect such transactions, Borrower ratifying all that such attorney shall do by virtue thereof.

Section 10.37 Waivers. No waiver of any provision of the Credit Documents shall be effective unless in writing and signed by the party against whom enforcement is sought, provided that a written waiver signed by Administrative Agent on behalf of the Lenders shall be deemed to have been signed by the Lenders.

Section 10.38 Post-Closing Obligations of Borrower. Notwithstanding the fact that Borrower has not satisfied certain of the conditions to the advance of the Loan proceeds as of the Closing Date, Lenders have agreed to advance the proceeds of the Loan to Borrower, subject to the satisfaction of the requirements set forth in **Schedule 10.38** attached hereto (the “**Post-Closing Obligations**”).

Section 10.39 Limitation on Liability of Lender’s Officers, Employees, etc. Any obligation or liability whatsoever of Administrative Agent or any Lender which may arise at any time under this Agreement or any other Credit Document shall be satisfied, if at all, out of Administrative Agent’s or such Lender’s assets only. No such obligation or liability shall be personally binding upon, nor shall resort for the enforcement thereof be had to, the property of any of Administrative Agent’s or such Lender’s shareholders, members, directors, officers, managers, employees or agents, regardless of whether such obligation or liability is in the nature of contract, tort or otherwise.

[Signatures Begin on Following Page]

EXECUTED as of the date first written above.

ADMINISTRATIVE AGENT AND LENDER:

CAPITAL ONE, NATIONAL ASSOCIATION

By: /s/ Jeffrey Fattal
Name: Jeffrey Fattal
Title: Duly Authorized Signatory

[Signatures Continued on Following Page]

BORROWER:

ACRC LENDER CO LLC, a Delaware limited liability company

By: /s/ Elaine McKay

Name: Elaine McKay

Title: Vice President

GUARANTY OF RECOURSE OBLIGATIONS

This GUARANTY OF RECOURSE OBLIGATIONS (this “**Guaranty**”) is entered into as of July 28, 2022, by ARES COMMERCIAL REAL ESTATE CORPORATION, a Maryland corporation (whether one or more collectively referred to as “**Guarantor**”), for the benefit of **CAPITAL ONE, NATIONAL ASSOCIATION**, as administrative agent for the Lenders under the hereinafter described Credit Agreement (together with its successors and assigns in such capacity, “**Administrative Agent**”), for the benefit of the Lenders.

RECITALS

A. Pursuant to the Credit and Security Agreement, dated as of even date herewith (as amended, restated, supplemented and otherwise modified from time to time, the “**Credit Agreement**”), between ACRC Lender CO LLC (“**Borrower**”), Administrative Agent and Lenders, Lenders made loan (as amended, supplemented, increased, renewed and otherwise modified from time to time, the “**Loan**”) available to Borrower on the terms and conditions set forth therein. Initially capitalized terms used without definition herein have the meanings ascribed thereto in the Credit Agreement.

B. WHEREAS, Lenders are not willing to make the Loan, or otherwise extend credit, to Borrower unless Guarantor unconditionally guarantees payment and performance to Lenders of the Guaranteed Obligations (as herein defined); and

WHEREAS, Guarantor is the owner of a direct or indirect interest in Borrower, and Guarantor will directly benefit from Lenders’ making the Loan to Borrower.

AGREEMENTS:

NOW, THEREFORE, as an inducement to Lenders to make the Loan to Borrower and to extend such additional credit as Lenders may from time to time agree to extend under the Credit Documents, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Guarantor does hereby agree as follows:

1. **DEFINED TERMS.** All capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms in the Credit Agreement.

2. **THE GUARANTY.**

2.1 **Guaranty of Obligation.** Guarantor hereby irrevocably and unconditionally guarantees to Administrative Agent and Lenders and their respective successors and assigns the payment and performance of the Guaranteed Obligations as and when the same shall be due and payable, whether by lapse of time, by acceleration of maturity or otherwise. Guarantor hereby irrevocably and unconditionally covenants and agrees that it is liable for the Guaranteed Obligations as a primary obligor, plus all reasonable, actual and documented fees and out-of-pocket expenses, including, without limitation, reasonable attorney’s fees and disbursements, that are incurred by Administrative Agent and Lenders in the enforcement of any obligation of Guarantor hereunder.

2.2 **Definition of Guaranteed Obligations.** As used herein, the term “**Guaranteed Obligations**” means the following:

(a) all losses, damages, liabilities, obligations, costs and expenses (including, without limitation, reasonable attorney’s fees), penalties, charges, fines, fees,

causes of action, suits, claims, demands, judgments, and awards of any nature or description whatsoever, in each case, which are incurred by or awarded against Administrative Agent or any other Secured Party as a result of:

(i) fraud, willful misconduct or gross negligence by Borrower or Guarantor in connection with the execution, delivery and performance of this Guaranty, the Loan Agreement or any of the other Loan Documents, or any certificate, report, financial statement or document required to be delivered to Lender under the Loan Documents at the time of the closing of the Loan Agreement or during the term of the Loan Agreement;

(ii) the misappropriation by Borrower or Guarantor in violation of the Loan Documents of (A) any insurance proceeds, (B) condemnation proceeds, or (C) revenues generated after an Event of Default under the Underlying Loan;

(iii) any intentionally false representation or warranty made by Borrower under the Loan Documents;

(iv) if Borrower or Guarantor (or any Person comprising Borrower or Guarantor), in bad faith, interferes with any enforcement action or exercise or assertion of any right or remedy by or on behalf of Lender available to Lender under the Loan Documents, including, without limitation, seeking a defense or filing a petition for judicial intervention or injunctive or other equitable relief of any kind, or asserting in a pleading filed in connection with a judicial proceeding any defense against the Lender; provided, however, if the applicable enforcement action was commenced due to an Event of Default under Section 7.1 of this Agreement, any such contest will be deemed to be in bad faith;

(v) exercise of any Conversion with respect to the Project by Borrower or an Affiliate of Borrower in violation of the Loan Agreement;

(vi) if Borrower exercises its right as lender under the Underlying Loan Documents and forecloses on the Project, accepts a deed-in-lieu of foreclosure on the Project, or otherwise becomes a mortgagee-in-possession under applicable law with respect to the Project and (A) there is any failure to correct any environmental condition in violation of Environmental Laws, or any failure to remove any Hazardous Material pursuant to a requirement of Environmental Law, in each case, with respect to the Project, or any economic waste or (B) Borrower fails to maintain insurance required by the Underlying Loan Documents applicable to the Project (provided that Guarantor shall not have liability pursuant to this clause (B) to the extent that the Project fails to generate sufficient revenue to pay such insurance policies required by the Underlying Loan Documents (except insufficient revenue which results from the intentional misapplication or misappropriation by Borrower or any of its Affiliates of any revenue from the Project));

(b) repayment of all Obligations under the Credit Documents in the event of:

(i) Borrower or Guarantor consents to or joins in any application for the appointment of a custodian, receiver, trustee or examiner for Borrower or Borrower's assets and liabilities in a federal or state bankruptcy or insolvency proceeding except for (x) the appointment of a receiver or trustee in

bankruptcy in connection with a foreclosure of the Underlying Loan or (y) the appointment of a receiver or trustee in bankruptcy in connection with a foreclosure of the Collateral by Lender pursuant to the Loan Agreement;

(ii) Borrower commences a voluntary federal or state bankruptcy or insolvency proceeding;

(iii) Any breach by Borrower of the separateness covenants set forth in the Loan Agreement that result in the substantive consolidation of the assets and/or liabilities of Borrower with any other Person (including, without limitation, in connection with any insolvency law); or

(iv) an involuntary bankruptcy or insolvency proceeding is commenced against Borrower in connection with which Borrower or any subsidiary thereof (alone or in any combination) (A) has or have colluded or conspired in any way with the creditors commencing or filing such proceeding, (B) has solicited or caused to be solicited petition creditors for any involuntary bankruptcy or insolvency petition against Borrower from any Person, or (C) has filed an answer consenting to or joining in with respect to such involuntary bankruptcy or insolvency proceeding; provided, that nothing in this clause (iv) shall cause any recourse to Guarantor if any such proceeding is one filed by Lender (other than proceedings whereby Lender joined in solely to protect its rights under the Loan);

2.3 Continuing Guaranty; Guaranty of Payment. This Guaranty is a continuing guaranty of the Guaranteed Obligations, and Guarantor agrees that the obligations of Guarantor to Administrative Agent and Lenders hereunder shall be primary obligations, shall not be subject to any counterclaim, set-off, abatement, deferment or defense based upon any claim that Guarantor may have against Administrative Agent, any Lender, Borrower or any other Person. Guarantor shall be regarded, and shall be in the same position, as the principal debtors with respect to the Guaranteed Obligations. Guarantor agrees that any notice or directive given at any time to Administrative Agent or any Lender which is inconsistent with the first sentence of this Section 2.3 shall be null and void and may be ignored by Administrative Agent and Lenders, and, in addition, may not be pleaded or introduced as evidence in any litigation relating to this Guaranty for the reason that such pleading or introduction would be at variance with the written terms of this Guaranty, unless Administrative Agent and Lenders have specifically agreed otherwise in writing.

2.4 Liability of Guarantor Not Affected. This Guaranty shall remain in full force and effect without regard to, and shall not be released, discharged or affected in any way by any circumstances or condition, including, without limitation:

(a) the attempt or the absence of any attempt by Administrative Agent (on behalf of Lenders) to obtain payment or performance by Borrower or Guarantor (this being a guaranty of payment and performance and not of collection);

(b) delay by Administrative Agent (on behalf of Lenders) in enforcing or absence of action to enforce Guarantor's obligations hereunder or of any other party under the Credit Documents, or any prior partial exercise by Administrative Agent (on behalf of Lenders) of any right or remedy hereunder or under any of the other Credit Documents;

(c) the fact that Borrower is not liable for the payment or performance of the Guaranteed Obligations, or any portion thereof, for any reason whatsoever,

Guarantor being liable for the Guaranteed Obligations notwithstanding that Borrower may not be liable for such Guaranteed Obligations;

(d) any renewal, extension, substitution, modification, settlement, compromise, replacement of or indulgence with respect to, the Obligations, all of which Administrative Agent (on behalf of Lenders) is hereby authorized to make;

(e) any sale, exchange, release, surrender or other disposition of, or realization upon, any collateral securing the Obligations, or any amendment, waiver, settlement or compromise of any guaranties of the Obligations, or any other obligation of any Person with respect to the Credit Documents;

(f) the acceptance by Administrative Agent (on behalf of Lenders) of any additional security for the Obligations;

(g) the lack of genuineness, validity, regularity or enforceability of or amendment, waiver or consent by Administrative Agent (on behalf of Lenders) with respect to, any provision of any instrument evidencing, securing or otherwise relating to the Obligations, or any part thereof, including without limitation, the other Credit Documents;

(h) the existence, value or condition of, or the failure by Administrative Agent (on behalf of Lenders) to take any steps to perfect, maintain, or enforce, the security interests or remedies under the Credit Documents, or to preserve the rights to or protect any security or collateral, for the Obligations granted to Administrative Agent (for the benefit of Lenders);

(i) any voluntary or involuntary bankruptcy, insolvency, reorganization, arrangement, readjustment, assignment for the benefit of creditors, composition, receivership, liquidation, marshalling of assets and liabilities or similar event or proceedings with respect to Borrower or Guarantor or any other Person, as applicable, or any of their respective properties (each, an "**Insolvency Proceeding**"), or any action taken by Administrative Agent (on behalf of Lenders), any trustee or receiver or by any court in any such Insolvency Proceeding;

(j) the failure by Administrative Agent (on behalf of Lenders) to file or enforce a claim against the estate (either in an Insolvency Proceeding or other proceeding) of Borrower or Guarantor or any other Person;

(k) in any proceeding under the Bankruptcy Code: (i) any election by Administrative Agent (on behalf of Lenders) under Section 1111(b)(2) of the Bankruptcy Code, (ii) any borrowing or grant of a security interest by Borrower as a debtor-in-possession under Section 364 of the Bankruptcy Code, (iii) the inability of Administrative Agent (on behalf of Lenders) to enforce the Obligations against Borrower by application of the automatic stay provisions of Section 362 of the Bankruptcy Code, or (iv) the disallowance, under Section 502 of the Bankruptcy Code, of all or any portion of Administrative Agent's or any Lender's claim(s) against Borrower for repayment of the Obligations;

(l) the failure of Guarantor to receive notice of any intended disposition of the collateral for the Obligations;

(m) any merger or consolidation of Borrower into or with any other entity, or any sale, lease or transfer of any of the assets of Borrower or Guarantor to any other Person;

(n) any change in the ownership of Borrower, or any change in the relationship between Borrower and Guarantor or any termination of any such relationship;

(o) the death, incapacity, insanity, disability, dissolution or other change in status of Borrower or Guarantor;

(p) the making of additional loans to Borrower, the increase or reduction of the maximum principal amount of the Obligations, the increase or reduction in the interest rate provided in the Notes, or any other modification, amendment, release or waiver of the terms of the Credit Documents;

(q) the absence, impairment or loss of any right of reimbursement or subrogation or other right or remedy of Guarantor; and

(r) any other action or circumstance which might otherwise constitute a legal or equitable discharge or defense of Borrower, Guarantor or any other guarantor.

Guarantor hereby expressly waives and surrenders any defense to its liability under this Guaranty based upon any of the foregoing acts, omissions, agreements, waivers or matters, whether or not Guarantor had notice or knowledge of same. It is the purpose and intent of this Guaranty that the obligations of Guarantor hereunder shall be absolute and unconditional under any and all circumstances.

2.5 Rights of Administrative Agent. Administrative Agent is hereby authorized, without notice to or demand of Guarantor and without affecting the liability of Guarantor hereunder, to take any of the following actions from time to time on behalf of Lenders, and neither Administrative Agent nor any Lender shall incur any liability to Guarantor as a result thereof, and no such action shall impair or release the Guaranteed Obligations of Guarantor or any of them under this Guaranty:

(a) increase or decrease the amount of, or renew, extend, accelerate or otherwise change the time, place or terms for payment of, or other terms relating to, the Obligations, or otherwise modify, amend or change the terms of any promissory note or other agreement evidencing, securing or otherwise relating to any of the Obligations, including, without limitation, the making of additional advances thereunder;

(b) accept and apply any payments on or recoveries against the Obligations from any source, and any proceeds of any security therefor, to the Obligations in such manner, order and priority as Administrative Agent may elect in Administrative Agent's sole discretion;

(c) take, hold, sell, exchange, release or otherwise dispose of all or any property pledged, mortgaged or conveyed, or in which Administrative Agent has been granted a lien (for the benefit of Lenders), as security for the Obligations or the payment of this Guaranty;

(d) settle, release, compromise, collect or otherwise liquidate the Obligations or any portion thereof;

(e) accept, hold, substitute, add or release any other guaranty or endorsements of the Obligations;

(f) take any action under or in respect of the Credit Documents in the exercise of any remedy, power or privilege contained therein or available to Administrative Agent at law, equity or otherwise, or waive or refrain from exercising any such remedies, powers or privileges;

(g) amend or modify, in any manner whatsoever, the Credit Documents;

(h) extend or waive the time for any Person's performance of, or compliance with, any term, covenant or agreement on its part to be performed or observed under the Credit Documents, or waive such performance or compliance or consent to a failure of, or departure from, such performance or compliance;

(i) release anyone who may be liable in any manner for the payment of any amounts owed by Borrower, Guarantor or any other Borrower Party to Administrative Agent or Lenders;

(j) modify or terminate the terms of any intercreditor or subordination agreement pursuant to which claims of other creditors of Guarantor, Borrower or any Borrower Party are subordinated to the claims of Administrative Agent and Lenders; and

(k) at any time after maturity of the Obligations, apply toward payment of the Guaranteed Obligations (i) any indebtedness due or to become due from Administrative Agent or any Lender to Guarantor, and (ii) any moneys, credits, or other property belonging to Guarantor at any time held by or coming into the possession of Administrative Agent or any Lender or any affiliates thereof, whether for deposit or otherwise.

2.6 **Subordination.** All indebtedness now or hereafter owing by Borrower to Guarantor for borrowed money or otherwise is hereby subordinated to the payment of the Obligations, and, following and during the continuance of any Event of Default hereunder or under any of the other Credit Documents, Guarantor shall not accept payment of all or any portion of such subordinated indebtedness until satisfaction in full of the Obligations. All security interests, liens and encumbrances which Guarantor now or hereafter may have upon any of the assets of Borrower are hereby subordinated to all security interests, liens and encumbrances heretofore, now or hereafter granted to Administrative Agent (for the benefit of Lenders) pursuant to any of the Credit Documents.

2.7 **[Reserved]**

3. **GUARANTOR'S ADDITIONAL WAIVERS**

3.1 **Statutes of Limitation.** Guarantor irrevocably waives all statutes of limitation as a defense to any action or proceeding brought against Guarantor, Borrower or any other Borrower Party by Administrative Agent or any Lender, to the fullest extent permitted by law.

3.2 **Election of Remedies.** If Administrative Agent (on its own behalf or on behalf of Lenders) may, under applicable law, proceed to realize benefits under any of the Credit Documents giving Administrative Agent (for the benefit of Lenders) a lien upon any collateral owned by Borrower or any other Borrower Party, either by judicial foreclosure or by non-judicial

sale or enforcement, Administrative Agent may, at its sole option, determine which of such remedies or rights it may pursue without affecting any of Administrative Agent's rights and remedies under this Guaranty. If, in the exercise of any of Administrative Agent's rights and remedies against Borrower, Guarantor or any other Person liable with respect to the Obligations or the Guaranteed Obligations (as the case may be), Administrative Agent shall forfeit any of the rights or remedies available to Administrative Agent (on behalf of Lenders), including any right to enter a deficiency judgment against Borrower, whether because of any applicable laws pertaining to "election of remedies" or the like, Guarantor hereby consents to such action by Administrative Agent, as applicable, and waives any claim or defense based upon such action, even if such action by Administrative Agent shall result in a full or partial loss of any rights of subrogation which Guarantor might otherwise have had but for such action by Administrative Agent. Any election of remedies which results in the denial or impairment of the right of Administrative Agent (on behalf of Lenders) to seek a deficiency judgment against Borrower shall not impair Guarantor's obligation to pay the full amount of the Guaranteed Obligations, and Guarantor hereby irrevocably waives any defense based upon an election of remedies made by Administrative Agent (on behalf of Lenders) or any other election afforded to Administrative Agent pursuant to applicable law, including, without limitation, (a) any election to proceed by judicial or nonjudicial foreclosure or by Uniform Commercial Code sale or by deed or assignment in lieu thereof, or any election of remedies which destroys or otherwise impairs the subrogation rights of the Guarantor or the rights of the Guarantor to proceed against Borrower or any other Person for reimbursement, or both, (b) the waiver by Administrative Agent or Lenders, either by action or inaction of Administrative Agent or Lenders or by operation of law, of a deficiency judgment against Borrower, and (c) any election pursuant to an Insolvency Proceeding.

3.3 Rights of Subrogation and Other Rights.

(a) Guarantor hereby expressly and irrevocably waives, on behalf of itself and its successors and assigns (including any surety) (i) any and all rights at law or in equity to seek subrogation, contribution, indemnification or any other form of reimbursement or repayment from Borrower or any other Person now or hereafter primarily or secondarily liable for any of the Guaranteed Obligations for any disbursements made by Guarantor under or in connection with this Guaranty, (ii) all claims of any kind or type against Borrower as a result of any payment made by Guarantor to Administrative Agent (for the account of Lenders) or Lenders, and (iii) any right to participate in any security now or hereafter held by Administrative Agent (for the benefit of Lenders). In furtherance, and not in limitation, of the foregoing, Guarantor agrees that any payment to Administrative Agent for the account of Lenders pursuant to this Guaranty shall be deemed a contribution to the capital of Borrower or other obligated party and shall not constitute Guarantor a creditor of Borrower or such other party.

(b) Guarantor hereby further acknowledges and agrees that (i) this waiver is intended to benefit Administrative Agent and Lenders and shall not limit or otherwise affect Guarantor's liability hereunder or the enforceability of this Guaranty (ii) Administrative Agent and Lenders and their respective successors and assigns are intended third party beneficiaries of the waivers and agreements set forth in this Section 3.3 and their rights under this Section 3.3 shall survive payment in full of the Guaranteed Obligations, and (iii) to the extent the waiver of its rights of subrogation as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any rights of subrogation Guarantor may have against Borrower or against any collateral or security for any of the Guaranteed Obligations shall be junior and subordinate to any rights Administrative Agent and Lenders may have against Borrower and to all right, title and interest Administrative Agent (for the benefit of Lenders) may have in such collateral or security.

3.4 **Demands and Notices.** Guarantor irrevocably waives all presentments, demands for performance, protests, notices of protest, notices of dishonor, notice of acceleration to Borrower, any other Person or any other party with respect to the Loan or the Guaranteed Obligations, notices of acceptance of this Guaranty and of the existence, creation or incurring of new or additional Obligations, notices of defaults by Borrower or any other Person liable for all or any portion of the Guaranteed Obligations and demands and notices of every kind that may be required to be given by any statute or rule or law.

3.5 **Borrower Information.** Guarantor irrevocably waives (a) any duty of Administrative Agent or Lenders to advise Guarantor of any facts that may now or hereafter be known to Administrative Agent or Lenders regarding Borrower regardless of whether Administrative Agent or Lenders have reason to believe that any such facts materially increase the risk beyond that which Guarantor intends to assume or has reason to believe that such facts are unknown to Guarantor, Guarantor acknowledging that Guarantor is fully responsible for being and keeping informed of the financial conditions and affairs of Borrower, and (b) any defense based on any claim that Guarantor's obligations exceed or are more burdensome than those of Borrower.

3.6 **Limitation of Liability.** Guarantor irrevocably waives any impairment, modification, change, release or limitation of the liability of, or stay of actions or lien enforcement proceedings against Borrower or Guarantor, their property, or their estate in bankruptcy, resulting from the operation of any provision of the state or federal bankruptcy laws, or from the decision of any court.

3.7 **Lack of Diligence.** Guarantor irrevocably waives any and all claims or defenses based upon lack of diligence in: (a) collection of any Obligations; (b) protection of any collateral or other security for the Indebtedness or Obligations; or (c) realization upon any collateral or under any of the other Credit Documents.

3.8 **Other Defenses.** Guarantor irrevocably waives any other defenses, set-offs or counterclaims which may be available to Borrower, or any other Guarantor, and any and all other defenses now or at any time hereafter available to Guarantor (including, without limitation, those given to sureties) at law or in equity, including but not limited to any defenses based upon:

- (a) the incapacity, lack of authority, death or disability of Borrower, any other Guarantor or Person;
 - (b) the failure of Administrative Agent to commence (on behalf of Lenders) an action against Borrower or any other Person or to proceed against or exhaust any security held by Administrative Agent, for the benefit of Lenders, or by Lenders at any time or to pursue any other remedy whatsoever at any time;
 - (c) the consideration for this Guaranty;
 - (d) any acts or omissions of Administrative Agent or Lenders which vary, increase or decrease the risk of Guarantor;
 - (e) the application by Borrower of the proceeds of the Loan for purposes other than the purposes represented by Borrower to Administrative Agent and Lenders or intended or understood by Administrative Agent, Lenders or Guarantor;
-

(f) any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in any other aspects more burdensome than that of a principal;

(g) Administrative Agent's election (on behalf of Lenders), in any proceeding instituted under the Bankruptcy Code, of the application of Section 1111(b)(2) of the Bankruptcy Code or any successor statute; and

(h) any borrowing or any grant of a security interest under Section 364 of the Bankruptcy Code.

3.9 **Nature of Waivers.** It is agreed among Guarantor, Administrative Agent and Lenders that the waivers set forth in this Guaranty (both in this Section and elsewhere) are of the essence of the transaction contemplated by the Credit Documents and that, but for this Guaranty and such waivers, Administrative Agent and Lenders would decline to enter into the Credit Agreement.

4. **REPRESENTATIONS, WARRANTIES AND COVENANTS.** Guarantor represents, warrants and covenants to Administrative Agent and Lenders as follows:

4.1 **Financial Statements.** All financial statements and other financial information furnished or to be furnished to Administrative Agent (a) are or will be true and correct in all material respects and do or will fairly represent the financial condition of Guarantor (including all contingent liabilities) in each case as of the date delivered, and (b) were or will be prepared in accordance with generally accepted accounting principles, consistently applied. There has been no material adverse change in Guarantor's financial condition since the dates of the statements most recently furnished Administrative Agent.

4.2 **No Defaults.** There is no existing event of default, and no event has occurred which with the passage of time and/or the giving of notice will constitute an event of default, under any agreement to which Guarantor is a party, which event of default could reasonably be expected to have a material adverse effect on Guarantor's ability to perform the Guaranteed Obligations under this Guaranty, and neither the execution and delivery of this Guaranty nor compliance with the terms and provisions hereof will violate any presently existing provision of law or any presently existing regulation, order, writ, injunction or decree of any court or governmental department, commission, board, bureau, agency or instrumentality, or constitute a default under, any agreement to which Guarantor is a party or by which Guarantor or its property is bound.

4.3 **No Litigation.** There are no actions, suits or proceedings pending or threatened against Guarantor before any court or any governmental, administrative, regulatory, adjudicatory or arbitrational body or agency of any kind which, if decided adversely, could reasonably be expected to adversely affect performance by Guarantor of such Guarantor's obligations pursuant to and as contemplated by the terms and provisions of this Guaranty.

4.4 **Accuracy.** Neither this Guaranty nor any document, financial statement, credit information, certificate or statement heretofore furnished or required herein to be furnished to Administrative Agent by Guarantor contains any untrue statement of fact or omits to state a fact material to this Guaranty, in each case as of the date of such document, financial statement, credit information or statement.

4.5 **No Defenses.** As of the date of this Guaranty, Guarantor's obligations under this Guaranty are not subject to any offsets or defenses against Administrative Agent or Lenders of any kind.

4.6 **Organization**. Guarantor is a corporation duly organized, validly existing and in good standing under the laws of the State of Maryland with its principal place of business at 245 Park Avenue, 42nd Floor, New York, NY 10167. Guarantor owns one hundred percent (100%) of the indirect membership interests in Borrower clear of all liens, claims and encumbrances. Guarantor has full right, power and authority to execute the Credit Documents to which it is a party on its own behalf.

4.7 **Governing Documents**. A true, complete and correct copy of the certificate of incorporation and any amendments thereto and all other documents creating and governing Guarantor (collectively, the “**Guarantor Documents**”) have been furnished to Administrative Agent. The Guarantor Documents constitute the entire agreement among the members of Guarantor and are binding upon and enforceable against each of the members in accordance with their terms, subject to bankruptcy and other laws affecting the rights of creditors, generally. There are no other agreements, oral or written, among the members of Guarantor. No breach exists under any of the Guarantor Documents and no condition exists which, with the giving of notice or the passage of time, would constitute a breach under any of the Guarantor Documents.

4.8 **Existence**. Guarantor shall preserve and keep in full force and effect its existence, entity status, franchises, rights and privileges under the laws of its state of formation. Guarantor shall not wind up, liquidate, dissolve, reorganize, merge, or consolidate with or into, or convey, sell, assign, transfer, lease or otherwise dispose of all or substantially all of its assets, or acquire all or substantially all of the assets of the business of any Person, or permit any subsidiary or Affiliate of Borrower to do so. Guarantor shall not amend or terminate or permit the amendment or termination of the Guarantor Documents without the prior written consent of Administrative Agent. Guarantor shall not change its name, identity, or organizational structure, the location of its chief executive office or its place of business or its state of organization unless Administrative Agent has been notified in writing in advance.

5. **COVENANTS**

5.1 **No Defenses**. Guarantor agrees that its obligations under this Guaranty shall not be subject to any counterclaims, offsets or defenses against Administrative Agent or any Lender of any kind which may arise in the future.

5.2 **Financial Information**. Guarantor hereby agrees, as a material inducement to Lenders to make the Loan to Borrower, to furnish to Administrative Agent the financial statements required of Guarantor under the Credit Agreement. Guarantor hereby warrants and represents unto Administrative Agent and Lenders that any and all balance sheets, net worth statements and other financial data which may hereafter be given to Administrative Agent with respect to Guarantor will, at the time of such delivery, fairly and accurately present the financial condition of Guarantor.

5.3 **Minimum Tangible Net Worth and Liquidity Covenants**. Until the Obligations have been finally and indefeasibly paid in full, Guarantor shall maintain, as of the last day of each calendar quarter: (a) tangible net worth, determined in accordance with GAAP (but excluding goodwill, other intangible assets and any Affiliate note receivables), is now and shall, at all times during the term of this Guaranty, in an amount not less than the sum of (7) 80% of Guarantor's tangible net worth as of June 30, 2022, plus (2) 80% of the total net contributed capital actually received (after deducting transaction costs) as a result of the issuance of equity interest in the Guarantor subsequent to June 30, 2022; and (b) Liquid Assets having a market value of at least the greater of (1) \$5,000,000 and (2) 50% of the Guarantor's recourse debt (not to exceed \$10,000,000). As used in this Section 5.3, “**Liquid Assets**” means, as of the applicable date, Guarantor's unrestricted and unencumbered (whether by Liens, negative pledges, or

otherwise) (i) cash, and (ii) stocks, bonds, and mutual fund shares, in each instance that can be readily sold for cash on stock exchanges or over-the-counter markets provided that if the Guarantor's liquid assets equal or exceed \$5,000,000 then for purposes of clause (b)(2) above, Guarantor may include Guarantor's available borrowing capacity in the calculation of liquid assets under clause (b)(2) above.

5.4 **Determination of Compliance by Administrative Agent.** Administrative Agent shall determine, in its reasonable discretion, whether Guarantor has complied with each of the foregoing covenants in this Section 5.

6. **MISCELLANEOUS**

6.1 **Enforcement.** Administrative Agent shall have the right to enforce this Guaranty in a separate action against one or more Persons comprising Guarantor, or by an action against Guarantor and some or all of the other Persons obligated under the Credit Documents, or any combination of the foregoing.

6.2 **Revival and Reinstatement.** This Guaranty shall remain in full force and effect and continue to be effective should any petition be filed by or against Borrower or any other Borrower Party for liquidation or reorganization, should Borrower or any other Borrower Party become insolvent or make an assignment for the benefit of creditors or should a receiver or trustee be appointed for all or any significant part of Borrower or such Borrower Party's assets. This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Guaranteed Obligations, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by Administrative Agent or Lenders, whether as a "voidable preference", "fraudulent conveyance", or otherwise, all as though such payment or performance had not been made to Administrative Agent (for the account of Lenders) or to any Lender in the first place. In the event that any payment of any Obligation, or any part thereof, is rescinded, reduced, restored or returned, the Guaranteed Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

6.3 **No Marshaling.** Administrative Agent has no obligation to marshal any assets in favor of Guarantor, or against or in payment of (a) any of the Guaranteed Obligations, or (b) any other obligation owed to Administrative Agent or Lenders by Guarantor, Borrower or any other Person.

6.4 **No Modification, Waiver or Release Without Writing.** Except as may otherwise be expressly set forth herein, this Guaranty may not be modified, amended, revised, revoked, terminated, changed or varied in any way whatsoever, nor shall any waiver of any of the provisions of this Guaranty be binding upon Administrative Agent or Lenders, except as expressly set forth in a writing duly executed by Administrative Agent (on behalf of Lenders). No waiver by Administrative Agent (on behalf of Lenders) of any default shall operate as a waiver of any other default or the same default on a future occasion, and no action by Administrative Agent (on behalf of Lenders) permitted hereunder shall in any way affect or impair Administrative Agent's or any Lender's rights or the obligations of Guarantor under this Guaranty.

6.5 **Assignment; Successors and Assigns.** Guarantor may not assign its obligations or liability under this Guaranty. Subject to the preceding sentence, this Guaranty shall be binding upon the parties hereto and their respective successors and assigns and shall inure to the benefit of the parties hereto and their respective successors and assigns. Lenders may, without notice to anyone, sell or assign the Guaranteed Obligations, the Notes or other Credit Documents or any part thereof, or grant participations therein, and in any such event each

and every assignee or holder of, or participant in, all or any of the Guaranteed Obligations shall have the right to enforce this Guaranty, by suit or otherwise for the benefit of such assignee, holder, or participant, as fully as if herein by name specifically given such right, but Administrative Agent shall have an unimpaired right, prior and superior to that of any such assignee, holder or participant, to enforce this Guaranty for the benefit of Lenders.

6.6 **Integration**. This Guaranty is the entire agreement of Guarantor with respect to the subject matter of this Guaranty, provided that this Guaranty shall not in any way limit or abrogate the obligations of Guarantor under any other Credit Documents to which Guarantor is party.

6.7 **Rights Cumulative**. All of Administrative Agent's and each Lender's rights under this Guaranty and the other Credit Documents are cumulative. The exercise of any one right does not exclude the exercise of any other right given in this Guaranty or the other Credit Documents or any other right of Administrative Agent or Lenders not set forth in this Guaranty or the other Credit Documents.

6.8 **Severability**. Whenever possible, each provision of this Guaranty shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Guaranty shall be prohibited by or 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 Guaranty.

6.9 **Material Inducement; Consideration**. Guarantor acknowledges and agrees that Administrative Agent and Lenders are specifically relying upon the representations, warranties, agreements and waivers contained herein and that such representations, warranties, agreements and waivers constitute a material inducement to Administrative Agent and Lenders to accept this Guaranty and to enter into the Credit Agreement and the transaction contemplated therein. Guarantor further acknowledges that it expects to benefit from Lenders' extension of financing accommodations to Borrower because of its relationship to Borrower, and that it is executing this Guaranty in consideration of that anticipated benefit.

6.10 **Cooperation**. Guarantor acknowledges that Lenders and their successors and assigns may (i) sell, transfer or assign all or a portion of the Loan to one or more investors, or (ii) participate the Loan secured by this Guaranty to one or more investors. Guarantor shall cooperate with Administrative Agent in effecting any such transaction and shall provide such information and documents relating to Guarantor, as Administrative Agent may reasonably request in connection therewith, including information concerning its business and operations that Administrative Agent may reasonably request. Administrative Agent shall be permitted to share all such information with the proposed transferees and participants, provided such parties agree to keep such information confidential.

6.11 **Counterparts**. This Guaranty may be executed in counterparts, each of which shall be deemed an original, but all of which, when taken together, shall be deemed one and the same agreement. This Guaranty may be delivered by facsimile transmission, by electronic mail, or by other electronic transmission, in portable document format (.pdf), or other electronic or facsimile format, and each such executed facsimile, .pdf, or other electronic record shall be considered an original executed counterpart for purposes of this Guaranty. Guarantor (a) agrees that it will be bound by its own Electronic Signature (as defined below), (b) accepts the Electronic Signature of each other party to this Guaranty, and (c) agrees that such Electronic Signatures shall be the legal equivalent of manual signatures. The term "Electronic Signature" means (i) the signing party's manual signature on a signature page, converted by the signing party (or its agent) to facsimile or digital form (such as a .pdf file) and received from the customary email address or customary facsimile number of the signing party (or its counsel or

representative), or other mutually agreed-upon authenticated source; or (ii) the signing party's digital signature executed using a mutually agreed-upon digital signature service provider and digital signature process. The words "execution," "executed," "signed," "signature," and words of like import in this paragraph shall, for the avoidance of doubt, be deemed to include Electronic Signatures and the use and keeping of records in electronic form, each of which shall have the same legal effect, validity and enforceability as manually executed signatures and the use of paper records and paper-based recordkeeping systems, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, state laws based on the Uniform Electronic Transactions Act, the New York State Electronic Signatures and Records Act, the Illinois Electronic Commerce Security Act, or any other similar state law

6.12 **Governing Law.** This Guaranty shall be governed by and construed in accordance with the internal laws of the State of Illinois (the "**State**"), without regard to conflicts of law principles.

6.13 **Assignment of Rights in Insolvency Proceedings.** In the event any Insolvency Proceeding is instituted by or against Borrower, whether voluntary or involuntary, Administrative Agent (on behalf of Lenders) shall have the right to: (a) file claims in any such proceeding on behalf of Guarantor and (b) vote Guarantor's claims in any such proceeding.

6.14 **Time of Essence.** Time is of the essence in this Guaranty.

6.15 **Notice.** Any notice or other communication required or permitted to be given under this Guaranty shall be in writing addressed to the respective party as set forth below and shall be delivered in accordance with Section 10.1 of the Credit Agreement.

If to Guarantor: 245 Park Avenue, 42nd Floor
New York, New York 10167
Attn: Capital Markets and Legal
Email: ssasidharan@aresmgmt.com;
AREGDEBTLEGAL@aresmgmt.com

With a copy to: Latham & Watkins LLP
1271 Avenue of the Americas
New York, New York 10020
Attention: Loren N. Finegold
Telephone: (212) 906-1327
Email: loren.finegold@lw.com

If to Administrative Agent: Capital One, National Association
77 W. Wacker Drive, 10th Floor
Chicago, Illinois 60601
Attention: Jason LaGrippe
Facsimile: 888-722-5146
Reference: Ares Briarcliff

with a copy to: Capital One, National Association
500 W. Wacker Drive, 10th Floor
Chicago, Illinois 60601

Attention: Jeffrey M. Muchmore,
Managing Director
Facsimile: (855) 332-1699
Reference: Ares Briarcliff

with a copy to: Capital One, National Association
5804 Trailridge Drive
Austin, Texas 78731
Attention: Diana Pennington,
Chief Counsel-Real Estate
Facsimile: (855) 438-1132
Reference: Ares Briarcliff

Any party may change its respective address for the giving of notice to another address by giving at least ten (10) business days' notice of such change.

6.16 **Parties in Interest.** Except as expressly set forth herein, nothing in this Guaranty, whether express or implied, is intended to confer any rights or remedies under or by reason of this Guaranty on any person other than Administrative Agent and Lenders and their respective successors and assigns, nor is anything in this Guaranty intended to relieve or discharge the obligations or liability of any third persons to Administrative Agent and Lenders, nor shall any provision give any third persons other than Administrative Agent and Lenders and their respective successors and assigns any right of subrogation over or against Guarantor.

6.17 **VENUE.** GUARANTOR HEREBY CONSENTS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE STATE OF ILLINOIS AND IRREVOCABLY AGREES THAT, SUBJECT TO ADMINISTRATIVE AGENT'S ELECTION, ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS GUARANTY MAY BE LITIGATED IN SUCH COURTS. GUARANTOR EXPRESSLY SUBMITS AND CONSENTS TO THE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS. GUARANTOR HEREBY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE UPON GUARANTOR BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, ADDRESSED TO GUARANTOR, AT THE ADDRESS SET FORTH IN THIS GUARANTY AND SERVICE SO MADE SHALL BE DEEMED COMPLETE TEN (10) DAYS AFTER THE SAME HAS BEEN POSTED.

6.18 **WAIVER OF JURY TRIAL.** GUARANTOR AND, BY THEIR ACCEPTANCE OF THIS GUARANTY, ADMINISTRATIVE AGENT AND LENDERS, HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, OR RELATED TO, THE SUBJECT MATTER OF THIS GUARANTY AND THE BUSINESS RELATIONSHIP THAT IS BEING ESTABLISHED. THIS WAIVER IS KNOWINGLY, INTENTIONALLY AND VOLUNTARILY MADE BY GUARANTOR AND, BY THEIR ACCEPTANCE OF THIS GUARANTY, ADMINISTRATIVE AGENT AND LENDERS. GUARANTOR ACKNOWLEDGES THAT NONE OF ADMINISTRATIVE AGENT AND LENDERS, NOR ANY PERSON ACTING ON BEHALF OF ADMINISTRATIVE AGENT OR ANY LENDER, HAS MADE ANY REPRESENTATIONS OF FACT TO INDUCE THIS WAIVER OF TRIAL BY JURY OR HAS TAKEN ANY ACTIONS WHICH IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. GUARANTOR, ADMINISTRATIVE AGENT AND LENDERS ACKNOWLEDGE THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT

GUARANTOR, ADMINISTRATIVE AGENT AND LENDERS HAVE ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THIS GUARANTY AND THAT EACH OF THEM WILL CONTINUE TO RELY ON THIS WAIVER IN THEIR RELATED FUTURE DEALINGS. GUARANTOR, ADMINISTRATIVE AGENT AND LENDERS FURTHER ACKNOWLEDGE THAT THEY HAVE BEEN REPRESENTED (OR HAVE HAD THE OPPORTUNITY TO BE REPRESENTED) IN THE SIGNING OF THIS GUARANTY AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL.

6.19 WAIVERS. THE WAIVERS SET FORTH IN THIS GUARANTY (INCLUDING, WITHOUT LIMITATION, SECTIONS 7.17 AND 7.18 ABOVE) ARE KNOWINGLY, INTENTIONALLY, AND VOLUNTARILY MADE BY GUARANTOR, AND GUARANTOR ACKNOWLEDGES THAT NEITHER ANY LENDER, NOR ADMINISTRATIVE AGENT, NOR ANY PERSON ACTING ON BEHALF OF ANY OF THEM, HAS MADE ANY REPRESENTATIONS OF FACT TO INDUCE THESE WAIVERS OR IN ANY WAY TO MODIFY OR NULLIFY THEIR EFFECT. GUARANTOR FURTHER ACKNOWLEDGES THAT IT HAS BEEN REPRESENTED (OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED) IN THE SIGNING OF THIS GUARANTY AND IN THE MAKING OF THESE WAIVERS BY INDEPENDENT LEGAL COUNSEL, SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THESE WAIVERS WITH COUNSEL.

[SIGNATURES BEGIN ON NEXT PAGE]

EXECUTED as of the day and year first above written.

GUARANTOR:

ARES COMMERCIAL REAL ESTATE CORPORATION,
a Maryland Corporation

By:	<u>/s/ Elaine McKay</u>
Name:	Elaine McKay
Title	Vice President

**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: July 29, 2022

/s/ Bryan Donohoe

Bryan Donohoe
Chief Executive Officer

**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: July 29, 2022

/s/ Tae-Sik Yoon

Tae-Sik Yoon
Chief Financial Officer and Treasurer

**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, 2022 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: July 29, 2022

/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.