FORM 8-K

Current report filing

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FILER

Exantas Capital Corp.

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SIC: **6798** Real estate investment trusts

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 OR 15(d)
of The Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): August 3, 2020

Exantas Capital Corp.
(Exact name of registrant as specified in its charter)

Maryland	**1-32733**	**20-2287134**
(State or other jurisdiction of incorporation)	**(Commission File Number)**	**(IRS Employer Identification No.)**

865 Merrick Avenue, Suite 200S **Westbury, NY** **(Address of principal executive offices)**	**11590** **(Zip Code)**

Registrant's telephone number, including area code: 516-535-0015

N/A
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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, $0.001 par value	**XAN**	**New York Stock Exchange**
8.625% Fixed-to-Floating Series C Cumulative Redeemable Preferred Stock	**XANPrC**	**New York Stock Exchange**

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company ☐

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

Item 1.01. Entry into a Material Definitive Agreement.

On July 31, 2020, Exantas Capital Corp. (the "Company") amended and restated its Third Amended and Restated Management Agreement (the "Management Agreement") pursuant to which amendment and restatement, among other things, ACRES Capital, LLC ("ACRES") has replaced Exantas Capital Manager Inc. ("ECM") as the Company's external manager. In addition, the Company entered into separate agreements with Massachusetts Mutual Life Insurance Company ("MassMutual") and a fund managed by Oaktree Capital Management, L.P. ("Oaktree") for new capital commitments aggregating up to $375 million.

A fund managed by Oaktree has a minority interest in ACRES.

Amendment of the Existing Management Agreement

On July 31, 2020, the Company entered into a Fourth Amended and Restated Management Agreement (the "Fourth Agreement"), which amends and restates the Management Agreement. The Fourth Agreement was entered into among the Company, ACRES and ACRES Capital Corp. Under the Fourth Agreement, ACRES replaces ECM as the Company's external manager. Except as described above, the terms of the Fourth Agreement are substantially the same as the terms of the Management Agreement, except for the following terms:

- *Term.* The term of the Fourth Agreement is extended to July 21, 2023;
- *Board Designation Rights.* During the term of the Fourth Agreement, ACRES will have the right to designate not less than two nominees for election to the Board of the Directors of the Company, each of whom shall be required to resign in certain circumstances;
- *Termination Fee.* A Termination Fee (as defined in the Fourth Agreement) is payable to ACRES upon ACRES's termination of the Fourth Agreement due to default by the Company;
- *Compensation.* A minimum monthly amount was included in the Base Management Fee (as defined in the Fourth Agreement) payable by the Company to ACRES covering the period through July 31, 2022; and
- *Definition of "Incentive Compensation."* A revised calculation of "Incentive Compensation," with respect to each fiscal quarter commencing with the quarter ending December 31, 2022, is added to the Fourth Agreement. Generally, it provides that the incentive compensation fees are calculated based on 20% of the amount of the Company's Core Earnings (as defined in the Fourth Agreement) in excess of a 7% return on the Company's Book Value Equity (as defined in the Fourth Agreement); provided, however, that in no event will an incentive compensation fee be paid unless Core Earnings for the 12 most recently completed calendar quarters (or such lesser number of completed calendar quarters from September 30, 2022) in the aggregate is greater than zero.

The foregoing description of the Fourth Agreement is only a summary, does not purport to be complete and is qualified in its entirety by reference to the full text of the Fourth Agreement, which is filed as Exhibit 10.1 hereto and is incorporated herein by reference.

Senior Secured Financing Facility

On July 31, 2020, RCC Real Estate SPE Holdings LLC ("Holdings"), an indirect, wholly owned subsidiary of the Company, and RCC Real Estate SPE 9 LLC (the "Borrower"), a direct, wholly owned subsidiary of Holdings, entered into a $250 million Loan and Servicing Agreement (the "Loan Agreement") with MassMutual, the other lenders party thereto (the "Lenders"), Wells Fargo Bank, National Association, as the administrative agent and collateral custodian, MassMutual, as facility servicer, and ACRES Capital Servicing LLC, an affiliate of ACRES, as the portfolio servicer. The asset-based revolving loan facility (the "Facility") provided under the Loan Agreement will be used to finance the Company's core commercial real estate lending business. The Facility has an advance rate of 55% and an interest rate of 5.75% per annum payable monthly. The Facility matures on July 31, 2027 if the Borrower obtains a rating for the Facility of BBB or higher by October 31, 2020. If such rating is not obtained by October 31, 2020, then the Facility matures on December 1, 2020. The company paid a commitment fee as well as other reasonable closing costs. The loans under the Facility are available for drawing during the first two years of the Facility (the "Availability Period"). During the Availability Period, an unused commitment fee of 0.50% per annum (payable monthly) on unused commitments under the Loan Agreement is payable for each day on which less than 75% of the total commitment is drawn.

Pursuant to the Loan Agreement, the Borrower's obligations under the Loan Agreement are secured by the Borrower's assets and Holdings' equity interests in the Borrower, including all distributions, proceeds and profits from Holdings' interests in the Borrower.

In connection with the Loan Agreement, the Company entered into a Guaranty (the "Guaranty") among the Company, Exantas Real Estate Funding 2018-RS06 Investor, LLC ("RS06"), Exantas Real Estate Funding 2019-RS07 Investor, LLC ("RS07"), and Exantas Real Estate Funding 2020-RS08 Investor, LLC ("RS08", and collectively with RS06 and RS07, the "Additional Subsidiaries"), each an indirect, wholly owned subsidiary of the Company, in favor of the secured parties under the Loan Agreement. Pursuant to the Guaranty, the Company fully guaranteed all payments and performance of Holdings and the Borrower under the Loan Agreement. Additionally, the Company and the Additional Subsidiaries made certain representations and warranties and agreed to not incur debt or liens, each subject to certain exceptions, and agreed to provide the Lenders with certain information.

The Loan Agreement contains events of default, subject to certain materiality thresholds and grace periods, customary for this type of financing arrangement, including but not limited to, bankruptcy or insolvency proceedings, a change of control of Holdings, the Borrower or the Company, breaches of covenants and/or representations and warranties, performance defaults, or a judgment in an amount greater than $5,000,000 against Holdings or the Borrower. The remedies for such events of default are also customary for this type of transaction and include the acceleration of the principal amount outstanding under the Loan Agreement and liquidation of the assets securing the Facility.

The foregoing descriptions of the Loan Agreement and the Guaranty are only summaries, do not purport to be complete and are qualified in their entirety by reference to the full text of the Loan Agreement and the Guaranty, which are filed as Exhibit 10.2 and Exhibit 10.3 hereto and are incorporated herein by reference.

12% Senior Notes Due 2027 and Warrants

On July 31, 2020, the Company entered into a Note and Warrant Purchase Agreement (the "Note and Warrant Purchase Agreement") with Oaktree and MassMutual pursuant to which the Company may issue to Oaktree and MassMutual from time to time up to $125 million aggregate principal amount of 12% senior unsecured notes due 2027 (the "Senior Notes") and warrants (the "Warrants") to purchase an aggregate of up to 3.5 million shares of the Company's common stock, $0.001 par value per share (the "Common Stock"), at an exercise price of $0.01 per share (subject to certain potential adjustments), for an aggregate cash purchase price of up to $125 million. The Senior Notes have an annual interest rate of 12.00%, payable up to 3.25% (at the election of the Company) as pay-in-kind interest and the remainder as cash interest. On July 31, 2020, the Company issued to Oaktree $42.0 million aggregate principal amount of the Senior Notes and warrants to purchase 1,176,000 shares of the Common Stock for an aggregate purchase price of $42.0 million. In addition, on July 31, 2020, the Company issued to MassMutual $8.0 million aggregate principal amount of the Senior Notes and warrants to purchase 224,000 shares of the Common Stock for an aggregate purchase price of $8.0 million. At any time and from time to time prior to January 31, 2022, the Company may elect to issue to Oaktree and MassMutual up to $75 million aggregate principal amount of additional Senior Notes and warrants to purchase an additional 2.1 million shares of the Common Stock for a purchase price equal to the principal amount of the additional Senior Notes being issued.

The Note and Warrant Purchase Agreement contains events of default, subject to certain materiality thresholds and grace periods, customary for this type of financing arrangement, including but not limited to, bankruptcy or insolvency proceedings, breaches of covenants and/or representations and warranties, performance defaults, or a judgement in an amount greater than $25,000,000 (exclusive of insurance proceeds). The remedies for such events of default are also customary for this type of transaction and include the acceleration of all Notes then outstanding under the Note and Warrant Purchase Agreement.

The foregoing description of the Note and Warrant Purchase Agreement is only a summary, does not purport to be complete and is qualified in its entirety by reference to the full text of the Note and Warrant Purchase Agreement, including the terms of the Form of Note and Form of Warrant attached as exhibits thereto, which is filed as Exhibit 10.4 hereto and is incorporated herein by reference.

Promissory Note

On July 31, 2020, RCC Real Estate, Inc., a direct, wholly owned subsidiary of the Company, provided a $12 million loan (the "ACRES Loan") to ACRES Capital Corp. evidenced by a Promissory Note (the "Promissory Note") from ACRES Capital Corp.

The ACRES Loan accrues interest at 3% per annum payable monthly. The monthly amortization payment is $25,000. The ACRES Loan matures in six years, subject to two one-year extensions (at ACRES Capital Corp.'s option) subject to a payment of an 0.5% extension fee to RCC Real Estate, Inc. on the outstanding principal amount of the ACRES Loan.

The foregoing description of the Promissory Note is only a summary, does not purport to be complete and is qualified in its entirety by reference to the full text of the Promissory Note, which is filed as Exhibit 10.5 hereto and is incorporated herein by reference.

Item 2.03 Creation of a Direct Financial Obligation or an Obligation Under an Off-Balance Sheet Arrangement of a Registrant.

The information set forth under Item 1.01 is incorporated herein by reference.

Item 3.02 Unregistered Sales of Equity Securities.

The information set forth under Item 1.01 is incorporated herein by reference. The Warrants were sold to Oaktree and MassMutual pursuant to an exemption from the registration requirements of the Securities Act of 1933, as amended (the "Act"), afforded by Section 4(a)(2) of the Act and Rule 506 promulgated thereunder. The Company agreed to register the resale of the shares of common stock issuable upon exercise of the Warrants.

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

On July 31, 2020, Henry Silverman notified the Company of his decision to resign as a member of the Board of Directors of the Company, effective immediately. Mr. Silverman indicated that his decision was due to other time commitments. Mr. Silverman's resignation was not the result of any disagreement with the Company on any matter relating to the Company's operations, policies or practices.

In connection with ACRES becoming the Company's external manager, on July 31, 2020, Jeffrey P. Cohen and Andrew L. Farkas resigned their positions as directors of the Company, Robert C. Lieber resigned his position as Chief Executive Officer of the Company and Matthew J. Stern resigned his position as President of the Company, each effective immediately.

The resignation of each of Messrs. Cohen, Farkas, Lieber and Stern was not due to any dispute or disagreement with the Company on any matter relating to the Company's operations, policies or practices.

Effective July 31, 2020, Andrew L. Fentress and Mark S. Fogel were appointed directors of the Company. Additionally, Mr. Fentress was appointed Chairman of the Board of the Company and Mr. Fogel was appointed President and Chief Executive Officer of the Company.

Mr. Fentress, age 50, co-founded ACRES in 2012 and leads ACRES' capital markets efforts. Mr. Fentress has served as a Managing Director at Napier Park Global Capital in the Special Situations group from January 2014 to September 2016. Mr. Fentress was a founding and Managing Partner of Medley Capital, a private investment firm headquartered in New York from 2004 through March of 2013. As a Managing Partner, he shared responsibility for all aspects of the firm's development to $5 billion of AUM and 60 employees. Mr. Fentress served on the investment committee and oversaw the asset management division of the firm, before selling his interest in 2013. Mr. Fentress began his career with Morgan Stanley & Co., Inc. where he was responsible for overseeing the operations of a global trading team in such sectors as technology, telecommunications and media.

Mr. Fogel, age 52, co-founded ACRES in 2012 and leads its executive management team as Chief Executive Officer. Prior to founding ACRES, Mr. Fogel served in executive capacities at several prominent commercial real estate finance companies, and oversaw loan production, asset management and special servicing for a diverse portfolio of investments, nationwide. In addition to his other executive roles, for over six years, Mr. Fogel served as a senior officer at a multi-billion dollar, publicly traded mortgage REIT and, in the midst of the financial turbulence of 2008, assisted in the capital raise and launch of a successful specialty finance company.

Mr. Fentress and Mr. Fogel will be compensated by ACRES, which receives management fees and reimbursement of certain expenses pursuant to the Fourth Agreement. Mr. Fentress and Mr. Fogel will receive no other compensation for their services to the Company other than incentive awards which may be granted in the future.

Item 7.01 Regulation FD Disclosure.

On August 3, 2020, the Company issued a press release (the "Press Release") announcing the amendment of the Company's Management Agreement and transition of its external manager, the entry into the Loan Agreement, and the entry into a Note and Warrant Purchase Agreement and the issuance of the Senior Notes and Warrants. The Press Release is attached hereto as Exhibit 99.1 and is furnished pursuant to Item 7.01 of Form 8-K.

Additionally, the Company is furnishing an investor presentation, dated August 3, 2020 (the "Investor Presentation"), which representatives of the Company will be using in meeting with investors on August 6, 2020. The Company does not undertake to update the attached presentation materials. The Investor Presentation is attached hereto as Exhibit 99.2 and is furnished pursuant to Item 7.01 of Form 8-K.

This Current Report on Form 8-K, including the Press Release and the Investor Presentation, contains "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. These statements are made on the basis of management's views and assumptions regarding future events and business performance as of the time the statements are made. Actual results may differ materially from those expressed or implied. Information concerning factors that could cause actual results to differ materially from those in forward-looking statements is contained from time to time in the Company's filings with the Securities and Exchange Commission. Such forward-looking statements speak only as of the date that they are made, and the Company undertakes no obligation to update or revise any forward-looking statement.

In accordance with General Instruction B.2 of Form 8-K, the information included in Item 7.01 of this Current Report on Form 8-K (including Exhibits 99.1 and 99.2 hereto), shall not be deemed "filed" for the purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or otherwise subject to the liabilities of that section, nor shall it be deemed incorporated by reference into any registration statement or any filing made by the Company under the Exchange Act or Securities Act of 1933, as amended, except as shall be expressly set forth by specific reference in such a filing. The furnishing of this information should not be deemed an admission as to the materiality of any such information.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

Exhibit No.	Description
10.1	Fourth Amended and Restated Management Agreement, dated as of July 31, 2020, by and among Exantas Capital Corp., ACRES Capital, LLC and ACRES Capital Corp.
10.2	Loan and Servicing Agreement, dated as of July 31, 2020, among RCC Real Estate SPE Holdings LLC, as Holdings, RCC Real Estate SPE 9 LLC, as the Borrower, Massachusetts Mutual Life Insurance Company and the other Lenders from time to time party thereto, Wells Fargo Bank, National Association, as the Administrative Agent, Massachusetts Mutual Life Insurance Company, as the Facility Servicer, ACRES Capital Servicing LLC, as the Portfolio Asset Servicer, and Wells Fargo Bank, National Association, as the Collateral Custodian.
10.3	Guaranty, dated as of July 31, 2020, by Exantas Capital Corp., and each of Exantas Real Estate Funding 2018-RSO6 Investor, LLC, Exantas Real Estate Funding 2019-RSO7 Investor, LLC, and Exantas Real Estate Funding 2020-RSO8 Investor, LLC, in favor of the Secured Parties.
10.4	Note and Warrant Purchase Agreement, dated as of July 31, 2020, by and among Exantas Capital Corp. and the Purchasers signatory thereto.
10.5	Promissory Note, dated as of July 31, 2020, issued by ACRES Capital Corp. to RCC Real Estate, Inc.
99.1	Press Release, dated August 3, 2020.
99.2	Investor Presentation, dated August 3, 2020.
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

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 hereunto duly authorized.

EXANTAS CAPITAL CORP.

Date: August 3, 2020

By: /s/ Mark Fogel
Mark Fogel
President & Chief
Executive Officer

Exhibit 10.1

Execution Version

FOURTH AMENDED AND RESTATED MANAGEMENT AGREEMENT

THIS FOURTH AMENDED AND RESTATED MANAGEMENT AGREEMENT dated July 31, 2020, (this "Agreement") is made by and among EXANTAS CAPITAL CORP., a Maryland corporation (the "Company"), ACRES CAPITAL, LLC, a New York limited liability company (together with its permitted assignees, the "Manager"), and ACRES CAPITAL CORP., a Delaware corporation ("Acres Capital").

WHEREAS, the Company is a corporation that has elected and has qualified to be treated as a real estate investment trust for federal income tax purposes; and

WHEREAS, the Company is a party to that certain Third Amended and Restated Management Agreement dated as of December 14, 2017 by and among the Company (formerly known as Resource Capital Corp.), Exantas Capital Manager Inc., a Delaware corporation ("Exantas Capital," formerly known as Resource Capital Manager, Inc.), and Resource America, Inc., a Delaware corporation ("Resource"), as amended by that certain Amendment No. 1 to the Third Amended and Restated Management Agreement, dated as of February 20, 2020, by and among the Company, Exantas Capital and Resource (as so amended, the "Third Amended Agreement").

NOW THEREFORE, in consideration of the mutual agreements herein set forth, the parties hereto agree as follows:

SECTION 1. DEFINITIONS. The following terms have the meanings assigned them:

(a) "Affiliate" means a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified. It is acknowledged and agreed that, for all purposes of this Agreement, Oaktree, as of the date hereof, is not an Affiliate of (i) Acres Capital or (ii) any Affiliate of Acres Capital, including, without limitation, the Manager. For purposes of this definition of Affiliate, "Oaktree" shall mean Oaktree Capital Management, L.P., any funds or accounts managed by it, and any of its or their respective direct or indirect subsidiaries, officers, directors, managers, partners, members, stockholders, employees or Affiliates.

(b) "Agreement" means this Fourth Amended and Restated Management Agreement, as amended from time to time.

(c) "Ancillary Operating Subsidiary" means a Subsidiary, including a TRS and its Subsidiaries, that is an operating entity principally engaged in the evaluation, underwriting, origination, servicing, holding, trading and financing of loans, securities, investments and credit products other than commercial real estate loans.

(d) "Base Management Fee" means the base management fee, calculated and paid monthly in arrears, in an amount equal to (i) one-twelfth (1/12) of Equity as of the end of such month, multiplied by (ii) 1.50%. If applicable, the initial and final installments of the Base Management Fee shall be pro-rated based on the number of days during the initial and final month, respectively, that this Agreement is in effect.

(e) "Board of Directors" means the Board of Directors of the Company.

(f) "Book Value" means, with respect to any fiscal quarter end, the total stockholders' equity of the Company at September 30, 2017, excluding equity attributable to preferred stock ($460,568,964), as adjusted to include net income or loss from the operations or gain or loss on resolutions of Strategic Plan Assets between October 1, 2017, and that fiscal quarter end, with the calculation of such adjustments being subject to the approval by a majority of the Independent Directors; provided that no such adjustments shall be made for any fiscal quarter after the quarter ending December 31, 2018. For the avoidance of doubt, Book Value for any fiscal quarter ending after December 31, 2018, shall include such adjustments for the period between October 1, 2017 and December 31, 2018.

(g) "Book Value Equity" means (a) the sum of (1) the total stockholders' equity of the Company calculated in accordance with GAAP, less the equity attributable to any outstanding preferred stock (based on the equity value attributable to such preferred stock included in such total stockholders' equity), at September 30, 2022, plus (2) the total amount of net proceeds (or the value of Common Shares issued upon the conversion of convertible securities, if applicable and without duplication) from any issuance of common stock of the Company after October 1, 2022, after deducting any underwriting discounts and commissions and other expenses and costs relating to such issuance, and plus (3) cumulative Core Earnings from and after October 1, 2022 to the end of the most recently completed calendar quarter, (b) less (1) any distributions to the Company' s stockholders after October 1, 2022, (2) any amount that the Company has paid to repurchase the Company' s Common Stock after October 1, 2022, and (3) any Incentive Compensation paid after October 1, 2022. For the avoidance of doubt, Book Value Equity shall include any restricted shares of Common Stock or common equity of Subsidiaries and any other shares of Common Stock or common equity of Subsidiaries underlying awards granted under one or more of the Company' s or its subsidiary' s equity incentive plans. The amount of net proceeds received shall be subject to the determination of the Board to the extent such proceeds are other than cash.

(h) "Change of Control" means the occurrence of any of the following:

(i) the sale, lease or transfer, in one or a series of related transactions, of all or substantially all of the assets of the Manager, taken as a whole, to any Person other than a direct or indirect wholly owned subsidiary of Acres Capital; or

(ii) the acquisition by any Person or group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act, or any successor provision), including any group acting for the purpose of acquiring, holding or disposing of securities (within the meaning of Rule 13d-5(b)(1) under the Exchange Act), in a single transaction or in a related series of transactions, by way of merger, consolidation or other business combination or purchase of beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act, or any successor provision) of 50% or more of the total voting power of the voting capital interests of the Manager.

(i) "Code" means the Internal Revenue Code of 1986, as amended.

(j) "Common Share" means a share of capital stock of the Company now or hereafter authorized as common voting stock of the Company.

(k) "Company Account" has the meaning set forth in Section 5 hereof.

(l) "Company Indemnified Party" has the meaning set forth in Section 11(b) hereof.

(m) "Core Earnings" means, with respect to any period, GAAP net income (loss) attributable to Common Shares for such period, adjusted to: (A) exclude the following items incurred during such period: (i) non-cash equity compensation expense, (ii) Incentive Compensation payable to the Manager, (iii) unrealized gains and losses, (iv) non-cash provisions for loan losses, (v) non-cash impairments on securities, (vi) non-cash amortization of discounts or premiums associated with borrowings, (vii) net income or loss from the operations or gain or loss on resolutions of Strategic Plan Assets, (viii) real estate depreciation and amortization, (ix) foreign currency gains or losses and (x) income or loss from discontinued operations; and (B) add any realized gain and deduct any realized loss incurred during such period (excluding any realized gain or loss on the resolution of any Strategic Plan Asset) to the extent such realized gain or loss was previously excluded from the calculation of Core Earnings for a previous period.

(n) "Current Term" has the meaning set forth in Section 13(a) hereof.

(o) "Effective Termination Date" has the meaning set forth in Section 13(a) hereof.

(p) "Equity" means, for purposes of calculating the Base Management Fee for any month: (a) (i) the total amount of net proceeds (or the value of Common Shares issued upon the conversion of convertible securities, if applicable and without duplication) from any issuance of capital stock of the Company (including common stock and preferred stock) during such month, after deducting any underwriting discounts and commissions and other expenses and costs relating to such issuance, plus (or minus) (ii) the Company' s retained earnings (or deficit) at the end of such month (without taking into account any non-cash equity compensation expense incurred in current or prior periods), less (b) all amounts that the Company pays for repurchases of any capital stock of the Company (including common stock and preferred stock) during such month; *provided*, that the foregoing calculation of Equity shall be adjusted to exclude one-time events pursuant to changes in GAAP, as well as non-cash charges after discussion between the Manager and the Independent Directors and approval by a majority of the Independent Directors in the case of non-cash charges. For all purposes of this Agreement, "preferred stock" means all preferred stock, whether redeemable (mandatorily or otherwise) or not, other than trust preferred stock.

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

(r) "Federal Reserve Board" means the Board of Governors of the Federal Reserve System.

(s) "GAAP" means generally accepted accounting principles, as applied in the United States.

(t) "Governing Instruments" means, with regard to any entity, the articles of incorporation and bylaws in the case of a corporation, certificate of limited partnership (if applicable) and the partnership agreement in the case of a general or limited partnership, the articles of formation and the 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 from time to time.

(u) "Guidelines" shall have the meaning set forth in Section 2(b)(i) hereof.

(v) "Incentive Compensation" means, with respect to each fiscal quarter commencing with the quarter ending September 30, 2020, through the fiscal quarter ending September 30, 2022, an incentive management fee calculated and payable in an amount, not less than zero, equal to the product of: (A) twenty percent (20%) of the dollar amount by which (i) the amount of the Company' s Core Earnings per Common Share for such quarter (based on the weighted average number of Common Shares outstanding during such quarter) exceeds (ii) an amount equal to (1) the weighted average of (a) Book Value as of the end of such quarter divided by 30,881,351 and (b) the price per share (including the conversion price, if applicable) paid for Common Shares in each offering (or issuance, upon the conversion of convertible securities) by the Company subsequent to September 30, 2017, in each case at the time of issuance thereof, multiplied by (2) the greater of (a) 1.75% or (b) 0.4375% plus one-fourth of the Ten Year Treasury Rate for such quarter; multiplied by (B) the weighted average number of Common Shares outstanding during such quarter; provided, that the foregoing calculation of Incentive Compensation shall be adjusted (x) to exclude events pursuant to changes in GAAP or the application of GAAP, as well as non-recurring or unusual transactions or events, after discussion between the Manager and the Independent Directors and approval by a majority of the Independent Directors in the case of non-recurring or unusual transactions or events, and (y) by deducting an amount equal to any TRS Directly Paid Fees accrued (calculated as if such fees were payable on a quarterly basis) not previously used to offset Incentive Compensation.

"Incentive Compensation" means, with respect to each fiscal quarter commencing with the quarter ending December 31, 2022, an incentive management fee calculated and payable in arrears in an amount, not less than zero, equal to:

(i) *for the first full calendar quarter ending December 31, 2022*, the product of (a) 20% and (b) the excess of (i) Core Earnings of the Company for such calendar quarter, over (ii) the product of (A) the Company' s Book Value Equity as of the end of such calendar quarter, and (B) 7% per annum;

(ii) *for each of the second, third and fourth full calendar quarters following the calendar quarter ending December 31, 2022,* the excess of (1) the product of (a) 20% and (b) the excess of (i) Core Earnings of the Company for the calendar quarter(s) following September 30, 2022, over (ii) the product of (A) the Company' s Book Value Equity in the calendar quarter(s) following September 30, 2022, and (B) 7% per annum, over (2) the sum of any Incentive Compensation paid to the Manager with respect to the prior calendar quarter(s) following September 30, 2022 (other than the most recent calendar quarter); and

(iii) *for each calendar quarter thereafter,* the excess of (1) the product of (a) 20% and (b) the excess of (i) Core Earnings of the Company for the previous 12-month period, over (ii) the product of (A) the Company' s Book Value Equity in the previous 12-month period, and (B) 7% per annum, over (2) the sum of any Incentive Compensation paid to the Manager with respect to the first three calendar quarters of such previous 12-month period; *provided*, however, that no Incentive Compensation shall be payable with respect to any calendar quarter unless Core Earnings for the 12 most recently completed calendar quarters (or such lesser number of completed calendar quarters from September 30, 2022) in the aggregate is greater than zero.

Securities of the Company or any of its Subsidiaries that are entitled to a specified periodic distribution or have other debt characteristics shall not constitute equity securities and shall not be included in "Book Value Equity" for the purpose of calculating Incentive Compensation and instead the aggregate distribution amount that accrues to such securities during the calendar quarter of such calculation shall be subtracted from Core Earnings, before Incentive Compensation for purposes of calculation Incentive Compensation, unless such distribution is otherwise excluded from Core Earnings.

For purposes of Incentive Compensation, the definition of Equity shall be deemed to exclude preferred stock.

(w) "Indemnified Party" has the meaning set forth in Section 11(a) hereof.

(x) "Independent Directors" means the members of the Board of Directors who are not, and have not been within the last two years, officers or employees of the Manager or any Person directly or indirectly controlling or controlled by, or otherwise an Affiliate of, the Manager and who are otherwise "independent" in accordance with the Company' s Governing Instruments and, if applicable, the rules of any national securities exchange on which any capital stock of the Company is listed.

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

(z) "Investments" means the investments of the Company.

(aa) "Notice of Proposal to Negotiate" has the meaning set forth in Section 13(a) hereto.

(bb) "Person" means any individual, corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated association, any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

(cc) "REIT" means a "real estate investment trust" as defined under the Code.

(dd) "Renewal Term" has the meaning as set forth in Section 13(a) hereto.

(ee) "Strategic Plan Assets" means certain non-core businesses, investments or other assets identified on Exhibit C hereto.

(ff) "Subsidiary" means any subsidiary of the Company; any partnership, the general partner of which is the Company or any subsidiary of the Company; and any limited liability company, the managing member of which is the Company or any subsidiary of the Company.

(gg) "Ten Year Treasury Rate" means the average of the weekly average yield to maturity for U.S. Treasury securities (adjusted to a constant maturity of ten (10) years) as published weekly by the Federal Reserve Board in publication H.15, or any successor publication, during a fiscal quarter, or if such rate is not published by the Federal Reserve Board, any Federal Reserve Bank or agency or department of the federal government selected by the Company. If the Company determines in good faith that the Ten Year Treasury Rate cannot be calculated as provided above, then the rate shall be the arithmetic average of the per annum average yields to maturities, based upon closing asked prices on each business day during a quarter, for each actively-traded marketable U.S. Treasury fixed interest rate security with a final maturity date not less than eight or more than twelve years from the date of the closing asked prices as chosen and quoted for each business day in each such quarter in New York City by at least three recognized dealers in U.S. government securities selected by the Company.

(hh) "Termination Fee" has the meaning set forth in Section 13(b) hereof.

(ii) "Termination Notice" has the meaning set forth in Section 13(a) hereof.

(jj) "Treasury Regulations" means the regulations promulgated under the Code from time to time, as amended.

(kk) "TRS" means a Subsidiary that is a taxable REIT subsidiary as defined in Section 856(1) of the Code.

(ll) "TRS Directly Paid Fees" means fees paid directly by a TRS (or any subsidiary thereof) to employees, agents and/or Affiliates of the Manager with respect to profits of such TRS (or subsidiary thereof) generated from the services of such employees, agents and/or Affiliates, the fee structure of which shall have been approved by a majority of the Company' s Independent Directors and which fees may not exceed 20% of the net income (before such fees) of such TRS (or subsidiary thereof). TRS Directly Paid Fees may be accrued and paid in subsequent periods if the structure of such fees requires their payment on a periodic basis other than quarterly.

SECTION 2. APPOINTMENT AND DUTIES OF THE MANAGER.

(a) The Company hereby appoints the Manager to manage the assets of the Company and its Subsidiaries subject to the further terms and conditions set forth in this Agreement and the Manager hereby agrees to use its commercially reasonable efforts to perform each of the duties set forth herein. The appointment of the Manager shall be exclusive to the Manager except to the extent that the Manager otherwise agrees, in its sole and absolute discretion, and except to the extent that the Manager elects, in accordance with the terms of this Agreement, to cause the duties of the Manager hereunder to be provided by third parties. During the term of this Agreement, the Manager shall have the right to designate not less than two persons as nominees for election to the Board of Directors ("Manager Directors"). The Nominating and Corporate Governance Committee of the Board of Directors and the full Board of Directors shall take all

necessary action to effect the foregoing. Each Manager Director shall agree to resign as a member of the Board of Directors effective immediately upon either (x) the number of Manager Directors being equal to or more than the number of Independent Directors (following any cure period granted under the New York Stock Exchange or other applicable listing rules or standards), provided that, such resignation shall only be in effect for the period during which the number of Manager Directors is equal to or more than the number of Independent Directors, and provided further that under the circumstances set forth in this clause (x), the Manager shall be entitled to continue to have at least one Manager Director on the Board of Directors, or (y) the termination of this Agreement.

(b) The Manager, in its capacity as manager of the assets and the day-to-day operations of the Company, at all times will be subject to the supervision of the Company' s Board of Directors and will have only such functions and authority as the Company may delegate to it including, without limitation, the functions and authority identified herein and delegated to the Manager hereby. 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 assets and operations of the Company as may be appropriate, including, without limitation:

(i) serving as the Company' s consultant with respect to the periodic review of the investment criteria and parameters for Investments, borrowings and operations, any modifications to which shall be approved by a majority of the Independent Directors (such policy guidelines as initially approved, as the same may be modified with such approval, the "Guidelines") and other policies for approval by the Board of Directors;

(ii) investigation, analysis and selection of investment opportunities;

(iii) with respect to any prospective investment by the Company and any sale, exchange or other disposition of any Investment by the Company, conducting negotiations on behalf of the Company with sellers and purchasers and their respective agents, representatives and investment bankers;

(iv) engaging and supervising, on behalf of the Company and at the Company' s expense, independent contractors which provide investment banking, mortgage brokerage, securities brokerage and other financial services and such other services as may be required relating to the Investments;

(v) 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;

(vi) providing executive and administrative personnel, office space and office services required in rendering services to the Company;

(vii) administering the day-to-day operations of the Company and performing and supervising the performance of such other administrative functions necessary in the management of the Company as may be agreed upon by the Manager and the Board of Directors, including, without limitation, 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;

(viii) communicating on behalf of the Company with the holders of any equity or debt securities of the Company 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;

(ix) counseling the Company in connection with policy decisions to be made by the Board of Directors;

(x) evaluating and recommending to the Board of Directors hedging strategies and engaging in hedging activities on behalf of the Company, consistent with such strategies, as so modified from time to time, with the Company' s status as a REIT, and with the Guidelines;

(xi) counseling the Company regarding the maintenance of its status as a REIT and monitoring compliance with the various REIT qualification tests and other rules set out in the Code and Treasury Regulations thereunder;

(xii) counseling the Company regarding the maintenance of its exclusion from status as an investment company under the Investment Company Act and monitoring compliance with the requirements for maintaining such exclusion;

(xiii) assisting the Company in developing criteria for asset purchase commitments that are specifically tailored to the Company' s investment objectives and making available to the Company its knowledge and experience with respect to mortgage loans, real estate, real estate securities, other real estate-related assets and non-real estate related assets;

(xiv) furnishing reports and statistical and economic research to the Company regarding the Company' s activities and services performed for the Company by the Manager or the Subsidiaries;

(xv) monitoring the operating performance of the Investments and providing periodic reports with respect thereto to the Board of Directors, including comparative information with respect to such operating performance and budgeted or projected operating results;

(xvi) investing and re-investing any moneys 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 stockholders and partners of the Company) and advising the Company as to its capital structure and capital raising;

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

(xviii) causing the Company to qualify to do business in all applicable jurisdictions and to obtain and maintain all appropriate licenses;

(xix) assisting the Company in complying with all regulatory requirements applicable to the Company in respect of its 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;

(xx) taking all necessary actions to enable the Company and its Subsidiaries to make required tax filings and reports, including soliciting stockholders for required information to the extent provided by the provisions of the Code and Treasury Regulations applicable to REITs;

(xxi) 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, subject to such limitations or parameters as may be imposed from time to time by the Board of Directors;

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

(xxiii) advising the Company with respect to obtaining appropriate warehouse or other financings for its assets;

(xxiv) 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;

(xxv) performing such other services as may be required from time to time for management and other activities relating to the assets of the Company as the Board of Directors shall reasonably request or the Manager shall deem appropriate under the particular circumstances; and

(xxvi) using commercially reasonable efforts to cause the Company to comply with all applicable laws.

Without limiting the foregoing, the Manager will perform portfolio management services (the "Portfolio Management Services") on behalf of the Company with respect to the Investments. Such services will include, but not be limited to, consulting with the Company on the purchase and sale of, and other investment opportunities in connection with, the Company' s portfolio of assets; the collection of information and the submission of reports pertaining to the

Company' s assets, interest rates and general economic conditions; periodic review and evaluation of the performance of the Company' s portfolio of assets; acting as liaison between the Company and banking, mortgage banking, investment banking and other parties with respect to the purchase, financing and disposition of assets; and other customary functions related to portfolio management. Additionally, the Manager will perform monitoring services (the "Monitoring Services") on behalf of the Company with respect to any loan servicing activities provided by third parties. Such Monitoring Services will include, to the extent applicable, negotiating servicing agreements; acting as a liaison between the servicers of the assets and the Company; review of servicers' delinquency, foreclosure and other reports on assets; supervising claims filed under any insurance policies; and enforcing the obligation of any servicer to repurchase assets.

(c) The Manager may enter into agreements with other parties, including its Affiliates, for the purpose of engaging one or more parties for and on behalf, and at the sole cost and expense, of the Company to provide property management, asset management, leasing, development, brokerage, financial advisory, custodial and/or other services to the Company (including, without limitation, Portfolio Management Services and Monitoring Services) pursuant to agreement(s) with terms which are then customary for agreements regarding the provision of services to companies that have assets similar in type, quality and value to the assets of the Company; *provided*, that (i) any such agreements entered into with Affiliates of the Manager shall be (A) on terms no more favorable to such Affiliate than would be obtained from a third party on an arm' s-length basis and (B) to the extent the same do not fall within the provisions of the Guidelines, approved by a majority of the Independent Directors, (ii) with respect to Portfolio Management Services, (A) any such agreements shall be subject to the Company' s prior written approval (and approved by a majority of the Independent Directors) and (B) the Manager shall remain liable for the performance of such Portfolio Management Services, and (iii) with respect to Monitoring Services, any such agreements shall be subject to the Company' s prior written approval (and approved by a majority of the Independent Directors).

(d) The Manager may retain, for and on behalf, and at the sole cost and expense, of the Company, such services of accountants, legal counsel, appraisers, insurers, brokers, transfer agents, registrars, developers, investment banks, financial advisors, banks and other lenders and others as the Manager deems necessary or advisable in connection with the management and operations of the Company. Notwithstanding anything contained herein to the contrary, the Manager shall have the right to cause any such services to be rendered by its employees or Affiliates. The Company shall pay or reimburse the Manager or its Affiliates performing such services for the cost thereof; *provided*, that such costs and reimbursements are no greater than those which would be payable to outside professionals or consultants engaged to perform such services pursuant to agreements negotiated on an arm' s-length basis.

(e) As frequently as the Manager may deem necessary or advisable, or at the direction of the Board of Directors, the Manager shall, at the sole cost and expense of the Company, prepare, or cause to be prepared, with respect to any Investment, reports and other information with respect to such Investment as may be reasonably requested by the Company.

(f) 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 of Directors 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, all materials and data necessary to complete such reports and other materials including, without limitation, an annual audit of the Company' s books of account by a nationally recognized independent accounting firm.

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

(h) Notwithstanding anything contained in this Agreement to the contrary, except to the extent that the payment of additional moneys is proven by the Company to have been required as a direct result of the Manager' s acts or omissions which result in the right of the Company to terminate this Agreement pursuant to Section 15 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 Section 9 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 to terminate this Agreement under (x) Section 13(a) of this Agreement due to the Manager' s unsatisfactory performance or (y) Section 15 of this Agreement for cause.

(i) In performing its duties under this Section 2, the Manager shall be entitled to rely reasonably on qualified experts and professionals (including, without limitation, accountants, legal counsel and other professional service providers) hired by the Manager at the Company' s sole cost and expense.

SECTION 3. DEVOTION OF TIME; ADDITIONAL ACTIVITIES OF THE MANAGER.

(a) The Manager will provide the Company with a management team, including a Chief Executive Officer and President, along with appropriate support personnel, to provide the management services to be provided by the Manager to the Company hereunder, the members of which team shall devote such of their time to the management of the Company as may be reasonably necessary and appropriate, commensurate with the level of activity of the Company from time to time. The Manager shall also provide the Company with a Chief Financial Officer who shall be fully dedicated to the operations of the Company and a sufficient amount of services of additional accounting, finance and investor relations professionals (which amount shall be reviewed and approved by the Board of Directors). Notwithstanding the foregoing or anything else in this Agreement to the contrary, an Ancillary Operating Subsidiary shall, with the approval of a majority of the Independent Directors, directly incur and pay all of its own operating costs and expenses, including without limitation, compensation of employees of such Ancillary Operating Subsidiary and reimbursement of any compensation costs incurred by the Manager for personnel principally devoted to such Ancillary Operating Subsidiary.

(b) The Manager agrees to offer the Company the right to participate in all investment opportunities that the Manager determines are appropriate for the Company in view of its investment objectives, policies and strategies, and other relevant factors, with the understanding that, in accordance with the Manager' s Conflict of Interests Policy (attached hereto as Exhibit A and as may be amended from time to time in the sole discretion of the Manager), the Company might not participate in each such opportunity but will on an overall basis equitably participate with the Manager' s and its Affiliates' other clients in all such opportunities. Except as provided in the penultimate sentence of this Section 3(b), 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, including, without limitation, investing in, or rendering advisory services to others investing in, any type of conduit CMBS or other mortgage loans (including, without limitation, investments that meet the principal investment objectives of the Company), whether or not the investment objectives or policies of any such other Person or entity are similar to those of the Company or (ii) in any way bind or restrict the Manager or any of its Affiliates, officers, directors or employees 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, officers, directors or employees may be acting. 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 other investment companies, funds and advisory accounts. 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 any investment company, fund or advisory account. Notwithstanding anything to the contrary in this Section 3(b), the Manager hereby agrees that, during the term of this Agreement set forth in Section 13 hereof, neither the Manager nor any entity controlled by the Manager shall raise, sponsor or advise any new REIT that invests primarily in domestic mortgage backed securities in the United States. 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.

(c) Directors, officers, employees and agents of the Manager or Affiliates of the Manager may serve as directors, officers, employees, agents, nominees or signatories for the Company or any Subsidiary, to the extent permitted by their Governing Instruments, as from time to time amended, or by any resolutions duly adopted by the Board of Directors pursuant to the Company' s Governing Instruments. When executing documents or otherwise acting in such capacities for the Company, such Persons shall use their respective titles in the Company.

(d) The Manager is authorized, for and on behalf, and at the sole cost and expense of the Company, to employ such securities dealers for the purchase and sale of investment assets of the Company as may, in the good faith judgment of the Manager, be necessary to obtain the best commercially available net results for the Company taking into account such factors as the policies of the Company, price, dealer spread, the size, type, timing and difficulty of the transaction involved, the firm' s general execution and operational facilities and the firm' s risk in

positioning the securities involved. Consistent with this policy, the Manager is authorized to direct the execution of the Company' s portfolio transactions to dealers and brokers furnishing statistical information or research deemed by the Manager to be useful or valuable to the performance of its investment advisory functions for the Company.

(e) The Company (including the Board of Directors) agrees to take all actions reasonably required to permit and enable the Manager to carry out its duties and obligations under this Agreement, including, without limitation, all steps reasonably necessary to allow the Manager to file any registration statement on behalf of the Company in a timely manner or to deliver any financial statements or other reports with respect to the Company. If the Manager is not able to provide a service, or in the reasonable judgment of the Manager it is not prudent to provide a service, without the approval of the Board of Directors or the Independent Directors, as applicable, then the Manager shall be excused from providing such service (and shall not be in breach of this Agreement) until the applicable approval has been obtained.

SECTION 4. AGENCY. The Manager shall act as agent of the Company in making, acquiring, financing and disposing of Investments, disbursing and collecting the Company' s funds, paying the debts and fulfilling the obligations of the Company, supervising the performance of professionals engaged by or on behalf of the Company and handling, prosecuting and settling any claims of or against the Company, the Board of Directors, holders of the Company' s securities or the Company' s representatives or properties.

SECTION 5. BANK ACCOUNTS. At the direction of the Board of Directors, the Manager may establish and maintain one or more bank accounts in the name of the Company or any Subsidiary (any such account, a "Company Account"), and may collect and deposit funds into any such Company Account or Company Accounts, and disburse funds from any such Company Account or Company Accounts, under such terms and conditions as the Board of Directors may approve; and the Manager shall, from time to time and upon request, render appropriate accountings of such collections and payments to the Board of Directors and to the auditors of the Company or any Subsidiary.

SECTION 6. RECORDS; CONFIDENTIALITY. The Manager shall maintain appropriate books of accounts and records relating to services performed under this Agreement, and such books of account and records shall be accessible for inspection by representatives of the Company or any Subsidiary at any time during normal business hours upon one (1) business day' s advance written notice. The Manager shall keep confidential any and all information obtained in connection with the services rendered under this Agreement and shall not disclose any such information (or use the same except in furtherance of its duties under this Agreement) to nonaffiliated third parties except (i) with the prior written consent of the Board of Directors, (ii) to legal counsel, accountants and other professional advisors; (iii) to appraisers, financing sources and others in the ordinary course of the Company' s business; (iv) to governmental officials having jurisdiction over the Company; (v) in connection with any governmental or regulatory filings of the Company or disclosure or presentations to Company investors; (vi) as required by law or legal process to which the Manager or any Person to whom disclosure is permitted hereunder is a party; or (vii) to lenders or other financing sources of the Company, provided that any such lender or other financing source executes a customary nondisclosure agreement reasonably acceptable to the Independent Directors (it being understood any such

nondisclosure agreement shall include customary restrictions on the use of any material, nonpublic information with respect to the Company). The foregoing shall not apply to information which has previously become publicly available through the actions of a Person other than the Manager not resulting from the Manager' s violation of this Section 6. The provisions of this Section 6 shall survive the expiration or earlier termination of this Agreement for a period of one year.

SECTION 7. OBLIGATIONS OF MANAGER; RESTRICTIONS.

(a) The Manager shall require each seller or transferor of investment assets to the Company to make such representations and warranties regarding such assets as may, in the reasonable judgment of the Manager, be necessary and appropriate or as advised by the Board of Directors and consistent with standard industry practice. In addition, the Manager shall take such other action as it deems necessary or appropriate or as advised by the Board of Directors and consistent with standard industry practice with regard to the protection of the Investments.

(b) The Manager shall refrain from any action that, in its sole judgment made in good faith, (i) is not in compliance with the Guidelines, (ii) would adversely affect the status of the Company as a REIT under the Code or the Company' s status as an entity 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 any Subsidiary or that would otherwise not be permitted by the Company' s Governing Instruments. If the Manager is ordered to take any such action by the Board of Directors, the Manager shall promptly notify the Board of Directors of the Manager' s judgment that such action would adversely affect such status or violate any such law, rule or regulation or the Governing Instruments. Notwithstanding the foregoing, the Manager, its directors, officers, stockholders and employees shall not be liable to the Company or any Subsidiary, the Board of Directors, or the Company' s or any Subsidiary' s stockholders or partners, for any act or omission by the Manager, its directors, officers, stockholders or employees except as provided in Section 11 of this Agreement.

(c) The Company shall not invest in joint ventures with the Manager or any Affiliate thereof, unless (i) such Investment is made in accordance with the Guidelines and (ii) such Investment is approved in advance by a majority of the Independent Directors.

(d) The Manager shall not (i) consummate any transaction which would involve the acquisition by the Company of an asset in which the Manager or any Affiliate thereof has an ownership interest or the sale by the Company of an asset to the Manager or any Affiliate thereof, or (ii) under circumstances where the Manager is subject to an actual or potential conflict of interest, in the reasonable judgment of the Manager or the Board of Directors, because it manages both the Company and another Person (not an Affiliate of the Company) with which the Company has a contractual relationship, take any action constituting the granting to such Person of a waiver, forbearance or other relief, or the enforcement against such Person of remedies, under or with respect to the applicable contract, unless such transaction or action, as the case may be and in each case, is approved by a majority of the Independent Directors.

(e) The Board of Directors periodically reviews the Guidelines and the Company' s portfolio of Investments but will not review each proposed investment, except as otherwise provided herein. If a majority of the Independent Directors determines in the periodic review of transactions by the Independent Directors, that a particular transaction does not comply with the Guidelines (including as a result of violation of the provisions of Section 7(d) above), then a majority of the Independent Directors will consider what corrective action, if any, can be taken. The Manager shall be permitted to rely upon the direction of the Secretary of the Company to evidence the approval of the Board of Directors or the Independent Directors with respect to a proposed investment.

(f) The Manager shall at all times during the term of this Agreement (including the Current Term and any Renewal Term) maintain a tangible net worth equal to or greater than $1,000,000. The Manager shall at all times during the term of this Agreement maintain "errors and omissions" insurance coverage and other insurance coverage which is customarily carried by property, asset and investment managers performing functions similar to those of the Manager under this Agreement with respect to assets similar to the assets of the Company, in an amount that1 is comparable to that customarily maintained by other managers or servicers of similar assets.

SECTION 8. COMPENSATION.

(a) During the term of this Agreement (including the Current Term and any Renewal Term), the Company shall pay the Manager the Base Management Fee monthly in arrears; provided, however, that for each calendar month beginning on the date hereof through July 31, 2022, such fee shall be equal to the greater of (A) $442,000 and (B) the Base Management Fee (and such amount shall be deemed to be the "Base Management Fee" for such month for all purposes of this Agreement).

(b) The Manager shall compute the amount of each installment of the Base Management Fee within fifteen (15) business days after the end of the calendar month with respect to which such installment is payable. A copy of the computations made by the Manager to calculate such installment amount shall thereafter, for informational purposes only and subject in any event to Section 13(a) of this Agreement, promptly be delivered to the Board of Directors and, upon such delivery, payment of such installment of the Base Management Fee shown therein shall be due and payable no later than the date which is twenty (20) business days after the end of the calendar month with respect to which such installment is payable.

(c) The Base Management Fee is subject to adjustment pursuant to and in accordance with the provisions of Section 13(a) of this Agreement.

(d) In addition to the Base Management Fee otherwise payable hereunder, the Company shall pay the Manager quarterly Incentive Compensation. The Incentive Compensation calculation and payment shall be made for each fiscal quarter in arrears.

(e) The Manager shall compute the amount of each installment of the Incentive Compensation within thirty (30) days after the end of each fiscal quarter with respect to which such installment is payable. A copy of the computations made by the Manager to calculate such installment amount shall thereafter, subject to Section 13(a) of this Agreement, promptly be delivered to the Board of Directors and payment of such Incentive Compensation, or such other amount as may be determined pursuant to the last sentence of this Section 8(e), shall be due and payable no later than the date which is five (5) business days after the date of delivery to the Board of Directors of such computations. The amount of Incentive Compensation may be increased or decreased, if the Manager agrees and if a majority of the Independent Directors determines in the exercise of reasonable discretion that the amount so calculated is not equitable based upon facts and circumstances that may include, without limitation, dividend payments, market conditions, managerial performance or other factors not reflected in Core Earnings.

(f) Twenty-five percent (25%) of the Incentive Compensation shall (subject to the remaining provisions of this Section 8(f) and the provisions of Sections 8(g), 8(h) and 8(i)) be payable to the Manager in Common Shares, and the remainder thereof shall be paid in cash; provided, the Manager may (subject to the remaining provisions of this Section 8(f) and the provisions of Sections 8(g), 8(h) and 8(i)) elect, by so indicating in the installment calculation delivered to the Board of Directors, to receive more than twenty-five percent (25%) of the Incentive Compensation in the form of Common Shares; *provided*, *however*, the Manager may not receive payment of any portion of the Incentive Compensation in the form of Common Shares, either automatically or by election, if such payment would result in the Manager directly or indirectly through one or more subsidiaries owning in the aggregate more than 9.8% of the outstanding Common Shares. For purposes of this computation, Common Shares include shares issued and outstanding (whether vested or unvested or forfeitable or non-forfeitable) and shares to be issued upon exercise of outstanding stock options (whether such options are exercisable or nonexercisable). The Manager' s receipt of Common Shares in accordance herewith shall be subject to all applicable securities exchange rules and securities laws (including, without limitation, prohibitions on transfers and insider trading). All Common Shares paid to the Manager as Incentive Compensation will be fully vested upon issuance, provided that the Manager hereby agrees not to sell such shares prior to the date that is one year after the date such shares are due and payable. Notwithstanding such restriction and subject to compliance with all applicable securities laws (including, without limitation, prohibitions on insider trading), the Manager shall have the right to allocate such shares in its sole and absolute discretion to its officers, employees and other individuals who provide services to it at any time. In addition, the foregoing restriction regarding the sale of such shares shall terminate upon termination of this Agreement.

(g) Common Shares payable as Incentive Compensation shall be valued as follows:

(i) if such shares are traded on a securities exchange, the value shall be deemed to be the average of the closing prices of the shares on such exchange over the thirty (30) day period ending three (3) days prior to the issuance of such shares;

(ii) if such shares are actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sales price as applicable over the thirty (30) day period ending three (3) days prior to the issuance of such shares; and

(iii) if there is no active public market for such shares, the value shall be the fair market value thereof, as reasonably determined in good faith by the Board of Directors of the Company.

(h) If at any time the Manager shall, in connection with a determination of fair market value made by the Board of Directors, (i) dispute such determination in good faith by more than five percent (5%), and (ii) such dispute cannot be resolved between the Independent Directors and the Manager within ten (10) business days after the Manager provides written notice to the Company of such dispute (the "Valuation Notice"), then the matter shall be resolved by an independent appraiser of recognized standing selected jointly by the Independent Directors and the Manager within not more than twenty (20) days after the Valuation Notice. In the event the Independent Directors and the Manager cannot agree with respect to such selection within the aforesaid twenty (20) day time-frame, the Independent Directors shall select one such independent appraiser and the Manager shall select one independent appraiser within five (5) business days after the expiration of the twenty (20) day period, with one additional such appraiser (the "Last Appraiser") to be selected by the appraisers so designated within five (5) business days after their selection, each of which shall conduct an appraisal of fair market value. The three appraisers shall be instructed to deliver appraisals to the Manager and the Company within fifteen (15) days after the selection of the Last Appraiser. The average of the two appraisals closest in amount shall be utilized for determination of the fair market value and shall be deemed final and binding upon the Company, the Board of Directors and the Manager. The expenses of the appraisals shall be paid by the party with the estimate which deviated the furthest from the final valuation determination.

(i) The Company agrees to register the resale of the stock portion of the Incentive Compensation in accordance with the provisions of Exhibit B.

(j) Not later than seventy-five (75) days after the end of each fiscal year, the Company shall pay to the Manager an amount equal to the positive difference, if any, between (i) the Incentive Compensation payable for the prior fiscal year before deducting paid or accrued TRS Directly Paid Fees, less (ii) the sum of (A) the Incentive Compensation actually paid in the prior fiscal year plus (B) the TRS Directly Paid Fees actually paid for the prior fiscal year.

SECTION 9. EXPENSES OF THE COMPANY. The Company shall pay all of its expenses and shall reimburse the Manager and its Affiliates for documented expenses of the Manager and its Affiliates incurred on the Company' s behalf (collectively, the "Expenses"). Expenses include all costs and expenses which are expressly designated elsewhere in this Agreement as the Company' s, together with the following:

(a) expenses in connection with the issuance and transaction costs incident to the acquisition, disposition and financing of Investments;

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

(c) per loan underwriting and review fees in connection with valuations of and potential investments in certain subordinate commercial mortgage pass-through certificates, in amounts approved by a majority of the Independent Directors from time to time;

(d) the compensation and expenses of the Company' s directors and the cost of liability insurance to indemnify the Company' s directors and officers;

(e) costs associated with the establishment and maintenance of any credit facilities and other indebtedness of the Company (including commitment fees, accounting fees, legal fees, closing and other costs) or any securities offerings of the Company;

(f) expenses connected with communications to holders of securities of the Company or its Subsidiaries 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, without limitation, all costs of preparing and filing required reports with the Securities and Exchange Commission, the costs (including transfer agent and registrar costs) in connection with the listing and/or trading of the Company' s securities on any exchange or inter-dealer quotation system, the fees to any such exchange or inter-dealer quotation system in connection with its listing, costs of complying with the rules, regulations or policies of such exchange or inter-dealer quotation system, costs of preparing, printing and mailing the Company' s annual report to its stockholders and proxy materials with respect to any meeting of the stockholders of the Company;

(g) the allocable 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;

(h) expenses incurred by managers, officers, employees and agents of the Manager and its Affiliates for travel on the Company' s behalf and other out-of-pocket expenses incurred by managers, officers, employees and agents of the Manager and its Affiliates in connection with the purchase, financing, refinancing, sale or other disposition of an Investment or establishment and maintenance of any credit facilities and other indebtedness or any securities offerings of the Company;

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

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

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

(l) all taxes and license fees;

(m) all insurance costs incurred in connection with the operation of the Company' s business except for the costs attributable to the insurance that the Manager elects to carry for itself and its employees;

(n) costs and expenses incurred in contracting with third parties, including Affiliates of the Manager, for the servicing and special servicing of assets of the Company;

(o) all other costs and expenses relating to the Company' s business and investment operations, including, without limitation, the costs and expenses of acquiring, owning, protecting, maintaining, developing and disposing of Investments, including appraisal, reporting, audit and legal fees;

(p) expenses relating to any office(s) or office facilities, including but not limited to disaster backup recovery sites and facilities, maintained for the Company or Investments separate from the office or offices of the Manager;

(q) 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 of Directors to or on account of the holders of securities of the Company or its Subsidiaries, including, without limitation, in connection with any dividend reinvestment plan;

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

(s) the allocable portion of rent, telephone, utilities, office furniture, equipment, machinery and other office, internal and overhead expenses of the Manager and its Affiliates required for the Company' s operations; and

(t) expenses for personnel of the Manager or its Affiliates for their services in connection with the making of fixed-rate commercial real estate loans by the Company or a Subsidiary, in an amount equal to one percent (1%) of the principal amount of each such loan made; and

(u) all other expenses actually incurred by the Manager or its Affiliates which are reasonably necessary for the performance by the Manager of its duties and functions under this Agreement.

Without regard to the amount of compensation received under this Agreement by the Manager, the Manager shall bear the expense of the wages, salaries and benefits of the Manager' s officers and employees, with the exception that the Company shall bear the expense of the personnel described in the penultimate and final sentences of Section3(a) hereof, in proportion to such personnel' s percentage of time dedicated to the operations of the Company.

The provisions of this Section 9 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.

SECTION 10. CALCULATIONS OF EXPENSES.

The Manager shall prepare a statement documenting the Expenses of the Company and the Expenses incurred by the Manager on behalf of the Company during each calendar month, and shall deliver such statement to the Company within twenty (20) days after the end of each calendar month. Expenses incurred by the Manager on behalf of the Company shall be reimbursed by the Company to the Manager on the first business day of the month immediately following the date of delivery of such statement; *provided*, *however*, that such reimbursements may be offset by the Manager against amounts due to the Company. The provisions of this Section 10 shall survive the expiration or earlier termination of this Agreement.

SECTION 11. LIMITS OF MANAGER RESPONSIBILITY; INDEMNIFICATION.

(a) The Manager assumes no responsibility under this Agreement other than to render the services called for under this Agreement in good faith and shall not be responsible for any action of the Board of Directors in following or declining to follow any advice or recommendations of the Manager, including as set forth in Section 7(b) of this Agreement. The Manager, its stockholders, members, managers, officers, employees and Affiliates (including Acres Capital) will not be liable to the Company or any Subsidiary, to the Board of Directors, or the Company' s or any Subsidiary' s stockholders or partners for any acts or omissions by the Manager, its stockholders, members, managers, officers, employees or Affiliates (including Acres Capital), pursuant to or in accordance with this Agreement, except by reason of acts constituting bad faith, willful misconduct, gross negligence or reckless disregard of the Manager' s duties under this Agreement. The Company shall, to the full extent lawful, reimburse, indemnify and hold the Manager, its stockholders, members, managers, officers, employees and Affiliates (including Acres Capital) and each other Person, if any, controlling the Manager (each, an "Indemnified Party"), harmless of and from any and all expenses, losses, damages, liabilities, demands, charges and claims of any nature whatsoever (including attorneys' fees) in respect of or arising from any acts or omissions of such Indemnified Party made in good faith in the performance of the Manager' s duties under this Agreement and not constituting such Indemnified Party' s bad faith, willful misconduct, gross negligence or reckless disregard of the Manager' s duties under this Agreement.

(b) The Manager and Acres Capital shall, jointly and severally, to the full extent lawful, reimburse, indemnify and hold the Company, its stockholders, directors, officers and employees and each other Person, if any, controlling the Company (each, a "Company Indemnified Party"), harmless of and from any and all expenses, losses, damages, liabilities, demands, charges and claims of any nature whatsoever (including attorneys' fees) in respect of or arising from the Manager' s bad faith, willful misconduct, gross negligence or reckless disregard of its duties under this Agreement or any claims by Manager' s employees relating to the terms and conditions of their employment by Manager.

SECTION 12. NO JOINT VENTURE. Nothing in this Agreement shall be construed to make the Company, the Manager and Acres Capital partners or joint venturers or impose any liability as such on either of them.

SECTION 13. TERM; TERMINATION.

(a) Until this Agreement is terminated in accordance with its terms, this Agreement shall be in effect until July 31, 2023 (the "Current Term") and shall be automatically renewed for a one-year term on that date and each anniversary date thereafter (a "Renewal Term") unless at least two-thirds of the Independent Directors or the holders of at least a majority of the outstanding Common Shares agree not to automatically renew because (i) there has been unsatisfactory performance by the Manager that is materially detrimental to the Company or (ii) the compensation payable to the Manager hereunder is unfair; *provided*, that the Company shall not have the right to terminate this Agreement under clause (ii) above if the Manager agrees to continue to provide the services under this Agreement at a fee that at least two-thirds of the Independent Directors determines to be fair pursuant to the procedure set forth below. If the Company elects not to renew this Agreement at the expiration of the Current Term or any Renewal Term as set forth above, the Company shall deliver to the Manager prior written notice (the "Termination Notice") of the Company' s intention not to renew this Agreement based upon the terms set forth in this Section 13(a) not less than one hundred and eighty (180) days prior to the expiration of the then existing term. If the Company so elects not to renew this Agreement, the Company shall designate the date (the "Effective Termination Date"), not less than one hundred and eighty (180) days from the date of the notice, on which the Manager shall cease to provide services under this Agreement and this Agreement shall terminate on such date; *provided*, *however*, that in the event that such Termination Notice is given in connection with a determination that the compensation payable to the Manager is unfair, the Manager shall have the right to renegotiate such compensation by delivering to the Company, no fewer than forty-five (45) days prior to the prospective Effective Termination Date, written notice (any such notice, a "Notice of Proposal to Negotiate") of its intention to renegotiate its compensation under this Agreement. Thereupon, the Company (represented by the Independent Directors) and the Manager shall endeavor to negotiate in good faith the revised compensation payable to the Manager under this Agreement. Provided that the Manager and at least two-thirds of the Independent Directors agree to the terms of the revised compensation to be payable to the Manager within forty-five (45) days following the receipt of the Notice of Proposal to Negotiate, the Termination Notice shall be deemed of no force and effect and this Agreement shall continue in full force and effect on the terms stated in this Agreement, except that the compensation payable to the Manager hereunder shall be the revised compensation then agreed upon by the parties to this Agreement. The Company and the Manager agree to execute and deliver an amendment to this Agreement setting forth such revised compensation promptly upon reaching an agreement regarding same. In the event that the Company and the Manager are unable to agree to the terms of the revised compensation to be payable to the Manager during such forty-five (45) day period, this Agreement shall terminate, such termination to be effective on the date which is the later of (A) ten (10) days following the end of such forty-five (45) day period and (B) the Effective Termination Date originally set forth in the Termination Notice.

(b) In the event that this Agreement is terminated in accordance with the provisions of Section 13(a) or Section 15(c) of this Agreement, the Company shall pay to the Manager, on the date on which such termination is effective, a termination fee (the "Termination Fee") equal to the amount of four times the sum of the average annual Base Management Fee and the average annual Incentive Compensation earned by the Manager during the two 12-month periods immediately preceding the last quarter end prior to the date of such termination, calculated as of the end of the most recently completed fiscal quarter prior to the date of termination provided that the parties acknowledge and agree that if (and only if) any such termination in accordance with the provisions of Section 13(a) or 15(c) of this Agreement occurs prior to July 31, 2022, then the amount of the Termination Fee shall be equal to four times the sum of the average annual Base Management Fee and the average annual Incentive Compensation earned in the aggregate by the Company' s manager during the two twelve (12)-month periods immediately preceding the date of such termination, calculated as of the end of the most recently completed fiscal quarter prior to the date of termination. The parties acknowledge and agree that the aggregate quarterly Base Management Fee and Incentive Compensation earned by the Company' s manager prior to the date hereof for each of the quarters in the twenty-four (24) month period ended June 30, 2020 is attached hereto as Exhibit D and shall be utilized in determining the Termination Fee in accordance with the preceding sentence, if necessary. The obligation of the Company to pay the Termination Fee shall survive the termination of this Agreement.

(c) No later than one hundred and eighty (180) days prior to the expiration of the Current Term or any 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 upon expiration of the then current term.

(d) If this Agreement is terminated pursuant to Section 13 or Section 15 hereof, such termination shall be without any further liability or obligation of either party to the other, except as provided in Sections 6, 9, 10, 13(b) and 16 of this Agreement. In addition, Sections 8(i) (including the provisions of Exhibit B) and 11 of this Agreement shall survive termination of this Agreement.

SECTION 14. ASSIGNMENT.

(a) Except as set forth in Section 14(b) of this Agreement, this Agreement shall terminate automatically 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 consent of a majority of the Independent Directors. Any such permitted assignment 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 Manager. 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 or purchase of assets) 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.

(b) Notwithstanding any provision of this Agreement, the Manager may subcontract and assign any or all of its responsibilities under Sections 2(b), 2(c) and 2(d) of this Agreement to any of its Affiliates in accordance with the terms of this Agreement applicable to any such subcontract or assignment, and the Company hereby consents to any such assignment and subcontracting. In addition, provided that the Manager provides prior written notice to the Company for informational purposes only, nothing contained in this Agreement shall preclude any pledge, hypothecation or other transfer of any amounts payable to the Manager under this Agreement.

SECTION 15. TERMINATION FOR CAUSE.

(a) The Company may terminate this Agreement effective upon thirty (30) days' prior written notice of termination from the Company to the Manager, without payment of any Termination Fee, if (i) the Manager materially breaches any provision of this Agreement and such breach shall continue for a period of thirty (30) days after the Manager' s receipt of written notice thereof specifying such breach and requesting that the same be remedied in such thirty (30) day period, (ii) the Manager engages in any act of fraud, misappropriation of funds, or embezzlement against the Company, (iii) there is an event of any gross negligence on the part of the Manager in the performance of its duties under this Agreement, (iv) there is a Change of Control of the Manager and a majority of the Independent Directors determines, in their sole discretion, at any point during the 18 months following such Change of Control, that such Change of Control was detrimental to the ability of the Manager to perform its duties hereunder in substantially the manner conducted prior to such Change of Control, or (v) there is entered an order for relief or similar decree or order with respect to the Manager by a court having competent jurisdiction in an involuntary case under the federal bankruptcy laws as now or hereafter constituted or under any applicable federal or state bankruptcy, insolvency or other similar laws; or (vi) the Manager (A) ceases, or admits in writing its inability, to pay its debts as they become due and payable, or makes a general assignment for the benefit of, or enters into an composition or arrangement with, creditors; (B) applies for, or consents (by admission of material allegations of a petition or otherwise) to a sequestrator (or other similar official) of the Manager or of any substantial part of its properties or assets, or authorizes such an application or consent, or proceedings seeking such appointment are commenced without such authorization, consent or application against the Manager and continue undismissed for sixty (60) days; (C) authorizes or files a voluntary petition in bankruptcy, or applies for or consents (by admission of material allegations of a petition or otherwise) to the application of any bankruptcy, reorganization, arrangement, readjustment of debt, insolvency, dissolution, liquidation or other similar law of any jurisdiction, or authorizes such application or consent, or proceedings to such end are instituted against the Manager without such authorization, application or consent and are approved as properly instituted and remain undismissed for sixty (60) days or result in adjudication of bankruptcy or insolvency; or (D) permits or suffers all or any substantial part of its properties or assets to be sequestered or attached by court order and the order remains undismissed for sixty (60) days.

(b) The Manager agrees that if any of the events specified above occur, it will give prompt written notice thereof to the Company' s Board of Directors after the occurrence of such event.

(c) The Manager may terminate this Agreement effective upon sixty (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 thirty (30) days after written notice thereof specifying such default and requesting that the same be remedied in such thirty (30) day period, and in such event, the Termination Fee will be payable by the Company to the Manager.

(d) The Manager may terminate this Agreement, without the Company being required to pay a Termination Fee, in the event the Company becomes regulated as an "investment company" under the Investment Company Act, with such termination deemed to have occurred immediately prior to such event.

SECTION 16. ACTION UPON TERMINATION. From and after the effective date of termination of this Agreement, pursuant to Sections 13, 14, or 15 of this Agreement, the Manager shall not be entitled to compensation for further services under this Agreement, but shall be paid all compensation accruing to the date of termination and, if terminated pursuant to Section 13 or Section 15(c), the applicable Termination Fee. Upon such termination, the Manager shall forthwith:

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

(ii) deliver to the Board of Directors 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 of Directors with respect to the Company or a Subsidiary; and

(iii) deliver to the Board of Directors all property and documents of the Company or any Subsidiary then in the custody of the Manager.

SECTION 17. RELEASE OF MONEY OR OTHER PROPERTY UPON WRITTEN REQUEST. The Manager agrees that any money or other property of the Company or Subsidiary held by the Manager under this Agreement shall be held by the Manager as custodian for the Company or Subsidiary, and the Manager' s records shall be appropriately marked clearly to reflect the ownership of such money or other property by the Company or such Subsidiary. 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 or any Subsidiary any money or other property then held by the Manager for the account of the Company or any Subsidiary under this Agreement, the Manager shall release such money or other property to the Company or any Subsidiary within a reasonable period of time, but in no event later than sixty (60) days following such request. The Manager shall not be liable to the Company, any Subsidiary, the Independent Directors, or the Company' s or a Subsidiary' s stockholders or partners for any acts performed or omissions to act by the Company or any Subsidiary in connection with the money or other property released to the Company or any Subsidiary in accordance with the second sentence of this Section 17. The Company and any Subsidiary shall indemnify the Manager and

its members, managers, officers and employees against any and all expenses, losses, damages, liabilities, demands, charges and claims of any nature whatsoever, which arise in connection with the Manager' s release of such money or other property to the Company or any Subsidiary in accordance with the terms of this Section 17. Indemnification pursuant to this provision shall be in addition to any right of the Manager to indemnification under Section 11 of this Agreement.

SECTION 18. REPRESENTATIONS AND WARRANTIES.

(a) The Company hereby represents and warrants to the Manager as follows:

(i) The Company is duly organized, validly existing and in good standing under the laws of the State of Maryland, has the corporate power to own its assets and to transact the business in which it is now engaged and is duly qualified as a foreign corporation and in good standing under the laws of each jurisdiction where its ownership or lease of property or the conduct of its business requires such qualification, except for failures to be so qualified, authorized or licensed that could not in the aggregate have a material adverse effect on the business operations, assets or financial condition of the Company.

(ii) The Company has the corporate power and authority to execute, deliver and perform this Agreement and all obligations required hereunder and has taken all necessary corporate action to authorize this Agreement on the terms and conditions hereof and the execution, delivery and performance of this Agreement and all obligations required hereunder. No consent of any other person including, without limitation, stockholders or creditors of the Company, and no license, permit, approval or authorization of, exemption by, notice or report to, or registration, filing or declaration with, any governmental authority is required by the Company in connection with this Agreement or the execution, delivery or performance of this Agreement and all obligations required hereunder. This Agreement has been, and each instrument or document required hereunder will be, executed and delivered by a duly authorized officer of the Company, and this Agreement constitutes, and each instrument or document required hereunder when executed and delivered hereunder will constitute, the valid and binding obligation of the Company enforceable against the Company in accordance with its terms.

(iii) The execution, delivery and performance of this Agreement and the documents or instruments required hereunder will not violate any provision of any existing law or regulation binding on the Company, or any order, judgment, award or decree of any court, arbitrator or governmental authority binding on the Company, or the charter or bylaws of, or any securities issued by, the Company or of any mortgage, indenture, lease, contract or other agreement, instrument or undertaking to which the Company is a party or by which the Company or any of its assets may be bound, the violation of which would have a material adverse effect on the business operations, assets or financial condition of the Company, and will not result in, or require, the creation or imposition of any lien on any of its property, assets or revenues pursuant to the provisions of any such mortgage, indenture, lease, contract or other agreement, instrument or undertaking.

(iv) There are no actions, suits, proceedings, inquiries or investigations pending or, to the knowledge of the Company, threatened against the Company or its subsidiaries, or any of their respective assets, and to the knowledge of the Company, its respective directors, officers or employees at law or in equity, or before or by any governmental authority, the adverse outcome of which could reasonably be expected to result in, individually or in the aggregate, a material adverse effect to the Company.

(b) The Manager hereby represents and warrants to the Company as follows:

(i) The Manager is duly organized, validly existing and in good standing under the laws of the State of New York, has the limited liability company power to own its assets and to transact the business in which it is now engaged and is duly qualified to do business and is in good standing under the laws of each jurisdiction where its ownership or lease of property or the conduct of its business requires such qualification, except for failures to be so qualified, authorized or licensed that could not in the aggregate have a material adverse effect on the business operations, assets or financial condition of the Manager and its Subsidiaries, taken as a whole.

(ii) The Manager has the limited liability company power and authority to execute, deliver and perform this Agreement and all obligations required hereunder and has taken all necessary corporate action to authorize this Agreement on the terms and conditions hereof and the execution, delivery and performance of this Agreement and all obligations required hereunder. No consent of any other person including, without limitation, stockholders or creditors of the Manager, and no license, permit, approval or authorization of, exemption by, notice or report to, or registration, filing or declaration with, any governmental authority is required by the Manager in connection with this Agreement or the execution, delivery or performance of this Agreement and all obligations required hereunder. This Agreement has been, and each instrument or document required hereunder will be, executed and delivered by a duly authorized agent of the Manager, and this Agreement constitutes, and each instrument or document required hereunder when executed and delivered hereunder will constitute, the valid and binding obligation of the Manager enforceable against the Manager in accordance with its terms.

(iii) The execution, delivery and performance of this Agreement and the documents or instruments required hereunder, will not violate any provision of any existing law or regulation binding on the Manager, or any order, judgment, award or decree of any court, arbitrator or governmental authority binding on the Manager, or the certificate of formation or operating agreement of, or any securities issued by, the Manager or of any mortgage, indenture, lease, contract or other agreement, instrument or undertaking to which the Manager is a party or by which the Manager or any of its assets may be bound, the violation of which would have a material adverse effect on the business operations, assets or financial condition of the Manager and its subsidiaries, taken as a whole, and will not result in, or require, the creation or imposition of any lien on any of its property, assets or revenues pursuant to the provisions of any such mortgage, indenture, lease, contract or other agreement, instrument or undertaking.

(c) Acres Capital hereby represents and warrants to the Company as follows:

(i) Acres Capital is duly organized, validly existing and in good standing under the laws of the State of Delaware, has the corporate power to own its assets and to transact the business in which it is now engaged and is duly qualified to do business and is in good standing under the laws of each jurisdiction where its ownership or lease of property or the conduct of its business requires such qualification, except for failures to be so qualified, authorized or licensed that could not in the aggregate have a material adverse effect on the business operations, assets or financial condition of Acres Capital and its Subsidiaries, taken as a whole.

(ii) Acres Capital has the corporate power and authority to execute, deliver and perform this Agreement and all obligations required hereunder and has taken all necessary corporate action to authorize this Agreement on the terms and conditions hereof and the execution, delivery and performance of this Agreement and all obligations required hereunder. No consent of any other person including, without limitation, stockholders or creditors of Acres Capital, and no license, permit, approval or authorization of, exemption by, notice or report to, or registration, filing or declaration with, any governmental authority is required by Acres Capital in connection with this Agreement or the execution, delivery or performance of this Agreement and all obligations required hereunder. This Agreement has been, and each instrument or document required hereunder will be, executed and delivered by a duly authorized agent of Acres Capital, and this Agreement constitutes, and each instrument or document required hereunder when executed and delivered hereunder will constitute, the valid and binding obligation of Acres Capital enforceable against Acres Capital in accordance with its terms.

(iii) The execution, delivery and performance of this Agreement and the documents or instruments required hereunder, will not violate any provision of any existing law or regulation binding on Acres Capital, or any order, judgment, award or decree of any court, arbitrator or governmental authority binding on Acres Capital, or the charter or bylaws of, or any securities issued by, Acres Capital or of any mortgage, indenture, lease, contract or other agreement, instrument or undertaking to which Acres Capital is a party or by which Acres Capital or any of its assets may be bound, the violation of which would have a material adverse effect on the business operations, assets or financial condition of Acres Capital and its subsidiaries, taken as a whole, and will not result in, or require, the creation or imposition of any lien on any of its property, assets or revenues pursuant to the provisions of any such mortgage, indenture, lease, contract or other agreement, instrument or undertaking.

SECTION 19. NOTICES. Unless expressly provided otherwise in this Agreement, all notices, requests, demands and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given, made and received 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:

(a) If to the Company:

Exantas Capital Corp.

c/o
Quaker Bio Partners
CiraCenter
2929 Arch Street
Philadelphia, PA 19104
Attention: P. Sherrill Neff

(b) If to Acres Capital:

Acres Capital Corp
865 Merrick Avenue, Suite 200S
Westbury, New York 11590
Attention: Chief Executive Officer

(c) If to the Manager:

Acres Capital, LLC
c/o Acres Capital Corp
865 Merrick Avenue, Suite 200S
Westbury, New York 11590
Attention: Chief Executive Officer

Any party may alter the address to which communications or copies are to be sent by giving notice of such change of address in conformity with the provisions of this Section 19 for the giving of notice.

SECTION 20. 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 in this Agreement. Each of the Company, the Manager and Acres Capital agree that the representations, warranties, covenants and agreements of the Company contained herein are made on behalf of the Company and its wholly-owned Subsidiaries for the benefit of the Manager and Acres Capital and the representations, warranties, covenants and agreements of the Manager and Acres Capital are for the benefit of the Company and its wholly-owned Subsidiaries.

SECTION 21. ENTIRE AGREEMENT. This Agreement contains the entire agreement and understanding among the parties hereto with respect to the subject matter of this Agreement, 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 of this Agreement. The express terms of this Agreement control and supersede any course of performance and/or usage of the trade inconsistent with any of the terms of this Agreement. This Agreement may not be modified or amended other than by an agreement in writing signed by the parties hereto.

SECTION 22. 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.

SECTION 23. NO WAIVER; CUMULATIVE REMEDIES. No failure to exercise and no delay in exercising, on the part of any 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 hereto shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.

SECTION 24. COSTS AND EXPENSES. Each party hereto shall bear its own costs and expenses (including the fees and disbursements of counsel and accountants) incurred in connection with the negotiations and preparation of and the closing under this Agreement, and all matters incident thereto.

SECTION 25. HEADINGS. The headings of the sections of this Agreement have been inserted for convenience of reference only and shall not be deemed part of this Agreement.

SECTION 26. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts of this Agreement, individually or taken together, shall bear the signatures of all of the parties reflected hereon as the signatories.

SECTION 27. 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

SECTION 28. GENDER. Words used herein regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context requires.

[SIGNATURE PAGE FOLLOWS]

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

EXANTAS CAPITAL CORP.

By: /s/ Matthew Stern
Name: Matthew Stern
Title: President

ACRES CAPITAL, LLC

By: _____
Name:
Title:

ACRES CAPITAL CORP.

By: _____
Name:
Title:

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

EXANTAS CAPITAL CORP.

By: _____
Name: Mark Fogel
Title: President & CEO

ACRES CAPITAL, LLC

By: /s/ Andrew Fentress
Name: Andrew Fentress
Title: Managing Partner

ACRES CAPITAL CORP.

By: /s/ Andrew Fentress
Name: Andrew Fentress
Title: Managing Partner

[Signature Page to Amended and Restated Management Agreement]

ACRES CAPITAL LLC

CONFLICTS OF INTEREST POLICY

The Manager, by itself and through its Affiliates, including Acres Capital, and their respective subsidiaries (collectively, "Acres"), provides investment advisory services and manages the assets and day-to-day operations of various entities, including Exantas Capital Corp. (the "Company"). Acres is responsible for all activities relating to the assets and operations of the Company and, in such capacity, hereby sets forth the following policies with respect to conflicts of interest that might arise among the Company and Acres' other advisees:

(a) Except with the approval of a majority of the Independent Directors, the Company will not be permitted to invest in any investment fund, collateralized loan obligation or collateralized debt obligation structured, co-structured or managed by Acres or its Affiliates (each, an "Investment Vehicle") other than those structured, co-structured or managed primarily on the Company' s behalf. If the Company does invest in any Investment Vehicle that has other investors, Acres will waive, or refund to the Company, any base asset management fees allocable to the Company in respect of its investment in such Investment Vehicle.

(b) Except with the approval of a majority of the Independent Directors, the Company will not be permitted to enter into any transaction with Acres or any investment entity or fund managed or advised by Acres (collectively, "Other Clients"), including but not limited to purchasing any investment from, or selling any investment to, Acres or an Other Client, except that the Company may purchase an investment originated by Acres either (i) within 60 days before such investment is acquired by the Company or (ii) with the specific intent to sell such investment to the Company.

(c) Investments that may be appropriate for the Company, on the one hand, and one or more of Acres or Other Clients, on the other hand, will be allocated as between the Company, Acres and such Other Clients in accordance with Acres' allocation policies and procedures in effect from time to time.

Acres may make exceptions to these general policies when circumstances render the application thereof inequitable or uneconomic.

Registration Rights Agreements

1. Piggyback Rights. The Manager and any Permitted Transferee (as hereinafter defined) shall have the unlimited right to piggyback on to any registration statement of the Company (other than a registration statement on Form S-4 or Form S-8 or any successor form); *provided, however,* that in the event of an underwritten offering, the managing underwriters may exclude the shares of the Manager and any Permitted Transferee to the same extent and in the same proportion that shares of holders (other than the Company) are excluded, if the managing underwriters determine in good faith that marketing factors require a limitation on the number of shares to be included in such offering.

2. Demand Rights. The Manager and any Permitted Transferee shall also have the right to require the Company to prepare, file and maintain at all times such number of registration statements as are specified in the next sentence of this Section 2(a) exclusively for the resale of the stock portion of the Incentive Compensation (the "Incentive Shares"). The Manager and any Permitted Transferee shall be entitled to (i) an unlimited number of registrations on Form S-3 or any successor or replacement forms and (ii) if the Management Agreement terminates and the Company is not then eligible to use Form S-3 or any successor or replacement form, a single registration on such other form as the Company is then eligible to use. Notwithstanding anything herein to the contrary, the demand rights described herein may only be exercised upon request of the Manager and any Permitted Transferee, in the case of clause (i), who hold in the aggregate at least twenty percent (20%) of all outstanding Incentive Shares and, in the case of clause (ii), who hold in the aggregate at least one-third of all outstanding Incentive Shares.

3. Registration Procedures. The Company shall use its commercially reasonable efforts to effect or cause to be effected the registration of the Incentive Shares under the Securities Act of 1933, as amended (the "Securities Act"), to permit the resale of the Incentive Shares by the Manager or any Permitted Transferee.

4. Expenses. The Company shall bear all expenses of registration, including its professional fees and registration and filing fees with the SEC, state securities administrators and applicable stock exchanges, and printing, word processing and delivery and distribution fees with respect to any registration statement, prospectus (preliminary or final), or any amendments or supplements thereto, and reasonable fees and disbursements of one counsel to the Manager and any Permitted Transferees, provided, however, the Company shall not be liable for the underwriting discounts and commissions associated with the sale of the Incentive Shares.

5. Successors and Assigns; Permitted Transferees. The agreements in this Exhibit B shall inure to the benefit of and be binding upon the successors and assigns of each of the Company and the Manager. For purposes of this Exhibit B, the term "Permitted Transferee" shall mean each person or entity to whom the Manager transfers any Incentive Shares.

6. Indemnification and Contribution.

(a) The Company agrees to indemnify and hold harmless (i) the Manager and its Permitted Transferees and (ii) each person, if any, who controls the Manager and its Permitted Transferees within the meaning of the Securities Act or the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and (iii) the respective officers, directors, partners, employees, representatives and agents of the Manager and its Permitted Transferees or any person who controls any of the foregoing (each person referred to in clause (i), (ii) or (iii) are referred to collectively as the "Indemnified Parties"), from and against any losses, claims, damages or liabilities, joint or several, or any actions in respect thereof (including, but not limited to, any losses, claims, damages, judgments, expenses, liabilities or actions relating to purchases and sales of the Incentive Shares) to which each Indemnified Party may become subject under the Securities Act, the Exchange Act or otherwise, insofar as such losses, claims, damages, judgments, expenses, liabilities or actions arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in a registration statement or prospectus, including any document incorporated by reference therein, or in any amendment or supplement thereto or in any preliminary prospectus relating to a registration statement, or arise out of, or are based upon, the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, and shall reimburse, as incurred, the Indemnified Parties for any legal or other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, damage, liability or action in respect thereof; *provided*, *however*, that (i) the Company shall not be liable in any such case to the extent that such loss, claim, damage or liability arises out of or is based upon any untrue statement or alleged untrue statement or omission or alleged omission made in a registration statement or prospectus, or in any amendment or supplement thereto or in any preliminary prospectus relating to a registration statement, in reliance upon and in conformity with written information pertaining to the Manager or its Permitted Transferees or furnished to the Company by or on behalf of the Manager or its Permitted Transferees specifically for inclusion therein and (ii) with respect to any untrue statement or omission or alleged untrue statement or omission made in any preliminary prospectus relating to a registration statement, the indemnity agreement contained in this subsection (a) shall not inure to the benefit of the Manager or any Permitted Transferee from whom the person asserting any such losses, claims, damages or liabilities purchased the Incentive Shares concerned, to the extent that a prospectus relating to such Incentive Shares was required to be delivered by the Manager or such Permitted Transferee, as the case may be, under the Securities Act in connection with such purchase and any such loss, claim, damage or liability of the Manager or such Permitted Transferee results from the fact that there was not sent or given to such person, at or prior to the written confirmation of the sale of such Incentive Shares to such person, a copy of the final prospectus if the Company had previously furnished copies thereof to the Manager or such Permitted Transferee; *provided further*, *however*, that this indemnity agreement will be in addition to any liability which the Company may otherwise have to such Indemnified Party. The Company shall also indemnify underwriters, their officers and directors and each person who controls such underwriters within the meaning of the Securities Act or the Exchange Act to the same extent as provided above with respect to the indemnification of the Manager or any Permitted Transferee if requested by the Manager or such Permitted Transferee.

(b) In connection with any registration statement in which the Manager or a Permitted Transferee is participating and as a condition to such participation, the Manager and such Permitted Transferee, severally and not jointly, will indemnify and hold harmless the Company, its officers, directors, partners, employees, representatives, agents and investment advisers and each person, if any, who controls the Company within the meaning of the Securities Act or the Exchange Act (the "Company Indemnified Persons") from and against any losses, claims, damages or liabilities or any actions in respect thereof, to which the Company or any such controlling person may become subject under the Securities Act, the Exchange Act or otherwise, insofar as such losses, claims, damages, liabilities or actions arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in the registration statement or prospectus or in any amendment or supplement thereto or in any preliminary prospectus relating to the registration statement, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, but in each case only to the extent that the untrue statement or omission or alleged untrue statement or omission was made in reliance upon and in conformity with written information pertaining to the Manager or such Permitted Transferee or furnished to the Company by or on behalf of the Manager or such Permitted Transferee specifically for inclusion therein; and, subject to the limitation set forth immediately preceding this clause, shall reimburse, as incurred, the Company or any Company Indemnified Person for any legal or other expenses reasonably incurred by the Company or such Company Indemnified Person in connection with investigating or defending any loss, claim, damage, liability or action in respect thereof. This indemnity agreement will be in addition to any liability which the Manager or such Permitted Transferee may otherwise have to the Company or any Company Indemnified Person.

(c) Promptly after receipt by an indemnified party under this Section 6 of notice of the commencement of any action or proceeding (including a governmental investigation), such indemnified party will, if a claim in respect thereof is to be made against the indemnifying party under this Section 6, notify the indemnifying party of the commencement thereof; but the failure to notify the indemnifying party shall not relieve it from any liability that it may have under subsection (a) or (b) above except to the extent that it has been materially prejudiced by such failure; and *provided further* that the failure to notify the indemnifying party shall not relieve it from any liability that it may have to an indemnified party otherwise than under subsection (a) or (b) above. In case any such action is brought against any indemnified party, and it notifies the indemnifying party of the commencement thereof, the indemnifying party will be entitled to participate therein and, to the extent that it may wish, jointly with any other indemnifying party similarly notified, to assume the defense thereof, with counsel reasonably satisfactory to such indemnified party (who may be counsel to the indemnifying party unless, in the reasonable judgment of the indemnified party, a potential conflict exists), and after notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof the indemnifying party will not be liable to such indemnified party under this Section 6 for any legal or other expenses, other than reasonable costs of investigation, subsequently incurred by such indemnified party in connection with the defense thereof. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened action in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party unless such settlement (i) includes any unconditional release of such indemnified party from all liability on any claims that are the subject matter of such action, and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of any indemnified party.

(d) If the indemnification provided for in this Section 6 is unavailable or insufficient to hold harmless an indemnified party under subsections (a) or (b) above, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of the losses, claims, damages or liabilities (or actions in respect thereof) referred to in subsection (a) or (b) above in such proportion as is appropriate to reflect the relative fault of the indemnifying party or parties on the one hand and the indemnified party on the other in connection with the statements or omissions that resulted in such losses, claims, damages or liabilities (or actions in respect thereof) as well as any other relevant equitable considerations. The relative fault of the parties shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company on the one hand or the Manager or such Permitted Transferee or such other indemnified party, as the case may be, on the other, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The amount paid by an indemnified party as a result of the losses, claims, damages or liabilities referred to in the first sentence of this subsection (d) shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any action or claim which is the subject of this subsection (d). Notwithstanding any other provision of this Section 6(d), neither the Manager nor any Permitted Transferee shall be required to contribute any amount in excess of the amount by which the net proceeds received by the Manager or such Permitted Transferee from the sale of the Incentive Shares pursuant to the registration statement exceeds the amount of damages which the Manager or such Permitted Transferees have otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. For purposes of this paragraph (d), each person, if any, who controls such indemnified party within the meaning of the Securities Act or the Exchange Act shall have the same rights to contribution as such indemnified party and each person, if any, who controls the Company within the meaning of the Securities Act or the Exchange Act shall have the same rights to contribution as the Company.

(e) The agreements contained in this Section 6 shall survive the sale of the Incentive Shares pursuant to a registration statement and shall remain in full force and effect, regardless of any termination or cancellation of the Management Agreement or any investigation made by or on behalf of any indemnified party.

STRATEGIC PLAN ASSETS

In November 2016, the Board of Directors approved a strategic plan (the "Plan"), which included, among other things, disposing of certain non-core businesses and investments and underperforming legacy commercial real estate loans owned by the Company or a Subsidiary ("Strategic Plan Assets"). As part of the Plan, certain Strategic Plan Assets were reclassified as discontinued operations ("Discops") and/or assets held for sale ("AHFS") during the fourth quarter of 2016. The following table delineates, by business segment, the Strategic Plan Assets owned by the Company or a Subsidiary at September 30, 2017 and their respective net book values at September 30, 2017 (in millions):

	Net Book Value at September 30, 2017
Discops and AHFS	
Legacy CRE Loans	78.5
Middle Market Loans	29.2
Residential Mortgage Lending Segment	19.0
Other AHFS	6.6
Subtotal–Discops and AHFS	**133.3**
Investments in Unconsolidated Entities	**12.3**
Commercial Finance Assets	**3.5**
Total	**$ 149.1**

Exhibit D

Base Management Fee and Incentive Compensation

Attached

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Exantas - Base and Incentive Management Fees Paid

Base Management Fee			Incentive Management Fee (Quarterly)				
Period Covered	Paid	Amount	Paid	Cash	Stock	Total	
July-18	August-18	$ 685,626					
August-18	September-18	690,170					
September-18	October-18	694,028		$–	$–	$–	
October-18	November-18	688,182					
November-18	December-18	692,928					
December-18	January-19	696,503		–	–	–	
January-19	February-19	690,882					
February-19	March-19	694,911					
March-19	April-19	698,675		–	–	–	
April-19	May-19	690,700					
May-19	June-19	694,991					
June-19	July-19	699,461					
July-19	August-19	690,131	August-19	123,557	41,175	164,731	For 2Q 2019 IMF
August-19	September-19	695,568					
September-19	October-19	700,614					
October-19	November-19	693,375	November-19	330,920	110,295	441,215	For 3Q 2019 IMF
November-19	December-19	697,526					
December-19	January-20	701,249		–	–	–	
January-20	February-20	688,008					
February-20	March-20	688,502					
March-20	April-20	691,861		–	–	–	
April-20	May-20	439,189					
May-20	June-20	441,621					
June-20	July-20	446,308		–	–	–	
				$454,476	$151,470	$605,946	

Exhibit 10.2

Execution Version

LOAN AND SERVICING AGREEMENT

among

RCC REAL ESTATE SPE HOLDINGS LLC,

as Holdings,

RCC REAL ESTATE SPE 9 LLC,

as the Borrower,

MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY and

the other Lenders from time to time party hereto,

WELLS FARGO BANK, NATIONAL ASSOCIATION,

as the Administrative Agent,

MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY,

as the Facility Servicer,

ACRES CAPITAL SERVICING LLC,

as the Portfolio Asset Servicer, and

WELLS FARGO BANK, NATIONAL ASSOCIATION,

as the Collateral Custodian

Dated as of July 31, 2020

TABLE OF CONTENTS

LIST OF SCHEDULES AND EXHIBITS

SCHEDULES

EXHIBITS

LOAN AND SERVICING AGREEMENT, dated as of July 31, 2020, by and among:

(1) RCC REAL ESTATE SPE HOLDINGS LLC, a Delaware limited liability company ("Holdings");

(2) RCC REAL ESTATE SPE 9 LLC, a Delaware limited liability company (the "Borrower");

(3) MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY, and each of the other lenders from time to time party hereto, as Lenders (as defined herein);

(4) WELLS FARGO BANK, NATIONAL ASSOCIATION, as the Administrative Agent (as defined herein);

(5) MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY, as the Facility Servicer (as defined herein);

(6) ACRES Capital Servicing LLC, as the Portfolio Asset Servicer (as defined herein); and

(7) WELLS FARGO BANK, NATIONAL ASSOCIATION, as the Collateral Custodian (as defined herein).

The Lenders have agreed, on the terms and conditions set forth herein, to provide a secured revolving loan facility that provides for Advances from time to time in the amounts and in accordance with the terms set forth herein.

The proceeds of the Advances will be provided to the Borrower to be used to finance the origination and acquisition of and investment by the Borrower in the Portfolio Assets (including the repayment of debt secured by such Portfolio Assets), to pay transaction fees and expenses and to make Restricted Junior Payments to Holdings or the Sponsor subject to the terms hereof.

Accordingly, the parties agree as follows:

ARTICLE I.
INTERPRETATION

SECTION 1.01 Certain Defined Terms. As used in this Agreement and the exhibits, schedules and other attachments hereto (each of which is hereby incorporated herein and made a part hereof), the following terms have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

"1940 Act" means the Investment Company Act of 1940 and the rules and regulations promulgated thereunder.

"Account Bank" means Wells Fargo Bank, National Association in its capacity as the depository pursuant to the Account Control Agreement, and each other Person acting in such capacity pursuant to any agreement replacing or substituting for the Account Control Agreement.

"Account Control Agreement" means the Deposit Account Control Agreement among the Borrower, the Facility Servicer, the Account Bank and the Administrative Agent, with respect to the establishment and governance of the Collection Account, substantially in the form of Exhibit L.

"Additional Amount" has the meaning assigned to that term in Section 2.12(a).

"Administrative Agent" means Wells Fargo Bank, National Association, in its capacity as administrative agent for the Lenders and collateral agent for the Secured Parties, together with its successors and permitted assigns, including any successor appointed pursuant to Article VII.

"Advance" means the loans made by the Lenders to the Borrower pursuant to Article II.

"Advances Outstanding" means, at any time, the aggregate outstanding principal amount of all Advances at such time.

"Affiliate" when used with respect to a Person, means any other Person Controlling, Controlled by or under common Control with such Person.

"Agent Fee Letter "means, if applicable, any fee letter or letters between the Administrative Agent and the Borrower entered on or before the Closing Date.

"Agreement" means this Loan and Servicing Agreement.

"Anti-Corruption Laws" means any and all Applicable Laws relating to bribery or corruption.

"Anti-Money Laundering Law" means any and all applicable anti-money laundering, financial recordkeeping and reporting requirements of Applicable Law, including those of the Bank Secrecy Act (as amended by Title III of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act)) and any applicable anti-money laundering statutes of other jurisdictions, as well as the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any applicable governmental agency.

"Applicable Law" means for any Person all existing and future laws, rules, regulations, statutes, treaties, codes, ordinances, permits, certificates, orders, licenses of and interpretations by any Governmental Authority applicable to such Person and applicable judgments, decrees, injunctions, writs, awards or orders of any court, arbitrator or other administrative, judicial, or quasi-judicial tribunal or agency of competent jurisdiction.

"Applicable Servicer" means the Facility Servicer or the Portfolio Asset Servicer, as the context may require.

"Assignment and Assumption Agreement" means an agreement among the Borrower (if required under Section 11.04), a Lender, the Administrative Agent and, unless executed in connection with an assignment under Section 11.04, the Majority Lenders (such consent of the Majority Lenders (if applicable) not to be unreasonably withheld) in a form customarily provided by the Loan Syndications and Trading Association and delivered in connection with a Person becoming a Lender hereunder after the Closing Date.

"Authorized Person" means the individuals set forth on Schedules VI-X, as the same may be amended by Borrower, the Administrative Agent, the Portfolio Asset Servicer and the Facility Servicer from time to time by delivery thereof to the Collateral Custodian.

"Availability Period" means the period commencing on the Closing Date and ending on the earlier of (a) the second anniversary of the Closing Date and (b) the date the Commitments are terminated in accordance with this Agreement, whether as a result of an Event of Default or otherwise.

"Bankruptcy Code" means Title 11, United States Code, 11 U.S.C. §§ 101 *et seq*.

"Bankruptcy Event" is deemed to have occurred with respect to a Person if either:

(a) a case or other proceeding shall be commenced, without the application or consent of such Person, in any court, seeking the liquidation, reorganization, debt arrangement, dissolution, winding up, or composition or readjustment of debts of such Person, the appointment of a trustee, receiver, custodian, liquidator, assignee, sequestrator or the like for such Person or all or substantially all of its assets, or any similar action with respect to such Person under the Bankruptcy Laws, and such case or proceeding shall continue undismissed, or unstayed and in effect, for a period of 60 consecutive days; or an order for relief in respect of such Person shall be entered in an involuntary case under the federal Bankruptcy Laws or other similar laws now or hereafter in effect; or

(b) such Person shall commence a voluntary case or other proceeding under any Bankruptcy Laws now or hereafter in effect, or shall consent to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) for such Person or all or substantially all of its assets under the Bankruptcy Laws, or shall make any general assignment for the benefit of creditors, or shall fail to, or admit in writing its inability to, pay its debts generally as they become due, or, if a corporation or similar entity, its board of directors or members shall vote to implement any of the foregoing.

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

"Borrower" has the meaning assigned to that term in the preamble hereto.

"Borrower Taxes" means any Taxes imposed on the Borrower with respect to its operations.

"Business Day" means a day of the year other than (a) Saturday or a Sunday or (b) any other day on which commercial banks in New York, New York or the offices of the Administrative Agent, the Account Bank or Collateral Custodian are authorized or required by Applicable Law, regulation or executive order to close.

"Cash Trap Event" means, as at any date of determination, (a) LTV as of such date exceeds the Maximum Quarterly LTV Percentage then applicable, (b) as of the most recent calendar quarter end prior to such date, the Eligible Portfolio Assets that are First Lien Senior Secured Portfolio Assets have a Debt

Service Coverage Ratio of (i) 1.0:1.0 or lower during the period commencing on the Closing Date and ending on the first anniversary of the Closing Date, (ii) 1.2:1.0 or lower during the period commencing on the first anniversary of the Closing Date and ending on the third anniversary of the Closing Date and (iii) 1.3:1.0 or lower during the period commencing on the third anniversary of the Closing Date and ending on the Facility Termination Date, (c) as of the most recent calendar quarter end prior to such date, (x) the sum of (i) the aggregate Value of the Eligible Portfolio Assets plus, without duplication, the funds in the Collection Account as of such date that are or would be available to the Borrower under Section 2.08(a)(ix) (on a pro forma basis after giving effect to the provisions of clauses (a)(i) through (a)(viii) of Section 2.08(a)) and (ii) the aggregate Value of the Specified CLO Assets plus, without duplication, the aggregate amount of the Sponsor' s unrestricted and unencumbered cash and cash equivalents is less than (y) 1.6 times the aggregate Advances Outstanding on such date or (d) as of the most recent calendar quarter end prior to such date, the aggregate Value of the Eligible Portfolio Assets that are First Lien Senior Secured Portfolio Assets for which no Underlying Obligor Default exists is less than 75% of the aggregate Value of the Eligible Portfolio Assets as of such date.

"Change in Law" means the occurrence, after the Closing Date, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty; (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority; or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) 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 or issued.

"Change of Control" is deemed to have occurred if (a) the Sponsor fails to own all of the limited liability company interests in Holdings, directly or indirectly, through one or more wholly-owned subsidiaries, (b) Holdings fails to own all of the limited liability company interests in the Borrower, directly or (c) ACRES Capital Corp., a Delaware corporation, or a wholly-owned Subsidiary thereof, fails to be engaged as the manager for the Sponsor.

"Closing Date" means the date of this Agreement.

"Code" means the Internal Revenue Code of 1986.

"Collateral" has the meaning assigned to that term in Section 2.09(a).

"Collateral Custodian" means Wells Fargo Bank, National Association, not in its individual capacity, in its capacity as collateral custodian for the Administrative Agent and the Lenders pursuant to the terms of this Agreement, together with its successors and permitted assigns, including any successor appointed pursuant to Article IX.

"Collateral Custodian Fees" means the fees set forth on Schedule XI, between the Collateral Custodian and the Borrower, that are payable to the Collateral Custodian hereunder.

"Collateral Custodian Termination Expenses" has the meaning assigned to that term in Section 9.05.

"Collateral Custodian Termination Notice" has the meaning assigned to that term in Section 9.05.

"Collateral Portfolio" means all right, title and interest (whether now owned or hereafter acquired or arising, and wherever located) of the Borrower in all assets of the Borrower securing the Obligations, including the property identified below in clauses (a) through (d), and all accounts, money, cash and currency, chattel paper, tangible chattel paper, electronic chattel paper, intellectual property, goods, equipment, fixtures, contract rights, general intangibles, documents, instruments, certificates of deposit, certificated securities, uncertificated securities, financial assets, securities entitlements, commercial tort claims, securities accounts, deposit accounts, inventory, investment property, letter-of-credit rights, software, supporting obligations, accessions or other property consisting of, arising out of, or related to any of the following:

(a) the Portfolio Assets and all funds due or to become due in payment under such Portfolio Assets, including all Collections;

(b) any other Related Portfolio Assets with respect to the Portfolio Assets;

(c) the Collection Account; and

(d) all income and Proceeds of the foregoing.

"Collection Account" means the deposit account established with the Account Bank and governed by the Account Control Agreement in the name of the Borrower and under the "control" (within the meaning of Section 9-104 of the UCC) of the Administrative Agent for the benefit of the Secured Parties; provided that, subject to the rights of the Administrative Agent hereunder with respect to funds, the funds deposited therein from time to time shall constitute the property and assets of the Borrower, and the Borrower shall be solely liable for any Taxes payable with respect to the Collection Account.

"Collections" means all collections and other cash proceeds with respect to any Portfolio Asset or other Related Portfolio Asset (including payments on account of interest, principal, prepayments, fees, guaranty payments, dividends, distributions, return of capital and all other amounts received in respect of such Portfolio Asset or other Related Portfolio Asset), all Recoveries, all Insurance Proceeds and proceeds of any liquidations or Sales in each case, attributable to such Portfolio Asset or other Related Portfolio Asset, and all other proceeds or other funds of any kind or nature received by the Borrower, the Portfolio Asset Servicer or the Account Bank with respect to any Underlying Collateral.

"Commitment" means, (a) during the Availability Period (i) with respect to the Initial Lender, the Total Facility Amount as such amount may be reduced pursuant to an Assignment and Assumption Agreement and (ii) with respect to any other Lender, the amount set forth as such Lender' s "Commitment" on the Assignment and Assumption Agreement relating to such Lender and (b) after the end of the Availability Period, with respect to any Lender, such Lender' s Pro Rata Share of the aggregate Advances Outstanding.

"Competitor" means a specialty finance company or investment fund engaged in the business of investing in, acquiring or originating commercial real estate finance assets, including (without limitation) any mortgage or hybrid REIT or any company, fund or other vehicle that makes and/or invests in commercial real estate loans and/or other real estate related debt securities, but excluding any such entities that primarily invest in publicly traded securities and insurance companies, in each case that are identified as competitors on Schedule V attached hereto, as may be modified from time to time with the consent of the Initial Lender and upon 30 days' written notice to the Initial Lender (such consent not to be unreasonably withheld).

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

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise.

"Counterparty Lender" means, with respect to any Portfolio Asset that is a loan participation interest, the lender party to the related Loan Agreement and the related Participation Agreement.

"Covered Entity" means each of (a) the Sponsor, the Borrower, Holdings, and their respective Subsidiaries and any guarantors of the Obligations or pledgors of Collateral under this Agreement and (b) each Person that, directly or indirectly, is in control of a Person described in clause (a) above. For purposes of this definition, control of a Person means the direct or indirect (i) ownership of, or power to vote, 25% or more of the issued and outstanding equity interests having ordinary voting power for the election of directors of such Person or other Persons performing similar functions for such Person or (ii) power to direct or cause the direction of the management and policies of such Person whether by ownership of equity interests, contract or otherwise.

"Custodial and Account Control Agreements" means, collectively, (a) with respect to such Portfolio Assets listed on Schedule I that the Facility Servicer and Initial Lender reasonably determined require such an agreement to perfect the Administrative Agent' s lien on such Portfolio Assets, a custodial and account control agreement among the Borrower, the Administrative Agent and Wells Fargo Bank, National Association, as securities custodian, substantially in the form of Exhibit J and (b) with respect to any other Portfolio Asset acquired after the Closing Date (with the approval of the Initial Lender), such other agreements as the Administrative Agent may require with respect to such Portfolio Asset.

"Custodial Delivery Failure" means the failure by the Collateral Custodian to produce any document which constitutes a portion of any Portfolio Asset File that was in its possession pursuant to Article IX within one Business Day after required or requested by the Administrative Agent, the Portfolio Asset Servicer, the Facility Servicer or the Borrower in accordance with the provisions of this Agreement, and provided that (a) the Collateral Custodian previously delivered to the Administrative Agent, the Lenders and the Borrower a report pursuant to Section 9.02(a)(iv) that did not list such document as missing, (b) such document was held by the Collateral Custodian on behalf of the Borrower or the Administrative Agent, as applicable and (c) such document is not outstanding pursuant to a request for release pursuant to Section 9.08(a).

"Debt Service Coverage Ratio" means, as of any date of determination with respect to the Eligible Portfolio Assets that are First Lien Senior Secured Portfolio Assets, the ratio of (a) the aggregate NOI (as defined below) of all such Portfolio Assets as of such date to (b) the product of (1) the aggregate Advances Outstanding as of such date multiplied by (2) the interest rate for the Advances under Section 2.05(a).

"NOI" means, as of any date of determination for any Portfolio Asset, the following with respect to the type of property constituting the Underlying Collateral for such Portfolio Asset:

(i) with respect to a multifamily property, the annual operating income of such property equal to the sum of (A) rental income and tenant recoveries and other recurring income for the year of stabilization, less (B) an adjustment to assume a vacancy factor equal to the greater of (1) the vacancy rate projected for such property and (2) a 5.0% vacancy factor, less (C) projected operating expenses incurred in connection with such property for the year of stabilization assuming (1) a base property management fees equal to the greater of (a) the actual amount payable by the applicable Obligors pursuant to the applicable management agreement and (b) a minimum of 2.5% of revenues and (2) a normalized adjustment for capital expenditures equal to a minimum of $200 per unit;

(ii) with respect to office, retail, industrial and mixed use properties, the annual operating income of such property based on underwritten rents for the year of stabilization, but subject to a maximum market occupancy cap of 95%, less projected operating expenses incurred in connection with such property for the year of stabilization, and assuming (A) a base property management fees equal to the greater of (1) the actual amount payable by the applicable Obligors pursuant to the applicable management agreement and (2) 2.5% of revenues and (B) a normalized adjustment for capital expenditures equal to a minimum of $0.20 per square foot ($0.10 per square foot for industrial properties); and

(iii) with respect to a hospitality property, the underwritten net operating income of such property for the year of stabilization determined by the Initial Lender as the sum of room, food and beverage, retail and other recurring income, less operating expenses incurred in connection with such property for the year of stabilization and assuming (A) a base property management fees equal to the greater of (1) the actual amount payable by the applicable Obligors pursuant to the applicable management agreement and (2) 2.50% of revenues and (B) a normalized adjustment for FF&E equal to 4.0% of total revenue.

"Default Rate" means, as of any date of determination, a rate per annum equal to the interest rate that is or would be applicable to the Advances at such time plus 2.0%.

"Determination Date" means, for any Payment Date or Reporting Date, the date that is five Business Days prior to such Payment Date or Reporting Date, as applicable.

"Electronic Portfolio Asset File" mean any Portfolio Asset File document that Borrower delivers to the Collateral Custodian electronically in a .pdf format and identified as "unique loan id.document_name.pdf" (example: 12345.mortgage.pdf).

"Electronic Recording" means a mortgage or a mortgage-related document created, generated, sent, communicated, received or stored by electronic means (that complies with the requirements of the Electronic Signatures in Global and National Commerce Act or the Uniform Electronic Transactions Act, as applicable) that has been accepted for recording by a participating county land records office which accepts such electronic record of a mortgage or a mortgage-related document as an alternative to recordation of the original paper form of such document.

"Eligible Assignee" means (a) a Lender or any of its Affiliates, (b) any Person managed by a Lender or any of its Affiliates or (c) any financial or other institution reasonably acceptable to the Administrative Agent (such acceptance not to be unreasonably withheld) acting at the direction of the Majority Lenders (such direction of the Majority Lenders not to be unreasonably withheld). For the avoidance of doubt, any Competitor is subject to Section 11.04(e).

"Eligible Portfolio Asset" means (a) each of the Initial Portfolio Assets and (b) any other Portfolio Asset that has been approved in writing by the Initial Lender in its sole discretion.

"Environmental Laws" means any and all foreign, federal, State and local laws, statutes, ordinances, rules, regulations, permits, licenses, approvals, interpretations and orders of courts or Governmental Authorities, relating to the protection of human health or the environment, including, but not limited to, requirements pertaining to the manufacture, processing, distribution, use, treatment, storage, disposal, transportation, handling, reporting, licensing, permitting, investigation or remediation of Hazardous Materials.

"ERISA" means the United States Employee Retirement Income Security Act of 1974.

"ERISA Affiliate" means any trade or business that, together with the Borrower, is treated as a single employer under Section 414(b) or (c) of the Code, or solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under the Code.

"Escrow Payment" means any amount received by the Borrower for the account of an Obligor for application toward the payment of Taxes, insurance premiums, assessments, ground rents, deferred maintenance, environmental remediation, rehabilitation costs, capital expenditures and similar items in respect of an applicable Portfolio Asset.

"Event of Default" has the meaning assigned to that term in Section 6.01.

"Excepted Persons" has the meaning assigned to that term in Section 11.11(a).

"Exchange Act" means the United States Securities Exchange Act of 1934 and the rules and regulations promulgated thereunder.

"Excluded Amounts" means, without duplication, (a) any amount received in the Collection Account with respect to any Portfolio Asset included as part of the Collateral Portfolio, which amount is attributable to the payment of any Tax, fee or other charge imposed by any Governmental Authority on such Portfolio Asset or on any Underlying Collateral and (b) any amount received in the Collection Account representing (i) any Escrow Payments, (ii) any amounts received on or with respect to a Portfolio Asset that is not a loan participation interest under any Insurance Policy that is required to be used to restore, improve or repair the related real estate or other assets of such Portfolio Asset or required to be paid to any Obligor under the Loan Agreement for such Portfolio Asset, (iii) any amount received in the Collection Account with respect to any Portfolio Asset that is otherwise Sold by the Borrower pursuant to Section 2.10, to the extent such amount is attributable to a time after the effective date of such Sale and (iv) amounts deposited in the Collection Account which were not required to be deposited therein or were deposited in error.

"Excluded Taxes" means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient under any Transaction Document: (a) Taxes imposed on (or measured by) net income (however denominated) and any branch profits Taxes (i) imposed by the jurisdiction under the laws of which such Recipient is organized or in which such Recipient' s principal office is located or, in the case of any Lender, in which such Lender' s applicable lending office is located or (ii) that are Other Connection Taxes; (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in an Advance or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Advance or Commitment or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.12, amounts with respect to such Taxes were payable either to such Lender' s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office; (c) Taxes attributable to such Recipient' s failure to comply with Section 2.12(d) or (e); and (d) any U.S. federal withholding Taxes imposed under FATCA. "Facility Servicer" means Massachusetts Mutual Life Insurance Company, not in its individual capacity, but in its capacity as facility servicer pursuant to terms of this Agreement, together with its successors and permitted assigns, including any successor appointed pursuant to Article VIII.

"Facility Servicer" means Massachusetts Mutual Life Insurance Company, not in its individual capacity, but in its capacity as facility servicer pursuant to terms of this Agreement, together with its successors and permitted assigns, including any successor appointed pursuant to Article VIII.

"Facility Servicer Fee Letter" means, if applicable, any fee letter or letters between the Facility Servicer and the Borrower entered on or before the Closing Date.

"Facility Servicing Fees" means the fees set forth in the Facility Servicing Fee Letter that are payable to the Facility Servicer.

"Facility Termination Date" means the date on which the aggregate outstanding principal amount of the Advances have been repaid in full and all accrued and unpaid interest thereon, all Fees and all other Obligations (other than contingent indemnification obligations) have been paid in full and the Commitments of the Lenders have been terminated.

"FATCA" means Sections 1471 through 1474 of the Code as in effect on the date hereof (or any amended or successor version that is substantively comparable and not materially more onerous to comply with) and any current or future regulations promulgated thereunder or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code as of the date hereof (or any amended or successor version described above) and any intergovernmental agreements (or related rules, legislation or official administrative guidance) implementing such provisions of the Code or any non-U.S. laws implementing the foregoing.

"FATCA Withholding Tax" means any withholding or deduction required pursuant to FATCA.

"Fee Letters" means the Agent Fee Letter, Facility Servicer Fee Letter and each other fee letter agreement entered into by and among the Borrower and any of the Administrative Agent, the Facility Servicer, the Initial Lender and any other Lender in connection with the transactions contemplated by this Agreement.

"Fees" means the fees payable to the Administrative Agent, the Collateral Custodian, the Facility Servicer, the Initial Lender, any other Lender or any other applicable agent or party pursuant to the terms of the Fee Letters or the other Transaction Documents.

"First Lien Senior Secured" means, with respect to any Portfolio Asset, that such Portfolio Asset is a loan interest (as opposed to a participation interest or other asset) secured by a Lien on the Underlying Collateral that is prior to any other Lien on such Underlying Collateral other than customary and standard permitted liens.

"GAAP" means generally accepted accounting principles as in effect from time to time in the United States.

"Governmental Authority" means, with respect to any Person, any nation or government, any state or other political subdivision thereof or any entity, authority, agency, division or department exercising the executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to a government and any court or arbitrator having jurisdiction over such Person (including any supra-national bodies such as the European Union or the European Central Bank).

"Guaranty Agreement" has the meaning assigned to that term in Section 3.01(b).

"Hazardous Materials" means all materials subject to any Environmental Law, including materials listed in 49 C.F.R. § 172.010, materials defined as hazardous pursuant to § 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, flammable, explosive or radioactive materials, hazardous or toxic wastes or substances, lead-based materials, petroleum or petroleum distillates or asbestos or material containing asbestos, polychlorinated biphenyls, radon gas, urea formaldehyde and any substances classified as being "in inventory", "usable work in process" or similar classification that would, if classified as unusable, be included in the foregoing definition.

"Holdings" has the meaning assigned to that term in the preamble hereto.

"Indebtedness" means with respect to any Person at any date, (a) all indebtedness of such Person for borrowed money or for the deferred purchase price of property or services (other than accounts payable incurred in the ordinary course of business and payable in accordance with customary trade practices) or that is evidenced by a note, bond, debenture or similar instrument or other evidence of indebtedness customary for indebtedness of that type, (b) all liabilities secured by any Lien on any property owned by such Person even though such Person has not assumed or otherwise become liable for the payment thereof, (c) all indebtedness, obligations or liabilities of that Person in respect of derivatives and (d) all obligations under direct or indirect guaranties in respect of obligations (contingent or otherwise) to purchase or otherwise acquire, or to otherwise assure a creditor against loss in respect of, indebtedness or obligations of others of the kind referred to in clauses (a) through (c) above.

"Indemnified Amounts" has the meaning assigned to that term in Section 10.01(a).

"Indemnified Party" has the meaning assigned to that term in Section 10.01(a).

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

"Independent Manager" means the Person holding the Independent Manager position as provided for in the applicable Loan Party' s limited liability company agreement.

"Indorsement" has the meaning specified in Section 8-102(a)(11) of the UCC, and "Indorsed" has a corresponding meaning.

"Initial Lender" means (a) so long as it holds a Commitment or any portion of an Advance, Massachusetts Mutual Life Insurance Company and (b) otherwise, the Majority Lenders.

"Initial Portfolio Assets" means the Portfolio Assets described on Schedule I.

"Insurance Policy" means, with respect to any Portfolio Asset, an insurance policy covering liability and physical damage to, or loss of, the Underlying Collateral for such Portfolio Asset.

"Insurance Proceeds" means any amounts received on or with respect to a Portfolio Asset under any Insurance Policy or with respect to any condemnation proceeding or award in lieu of condemnation.

"Interest Collections" means, with respect to any Portfolio Asset, all Collections attributable to interest on such Portfolio Asset (including Collections attributable to the portion of the outstanding principal amount of a Portfolio Asset, if any, that represents interest which has accrued in kind and has been added to the principal balance of such Portfolio Asset), including all scheduled payments of interest and payments of interest relating to principal prepayments, all guaranty payments attributable to interest and proceeds of any liquidations, sales or dispositions attributable to interest on such Portfolio Asset.

"Lender" means collectively, the Initial Lender and any other Person to whom any Lender assigns any part of its rights and obligations under this Agreement and the other Transaction Documents in accordance with the terms of Section 11.04 and any other party that becomes a lender pursuant to an Assignment and Assumption Agreement.

"Lien" means any mortgage or deed of trust, pledge, hypothecation, collateral assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, claim, preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale, lease or other title retention agreement, sale subject to a repurchase obligation, any easement, right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing).

"Loan Agreement" means the loan agreement, credit agreement or other agreement pursuant to which a Portfolio Asset that is a loan interest or an Underlying Loan Obligation of a Portfolio Asset, as applicable, has been issued or created and each other agreement that governs the terms of or secures the obligations represented by such Portfolio Asset or Underlying Loan Obligation or of which the holders of such Portfolio Asset are the beneficiaries, including any co-lender or servicing agreement entered into by an applicable Counterparty Lender, Underlying Agent or Underlying Servicer.

"Loan Parties" means, collectively, the Borrower and Holdings.

"LTV" means, as of any date of determination, the ratio (expressed as a percentage) of (a) the aggregate amount of Advances Outstanding and accrued and unpaid interest thereon as of such date to (b) the most recent Total Portfolio Value as of such date.

"Majority Lenders" means the Lenders representing an aggregate of more than 50% of the aggregate Advances Outstanding; provided that the sum of the aggregate unpaid principal amount of the Advances Outstanding held or deemed held by the Borrower, Holdings, the Sponsor or any of their Affiliates shall be excluded for purposes of making a determination of Majority Lenders at any time.

"Material Adverse Effect" means a material adverse effect on (a) the business, financial condition, operations, liabilities (actual or contingent), performance or properties of the Borrower, (b) the validity or enforceability of this Agreement or any other Transaction Document or the validity or enforceability of the Portfolio Assets generally or any material portion of the Portfolio Assets, (c) the rights and remedies of the Collateral Custodian, the Administrative Agent, the Facility Servicer, any Lender or any other Secured Parties with respect to matters arising under this Agreement or any other Transaction Document, (d) the ability of the Borrower to perform its obligations under this Agreement or any other Transaction Document or (e) the existence, perfection, priority or enforceability of the Administrative Agent' s or the other Secured Parties' Lien on the Collateral Portfolio; provided that, there shall be no Material Adverse Effect to the extent such Material Adverse Effect arises from the action (or inaction) of the Collateral Custodian, the Administrative Agent, the Facility Servicer or a Lender.

"Material CLO Modification" means any amendment or waiver of, or modification or supplement to, or termination, cancellation or release of, any term of the documentation executed or delivered in connection with the issuance of a Specified CLO Asset (other than with respect to any such amendment, waiver, modification, supplement, termination, cancellation or release relating to the Underling Loan Obligation for such Specified CLO) for which the Sponsor or a wholly-owned Subsidiary thereof must agree to or consent and could reasonably be expected to have a material effect on the Value of such Specified CLO Asset or the rights of the Sponsor or a wholly owned Subsidiary thereof with respect thereto.

"Material Modification" means any amendment or waiver of, or modification or supplement to, or termination, cancellation or release of, a Loan Agreement for a Portfolio Asset or for the Underlying Loan Obligation for a Portfolio Asset, as applicable, that:

(a) forgives, excuses, reduces, waives or modifies such Loan Agreement or the related loan documents in a manner that would (i) reduce the outstanding principal amount of the amount due thereunder or waive any payment default thereunder, (ii) reduce the interest rate margin thereon by an amount that is more than 50 basis points less than the original margin or (iii) reduce the amount of any prepayment premium or any fees payable thereunder;

(b) extends the final, initial scheduled maturity date for payment of principal payable under such Loan Agreement to a date that is more than six months after the final, scheduled maturity date thereof;

(c) (i) extends the scheduled date of expiration or termination of any commitment to make future advances thereunder or (ii) increases the commitment to make such future advances;

(d) releases any Obligor from its obligations under such Loan Agreement or the related loan documents or permits an Obligor to assign or transfer its rights and obligations under such Loan Agreement or the related loan documents (in each case other than as expressly contemplated by such loan documents);

(e) releases any material Underlying Collateral for such Portfolio Asset (other than by the granting of Permitted Liens) other than as set forth in such Loan Agreement or the related loan documents; or

(f) alters any provision requiring the pro rata treatment of such Portfolio Asset with pari passu obligations that has the effect of subordinating such Portfolio Asset or commitment in a manner that adversely impacts the holders thereof.

"Maturity Date" means the earlier to occur of (a) if the Extension Conditions (as defined below) have been satisfied, the seventh anniversary of the Closing Date, (b) if the Extension Conditions have not been satisfied, December 1, 2020, and (c) the date the Advances are accelerated after the occurrence and continuance of an Event of Default. "Extension Condition" means that on or before October 31, 2020, the Borrower has obtained a rating for the credit facility evidenced by this Agreement of BBB or higher from a NRSRO and the Initial Lender has a received a copy of any rating letter issued in connection therewith.

"Maximum Quarterly LTV Percentage" means, as of any Determination Date occurring during the time periods set forth in column (1) below, the percentage of LTV set forth in the corresponding column (2) below:

(1) Determination Date occurs:	(2) Maximum Quarterly LTV Percentage:	
After the closing Date and before the fifth anniversary of the Closing Date	55	%
On or after the fifth anniversary of the Closing Date and prior to July 31, 2026	20	%
On or after July 31, 2026	0	%

"Multiemployer Plan" means a "multiemployer plan" as defined in Section 4001(a)(3) of ERISA to which the Borrower or any ERISA Affiliate of the Borrower contributed or had any obligation to contribute on behalf of its employees at any time during the current year or the preceding five years.

"NRSRO" means a Nationally Recognized Statistical Rating Organization acceptable to the Initial Lender.

"Note" has the meaning assigned to that term in Section 2.03(a).

"Notice of Borrowing" means a written notice of borrowing from the Borrower to the Administrative Agent and Initial Lender substantially in the form of Exhibit B.

"Notice of Exclusive Control" has the meaning assigned to that term in the Account Control Agreement.

"Obligations" means all present and future indebtedness and other liabilities and obligations (howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, or due or to become due) of the Borrower to the Lenders, the Administrative Agent, the Collateral Custodian, the Facility Servicer or any other Secured Party arising under this Agreement or any other Transaction Document and shall include all liability for principal of and interest on the Advances, Fees, indemnifications and other amounts due or to become due by the Borrower to the Lenders, the

Administrative Agent, the Collateral Custodian, the Facility Servicer and any other Secured Party under this Agreement or any other Transaction Document, including any Fee Letter and costs and expenses payable by the Borrower to the Lenders, the Administrative Agent, the Collateral Custodian, the Facility Servicer or any other Secured Party, including reasonable attorneys' fees, costs and expenses, including interest, fees and other obligations that accrue after the commencement of an insolvency proceeding (in each case whether or not allowed as a claim in such insolvency proceeding).

"Obligor" means, collectively, each Person obligated to make payments under a Loan Agreement, including any guarantor thereof.

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

"Other Taxes" means any and all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes payable or determined to be payable to any Governmental Authority that arise from any payment made under, the execution, delivery, performance, enforcement or registration of, from receipt or perfection of a security interest under, filing and recording of this Agreement, or any other Transaction Documents, or otherwise in connection with this Agreement or any other Transaction Document, except any such Other Connection Taxes imposed with respect to an assignment.

"Participant Register" has the meaning assigned to that term in Section 2.03(c).

"Participation Agreement" means, for any Portfolio Asset that consists of a loan participation interest, any agreement pursuant to which the Borrower participates in the Underlying Loan Obligation for such Portfolio Asset in a form reasonably agreed to by the Borrower and the Majority Lenders.

"Payment Date" means (a) the eighth (8th) Business Day after the tenth (10th) calendar day of each calendar month and (b) the Maturity Date.

"Payment Date Report" means a report from the Facility Servicer substantially in the form of Exhibit D.

"Pension Plan" has the meaning assigned to that term in Section 4.01(r).

"Permitted Liens" means any of the following: (a) Liens for Taxes if such Taxes shall not at the time be due or if a Person shall currently be contesting the validity thereof in good faith by appropriate proceedings and with respect to which reserves in accordance with GAAP have been provided on the books of such Person; (b) Liens imposed by law, such as materialmen' s, warehousemen' s, mechanics' , carriers' , workmen' s and repairmen' s Liens and other similar Liens, arising by operation of law in the ordinary course of business for sums that are not overdue or are being contested in good faith by appropriate proceedings and with respect to which reserves in accordance with GAAP have been provided on the books of the applicable Person; (c) Liens granted pursuant to or by the Transaction Documents; (d) judgment Liens arising solely as a result of the existence of judgments, orders, or awards that do not constitute an Event of Default; (e) with respect to the Underlying Collateral for any Portfolio Asset, (i) Liens

in favor of the lenders, lead agent, administrative agent, collateral agent or similar agent for the benefit of all holders of indebtedness relating to such Portfolio Asset (or the Underlying Loan Obligation as applicable) and (ii) "permitted liens" as defined in the Loan Agreement for such Portfolio Asset or such comparable definition if "permitted liens" is not defined therein; (f) Liens routinely imposed on cash or securities by the Account Bank or the securities custodian, to the extent permitted under the Account Control Agreement or Custodial Securities Account Agreements, as applicable; and (g) Liens consisting of restrictions on transfer of a Portfolio Asset or rights of set-off or withholding set forth in the underlying Loan Agreement.

"Person" means an individual, partnership, corporation (including a statutory or business trust), limited liability company, joint stock company, trust, unincorporated association, sole proprietorship, joint venture, government (or any agency or political subdivision thereof) or other entity.

"Platform" has the meaning assigned to that term in Section 11.23.

"Pledged Equity" has the meaning assigned to that term in Section 2.09(b).

"Portfolio Asset" means any loan interest, any loan participation interest, any real estate owned real property or preferred equity interests owned by or Transferred to the Borrower (free and clear of any Indebtedness or Lien, other than Permitted Liens), which loan interest, loan participation interest, real estate owned real property or preferred equity interests includes (a) the Portfolio Asset File therefor and (b) all right, title and interest in and to (i) such loan interest, the related Loan Agreement and any Underlying Collateral, (ii) such loan participation interest, the related Participation Agreement and, subject to the terms thereof, the related Loan Agreement and any Underlying Collateral, (iii) such real estate owned real property and (iv) such preferred equity interest, any distributions in connection therewith and the related documentation executed or delivered in connection with the issuance thereof.

"Portfolio Asset Assignment" means an assignment, participation agreement or other agreement pursuant to which any Portfolio Asset not originated by the Borrower is Transferred to the Borrower in a form of Exhibit I hereto or any other form reasonably agreed to by the Borrower and the Initial Lender.

"Portfolio Asset Checklist" means, with respect to each Portfolio Asset, a checklist of all of the agreements, documents and instruments executed or delivered in connection with the origination and acquisition of such Portfolio Asset, substantially in the form of Exhibit K hereto, as prepared by the Borrower or the Portfolio Asset Servicer on its behalf.

"Portfolio Asset File" means, with respect to each Portfolio Asset, a file containing each of the agreements, instruments, certificates and other documents and items set forth on the Portfolio Asset Checklist with respect to such Portfolio Asset.

"Portfolio Asset Servicer" means ACRES Capital Servicing LLC, not in its individual capacity, but in its capacity as portfolio asset servicer pursuant to the terms of this Agreement, together with its successors and permitted assigns, including any successor appointed pursuant to Article VIII.

"Pro Rata Share" means, with respect to any Lender, the ratio of such Lender' s Commitment to the aggregate Commitments of all Lenders.

"Proceeds" means, with respect to the Collateral, all property that is receivable or received when such Collateral is collected, sold, liquidated, foreclosed, exchanged, or otherwise disposed of, whether such disposition is voluntary or involuntary, and includes all rights to payment with respect to any insurance relating to such Collateral.

"Quarterly LTV Certificate" means a certificate setting forth the calculation of LTV and Total Portfolio Value as of the applicable date of determination, substantially in the form of Exhibit E, prepared by the Borrower.

"Recipient" means the Administrative Agent, any Lender or the Collateral Custodian, as applicable.

"Records" means all documents relating to the Portfolio Assets, including books, records and other information executed in connection with the maintenance of the Portfolio Assets in the Collateral Portfolio or maintained with respect to the Collateral Portfolio and the related Obligors that the Borrower or the Portfolio Asset Servicer has generated, or in which the Borrower has otherwise obtained an interest.

"Recoveries" means, as of the time any Underlying Collateral for any Portfolio Asset is Sold, discarded or abandoned (after a determination by the Portfolio Asset Servicer, the Counterparty Lender, Underlying Agent or Underlying Servicer, as applicable, that such Underlying Collateral has little or no remaining value) or otherwise determined to be fully liquidated by the Portfolio Asset Servicer or such Counterparty Lender, Underlying Agent or Underlying Servicer, the proceeds from the Sale of such Underlying Collateral, the proceeds of any related Insurance Policy or any other recoveries (including interest proceeds recovered) with respect to such Underlying Collateral and amounts representing late fees and penalties, net of any amounts received that are required under the Loan Agreement for the applicable Portfolio Asset to be refunded to the related Obligor.

"Register" has the meaning assigned to that term in Section 2.03(b).

"Related Parties" means, with respect to any Person, such Person' s Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person' s Affiliates.

"Related Portfolio Assets" means all Portfolio Assets owned by the Borrower, together with all proceeds thereof and other assets or property related thereto, including all right, title and interest of the Borrower in and to:

(a) subject to the terms of any applicable Participation Agreement, any amounts on deposit in any cash reserve, collection, custody or lockbox accounts securing the Portfolio Assets;

(b) all rights with respect to the Portfolio Assets to which the Borrower is entitled as lender under the applicable Loan Agreement or as a loan participant under the applicable Participation Agreement;

(c) subject to the terms of any applicable Participation Agreement, any Underlying Collateral securing the Portfolio Assets and all Recoveries related thereto, all payments paid in respect thereof and all monies due, to become due and paid in respect thereof, and all net liquidation proceeds;

(d) the Portfolio Asset Files related to the Portfolio Assets, any Records, and the documents, agreements, and instruments included in such Portfolio Asset Files or Records;

(e) subject to the terms of any applicable Participation Agreement, all Liens, guaranties, indemnities, warranties, letters of credit, accounts, bank accounts and property subject thereto from time to time purporting to secure or support payment of the Portfolio Assets (or the Underlying Loan Obligations, as applicable), together with all UCC financing statements, mortgages or similar filings signed or authorized by an Obligor relating thereto;

(f) each Portfolio Asset Assignment with respect to such Portfolio Assets (including any rights of the Borrower against the Transferor thereunder) and the assignment to the Administrative Agent, for the benefit of the Secured Parties, of all UCC financing statements, if any, filed by the Borrower against any Transferor under or in connection with such Portfolio Asset Assignment;

(g) the assignment to the Administrative Agent, for the benefit of the Secured Parties, of all UCC financing statements for the Portfolio Assets;

(h) all records (including computer records) with respect to the foregoing; and

(i) all Collections, income, payments, proceeds and other benefits of each of the foregoing.

"Release Date" has the meaning assigned to that term in Section 2.10(b).

"Replacement Servicer" has the meaning assigned to that term in Section 8.01(c).

"Reportable Event" means any of the events set forth in Section 4043(c) of ERISA, other than an event for which the 30 day notice period has been waived.

"Reporting Date" means, with respect to a Payment Date, the 5th Business Day preceding such Payment Date or if such day is not a Business Day, the immediately preceding Business Day.

"Required Portfolio Documents" means, for each Portfolio Asset or Underlying Loan Obligation, as applicable, the following documents or instruments, all as specified on the related Portfolio Asset Checklist, to the extent applicable for such Portfolio Asset or Underlying Loan Obligation: copies of the executed (a) guaranty, if any, (b) loan agreement, (c) note purchase agreement, if any, (d) security agreement, (e) promissory note and (f) any certificates evidencing a preferred equity interest and the agreements, instruments or other documents executed or delivered in connection therewith, in each case as set forth on the Portfolio Asset Checklist.

"Responsible Officer" means, (a) when used with respect to the Administrative Agent or the Collateral Custodian any officer in the corporate trust office of the Administrative Agent or the Collateral Custodian, including any president, vice president, executive vice president, assistant vice president, treasurer, secretary, assistant secretary, corporate trust officer or any other officer thereof customarily

performing functions similar to those performed by the individuals who at the time shall be such officers, respectively, or to whom any matter is referred because of such officer' s knowledge of or familiarity with the particular subject, and, in each case, having direct responsibility for the administration of this Agreement and the other Transaction Documents to which such Person is a party; provided that any notices sent to the Administrative Agent or the Collateral Custodian in accordance with Section 11.02 shall be deemed to have been received by a Responsible Officer of the Administrative Agent or the Collateral Custodian, as applicable and (b) when used with respect to any other Person, any duly authorized person of such Person and, with respect to a particular matter, any other duly authorized person of such Person to whom such matter is referred because of such person' s knowledge of and familiarity with the particular subject, and in each case with direct responsibility for the administration of this Agreement.

"Restricted Junior Payment" means, with respect to the Borrower or Holdings, as applicable, (a) any dividend or other distribution, direct or indirect, on account of any class of membership interests of the Borrower or Holdings, as applicable, now or hereafter outstanding, except a dividend or other distribution paid solely in interests of that class of membership interests or in any pari passu or junior class of membership interests of the Borrower or Holdings, as applicable, (b) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any class of membership interests of the Borrower or Holdings, as applicable, now or hereafter outstanding or (c) any payment made to redeem, purchase, repurchase or retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire membership interests of the Borrower or Holdings, as applicable, now or hereafter outstanding.

"Review Criteria" has the meaning assigned to that term in Section 9.02(a)(i).

"Sale" has the meaning assigned to that term in Section 2.10(a) and both "Sold" and "Sell" have corresponding meanings.

"Sanctioned Country" means a country or territory subject to a sanctions program maintained under any Sanctions and Anti-Terrorism Law (at the time of this Agreement, Cuba, Iran, North Korea, Syria and the Crimea region of Ukraine).

"Sanctioned Person" means (a) any Person included on a list of designated or restricted Persons maintained by OFAC (defined below) (including, without limitation, OFAC' s Specially Designated Nationals and Blocked Persons List and Sectoral Sanctions Identifications List), the U.S. Department of State, the United Nations Security Council, or any other relevant Governmental Authority, (b) any Person located, organized, or resident in a Sanctioned Country, or (c) any Person 50% or more owned, directly or indirectly, individually or in the aggregate, or controlled by any such Person or Persons described in clauses (a) or (b) above.

"Sanctions and Anti-Terrorism Laws" means any and all Applicable Laws relating to terrorism and economic or financial sanctions or trade embargoes administered or enforced by the U.S. Government (including, without limitation, the U.S. Department of the Treasury' s Office of Foreign Assets Control ("OFAC")), the United Nations Security Council, or any other relevant Governmental Authority, and any regulation, order, or directive promulgated, issued or enforced pursuant to such applicable Laws, all as amended, supplemented or replaced from time to time.

"Scheduled Payment" means each scheduled payment of principal or interest required to be made by an Obligor on a Portfolio Asset or Underlying Loan Obligation, as applicable, as adjusted pursuant to the terms of the related Loan Agreement.

"Secured Party" means each of the Administrative Agent, each Lender (together with its permitted successors and assigns), each other Indemnified Party, the Facility Servicer and the Collateral Custodian; provided that in any context requiring a Secured Party to give direction to the Administrative Agent, such reference to Secured Party shall not include the Administrative Agent or the Collateral Custodian.

"Servicer Termination Event" means, with respect to an Applicable Servicer, the occurrence of any one or more of the following events:

(a) a Bankruptcy Event shall occur with respect to such Applicable Servicer;

(b) such Applicable Servicer shall assign its rights or obligations as "Facility Servicer" or "Portfolio Asset Servicer", as applicable, hereunder (other than as expressly provided herein);

(c) any failure by such Applicable Servicer to observe or perform any covenant or other agreement of such Applicable Servicer set forth in this Agreement or the other Transaction Documents (other than actions with respect to which another clause of this definition expressly relates), which continues to be unremedied for a period of 30 days (if such failure can be remedied) after the earlier to occur of (i) the date on which written notice of such failure shall have been given to such Applicable Servicer by the Administrative Agent (acting at the direction of the Majority Lenders) or Borrower and (ii) the date on which a Responsible Officer of such Applicable Servicer acquires Knowledge thereof (or such extended period of time reasonably approved by Borrower not to exceed 60 days in the aggregate provided that such Applicable Servicer is diligently proceeding in good faith to cure such failure or breach); and

(d) any representation, warranty or certification made by such Applicable Servicer in any Transaction Document or in any certificate delivered pursuant to any Transaction Document shall prove to have been incorrect when made, which materially and adversely affects the interests of the Administrative Agent, Borrower or the Lenders.

"Servicer Termination Expenses" has the meaning assigned to that term in Section 8.01(b).

"Servicer Termination Notice" has the meaning assigned to that term in Section 8.01(b).

"Servicing Report" means a report from the Portfolio Asset Servicer substantially in the form of Exhibit C.

"Servicing Standard" means, with respect to any Portfolio Assets included in the Collateral Portfolio, to service and administer such Portfolio Assets on behalf of the Borrower in accordance with Applicable Law, the terms of this Agreement, the Loan Agreements and all customary and usual servicing practices for loans or loan participations like the Portfolio Assets.

"Specified CLO Asset" means each collateralized loan obligation in the loan obligations of the applicable Obligor that is owned by the Sponsor or a Subsidiary thereof (free and clear of any Indebtedness or Lien, other than Permitted Liens) and (a) described on Schedule II or (b) approved after the date of this Agreement in writing by the Initial Lender in its sole discretion.

"Sponsor" means Exantas Capital Corp.

"State" means one of the fifty states of the United States or the District of Columbia.

"Subsidiary" means with respect to a person, a corporation, partnership or other entity of which shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation, partnership or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such person.

"Taxes" means any present or future taxes, levies, imposts, duties, charges, deductions, withholdings (including backup withholding), assessments or fees of any nature (including interest, penalties, and additions thereto) that are imposed by any Governmental Authority.

"Total Facility Amount" means $250,000,000, as reduced pursuant to Section 2.04(e).

"Total Portfolio Value" means, as of any date of determination, the aggregate Value of all Portfolio Assets and the Specified CLO Assets.

"Trade Date" has the meaning assigned to that term in Section 11.04(e).

"Transaction Documents" means this Agreement, any Note, the Account Control Agreement, the Fee Letters, each Assignment and Assumption Agreement, each Participation Agreement, the Custodial and Account Control Agreements and each agreement, instrument, certificate or other document related to any of the foregoing.

"Transfer" means (a) the acquisition by, or the transfer or assignment to, the Borrower of an Eligible Portfolio Asset or other Related Portfolio Asset pursuant to a Portfolio Asset Assignment, Participation Agreement, the documentation executed or delivered in connection with the issuance of a preferred equity interest or otherwise in accordance with Section 3.04 or (b) the origination of an Eligible Portfolio Asset that is a loan interest by the Borrower pursuant to a Loan Agreement.

"Transferor" means, with respect to any Transfer pursuant to clause (a) of the definition thereof, the assignor of an Eligible Portfolio Asset under a Portfolio Asset Assignment, Participation Agreement, the documentation executed or delivered in connection with the issuance of a preferred equity interest or otherwise in accordance with Section 3.04.

"UCC" means the Uniform Commercial Code as from time to time in effect in the specified jurisdiction.

"Underlying Agent" means, with respect to a Portfolio Asset, the administrative agent or other similar agent for the lenders party to the Loan Agreement for such Portfolio Asset.

"Underlying Collateral" means, with respect to a Portfolio Asset, any property or other assets pledged or mortgaged as collateral to secure repayment of such Portfolio Asset or the Underlying Loan Obligation for such Portfolio Asset, as applicable, including, mortgaged property and all proceeds from any sale or other disposition of such property or other assets.

"Underlying Loan Obligation" means, with respect to a Portfolio Asset consisting of a loan participation or a Specified CLO Asset, the loan obligations of any applicable Obligor in which such Portfolio Asset is participating or such Specified CLO Asset has been issued.

"Underlying Obligor Default" means, with respect to any Portfolio Asset the occurrence of one or more of the following events (any of which, for the avoidance of doubt, may occur more than once):

(a) an Obligor payment default in respect of principal or interest has occurred and is continuing under such Portfolio Asset (after giving effect to any grace or cure period set forth in the applicable Loan Agreement);

(b) any other event of default or similar event or circumstance under the Loan Agreement for such Portfolio Asset for which the Borrower (or agent or required lenders pursuant to the applicable Loan Agreement, as applicable) has elected to exercise any of its rights and remedies (excluding rights and remedies related to notices of default or reservation of rights, forbearances, imposition of reserves or any actions to perfect Liens on the Underlying Collateral) to enforce such Portfolio Asset (including the acceleration of the loan relating thereto); or

(c) a Bankruptcy Event occurs with respect to any related Obligor.

"Underlying Servicer" means, with respect to a Portfolio Asset consisting of a loan participation, any sub-agent or servicer appointed by the Underlying Agent or trustee or similar agent for such Portfolio Asset to administer and service the Underlying Loan Obligations for such Portfolio Asset.

"United States" means the United States of America.

"Unmatured Event of Default" means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

"Valuation Policy" means the Sponsor' s "Fair Value Disclosure" as of the date hereof, as delivered to pursuant to Section 3.01(c), and as may be amended, if required under Section 5.02(p), with the consent of the Initial Lender.

"Value" means (a) with respect to any Eligible Portfolio Asset as of any date of determination, the most recent internal valuation of such Portfolio Asset by the Borrower in accordance with the Valuation Policy and (b) with respect to any Specified CLO Asset as of any date of determination, the valuation of such Specified CLO Asset as determined, at the sole option of the Borrower, by (x) an independent nationally recognized third-party collateralized loan obligation valuation firm (such as Duff & Phelps) engaged by the Borrower and reasonably approved by the Initial Lender using a discounted cash flow model and such assumptions that are customary and reasonable for such a model or (y) the Borrower or the Portfolio Asset Servicer using a discount cash flow model and assuming 42% severity, 2.0% constant default rate, 0% constant prepayment rate and initial loan maturity; provided that with respect to any

Portfolio Asset or Specified CLO Asset to which there has been a Material Modification or Material CLO Modification, as applicable, to which the applicable Lenders have not consented pursuant to the terms hereof, such Portfolio Asset or Specified CLO Asset shall be valued as provided in Section 2.04(b).

"Wells Fargo" means Wells Fargo Bank, National Association, not in its individual capacity, but in its capacity as Administrative Agent, Account Bank and Collateral Custodian, in all cases pursuant to the terms of this Agreement.

SECTION 1.02 Other Terms. All accounting terms used but not specifically defined herein shall be construed in accordance with GAAP. All terms used in Article 9 of the UCC in the State of New York, and used but not specifically defined herein, are used herein as defined in such Article 9.

SECTION 1.03 Computation of Time Periods. Unless otherwise stated in this Agreement, in the computation of a period of time from a specified date to a later specified date, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding."

SECTION 1.04 Interpretation. In each Transaction Document, unless a contrary intention appears:

(a) the singular number includes the plural number and vice versa;

(b) reference to any Person includes such Person' s successors and assigns but only if such successors and assigns are not prohibited by the Transaction Documents;

(c) reference to any gender includes each other gender;

(d) reference to day or days without further qualification means calendar days;

(e) the term "or" is not exclusive;

(f) reference to the words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation";

(g) reference to any agreement (including any Transaction Document), document or instrument means such agreement, document or instrument as amended, modified, waived, supplemented, restated or replaced and in effect from time to time in accordance with the terms thereof and, if applicable, the terms of the other Transaction Documents, and reference to any promissory note includes any promissory note that is an extension or renewal thereof or a substitute or replacement therefor;

(h) reference to any Applicable Law means such Applicable Law as amended, modified, codified, replaced or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder and reference to any Section or other provision of any Applicable Law means that provision of such Applicable Law from time to time in effect and constituting the substantive amendment, modification, codification, replacement or reenactment of such Section or other provision;

(i) if payment or performance of any obligation of the Borrower hereunder is due on a date which is not a Business Day, the required date for payment or performance shall be the next Business Day; and

(j) unless otherwise specified, all references herein to times of day shall be references to New York City time (daylight or standard, as applicable).

SECTION 1.05 Changes in GAAP. If any Obligor notifies the Administrative Agent that such Obligor requests an amendment to any provision hereof to eliminate the effect of any change occurring after the date hereof in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies any Obligor that the Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

SECTION 1.06 Advances to Constitute Loans. Notwithstanding any provision herein to the contrary, the parties hereto intend that the Advances made hereunder constitute a "loan" and not a "security" for purposes of Section 8-102(15) of the UCC.

ARTICLE II.
THE FACILITY

SECTION 2.01 Advances. On the terms and conditions hereinafter set forth, each Lender, severally and not jointly, shall make Advances to the Borrower as the Borrower may request at its option from time to time on any Business Day during the Availability Period in an amount which after giving effect to such Advances (a) would not cause the aggregate Advances made hereunder (without giving effect to any repayment or prepayment thereof) to exceed the Total Facility Amount and (b) would not cause LTV to exceed 55% on such date (after giving effect to such Advance and any Transfer effectuated from the use of proceeds thereof). Notwithstanding anything contained in this Section 2.01 or elsewhere in this Agreement to the contrary, no Lender is obligated to make any Advance in an amount that would, after giving effect to such Advance, exceed such Lender' s Commitment less the aggregate outstanding amount of any Advances funded by such Lender. Each Advance to be made hereunder shall be made by the Lenders in accordance with their respective Pro Rata Shares. Subject to the terms and conditions hereof, the Borrower may borrow, repay and reborrow Advances hereunder during the Availability Period.

SECTION 2.02 Procedure for Advances.

(a) The Borrower shall request an Advance by delivery of a Notice of Borrowing to the Administrative Agent and Lenders, with a copy to the Facility Servicer, no later than 2:00 p.m. two Business Days immediately prior to the proposed date of such Advance (or such shorter period of time agreed to by the Lenders and the Administrative Agent in their sole discretion); provided that if the proposed date of the initial Advance is the Closing Date, the Notice of Borrowing with respect to the initial Advance may be delivered on the Closing Date. Each Notice of Borrowing must be accompanied by a duly completed Quarterly LTV Certificate (updated to the date such Advance is requested and giving pro forma effect to the Advance requested and the use of the proceeds thereof) and certify:

(i) the amount of such Advance, which must be at least equal to $250,000;

(ii) that such Advance would not cause (A) the aggregate Advances made hereunder (without giving effect to any repayment or prepayment thereof) to exceed the Total Facility Amount or (B) LTV to exceed 55% on the date of such Advance (after giving effect to such Advance and any Transfer effectuated from the use of proceeds thereof);

(iii) the proposed date of such Advance (which must be a Business Day);

(iv) detailed instructions as to where the proceeds of such Advance are to be deposited or transferred; and

(v) all conditions precedent for such Advance described in Article III have been satisfied or will be satisfied on the proposed date of such Advance.

(b) Promptly upon receipt of a Notice of Borrowing, the Administrative Agent shall notify the Lenders of the requested Advance and each Lender shall make the Advance on the terms and conditions set forth herein. On the date of each Advance, upon satisfaction of the applicable conditions set forth in Article III, each Lender shall, in accordance with instructions received by the Administrative Agent from the Borrower, make available to the Borrower, in same day funds, an amount equal to such Lender' s Pro Rata Share of such Advance, by payment into the account which the Borrower has designated in writing. Any funds held by the Administrative Agent shall be held uninvested.

(c) The obligation of each Lender to remit its Pro Rata Share of any Advance is several from that of each other Lender and the failure of any Lender to so make such amount available to the Borrower shall not relieve any other Lender of its obligations hereunder. In no event shall the Administrative Agent have any liability or obligation to fund any Advance.

SECTION 2.03 Evidence of Debt.

(a) If requested by a Lender, the Borrower shall deliver to the Lender a duly executed Note payable to such Lender and its registered assigns (the "Note") in substantially the form of Exhibit A.

(b) The Administrative Agent shall maintain, solely for this purpose as the agent of the Borrower, at its address referred to in Section 11.02 a copy of each Assignment and Assumption Agreement delivered to and accepted by it and a register for the recordation of the names and addresses of the Lenders, the Commitments of, and principal amounts of (and stated interest on) the Advances owing to each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive and binding for all purposes, absent manifest error, and the Borrower, the Administrative Agent, each Lender and the other parties hereto shall treat each person whose name is recorded in the Register as a Lender under this Agreement for all purposes of this Agreement. The Register shall be available for inspection by the Borrower or any Lender at any reasonable time and from time to time upon reasonable prior notice.

(c) Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each participant and the principal amounts of (and stated interest on) each participant' s interest in the Advances, loans or other obligations under the Transaction Documents (the "Participant Register"); provided that (a) 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 Advances,

commitments, loans or its other obligations under any Transaction Document) to any Person except to the extent that such disclosure is necessary to establish that such Advances, commitment, loan or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations and (b) the Administrative Agent shall have no liability or obligation to make determinations with respect to the rights of Participants hereunder. 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.

SECTION 2.04 Repayment.

(a) The Borrower shall repay to the Lenders on the Maturity Date the aggregate principal amount of all outstanding Advances, together with all accrued and unpaid interest thereon. The Borrower shall also repay the outstanding principal amount of the Advances as provided in Section 2.08. The Borrower may not prepay Advances except as provided by this Section 2.04 and Section 2.08.

(b) Unless consent is obtained with respect to a Material Modification or a Material CLO Modification as provided in Section 5.01(e)(i), the Value of the Portfolio Asset or Specified CLO Asset subject to such Material Modification or Material CLO Modification, as the case may be, for purposes of calculating the Value of such Portfolio Asset or Specified CLO Asset and Total Portfolio Value and determining whether a Cash Trap Event has occurred will be:

(i) with respect to a Material Modification, (A) reduced by 50% until the later of (1) the date occurring 90 days after such Material Modification and (2) the date the Value of such Portfolio Asset is determined after such Material Modification by an independent nationally recognized third-party valuation firm engaged by the Borrower and reasonably approved by the Initial Lender, in each case at the Borrower' s own expense and as part of the Borrower' s valuation procedures and (B) thereafter equal to the value of such Portfolio Asset as determined after such Material Modification by such independent nationally recognized third-party valuation firm (as such valuation may be updated thereafter); and

(ii) with respect to a Material CLO Modification, reduced to zero.

The Borrower acknowledges that the reduction of the Value of a Portfolio Asset or Specified CLO Asset pursuant to this Section 2.04(b) may cause a Cash Trap Event and result in repayments of the Advances Outstanding as required by Section 2.08.

(c) The Borrower may at any time prepay the Advances Outstanding, in whole or in part, without premium or penalty at the option of the Borrower, in a minimum amount of at least $1,000,000 (for prepayments in part made when the Advances Outstanding are more than $1,000,000), by delivering a notice of such prepayment to the Administrative Agent, with a copy to Initial Lender, at least one Business Day, or in the case of any prepayment in whole, at least three Business Days, prior to such prepayment.

(d) Upon any prepayment of Advances Outstanding pursuant to this Section 2.04, the Borrower shall also pay in full any accrued and unpaid interest, any prepayment fee and all costs and expenses of the Secured Parties related to such Advances then due and payable. The Administrative Agent shall apply amounts received from the Borrower pursuant to this Section 2.04 to the pro rata payment of all accrued and unpaid interest with respect to such Advances and all due and payable costs and expenses of the Secured Parties related to such Advances until paid in full and thereafter to prepay such Advances Outstanding.

(e) The Borrower may, upon notice to the Administrative Agent, with a copy to Initial Lender, terminate the Commitments, or from time to time reduce the Commitments; provided that (x) each such notice shall be in writing and must be received by the Administrative Agent at least three (3) Business Days prior to the effective date of such termination or reduction, (y) any such partial reduction shall be in an aggregate amount of $1,000,000 and (z) the Borrower shall not terminate or reduce the Commitments if, after giving effect thereto and to any concurrent prepayments hereunder, the Advances Outstanding would exceed the total Commitments; provided that (1) the Borrower may not terminate or reduce the Commitments in whole or in part prior to the six month anniversary of the Closing Date and (2) on and after the six month anniversary of the Closing Date and prior to the 12 month anniversary of the Closing Date, the Borrower may not terminate or reduce the Commitments in whole or in part unless the Borrower pays a commitment termination or reduction fee in an amount equal to 1.0% of the aggregate Commitments being terminated or reduced. The Administrative Agent will promptly notify the Lenders of any termination or reduction of the Commitments pursuant to this Section 2.04(e). Upon any reduction of Commitments, the Commitment of each Lender shall be reduced by such Lender' s ratable share of the amount of such reduction.

SECTION 2.05 Interest and Fees.

(a) The Borrower shall pay interest on the outstanding principal amount of the Advances at a rate per annum equal to 5.75%. Interest is payable on each Payment Date as and to the extent provided in Section 2.08. If accrued and unpaid interest is not paid in full on a Payment Date, the Borrower shall pay additional interest on such accrued and unpaid interest at the same rate per annum as the Borrower pays on the Advances, such additional interest being payable on each Payment Date as and to the extent provided in Section 2.08.

(b) If any amount payable by the Borrower under this Agreement or any other Transaction Document is not paid when due, whether at stated maturity, by acceleration or otherwise, such amount shall thereafter bear interest at the Default Rate. Upon the request of the Majority Lenders, while any Event of Default pursuant to Section 6.01(a) or (d) exists, the Borrower shall pay interest on the principal amount of all Advances outstanding hereunder at the Default Rate.

(c) Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Advance, together with all fees, charges and other amounts that are treated as interest on such Advance under Applicable Law (collectively, "charges"), exceed the maximum lawful rate (the "Maximum Rate") that may be contracted for, charged, taken, received or reserved by the Lenders holding such Advance in accordance with Applicable Law, the rate of interest payable in respect of such Advance hereunder, together with all charges payable in respect thereof, shall be limited to the Maximum Rate. To the extent lawful, the interest and charges that would have been paid in respect of such Advance but were not paid as a result of the operation of this Section 2.05(c) shall be cumulated and the interest and charges payable to such Lender in respect of other Advance or periods shall be increased (but not above the amount collectible at the Maximum Rate therefor) until such cumulated amount shall have been received by such Lender. Any amount collected by such Lender that exceeds the maximum amount collectible at the Maximum Rate shall be applied to the reduction of the principal balance of such Advance or refunded to the Borrower so that at no time shall the interest and charges paid or payable in respect of such Advance exceed the maximum amount collectible at the Maximum Rate.

(d) During the Availability Period, for any day on which the Advance Outstanding on the applicable day is less than 75% of the aggregate Commitment at such time, the Borrower shall pay an unused commitment fee (an "Unused Commitment Fee") on the unused amount of the aggregate Commitment at such time, if any, which shall accrue at a rate per annum equal to 0.50%. Accrued Unused Commitment Fees are payable in arrears on each Payment Date, commencing on the first such date to occur after the Closing Date, as provided in Section 2.08. All Unused Commitment Fees are fully earned and nonrefundable upon payment.

(e) The Borrower shall pay the fees set forth in the Fee Letters on the term and conditions provided therein.

(f) All computations of interest and fees hereunder shall be made on the basis of a year of 360 days for the actual number of days (including the first but excluding the last day) elapsed.

SECTION 2.06 Payments and Computations, Etc.

(a) All amounts to be paid or applied by the Facility Servicer from amounts received on the Portfolio Assets in the applicable Collection Account, on Borrower' s behalf, hereunder and in accordance with this Agreement shall be paid or applied in accordance with the terms hereof so that funds are received by the Lenders no later than 2:00 p.m. on the day when due in lawful money of the United States in immediately available funds to the account specified in writing by the Administrative Agent to the Facility Servicer. Any Obligation hereunder shall not be reduced by any distribution of any portion of Collections if at any time such distribution is rescinded or required to be returned by any Lender to the Borrower, the Facility Servicer or any other Person for any reason.

(b) Other than as otherwise set forth herein, whenever any payment hereunder shall be stated to be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time is reflected in the computation of interest and fees.

(c) To the extent that any payment by or on behalf of the Borrower is made to the Administrative Agent or any Lender, or the Administrative Agent or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Bankruptcy Law or otherwise, then (i) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred and (ii) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent.

SECTION 2.07 Collections and Allocations.

(a) The Borrower or the Portfolio Asset Servicer on the Borrower' s behalf shall direct the Obligors and, if applicable, any agent, administrative agent, Underlying Servicer or issuer for any Portfolio Asset to remit all Collections payable to the Borrower with respect to such Portfolio Asset directly to the Collection Account.

(b) The Borrower and the Portfolio Asset Servicer shall, and shall cause its Affiliates to, deposit all Collections received by it or its Affiliates with respect to the Collateral Portfolio to the Collection Account within two Business Days after receipt and shall, and shall cause its Affiliates to, hold in trust for the benefit of the Administrative Agent, for the benefit of the Secured Parties, all such Collections until so deposited.

(c) Upon receipt of Collections in the Collection Account, the Portfolio Asset Servicer shall promptly identify any Collections received as being principal, Interest Collections or Excluded Amounts. The Portfolio Asset Servicer shall further include a statement as to the amount of principal, Interest Collections or Excluded Amounts on deposit in the Collection Account on each Reporting Date in the Servicing Report delivered pursuant to Section 8.08(a). The Portfolio Asset Servicer shall take commercially reasonable steps to confirm that only funds constituting Collections relating to Portfolio Assets are deposited into the Collection Account.

(d) Notwithstanding the fact that Excluded Amounts (other than items described in clauses (iii) and (iv) of the definition thereof) are part of the Collateral Portfolio and constitute Portfolio Assets, prior to the delivery of a Notice of Exclusive Control by the Administrative Agent to the Facility Servicer and Account Bank in accordance with the terms of the Account Control Agreement, the Facility Servicer may (on behalf of the Borrower and at the direction of the Portfolio Asset Servicer) withdraw from the Collection Account any deposits thereto constituting Excluded Amounts if the Portfolio Asset Servicer has, prior to such withdrawal, identified to the Facility Servicer such Excluded Amounts and deliver such Excluded Amounts to the Borrower or as the Borrower may direct. After the delivery of a Notice of Exclusive Control in accordance with the terms of the Account Control Agreement, the Administrative Agent, upon written direction from the Majority Lenders, may withdraw from the Collection Account any deposits therein constituting Excluded Amounts.

(e) Except as set forth in clause (d) above, neither the Borrower nor the Portfolio Asset Servicer shall have any rights of withdrawal with respect to amounts held in the Collection Account.

SECTION 2.08 Remittance Procedures. With respect to Section 2.08(a), on each Payment Date, the Facility Servicer, on behalf of the Borrower, shall instruct the Account Bank to remit funds on deposit in the Collection Account as described in this Section 2.08 and in accordance with the Payment Date Report and shall instruct the Administrative Agent to apply such funds as described in this Section 2.08 and in accordance with the Payment Date Report, such funds to be received by the Administrative Agent no later than 12:00 p.m. on each Payment Date; provided that, at any time after delivery of Notice of Exclusive Control pursuant to the terms of the Account Control Agreement, the Administrative Agent shall instruct the Account Bank to remit funds on deposit in the Collection Account to the Administrative Agent as described in this Section 2.08.

(a) Collections. So long as no Event of Default has occurred and is continuing, the Facility Servicer (on behalf of the Borrower) shall (as directed pursuant to the first paragraph of this Section 2.08) instruct the Account Bank to transfer Collections held by the Account Bank in the Collection Account, in accordance with the Payment Date Report, and shall instruct the Administrative Agent to distribute such funds to the following Persons in the following amounts, calculated as of the most recent Determination Date, subject to the minimum balance requirement included in the Account Control Agreement, in the following order and priority, with respect to Collections:

(i) first, to the Borrower for payment of Borrower Taxes, registration and filing fees and operating expenses then due and owing by the Borrower that are attributable solely to the operations of the Borrower; provided that transfers from the Account Bank for registration and filing fees and operating expenses payable pursuant to this clause (i) shall not, individually or in the aggregate, exceed (A) $75,000 in any calendar quarter and (B) $200,000 in any calendar year;

(ii) second, to the Administrative Agent for the ratable distribution to the Administrative Agent and the Collateral Custodian in payment in full for all accrued fees, expenses and indemnities due and payable to such party hereunder or under any other Transaction Document and under the Fee Letters and Schedule XI;

(iii) third, to the Facility Servicer in payment in full for all accrued fees, expenses and indemnities due and payable to the Facility Servicer hereunder or under any other Transaction Document and under the Fee Letters;

(iv) fourth, to the Administrative Agent for the ratable distribution to the Lenders in payment in full for all accrued fees, expenses and indemnities due and payable to such party hereunder or under any other Transaction Document and under the Fee Letters;

(v) fifth, to the Administrative Agent for distribution to each Lender to pay such Lender' s Pro Rata Share of accrued and unpaid interest owing to such Lender under this Agreement (including any such accrued and unpaid interest or fees from a prior period);

(vi) sixth, if no Event of Default or Cash Trap Event has occurred and is continuing, to the Borrower or as the Borrower may direct (including to make a Restricted Junior Payment to Holdings or for Holdings to make a Restricted Junior Payment to its member or members), an amount equal to the lesser of (a) an amount equal to the minimum amount necessary for the Sponsor to maintain its status as a real estate investment trust for U.S. federal income tax purposes and to avoid income and excise tax under Section 857 and 4981 of the Code (after giving effect to any other available funds of the Sponsor and its Affiliates) as specified in the Servicing Report delivered pursuant to Section 8.08(a) for the most recent Reporting Date and (b) the amount by which Interest Collections exceed the required payments and distributions in clauses (a)(i) through (a)(iv) inclusive;

(vii) seventh, first to the Administrative Agent and the Collateral Custodian for any amounts not paid pursuant to clause (ii) above and second, to the Administrative Agent for distribution to each other Secured Party to pay any other Obligations (other than the principal of the Advances) that are then due and owing to such Secured Party;

(viii) eighth, if a Cash Trap Event has occurred and is continuing, to the Administrative Agent for distribution to each Lender to repay such Lender' s Pro Rata Share of the Advances Outstanding until (A) if such Cash Trap Event arises under clause (a) of the definition thereof, the Advances Outstanding are repaid to an amount where LTV, when recalculated giving effect to such repayment, is equal to the applicable Maximum Quarterly LTV Percentage at the time of such Payment Date or (B) if such Cash Trap Event arises under clauses (b), (c) or (d) of the definition thereof, the Advances Outstanding are paid in full (it being understood that such amount may be only a portion of the outstanding amount with respect to the Advances); and

(ix) ninth, if no Cash Trap Event has occurred and is continuing or would result after giving effect to the payment under this clause (vii), to the Borrower or as the Borrower may direct (including to make a Restricted Junior Payment to Holdings or for Holdings to make a Restricted Junior Payment to its member or members).

(b) Insufficiency of Funds. If the funds on deposit in the Collection Account are insufficient to pay any amounts otherwise due and payable on a Payment Date or otherwise, the Borrower nevertheless remains responsible for, and shall pay when due, all amounts payable under this Agreement and the other Transaction Documents in accordance with the terms of this Agreement and the other Transaction Documents, together with interest accrued as set forth in Section 2.05(b) from the date when due until paid hereunder.

(c) Application of Payments after an Event of Default. Notwithstanding anything herein to the contrary, upon the occurrence and during the continuance of an Event of Default, the Administrative Agent (acting at the direction of the Majority Lenders) may direct the Facility Servicer not to apply the collections in accordance with this Section 2.08(c) and instead may instruct the Account Bank to transfer all Collections in the Collection Account to be applied, subject to the minimum balance requirement included in the Account Control Agreement, in the following order and priority:

(i) first, to the Administrative Agent for the ratable distribution to the Administrative Agent and the Collateral Custodian in payment in full for all accrued fees, expenses and indemnities due and payable to such party hereunder or under any other Transaction Document and under the Fee Letters and Schedule XI;

(ii) second, to the Facility Servicer in payment in full for all accrued fees, expenses and indemnities due and payable to Facility Servicer hereunder or under any other Transaction Document or under the Fee Letters;

(iii) third, to the Administrative Agent for the ratable distribution to each Secured Party to pay any Obligations then due and payable to such Persons (other than with respect to interest or the repayment of Advances) under this Agreement and the other Transaction Documents, in payment in full for all such Obligations then due and payable to such Persons;

(iv) fourth, to the Administrative Agent for distribution to each Lender to pay such Lender' s Pro Rata Share of accrued and unpaid interest owing to such Lender under this Agreement (including any such accrued and unpaid interest or fees from a prior period);

(v) fifth, if (x) no Event of Default described in Section 6.01(a) or (b) has occurred and is continuing, (y) the Borrower has provided at least three Business Days' notice to the Administrative Agent and Initial Lender of the amount of such distribution and (z) the Initial Lender has consented to such distribution, to the Borrower (to make a Restricted Junior Payment to Holdings or for Holdings to make a Restricted Junior Payment to its member or members), an amount equal to the lesser of (a) an amount equal to the minimum amount necessary for the Sponsor to maintain its status as a real estate investment trust for U.S. federal income tax purposes and to avoid income and excise tax under Section 857 and 4981 of the Code (after giving effect to any other available funds of the Sponsor and its Affiliates) and (b) the amount by which Interest Collections exceed the required payments and distributions in clauses (c)(i) through (c)(iv) inclusive;

(vi) sixth, to the Administrative Agent for the ratable distribution to each Lender, to repay such Lender' s Pro Rata Share of the Advances Outstanding, to pay such Advances Outstanding in full; and

(vii) seventh, the balance, if any, after all Obligations have been paid in full as set forth above, to the Borrower or as otherwise required by Applicable Law.

(d) Instructions to the Account Bank. All instructions and directions given to the Account Bank by the Facility Servicer, the Borrower or the Administrative Agent (as applicable) pursuant to Section 2.08 shall be in writing (including instructions and directions transmitted to the Account Bank by e-mail) or pursuant to an electronic transmission system established between the Facility Servicer and the Account Bank on the Closing Date. The Facility Servicer and the Borrower shall transmit to the Administrative Agent by e-mail a copy of all instructions and directions given to the Account Bank by such party pursuant to Section 2.08 concurrently with the delivery thereof. The Administrative Agent shall transmit to the Facility Servicer and the Borrower by e-mail a copy of all instructions and directions given to the Account Bank by the Administrative Agent pursuant to Section 2.08 concurrently with the delivery thereof.

(e) No Presentment. Payment by the Administrative Agent to the Lenders in accordance with the terms hereof shall not require presentment of any Note.

SECTION 2.09 Grant of a Security Interest.

(a) To secure the prompt and complete payment in full when due, whether by lapse of time, acceleration or otherwise, of the Obligations and the performance by the Borrower of all of the covenants and obligations to be performed pursuant to this Agreement and each other Transaction Document, whether now or hereafter existing, due or to become due, direct or indirect, or absolute or contingent, the Borrower hereby grants a security interest to the Administrative Agent, for the benefit of the Secured Parties, in all of the Borrower' s right, title and interest in, to and under (but none of the obligations under) the following, whether now owned or hereinafter acquired (collectively, the "Collateral"): (i) all accounts, money, cash and currency, chattel paper, tangible chattel paper, electronic chattel paper, intellectual property, goods, equipment, fixtures, contract rights, general intangibles, documents, instruments, certificates of deposit, certificated securities, uncertificated securities, financial assets, securities entitlements, commercial tort claims, securities accounts, deposit accounts, inventory, investment property, letter-of-credit rights, software, supporting obligations, accessions or other property consisting of the Portfolio Assets, the other Related Portfolio Assets and Collections (but excluding the obligations thereunder); (ii) all Records; (iii) all Proceeds of the foregoing; (iv) the Collection Account; and (v) all proceeds and products of the foregoing.

(b) To secure the prompt and complete payment in full when due, whether by lapse of time, acceleration or otherwise, of the Obligations and the performance by the Borrower of all of the covenants and obligations to be performed pursuant to this Agreement and each other Transaction Document, whether now or hereafter existing, due or to become due, direct or indirect, or absolute or contingent, Holdings hereby grants a security interest to the Administrative Agent, for the benefit of the Secured Parties, in all of Holding' s right, title and interest in and to, whether now owned or hereinafter acquired (collectively, the "Pledged Equity"): (i) all investment property and general intangibles consisting of the ownership, equity or other similar interests in the Borrower, including the Borrower' s limited liability company interests; (ii) all certificates, instruments, writings and securities evidencing the foregoing; (iii) the operating agreement and other organizational documents of the Borrower and all options or other rights to acquire any membership or other interests under such operating agreement or other organizational documents; (iv) all dividends, distributions, capital, profits and surplus and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the foregoing; (v) all books, records and other written, electronic or other documentation in whatever form maintained now or hereafter by or for Holdings in connection with, and relating to, the ownership of, or evidencing or containing information relating to, the foregoing; and (vi) all proceeds, supporting obligations and products of any of the foregoing.

(c) Anything herein to the contrary notwithstanding, (i) the Borrower shall remain liable under the Collateral Portfolio and the Collateral to the extent set forth therein to perform all of its duties and obligations thereunder to the same extent as if this Agreement had not been executed, (ii) the exercise by the Administrative Agent, for the benefit of the Secured Parties, of any of its rights in the Collateral Portfolio, Collateral or the Pledged Equity does not release the Borrower or Holdings from any of its duties or obligations under the Collateral Portfolio, the Collateral or with respect to the Pledged Equity and (iii) none of the Administrative Agent, any Lender nor any other Secured Party shall have any obligations or liability under the Collateral Portfolio or Collateral by reason of this Agreement, nor shall the Administrative Agent, any Lender nor any other Secured Party be obligated to perform any of the obligations or duties of the Borrower thereunder or to take any action to collect or enforce any claim for payment assigned hereunder.

(d) At the request of the Initial Lender at any time that a Cash Trap Event has occurred and is continuing, the Borrower shall, at its expense, enter into a mortgage, deed of trust or similar security document granting the Administrative Agent a lien on any Portfolio Asset that is real estate owned real property and take such other actions and enter such other documentation as is customary to grant a lien on such property to a commercial lender.

SECTION 2.10 Sale of Portfolio Assets.

(a) Sales. The Borrower may not sell or otherwise transfer or dispose of any Portfolio Asset (a "Sale") unless (i) the Borrower has given the Initial Lender at least five business days advance notice thereof, (ii) either (A) the net cash consideration received by the Borrower in connection with such sale is at least 98% of (1) in the case of a Portfolio Asset that is a loan interest or a loan participation interest, the outstanding principal balance of such Portfolio Asset and (2) in the case of any other Portfolio Asset, the Value of such Portfolio Asset or (B) the Initial Lender has consented to such Sale in its sole discretion and (iii) the net cash proceeds from such Sale will be deposited directly to the Collection Account.

(b) Release of Lien. Upon confirmation by the Facility Servicer of the deposit of the amounts set forth in Section 2.10(a) in cash into the Collection Account and the fulfillment of the other terms and conditions set forth in this Section 2.10 for a Sale (such date of fulfillment, a "Release Date"), then the Portfolio Assets and other Related Portfolio Assets subject of such Sale are removed from the Collateral Portfolio. Subject to compliance by the Borrower with the immediately prior sentence, on the Release Date of each subject Portfolio Asset and Related Portfolio Assets, the Administrative Agent, for the benefit of the Secured Parties, shall automatically and without further action be deemed to have released all right, title and interest and any Lien of the Administrative Agent, for the benefit of the Secured Parties in, to and under such Portfolio Asset and other Related Portfolio Assets and all future monies due or to become due with respect thereto, without recourse, representation or warranty of any kind or nature.

(c) Treatment of Amounts Deposited in the Collection Account. Amounts deposited by the Borrower or the Portfolio Asset Servicer in the Collection Account pursuant to this Section 2.10 on account of Portfolio Assets shall be treated as payments of Collections for purposes of Section 2.08 and shall be applied as provided in Section 2.08(a) or Section 2.08(c), as applicable.

SECTION 2.11 Release of Portfolio Assets. The Borrower may obtain the release from the Lien of the Administrative Agent granted under the Transaction Documents of (a) any Portfolio Asset (and the other Related Portfolio Assets pertaining thereto) removed from the Collateral Portfolio in accordance with the applicable provisions of Section 2.10 and (b) any Portfolio Asset (and the other Related Portfolio Assets pertaining thereto) that terminates or expires by its terms and for which all amounts in respect thereof have been paid in full by the related Obligors and deposited in the Collection Account. The Administrative Agent, for the benefit of the Secured Parties, shall at the sole expense of the Borrower and at the direction of the Majority Lenders, execute such documents and instruments of release as may be prepared by the Borrower and take other such actions as shall reasonably be requested by the Borrower to effect such release of the Lien created pursuant to this Agreement. Upon the release of the Administrative Agent' s Lien as described in the immediately preceding sentence, the Portfolio Asset File will be returned to the Borrower as provided in Section 9.09.

SECTION 2.12 Increased Costs.

(a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender;

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes and (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its Advances, Commitments or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Advances made by such Lender; and the result of any of the foregoing shall be to increase the cost to such Lender of making, continuing or maintaining any Advance or of maintaining its obligation to make any such Advance or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or any other amount) then, upon request of such Lender, the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered.

(b) If any Lender determines that any Change in Law affecting such Lender or any lending office of such Lender or such Lender' s holding company, if any, regarding capital or liquidity requirements, has or would have the effect of reducing the rate of return on such Lender' s capital or on the capital of such Lender' s holding company, if any, as a consequence of this Agreement, to a level below that which such Lender or such Lender' s holding company could have achieved but for such Change in Law (taking into consideration such Lender' s policies and the policies of such Lender' s holding company with respect to capital adequacy), then from time to time the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender' s holding company for any such reduction suffered.

(c) A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in Section 2.12(a) or (b) and delivered to the Borrower, shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate on the next Payment Date that is not less than ten days after receipt thereof.

(d) Failure or delay on the part of any Lender to demand compensation pursuant to this Section 2.12 shall not constitute a waiver of such Lender' s right to demand such compensation; provided that the Borrower shall not be required to compensate a Lender pursuant to this Section 2.12 for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions, and of such Lender' s intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

SECTION 2.13 Taxes.

(a) All payments made by or on account of any obligation of the Borrower under this Agreement or any other Transaction Document (including by the Facility Servicer on behalf of the Borrower) will be made free and clear of and without deduction or withholding for or on account of any Taxes, except as required by Applicable Law. If any Taxes are required by Applicable Law (as determined in the good faith discretion of an applicable withholding agent) to be deducted and withheld from any such payments, then the applicable withholding agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with Applicable Law and, if such Tax is an Indemnified Tax, then the amount payable by the Borrower will be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 2.13) the applicable Recipient receives an amount equal to the sum that it would have received had no such deduction or withholding been made. Both the Borrower and the Administrative Agent may be a withholding agent.

(b) The Borrower shall timely pay to the relevant Governmental Authority in accordance with Applicable Law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes

(c) The Borrower will indemnify each Recipient for the full amount of Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 2.13) payable or paid by such Recipient or required to be deducted or withheld from payments to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error. All payments in respect of this indemnification shall be made within 15 days from the date a written invoice therefor is delivered to the Borrower, with a copy to the Facility Servicer.

(d) Within 15 days after the date of any payment by the Borrower or, at the direction of the Borrower, by the Facility Servicer from the Collection Account on behalf of the Borrower (to the extent amounts are available in the Collection Account) to the applicable Governmental Authority of any Taxes pursuant to this Section 2.13, the Borrower or the Facility Servicer, as applicable, will furnish to the Administrative Agent at the applicable address set forth on this Agreement, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment (to the extent received by the Facility Servicer or the Borrower, as applicable), a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent (acting at the direction of the Majority Lenders). For the avoidance of doubt, in no case or circumstance is the Facility Servicer liable to pay any Taxes pursuant to this Agreement, and if it pays any such amounts, it will solely be on behalf of the Borrower, from the Collection Account to the extent amounts are available therein.

(e)

(i) Each Lender (including any assignee thereof) that is not a "United States person" within the meaning of Section 7701(a)(30) of the Code (a "Non-U.S. Lender") shall deliver to the Borrower and the Administrative Agent two properly completed and duly executed copies of whichever (if any) of the following is applicable for claiming complete exemption from, or a reduced rate of, U.S. federal withholding tax on any payment by or on behalf of the Borrower under this Agreement: (i) U.S. Internal Revenue Service Form W-8BEN or W-8BEN-E (claiming the benefits of an applicable tax treaty), W-8IMY, W-8EXP or W-8ECI or (ii) in the case of a Non-U.S. Lender claiming exemption from U.S. federal withholding tax under Section 871(h) or 881(c) of the Code with respect to payments of "portfolio interest" a statement substantially in the form of Exhibit F to the effect that such Lender is eligible for a complete exemption from withholding of U.S. taxes under Section 871(h) or 881(c) of the Code (a "Tax Compliance Certificate") and a Form W-8BEN or W-8BEN-E, in each case (A) with any required attachments (including, with respect to any Lender that provides an U.S. Internal Revenue Service Form W-8IMY, any of the forms or other documentation described in clauses (i) and (ii) above for any of the direct or indirect owners of such Lender) and (B) any subsequent versions thereof or successors thereto. In addition, each Lender (including any assignee thereof) that is not a Non-U.S. Lender shall deliver to the Borrower and the Administrative Agent two copies of U.S. Internal Revenue Service Form W-9, properly completed and duly executed and claiming complete exemption, or shall otherwise

establish an exemption, from U.S. backup withholding. Such forms shall be delivered by each Lender on or about the date it becomes a party to this Agreement and from time to time thereafter as reasonably requested by the Borrower or the Administrative Agent. In addition, each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so. Notwithstanding any other provision of this paragraph, a Lender shall not be required to deliver any form pursuant to this paragraph that such Lender is not legally able to deliver.

(ii) If a payment made to a Lender under any Transaction Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or Administrative Agent such documentation prescribed by law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or Administrative Agent as may be necessary for the Borrower and Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender' s obligations under FATCA or to determine the amount, if any, to deduct and withhold from such payment. Solely for purposes of this Section 2.13(e), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(iii) The Administrative Agent, on or prior to the Closing Date, and any successor Administrative Agent, on or prior to the date any such successor Administrative Agent is appointed successor to the Administrative Agent pursuant to Section 7.05, in each case shall deliver to the Borrower a copy of an IRS Form W-9, properly completed and duly executed and claiming complete exemption, or shall otherwise establish an exemption, from U.S. backup withholding.

(f) A Lender that is entitled to an exemption from or reduction of withholding tax under the law of the jurisdiction in which the Borrower is located, or any treaty to which such jurisdiction is a party, with respect to payments under this Agreement shall deliver to the Borrower and the Administrative Agent, at the time or times prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation or information prescribed by applicable law as will permit such payments to be made without withholding or at a reduced rate (or otherwise permit the Borrower and the Administrative Agent to determine the applicable rate of withholding); provided that such Lender is legally entitled to complete, execute and deliver such documentation and in such Lender' s reasonable judgment such completion, execution or submission would not subject such Lender to any material unreimbursed cost or expense or would not materially prejudice the legal or commercial position of such Lender.

(g) If any party hereto determines, in its sole discretion, exercised in good faith, that it has received a refund of any Taxes for which it was indemnified by the Borrower, or the Facility Servicer on behalf of the Borrower, in each case, pursuant to this Section 2.13 (including by the payment of additional amounts pursuant to this Section 2.13) or with respect to which the Borrower or the Facility Servicer on behalf of the Borrower, it shall pay to the Borrower or the Facility Servicer, as applicable, an amount equal

to such refund (but only to the extent of indemnity payments made under this Section 2.13 with respect to the Taxes giving rise to such refund), net of all reasonable out-of-pocket expenses (including additional Taxes, if any) of such party, as the case may be, incurred in obtaining such refund, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). The Borrower, upon the request of such party, shall repay to such party the amount paid over pursuant to this Section 2.13(g) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this Section 2.13(g), in no event will the indemnified party be required to pay any amount to the Borrower pursuant to this Section 2.13(g) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the Borrower or any other Person.

(h) Without prejudice to the survival of any other agreement of the Borrower hereunder, the agreements and obligations of the Borrower contained in this Section 2.13 survive the resignation or replacement of the Administrative Agent or Collateral Custodian, any assignment of rights by or replacement of any Lender, the termination of Commitments, the repayment, satisfaction or discharge of all obligations under any Transaction Document or termination of this Agreement.

(i) The Borrower hereby covenants with the Administrative Agent that the Borrower will provide the Administrative Agent with information available to the Borrower so as to enable the Administrative Agent to determine whether or not the Administrative Agent is obliged to make any withholding, including FATCA Withholding Tax, in respect of any payments with respect to an Advance (and if applicable, to provide the necessary detailed information to effectuate any withholding, including FATCA Withholding Tax, such as setting forth applicable amounts to be withheld). For the avoidance of doubt, the term 'applicable law' for purposes of this Section 2.13(i) includes U.S. federal tax law and FATCA. Upon request from the Administrative Agent, the Borrower will provide such additional information that the Borrower may have to assist the Administrative Agent in making any withholdings or informational reports.

(j) If the Internal Revenue Service or any authority of the United States of America or other jurisdiction asserts a claim that the Administrative Agent did not properly withhold tax from amounts paid to or for the account of any Lender under this Agreement (because the appropriate form was not delivered or was not properly executed, or because such Lender failed to notify the Administrative Agent of a change in circumstances which rendered the exemption from, or reduction of, withholding tax ineffective, or for any other reason) such Lender shall indemnify promptly the Administrative Agent fully for all amounts paid by the Administrative Agent, directly or indirectly, as Tax or otherwise, together with all reasonable expenses incurred.

(k) The Lenders and any transferees or assignees thereof after the Closing Date will be required to provide to the Administrative Agent or its agents all information, documentation or certifications reasonably requested by the Administrative Agent to permit the Administrative Agent to comply with its tax reporting obligations under applicable laws, including any applicable cost basis reporting obligations.

ARTICLE III.
CONDITIONS PRECEDENT

SECTION 3.01 Conditions Precedent to Effectiveness. This Agreement becomes effective upon, and no Lender is obligated to make any Advance, nor is any Lender, the Collateral Custodian, the Facility Servicer or the Administrative Agent obligated to take, fulfill or perform any other action hereunder until, the satisfaction of the following conditions precedent:

(a) this Agreement, all other Transaction Documents and all other agreements, instruments, certificates and other documents listed on Schedule III have been duly executed by, and delivered to, the parties hereto and thereto;

(b) the Sponsor and each Subsidiary thereof that owns a Specified CLO Asset have entered into a guaranty (the "Guaranty Agreement") pursuant to which, among other things, (i) the Sponsor guarantees the Obligations, (ii) the Sponsor and such Subsidiaries agree not to incur any indebtedness (other than indebtedness permitted thereunder), (iii) the Sponsor and such Subsidiaries agree not to create a Lien on its assets (other than Liens permitted thereunder) and (iv) the Sponsor and such Subsidiaries agree to provide the Lenders with prior notice of any Material CLO Modification;

(c) the Borrower has provided the Facility Servicer and the Initial Lender with a copy of the Valuation Policy as in effect on the Closing Date;

(d) the representations contained in Sections 4.01 and 4.02 are true and correct;

(e) all up-front expenses and fees (including reasonable legal fees and expenses and any fees required under the Fee Letters and Schedule XI) that are required to be paid hereunder or by the Fee Letters and Schedule XI have been paid in full;

(f) the Borrower has received all material governmental, shareholder and third party consents and approvals necessary (or any other material consents as determined in the reasonable discretion of the Lenders) in connection with the transactions contemplated by this Agreement and the other Transaction Documents and all applicable waiting periods have expired without any action being taken by any Person that could reasonably be expected to restrain, prevent or impose any material adverse conditions on the Borrower or such other transactions or that could seek or threaten any of the foregoing, and no law or regulation is applicable which in the reasonable judgment of the Lenders could reasonably be expected to have such effect;

(g) no action, proceeding or investigation has been instituted, threatened or proposed before any Governmental Authority to enjoin, restrain, or prohibit, or to obtain substantial damages in respect of, or which is related to or arises out of this Agreement or the other Transaction Documents or the consummation of the transactions contemplated hereby or thereby, or which, at the Majority Lenders' discretion, would make it inadvisable to consummate the transactions contemplated by this Agreement or the other Transaction Documents or the consummation of the transactions contemplated hereby or thereby; and

(h) the Administrative Agent has received all documentation and other information requested by the Administrative Agent acting at the direction of the Majority Lenders or required by regulatory authorities with respect to the Borrower and the Facility Servicer under applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act, all in form and substance reasonably satisfactory to the Administrative Agent and the Majority Lenders.

SECTION 3.02 Conditions Precedent to the Initial Advance. The initial Advance is subject to the further conditions precedent that on the date of such Advance:

(a) the Collection Account has been established pursuant to the Account Control Agreement and the Administrative Agent and the Initial Lender have received a favorable opinion of counsel to the Borrower, reasonably acceptable to the Initial Lender and addressed to the Administrative Agent, the Collateral Custodian and the Lenders, relating thereto;

(b) the Borrower has obtained valid ownership interests in the Initial Portfolio Assets and all actions required to be taken or performed under Section 3.04 with respect to the Transfer of such Initial Portfolio Assets have been taken or satisfied;

(c) the Borrower (or the Portfolio Asset Servicer on its behalf) has delivered to the Collateral Custodian (with a copy of any electronic delivery to the Initial Lender) (i) hard copies of any promissory notes, possessory collateral and any original Required Portfolio Documents that the Borrower requires of the Obligors, (ii) electronic copies of the other Required Loan Documents, (iii) the Portfolio Asset Checklist pertaining to each Initial Portfolio Asset and (iv) a Custodial and Account Control Agreement as described in clause (a) of the definition thereof, in each case at least five Business Days prior to the date of such Advance;

(d) the Borrower has delivered to the Administrative Agent and the Lenders a Notice of Borrowing and a Quarterly LTV Certificate as provided in Section 2.02(a);

(e) such date occurs during the Availability Period;

(f) on and as of such date, after giving effect to such Advance and the transactions related thereto, including the use of proceeds thereof, (i) the initial Advance does not exceed the Total Facility Amount and (B) LTV does not exceed 55% (after giving effect to such Advance and any Transfer effectuated from the use of proceeds thereof);

(g) no Unmatured Event of Default, Event of Default or Cash Trap Event has occurred and is continuing or would result from such initial Advance or application of proceeds therefrom;

(h) the representations contained in Sections 4.01 and 4.02 are true and correct in all respects before and after giving effect to such initial Advance and to the application of proceeds therefrom, on and as of such day as though made on and as of such date (or, in the case of any such representation expressly stated to have been made as of a specific date, as of such specific date);

(i) all expenses and fees that are required to be paid hereunder or by the Fee Letters have been paid in full; and

(j) all actions required to be taken or performed (including the filing of UCC financing statements) to give the Administrative Agent, for the benefit of the Secured Parties, a first priority perfected security interest (subject only to Permitted Liens) in the Initial Portfolio Asset and the Related Portfolio Assets related thereto and the proceeds thereof have been taken or performed.

The request for the initial Advance pursuant to this Section 3.02 is deemed a representation by the Borrower that the conditions specified in this Section 3.02 have been met

SECTION 3.03 Conditions Precedent to All Advances. Each Advance, other than the initial Advance, is subject to the further conditions precedent that on the date of such Advance:

(a) the Borrower has delivered to the Administrative Agent and the Lenders a Notice of Borrowing and a Quarterly LTV Certificate as provided in Section 2.02(a);

(b) such date occurs during the Availability Period;

(c) on and as of such date, after giving effect to such Advance and the transactions related thereto, including the use of proceeds thereof, (i) the aggregate Advances made hereunder (without giving effect to any repayment or prepayment thereof) do not exceed the Total Facility Amount and (B) LTV does not exceed 55% (after giving effect to such Advance and any Transfer effectuated from the use of proceeds thereof);

(d) no Unmatured Event of Default, Event of Default or Cash Trap Event has occurred and is continuing or would result from such Advance or application of proceeds therefrom;

(e) the representations contained in Sections 4.01 and 4.02 are true and correct in all material respects before and after giving effect to such Advance and to the application of proceeds therefrom, on and as of such day as though made on and as of such date (or, in the case of any such representation expressly stated to have been made as of a specific date, as of such specific date); and

(f) all expenses and fees that are required to be paid hereunder or by the Fee Letters have been paid in full.

Each request for an Advance pursuant to this Section 3.03 is deemed a representation by the Borrower that the conditions specified in this Section 3.03 have been met.

SECTION 3.04 Conditions to Transfers of Portfolio Assets. Each Transfer of an Eligible Portfolio Asset, other than the Transfer of the Initial Portfolio Assets, is subject to the further conditions precedent that:

(a) no Event of Default exists or would result from such Transfer;

(b) (i) the Borrower has given the Initial Lender at least five business days advance notice of such Transfer, (ii) the Initial Lender has consented to such Transfer in its sole discretion and (iii) the Borrower has provided the Initial Lender with such information relating to the Portfolio Asset subject to such Transfer as is provided on Schedule I or as is otherwise requested by the Initial Lender;

(c) all actions required to be taken or performed (including the filing of UCC financing statements) to give the Administrative Agent, for the benefit of the Secured Parties, a first priority perfected security interest (subject only to Permitted Liens) in such Portfolio Asset and the Related Portfolio Assets related thereto and the proceeds thereof have been taken or performed; and

(d) the Borrower (or the Portfolio Asset Servicer on its behalf) has delivered to the Collateral Custodian (with a copy of any electronic delivery to the Initial Lender) (i) hard copies of any promissory notes, possessory collateral and any original Required Portfolio Documents that the Borrower requires of the Obligors, (ii) electronic copies of the other Required Loan Documents, (iii) the Portfolio Asset Checklist pertaining to each Initial Portfolio Asset and (iv) if required by the Administrative Agent or Initial Lender, a Custodial and Account Control Agreement as described in clause (b) of the definition thereof, in each case at least five Business Days prior to the Closing Date pertaining to such Portfolio Asset.

Each Transfer of an Eligible Portfolio Asset pursuant to this Section 3.04 is deemed a representation by the Borrower that the conditions specified in this Section 3.04 have been met.

ARTICLE IV.
REPRESENTATIONS

SECTION 4.01 Representations of the Loan Parties. Each Loan Party hereby represents to the Secured Parties as follows:

(a) Organization, Good Standing and Due Qualification. Such Loan Party is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization, with all requisite organizational power and authority necessary to own the Portfolio Assets and the Collateral Portfolio and to conduct its business as such business is presently conducted and to enter into and perform its obligations pursuant to this Agreement and the other Transaction Documents to which it is a party. Such Loan Party is duly qualified to do business, and has obtained all licenses and approvals, under the laws of its jurisdiction of organization and in all other jurisdictions necessary to own its assets and to transact the business in which it is engaged, and is duly qualified and in good standing under the laws of its jurisdiction of organization and in each other jurisdiction where the transaction of such business or its ownership of the Portfolio Assets and the Collateral Portfolio and the conduct of its business requires such qualification, except as would not reasonably be expected to have a Material Adverse Effect.

(b) Power and Authority; Due Authorization; Execution and Delivery. Such Loan Party (i) has the power, authority, and legal right to (A) execute and deliver this Agreement and the other Transaction Documents to which it is a party and (B) perform and carry out the terms of this Agreement and the other Transaction Documents to which it is a party and the transactions contemplated thereby and (ii) has taken all necessary action to (A) authorize the execution, delivery and performance of this Agreement and each of the other Transaction Documents to which it is a party, (B) grant to the Administrative Agent, for the benefit of the Secured Parties, a first priority perfected security interest in the Collateral on the terms and conditions of this Agreement and the other Transaction Documents, subject only to Permitted Liens and (C) authorize the Facility Servicer to perform the actions contemplated herein. This Agreement and each other Transaction Document have been duly executed and delivered by such Loan Party party thereto.

(c) Binding Obligation. This Agreement and each of the other Transaction Documents to which such Loan Party is a party constitutes the legal, valid and binding obligation of such Loan Party, enforceable against such Loan Party in accordance with their respective terms, except as the enforceability hereof and thereof may be limited by Bankruptcy Laws and by general principles of equity.

(d) All Consents Required. No consent of any other party and no consent, license, approval or authorization of, or registration or declaration with, any Governmental Authority, bureau or agency is required in connection with the execution, delivery or performance by the Borrower of this Agreement or any Transaction Document to which it is a party or the validity or enforceability of this Agreement or any such Transaction Document or the transfer of an ownership interest in the Portfolio Assets or grant of a security interest in the Collateral, other than such as have been met or obtained and are in full force and effect.

(e) No Violation. The execution, delivery and performance of this Agreement and the other Transaction Documents and all other agreements and instruments executed and delivered or to be executed and delivered in connection with the Transfer of any Portfolio Asset will not (i) conflict with, result in any breach of any of the terms and provisions of, or constitute (with or without notice or lapse of time or both) a default under, such Loan Party' s organizational documents, (ii) result in the creation or imposition of any Lien on the Collateral other than Permitted Liens or (iii) violate any Applicable Law in any material respect or (iv) violate any contract or other agreement to which such Loan Party is a party or by which the or any property or assets of the Borrower may be bound.

(f) No Proceedings; No Injunctions. There is no litigation, proceeding or investigation pending or, to the knowledge of such Loan Party, threatened against such Loan Party or any properties of such Loan Party, before any Governmental Authority (i) asserting the invalidity of this Agreement or any other Transaction Document, (ii) seeking to prevent the consummation of any of the transactions contemplated by this Agreement or any other Transaction Document or (iii) that could reasonably be expected to be adversely determined, and, if so determined, either individually or in the aggregate would reasonably be expected to have a Material Adverse Effect. No injunction, writ, restraining order or other order of any nature adversely affects, in any material respect, such Loan Party' s performance of its obligations under this Agreement or any Transaction Document to which a Loan Party is a party

(g) No Liens. The Collateral is owned by such Loan Party free and clear of any Liens except for Permitted Liens.

(h) Transfer of Collateral Portfolio. Except as otherwise expressly permitted by the terms of this Agreement, no item of Collateral Portfolio has been Sold, assigned or pledged by such Loan Party to any Person, other than in accordance with Article II and the grant of a security interest therein to the Administrative Agent, for the benefit of the Secured Parties, pursuant to the terms of this Agreement.

(i) Sole Purpose. The Borrower has been formed solely for the purpose of, and has not engaged in any business activity other than, the acquisition of commercial loans, the pledge and financing thereof and transactions incidental thereto and activities of the type expressly permitted under Section 5.01(a). The Borrower is not party to any agreements other than this Agreement and the other Transaction Documents to which it is a party and the Required Portfolio Documents and other agreements listed on the Portfolio Asset Checklist for each Portfolio Asset in respect of which the Borrower is a lender or loan participant.

(j) Separate Entity. Such Loan Party is operated as an entity with assets and liabilities distinct from those of the Sponsor and any Affiliates thereof, and such Loan Party hereby acknowledges that the Administrative Agent and the Lenders are entering into the transactions contemplated by this Agreement in reliance upon such Loan Party' s identity as a separate legal entity from the Sponsor and from each such other Affiliate of the Sponsor.

(k) Taxes. All tax returns (including all foreign, federal, State, local and other tax returns whether filed on a standalone or group basis) required to be filed by, on behalf of or with respect to the income and assets of the Borrower (including the Collateral Portfolio) have been timely filed and neither the Borrower nor Holdings is liable for Taxes payable by any other Person, except as could not reasonably

be expected to have a Material Adverse Effect. The Borrower and Holdings have paid or made adequate provisions for the payment of all Taxes, assessments and other governmental charges made against it or any of its property (including the Collateral Portfolio) except for those Taxes being contested in good faith by appropriate proceedings and in respect of which it has established proper reserves in accordance with GAAP on its books or as could not reasonably be expected to have a Material Adverse Effect. No Tax lien (other than a Permitted Lien) or similar adverse claim has been filed, and no claim is being asserted, with respect to any such Tax, assessment or other governmental charge, in each case, with respect to such Loan Party or its assets.

(l) Location. Except as permitted pursuant to Section 5.02(l), such Loan Party' s location (within the meaning of Article 9 of the UCC) is the State of Delaware. Except as permitted pursuant to Section 5.02(l), the principal place of business and chief executive office of such Loan Party (and the location of the Loan Party' s records regarding the Collateral (other than those delivered to the Collateral Custodian pursuant to this Agreement)) is located at the address set forth under its name in Section 11.02.

(m) Tradenames. Except as permitted pursuant to Section 5.02(l), such Loan Party' s legal name is as set forth in this Agreement. Except as permitted pursuant to Section 5.02(l), no Loan Party has changed its name since its formation and neither has tradenames, fictitious names, assumed names or "doing business as" names. Such Loan Party' s jurisdiction of formation is the State of Delaware, and, except as permitted pursuant to Section 5.02(l), no Loan Party has changed its jurisdiction of formation.

(n) No Subsidiaries. The Borrower does not own or hold the equity interests in any other Person and Holdings does not own or hold the equity interest in any other Person other than Borrower.

(o) Reports Accurate. All Notices of Borrowing, Quarterly LTV Certificates and other written or electronic information, exhibits, financial statements, documents, books, records or reports furnished by such Loan Party to the Administrative Agent, the Facility Servicer or the Collateral Custodian in connection with this Agreement and the other Transaction Documents (as modified or supplemented by other information so furnished at that time), taken as a whole, are accurate, true and correct in all material respects, and no such document contains any material misstatement of fact or omits to state a material fact or any fact necessary to make the statements contained therein, taken as a whole, in light of the circumstances under which they were made, not materially misleading; provided that (i) solely with respect to written or electronic information furnished by the Borrower which was provided to the Borrower from an Obligor with respect to a Portfolio Asset (or derived thereof), such information need only be accurate, true and correct to the knowledge of the Borrower and (ii) with respect to projected or pro forma financial information, the foregoing representation is only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time of preparation and delivery (it being understood that such projected information may vary from actual results and that such variances may be material).

(p) Exchange Act Compliance; Regulations T, U and X. None of the transactions contemplated herein or in the other Transaction Documents (including the use of Proceeds from the sale of any item in the Collateral Portfolio) will violate or result in a violation of Section 7 of the Exchange Act or Regulations T, U and X of the Board of Governors of the Federal Reserve System, 12 C.F.R., Chapter II. Such Loan Party does not own or intend to carry or purchase, and proceeds from the Advances will not be used to carry or purchase, any "margin stock" within the meaning of Regulation U or to extend "purpose credit" within the meaning of Regulation U.

(q) Event of Default or Unmatured Event of Default. No event has occurred which constitutes an Event of Default or Unmatured Event of Default, in each case, which has not been previously disclosed to the Administrative Agent and the Lenders in writing.

(r) ERISA. Except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, (i) the present value of all vested benefits under each "employee pension benefit plan" as such term is defined in Section 3(2) of ERISA, other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by the Borrower or any ERISA Affiliate of the Borrower or to which the Borrower or any ERISA Affiliate of the Borrower contributes or has an obligation to contribute, or has any liability (each, a "Pension Plan"), does not exceed the value of the assets of the Pension Plan allocable to such vested benefits (based on the value of such assets as of the last annual valuation date for the Pension Plan) determined in accordance with the assumptions used for funding such Pension Plan pursuant to Sections 412 and 430 of the Code for the applicable plan year, (ii) no failure by the Borrower to meet the minimum funding standard set forth in Sections 302(a) or 303 of ERISA and Sections 412(a) and 430 of the Code has occurred with respect to any Pension Plan, (iii) neither the Borrower nor any ERISA Affiliate of the Borrower has withdrawn from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a "substantial employer" (as defined in Section 4001(a)(2) of ERISA), (iv) no Reportable Event has occurred with respect to any Pension Plan, (v) no notice of intent to terminate a Pension Plan has been filed by the plan administrator under Section 4041 of ERISA, nor has any Pension Plan been terminated under Section 4041 of ERISA and (vi) the Pension Benefit Guaranty Corporation has not instituted proceedings to terminate, or appointed a trustee to administer, a Pension Plan under Section 4042 of ERISA, and no event has occurred or condition exists which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan.

(s) Broker-Dealer. Such Loan Party is not a broker-dealer or subject to the Securities Investor Protection Act of 1970.

(t) Instructions for Collections. The Collection Account is the only account to which the Obligors or any agent, administrative agent, Counterparty Lender, Underlying Agent, Underlying Servicer or issuer of any Portfolio Asset have been instructed by the Borrower or the Portfolio Asset Servicer on Borrower' s behalf, to send Collections with respect to the Portfolio Assets. The Borrower has not granted any Person other than the Administrative Agent, for the benefit of the Secured Parties, an interest in the Collection Account.

(u) Investment Company Act. Such Loan Party is not required to register as an "investment company" under the provisions of the 1940 Act.

(v) Compliance with Applicable Law. Except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, such Loan Party is in compliance with all Applicable Law to which it may be subject, and no item of the Collateral Portfolio contravenes any Applicable Law (including all applicable predatory and abusive lending laws, laws, rules and regulations relating to licensing, truth in lending, fair credit billing, fair credit reporting, equal credit opportunity, fair debt collection practices and privacy).

(w) Collections. All Collections received by such Loan Party with respect to the Collateral Portfolio are held in trust for the benefit of the Administrative Agent, for the benefit of the Secured Parties, until deposited into the Collection Account as provided herein.

(x) Set-Off etc. No Portfolio Asset has been compromised, adjusted, extended, satisfied, subordinated, rescinded, set-off or modified by the Borrower, or the Obligor thereof, and no item in the Collateral Portfolio is subject to compromise, adjustment, extension, satisfaction, subordination, rescission, set-off, counterclaim, defense, abatement, suspension, deferment, deduction, reduction, termination or modification, whether arising out of transactions concerning the Collateral Portfolio or otherwise, by the Borrower or the Obligor with respect thereto, except, in each case, for amendments, extensions and modifications, if any, (x) amendments, extensions and modifications that do not constitute Material Modifications or Material CLO Modifications and (y), with respect to Material Modifications and Material CLO Modifications, Material Modifications and Material CLO Modifications permitted pursuant to Section 5.01(e).

(y) Environmental. With respect to each item of Underlying Collateral, to the knowledge of such Loan Party, except as expressly disclosed to the Initial Lender with respect to such Portfolio Asset prior to the Transfer thereof or as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect: (i) the related Obligor' s operations comply in all material respects with all applicable Environmental Laws; (ii) none of the related Obligor' s operations is the subject of a Federal or State investigation evaluating whether any remedial action, involving expenditures, is needed to respond to a release of any Hazardous Materials into the environment; and (iii) the related Obligor does not have any material contingent liability in connection with any release of any Hazardous Materials into the environment. Such Loan Party has not received any material written notice of, or inquiry from any Governmental Authority regarding, any violation, alleged violation, non-compliance, liability or potential liability regarding environmental matters or compliance with Environmental Laws with regard to any of the Underlying Collateral.

(z) Anti-Money Laundering Laws. (i) No Covered Entity (A) is a Sanctioned Person; (B) has any of its assets in a Sanctioned Country or in the possession, custody or control of a Sanctioned Person in violation of any Anti-Terrorism Law; (C) does business in or with, or derives any of its income from investments in or transactions with, any Sanctioned Country or Sanctioned Person in violation of any Anti-Terrorism Law; or (D) engages in any dealings or transactions prohibited by any Anti-Terrorism Law; (ii) the proceeds of the Advances will not be used by the Borrower, or to the Borrower' s actual knowledge by any other Person, 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; (iii) the funds used to pay the Lenders, the Administrative Agent or the Facility Servicer, to the extent received from the Borrower, are not derived from any unlawful activity; and (iv) to the Loan Parties' knowledge, each Covered Entity is in compliance with, and no Covered Entity engages in any dealings or transactions prohibited by, any Anti-Terrorism Law.

(aa) Security Interest.

(i) This Agreement creates a valid and continuing security interest (as defined in the applicable UCC) in the Collateral in favor of the Administrative Agent, on behalf of the Secured Parties, which security interest is prior to all other Liens (except for Permitted Liens), and is enforceable as such against creditors of and purchasers from the Borrower.

(ii) The Collateral Portfolio is comprised of "instruments", "financial assets", "security entitlements", "general intangibles", "chattel paper", "accounts", "certificated securities", "uncertificated securities", "securities accounts", "deposit accounts", "supporting obligations" or "insurance" (each as defined in the applicable UCC), and the proceeds of the foregoing, or such other category of collateral under the applicable UCC as to which the Borrower has complied with its obligations under this Section 4.01(aa).

(iii) The Collection Account is not in the name of any Person other than the Borrower, subject to the security interest of the Administrative Agent, for the benefit of the Secured Parties.

(iv) The Collection Account constitutes a "deposit account" as defined in the applicable UCC.

(v) [Reserved].

(vi) The Borrower has authorized the filing of all appropriate financing statements in the proper filing office in the appropriate jurisdictions under Applicable Law in order to perfect the security interest in the Collateral and that portion of the Portfolio Assets in which a security interest granted to the Administrative Agent, on behalf of the Secured Parties, under this Agreement may be perfected by filing; provided that filings in respect of real property shall not be required.

(vii) Other than as expressly permitted by the terms of the Transaction Documents (including Permitted Liens), this Agreement and the security interest granted to the Administrative Agent, on behalf of the Secured Parties, pursuant to this Agreement, the Borrower has not pledged, assigned, sold, granted a security interest in or otherwise conveyed any of the Collateral. The Borrower has not authorized the filing of and is not aware of any financing statements against the Borrower that include a description of collateral covering the Collateral other than any financing statement (A) that has been terminated or fully and validly assigned to the Administrative Agent or (B) reflecting the transfer of assets on a Release Date pursuant to (and simultaneously with or subsequent to) the consummation of any transaction contemplated under (and in compliance with the conditions set forth in) Section 2.10.

(viii) None of the underlying promissory notes or related loan registers or Participation Agreements or related participation registers, as applicable, that constitute or evidence the Portfolio Assets has any marks or notations indicating that they have been pledged, assigned or otherwise conveyed to any Person other than the Administrative Agent, on behalf of the Secured Parties.

(ix) With respect to any Collateral that constitutes a "certificated security," such certificated security has been delivered to the Administrative Agent, on behalf of the Secured Parties and, if in registered form, has been specially Indorsed to the Administrative Agent, for the benefit of the Secured Parties, or in blank by an effective Indorsement or has been registered in the name of the Administrative Agent, for the benefit of the Secured Parties, upon original issue or registration of transfer by the Borrower of such certificated security.

(x) With respect to any Collateral that constitutes an "uncertificated security", the Borrower has caused the issuer of such uncertificated security to register the Administrative Agent, on behalf of the Secured Parties, as the registered owner of such uncertificated security.

(xi) The Pledged Equity issued by the Borrower has been duly and validly authorized and issued by the Borrower.

(xii) This Agreement creates a valid and continuing security interest (as defined in the applicable UCC) in the Pledged Equity in favor of the Administrative Agent, on behalf of the Secured Parties, which security interest is prior to all other Liens (except for Permitted Liens), and is enforceable as such against creditors of and purchasers from Holdings.

(xiii) Holdings has authorized the filing of all appropriate financing statements in the proper filing office in the appropriate jurisdictions under Applicable Law in order to perfect the security interest in the Pledged Equity.

(xiv) Other than as expressly permitted by the terms of the Transaction Documents (including Permitted Liens), this Agreement and the security interest granted to the Administrative Agent, on behalf of the Secured Parties, pursuant to this Agreement, Holdings has not pledged, assigned, sold, granted a security interest in or otherwise conveyed any of the Pledged Equity. Holdings has not authorized the filing of and is not aware of any financing statements against Holdings that include a description of collateral covering the Pledged Equity. Holdings is not aware of the filing of any judgment or Tax lien filings against Holdings, other than Permitted Liens.

(xv) Holdings consents to the transfer of any Pledged Equity to the Administrative Agent or its designee, in connection with an exercise of remedies in accordance with Applicable Law following, and during the occurrence of, an Event of Default and to the substitution of the Administrative Agent or its designee as a member in the Borrower with all the rights and powers related thereto, subject to the terms of this Agreement.

(xvi) The Pledged Equity shall not be represented by a certificate unless (A) the limited liability company agreement of the Borrower expressly provides that such interest shall be a "security" within the meaning of Article 8 of the UCC of the applicable jurisdiction and (B) such certificate shall be delivered as provided in clause (xvii) below.

(xvii) If any portion of the Pledged Equity constitutes a "certificated security," such certificated security has been delivered to the Administrative Agent, on behalf of the Secured Parties and, if in registered form, has been specially Indorsed to the Administrative Agent, for the benefit of the Secured Parties, or in blank by an effective Indorsement or has been registered in the name of the Administrative Agent, for the benefit of the Secured Parties, upon original issue or registration of transfer by Holdings of such certificated security.

(xviii) If any portion of the Pledged Equity constitutes an "uncertificated security", Holdings has caused the issuer of such uncertificated security to register the Administrative Agent, on behalf of the Secured Parties, as the registered holder of such uncertificated security.

(bb) The Borrower, in connection with the indemnity provided in Section 10.01, has access to sufficient capital to meet any and all indemnity obligations stated therein and covenants.

SECTION 4.02 Representations of the Borrower Relating to the Agreement and the Collateral Portfolio. The Borrower hereby represents to the Secured Parties as follows:

(a) Eligibility of Collateral Portfolio. (i) The written information in a Notice of Borrowing or with respect to the Initial Portfolio Assets and any other Portfolio Asset Transferred to the Borrower that is provided to the Initial Lender is true and correct as of the date so provided and (ii) with respect to each item of Collateral Portfolio, all consents, licenses, approvals or authorizations of or registrations or declarations of any Governmental Authority or any Person required to be obtained, effected or given by the Borrower in connection with the grant of a security interest in each item of Collateral Portfolio to the Administrative Agent, for the benefit of the Secured Parties, have been duly obtained, effected or given and are in full force and effect.

(b) No Fraud. To the knowledge of the Borrower, each Portfolio Asset was originated without any fraud or misrepresentation on the part of the Obligor or Transferor, if any, of such Portfolio Asset.

ARTICLE V.
GENERAL COVENANTS

SECTION 5.01 Affirmative Covenants of the Loan Parties. From the Closing Date until the Facility Termination Date:

(a) Organizational Procedures and Scope of Business. Each Loan Party shall observe in all material respects all organizational procedures required by its organizational documents and the laws of its jurisdiction of formation. Without limiting the foregoing, the Borrower shall limit the scope of its business to those set forth in its limited liability company agreement, including: (i) the acquisition and origination of and investments in Portfolio Assets and the ownership and management of the Related Portfolio Assets; (ii) the Sale of Portfolio Assets as and when permitted under the Transaction Documents; (iii) entering into and performing under the Transaction Documents; (iv) consenting or withholding consent as to proposed amendments, waivers and other modifications of the Loan Agreements to the extent not in conflict with the terms of this Agreement or any other Transaction Document; (v) exercising any rights (including but not limited to voting rights and rights arising in connection with a Bankruptcy Event with respect to an Obligor or the consensual or non-judicial restructuring of the debt or equity of an Obligor) or remedies in connection with the Portfolio Assets and participating in the committees (official or otherwise) or other groups formed by creditors of an Obligor to the extent not in conflict with the terms of this Agreement or any other Transaction Document; and (vi) engaging in any activity and to exercise any powers permitted to limited liability companies under the laws of the State of Delaware that are related or incidental to the foregoing and necessary, convenient or advisable to accomplish the foregoing.

(b) Special Purpose Entity Requirements. Each Loan Party shall at all times maintain at least one Independent Manager. The Borrower at all times shall comply in all material respects with the special purpose covenants set forth in Section 7 of its limited liability company agreement as in effect on the Closing Date and Holdings at all times shall comply in all material respects with the special purpose covenants set forth in Section 7 of its limited liability company agreement as in effect on the Closing Date. Each Loan Party Borrower shall at all times provide (and at all times such Loan Party' s organizational

documents shall reflect) that the unanimous consent of all members (including the consent of the Independent Manager) is required for such Loan Party to (i) dissolve or liquidate, in whole or part, or institute proceedings to be adjudicated bankrupt or insolvent, (ii) institute or consent to the institution of bankruptcy or insolvency proceedings against it, (iii) file a petition seeking or consent to reorganization or relief under any applicable federal or State law relating to bankruptcy or insolvency, (iv) seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for such Loan Party, (v) make any assignment for the benefit of such Loan Party' s creditors or (vi) admit in writing its inability to pay its debts generally as they become due.

(c) Preservation of Company Existence. Each Loan Party shall preserve and maintain its organizational existence in the jurisdiction of its formation and shall promptly obtain and thereafter maintain qualifications to do business as a foreign entity in any other jurisdiction in which it does business and in which it is required to so qualify under Applicable Law and preserve and maintain its other rights, franchises and privileges in the jurisdiction of its formation except where the failure to so qualify or maintain would not reasonably be expected to have a Material Adverse Effect.

(d) Deposit of Misdirected Collections. The Borrower shall promptly (but in no event later than two Business Days after receipt and identification thereof) deposit or cause to be deposited into the Collection Account any and all Collections received by the Borrower.

(e) Material Modifications, Material CLO Modifications and Underlying Obligor Default.

(i) Subject to the following sentence, the Borrower shall give prior written notice to the Lenders of any proposed Material Modification or Material CLO Modification with respect to any Portfolio Asset. If notified by the Borrower, the Majority Lenders shall have (A) five Business Days with respect to all Material Modifications not relating to payment defaults and (B) ten Business Days with respect to all Material CLO Modifications or Material Modifications relating to all payment defaults to consent or decline to consent to such Material Modification or Material CLO Modification. Whether or not such notice is given or such consent is obtained, the Borrower may proceed with such Material Modification or Material CLO Modification, but, if such consent is not obtained, the Borrower shall make any necessary adjustments to the calculation of Value and Total Portfolio Value as a result thereof as required by Section 2.04(b). For the avoidance of doubt, if the Majority Lenders do not respond to the request for consent for any proposed Material Modification or Material CLO Modification within the five Business Day period or ten Business Day period, as the case may be, such consent shall be deemed to have been declined.

(ii) The Borrower shall give written notice to the Facility Servicer and the Collateral Custodian of any occurrence of any Underlying Obligor Default after the Closing Date with respect to any Portfolio Asset promptly after obtaining knowledge thereof.

(f) Rating Agency Information; Maintenance of Credit Rating. The Borrower shall provide any NRSRO that is then engaged by the Borrower to rate the credit facility evidenced by this Agreement with all available information that is reasonably requested by such NRSRO in connection with its rating of the credit facility evidenced by this Agreement. At all times on and after the Borrower receives an initial rating (to occur on or before October 31, 2020), the Borrower shall maintain a rating on the credit facility evidenced by this Agreement from a NRSRO acceptable to the Initial Lender and if such rating falls below an equivalent rating of BBB, then at the direction of the Initial Lender, the Borrower shall use commercially reasonable efforts to obtain a rating from an NRSRO as directed by the Initial Lender.

(g) Notices. The Borrower shall notify the Administrative Agent, with a copy to Initial Lender, with prompt (and in any event within two Business Days following the acquisition of knowledge or receipt of notice by a Responsible Officer of the Borrower) written notice of the occurrence of:

(i) each Unmatured Event of Default or Event of Default and no later than three Business Days following such written notice, the Borrower shall provide to the Administrative Agent, with a copy to Initial Lender, a written statement of a Responsible Officer of the Borrower setting forth the details of such event and the action that the Borrower proposes to take with respect thereto;

(ii) any event or other circumstance known to the Borrower that would reasonably be expected to result in a Material Adverse Effect;

(iii) the filing or commencement of any action, suit, investigation or proceeding by or before any arbitrator or any Governmental Authority against any Loan Party, including pursuant to any applicable Environmental Laws, that would reasonably be expected to be adversely determined, and, if so determined, could reasonably be expected to result in liability of the Borrower in an aggregate amount exceeding $5,000,000;

(iv) any material Lien on the Collateral known to the Borrower (other than Permitted Liens);

(v) the receipt of notice of the occurrence of any Reportable Event with respect to any Pension Plan except as would not reasonably be expected to result in a Material Adverse Effect the Borrower shall provide the Administrative Agent with a copy of such notice;

(vi) any change in the accounting policies of the Borrower constituting a material deviation from GAAP; and

(vii) any change to the Valuation Policy then in effect, with a copy of such updated Valuation Policy.

(h) Additional Information; Additional Documents. Each Loan Party shall provide the Administrative Agent and Initial Lender with any financial or other information reasonably requested by the Administrative Agent (acting at the direction of the Initial Lender) or the Initial Lender (through the Administrative Agent) evidencing to support the representations set forth in this Agreement. Notwithstanding anything to the contrary in this provision, the Loan Parties and its Affiliates are not required to disclose, permit the inspection, examination or making copies or abstracts of, or discuss, any document, information or other matter that (i) constitutes non-financial trade secrets or non-financial proprietary information, (ii) in respect of which disclosure to the Administrative Agent or any Lender (or their respective representatives or agents) is prohibited by Applicable Law or (iii) in such Loan Party' s or Affiliate' s reasonable judgment, would compromise any attorney-client privilege, privilege afforded to attorney work product or similar privilege; provided that the Loan Parties shall make available redacted versions of requested documents or, if unable to do so consistent with the preservation of such privilege, shall make commercially reasonable efforts to disclose information responsive to the requests of the Administrative Agent, any Lender or any of their respective representatives and agents, in a manner that will protect such privilege.

(i) Protection of Security Interest. Each Loan Party shall take all action that the Administrative Agent (acting at the direction of the Majority Lenders) may reasonably request to perfect, protect and more fully evidence the first priority (subject to Permitted Liens) perfected security interest of the Administrative Agent, for the benefit of the Secured Parties, in the Collateral, or to enable the Administrative Agent to exercise or enforce any of its rights hereunder, including (i) with respect to the Portfolio Assets and that portion of the Collateral Portfolio in which a security interest may be perfected by filing, filing and maintaining (at the expense of the Loan Parties) effective financing statements against any Transferor in all necessary or appropriate filing offices (including any amendments thereto or assignments thereof) and filing continuation statements, amendments or assignments with respect thereto in such filing offices (including any amendments thereto or assignments thereof), (ii) executing or causing to be executed such other instruments or notices as may be necessary or appropriate, (iii) at the expense of the Loan Parties, take all action necessary to cause a valid, subsisting and enforceable first priority perfected security interest, subject only to Permitted Liens, to exist in favor of the Administrative Agent (for the benefit of the Secured Parties) in the Loan Party' s interests in the Collateral, including the filing of a UCC financing statement in the applicable jurisdiction adequately describing the Collateral (which may include an "all asset" filing), and naming such Loan Party as debtor and the Administrative Agent as the secured party, and filing continuation statements, amendments or assignments with respect thereto in such filing offices (including any amendments thereto or assignments thereof) and (iv) take all additional action that the Facility Servicer or Administrative Agent (acting at the direction of the Majority Lenders) may reasonably request to perfect, protect and more fully evidence the respective first priority (subject to Permitted Liens) perfected security interests of the parties to this Agreement in the Collateral, or to enable the Administrative Agent to exercise or enforce any of their respective rights hereunder (on its own behalf or through the Facility Servicer). The Loan Parties shall defend the right, title and interest of the Administrative Agent, for the benefit of the Secured Parties, in, to and under the Collateral against all claims of third parties (other than with respect to Permitted Liens).

(j) Compliance with Applicable Law. Except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, each Loan Party shall at all times comply with all Applicable Law (including Environmental Laws and all federal securities laws).

(k) Proper Records. Each Loan Party shall at all times keep proper books of records and accounts in which full, true and correct entries shall be made of its transactions in accordance with GAAP and set aside on its books from its earning for each fiscal year all such proper reserves in accordance with GAAP.

(l) Satisfaction of Obligations. Each Loan Party shall pay, discharge or otherwise satisfy at or before maturity or before they become delinquent, as the case may be, all its obligations of whatever nature, except where the amount or validity thereof is currently being contested in good faith by appropriate proceedings and reserves with respect thereto have been provided on the books of such Loan Party.

(m) Payment of Taxes. Each Loan Party shall pay and discharge all Taxes, levies, liens and other charges on it or its assets and on the Collateral, except for any such Taxes as are being appropriately contested in good faith by appropriate proceedings diligently conducted and with respect to which adequate reserves have been provided in accordance with GAAP or as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(n) Tax Treatment. The Borrower shall treat the Advances as indebtedness of the Borrower (or, so long as the Borrower is treated as a disregarded entity for U.S. federal income tax purposes, as indebtedness of the entity of which it is considered to be a part) for U.S. federal income tax purposes and to file any and all tax forms in a manner consistent therewith.

(o) Access to Records. From time to time and, prior to the occurrence and continuance of an Unmatured Event of Default or Event of Default, upon not less than five Business Days advance notice, the Loan Parties shall permit the Administrative Agent or any Person designated by the Administrative Agent or Initial Lender and at the sole cost and expense of the Loan Parties, to, during normal hours, visit and inspect at reasonable intervals its and any Person to which it delegates any of its duties under the Transaction Documents books, records and accounts relating to its business, financial condition, operations, assets and its performance under the Transaction Documents, and to make copies thereof or abstracts therefrom, and to discuss the foregoing with its and such Person' s officers, partners, employees and accountants, all as often as the Administrative Agent or Initial Lender may reasonably request; provided that (i) the Administrative Agent and Initial Lender shall use all reasonable efforts to coordinate their inspections and (ii) so long as an Event of Default has not occurred or is continuing, the Loan Parties are responsible for the cost and expense of no more than one site visit in any calendar year.

(p) Financial Reporting. The Borrower shall furnish to the Administrative Agent, the Facility Servicer and each Lender

(i) within 120 days after the end of each fiscal year of the Borrower, commencing with the fiscal year ended December 31, 2020, audited consolidated statements of the Borrower of assets, liabilities and capital, and audited balance sheet, consolidated statements of operations and cash flow, audited by a firm of nationally recognized independent public accountants, as of the end of such fiscal year;

(ii) within 45 days after the end of each fiscal quarter (A) an unaudited financial report of the Borrower containing a balance sheet, consolidated statement of assets, liabilities and capital, and a consolidated statement of operations for the most recent fiscal quarter, (B) a Quarterly LTV Certificate, including the report of an independent third party as agreed to by the Majority Lenders, delivered to the Borrower for such fiscal quarter, (C) a report by an independent third party reasonably acceptable to the Majority Lenders setting forth the Value of the Eligible Portfolio Assets and Specified CLO Assets as of the end of such fiscal quarter and (D) a calculation of the Debt Service Coverage Ratio for such fiscal quarter, including a breakdown of NOI and outstanding principal balance for each Eligible Portfolio Asset that is a First Lien Senior Secured Portfolio Asset as of the end of such quarter;

(iii) within 120 days after the end of each fiscal year of the Sponsor, commencing with the fiscal year ended December 31, 2020, audited consolidated statements of the Sponsor of assets, liabilities and capital, and audited balance sheet, consolidated statements of operations and cash flow, audited by a firm of nationally recognized independent public accountants, as of the end of such fiscal year; and

(iv) no later than three Business Days prior to any Reporting Date for which the Borrower is requesting a distribution pursuant to Section 2.08(a)(vi), a statement of the amounts to be so distributed , which amounts shall not exceed the amount necessary for the Sponsor to maintain its status as a real estate investment trust for federal income tax purposes and to avoid income and excise tax under Section 857 and 4981 of the Code (after giving effect to any other available funds of the Sponsor and its Affiliates).

The documents required to be delivered pursuant to this Section 5.01(p) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and, if so delivered, shall be deemed to have been delivered on the date on which such materials are publicly available as posted on the Electronic Data Gathering, Analysis and Retrieval system (EDGAR); provided that: (A) upon written request by the Administrative Agent, the Borrower shall deliver paper copies of such documents to the Administrative Agent or any Lender upon its request to the Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender and (B) the Borrower shall notify the Administrative Agent and each Lender (by telecopier or electronic mail) of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. The Administrative Agent shall have no obligation to request the delivery of or to maintain paper copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrower with any such request by a Lender for delivery, and each Lender shall be solely responsible for timely accessing posted documents or requesting delivery of paper copies of such document to it and maintaining its copies of such documents.

(q) Sanctions and Anti-Terrorism, Anti-Money Laundering and Anti-Corruption Compliance. Each Loan Party shall maintain in effect policies and procedures designed to ensure compliance by such Loan Party and its directors, officers, employees, and agents with applicable Sanctions and Anti-Terrorism Laws, Anti-Money Laundering Laws and Anti-Corruption Laws.

(r) Joinder to Guaranty Agreement. Each Loan Party shall cause any Subsidiary of the Sponsor that owns any Specified CLO after the date of this Agreement to become party to the Guaranty Agreement to the same extent as the Sponsor' s Subsidiaries party thereto on the Closing Date.

(s) Capitalization. The Borrower, in connection with the indemnity provided in Section 10.01, shall maintain access to sufficient capital as to meet its ongoing indemnity obligations until such obligation ceases to exist (other than such obligations which expressly survive termination of this Agreement) for which a claim has not been made.

SECTION 5.02 Negative Covenants of the Loan Parties. From the Closing Date until the Facility Termination Date:

(a) Protection of Title. Except as otherwise permitted under this Agreement, no Loan Party shall take any action which would directly or indirectly materially impair or materially and adversely affect such Loan Party' s title to the Collateral Portfolio or the Pledged Equity, as applicable.

(b) Transfer Limitations. Except as permitted pursuant to Sections 2.10, 5.02(f) or 5.02(i), no Loan Party shall transfer, assign, convey, grant, bargain, sell, set over, deliver or otherwise dispose of, or pledge or hypothecate, directly or indirectly, any interest in the Collateral to any Person other than the Administrative Agent for the benefit of the Secured Parties or in connection with Permitted Liens, or engage in financing transactions or similar transactions with respect to the Collateral with any person other than pursuant to this Agreement.

(c) Indebtedness; Liens. No Loan Party shall create, incur, assume or suffer to exist any Indebtedness for borrowed money other than the Obligations. No Loan Party shall create, incur or permit to exist any Lien in or on any of the Collateral other than Permitted Liens.

(d) Organizational Documents. No Loan Party shall modify or terminate any of its organizational or operational documents in any manner that would adversely affect the interests of the Lenders in any material respect.

(e) Merger, Acquisitions, Sales, etc. No Loan Party shall change its organizational structure, enter into any transaction of merger or consolidation or amalgamation or Sale (other than pursuant to Section 2.10), or liquidate, wind up or dissolve itself (or suffer any liquidation, winding up or dissolution) in any manner that would adversely affect the interests of the Lenders without the prior written consent of all Lenders.

(f) Use of Proceeds. The Borrower shall not use the proceeds of the Advance other than (i) to finance Transfer of the Portfolio Assets and refinancing of related indebtedness, (ii) to pay fees and expenses of the Sponsor, Holdings and the Borrower in connection with the transactions contemplated by this Agreement, including brokers fees, but excluding interest, and (iii) to make a Restricted Junior Payment to Holdings and the Sponsor so long as at the time of such Restricted Junior Payment, LTV is not greater than 55% and no Event of Default or Unmatured Event of Default has occurred and is continuing.

(g) Limited Assets. The Borrower shall not hold or own any assets that are not part of the Collateral Portfolio or as otherwise contemplated by Section 5.01(a).

(h) Tax Treatment. Neither Borrower nor any other Person on Borrower' s behalf shall make an election to be, or take any other action that is reasonably likely to result in the Borrower being treated as a corporation for U.S. federal income tax purposes and the Borrower shall take all steps necessary to avoid being treated as a corporation for U. S. federal income tax purposes. The Borrower shall not make any election to be, or take any other action that is reasonably likely to result in the Borrower being, treated as other than an entity disregarded from its owner under Treasury Regulation Section 301.7701-3(c).

(i) Restricted Junior Payments. The Borrower shall not make distributions of Portfolio Assets except as expressly contemplated under Section 2.10. No Loan Party shall make any Restricted Junior Payment, except as expressly permitted under Section 2.08.

(j) ERISA Matters. Except as would not reasonably be expected to result in a Material Adverse Effect, the Borrower shall not (i) fail to meet the minimum funding standard set forth in Sections 302(a) and 303 of ERISA and Sections 412(a) and 430 of the Code with respect to any Pension Plan, (ii) fail to make any payments to a Multiemployer Plan that the Borrower may be required to make under the agreement relating to such Multiemployer Plan or any law pertaining thereto, (iii) terminate any Pension Plan so as to result, directly or indirectly in any liability to the Borrower or (iv) permit to exist any occurrence of any Reportable Event with respect to any Pension Plan.

(k) Instructions Regarding Payments. The Borrower (and the Portfolio Asset Servicer on its behalf) shall not make any change in its instructions to the Obligors or any agent, administrative agent, Counterparty Lender, Underlying Agent, Underlying Servicer or issuer of any Portfolio Asset, as applicable, regarding payments to be made with respect to the related Portfolio Asset to the Collection Account, as applicable, unless the Majority Lenders have directed, or otherwise has consented in writing to, such change.

(l) Change of Jurisdiction, Location, Names or Location of Portfolio Asset Files. No Loan Party shall change the jurisdiction of its formation, change the location of its principal place of business and chief executive office or make any change to its name or use any tradenames, fictitious names, assumed names, "doing business as" names or other names unless, prior to the effective date of any such change in the jurisdiction of its formation, change in location or name change or use, such Loan Party provides at least ten days prior written notice thereof and delivers to the Administrative Agent such financing statements as the Administrative Agent (acting at the direction of the Majority Lenders) may request to reflect such change in the jurisdiction of its formation, change in location or name change or use, together any other documents and instruments as the Administrative Agent (acting at the direction of the Majority Lenders) may reasonably request in connection therewith.

(m) Amendments to Portfolio Assets. The Borrower shall not amend, waive, modify, supplement, terminate, cancel or release any provision of, or any Required Portfolio Document or other agreement, instrument or other document related to, a Portfolio Asset that is real estate owned real property or a preferred equity interest without the consent of the Initial Lender.

(n) No Changes in Fees. The Borrower shall not make any changes to the Fees or amend, restate, supplement or otherwise modify the Fee Letters in any material respect without the prior written approval of all parties to any applicable Fee Letter and all Lenders.

(o) Sanctions and Anti-Terrorism, Anti-Money Laundering and Anti-Corruption Compliance. The Borrower shall not use the proceeds of any Advance, directly or indirectly, for any payments in violation of any applicable Anti-Terrorism Laws, Anti-Money Laundering Laws or Anti-Corruption Laws or in any other manner that would constitute or result in a violation of Sanctions and Anti-Terrorism Laws, Anti-Money Laundering or Anti-Corruption Laws by any Person.

(p) Valuation Policy. The Borrower shall not make any material change to the Valuation Policy without the consent of the Initial Lender.

ARTICLE VI.
EVENTS OF DEFAULT

SECTION 6.01 Events of Default. If any of the following events (each, an "Event of Default") occurs:

(a) the Borrower fails to make any payment of (i) any Obligation (other than the payment of any amount upon the Maturity Date) when due and such failure is not cured within ten Business Days or (ii) any Obligation due on the Maturity Date;

(b) the Borrower defaults in making any payment required to be made under one or more agreements for borrowed money to which it is a party in an aggregate principal amount in excess of $1,000,000, or an event of default is declared under any such agreement, in each case, and such default is not cured or remedied within the applicable cure period, if any, provided for under such agreement;

(c) any failure on the part of the Borrower or Holdings to observe or perform any its covenants or agreements set forth in this Agreement or the other Transaction Documents to which it is a party that has a Material Adverse Effect on the Secured Parties (other than covenants or agreements with respect to which another clause of this Section 6.01 expressly relates, which shall not, on its own, constitute an Event of Default under this clause (c)) and the same continues unremedied for a period of 30 days (if such failure can be remedied) after the earlier to occur of (i) the date on which written notice of such failure requiring the same to be remedied shall have been given to the Borrower by the Administrative Agent or any Lender and (ii) the date on which a Responsible Officer of the Borrower acquires knowledge thereof;

(d) the occurrence of a Bankruptcy Event relating to the Borrower or Holdings;

(e) the rendering of one or more final judgments, decrees or orders by a court or arbitrator of competent jurisdiction against the Borrower or Holdings for the payment of money in excess of $5,000,000 in the aggregate (unless such judgment is covered by third party insurance as to which the insurer has been notified of such judgment, decree or order and has not denied or failed to acknowledge coverage) where the Borrower or Holdings, as applicable, shall not have either (i) discharged or provided for the discharge of any such judgment, decree or order in accordance with its terms within 60 days or (ii) perfected a timely appeal, decree or order and caused the execution of the same to be stayed during the pendency of the appeal;

(f) the breach by a Loan Party of the covenants set forth in Sections 5.01(c) (with respect to existence only), (d), (e), (f), (g), (h), (i), (o), (p) and (q) or any failure on the part of a Loan Party to observe or perform any covenants or agreements of the Loan Parties set forth in Section 5.02;

(g) (i) any Transaction Document, or any Lien or security interest granted thereunder, shall (except in accordance with its terms), in whole or in part, terminate, cease to be effective or cease to be the legally valid, binding and enforceable obligation of the Borrower or Holdings; provided that, there shall be no Event of Default under this clause (g)(i) to the extent such Event of Default arises solely from the action (or inaction) of the Account Bank, the Collateral Custodian, the Administrative Agent, the Facility Servicer or a Lender, (ii) the Borrower, Holdings, the Sponsor or any of their Affiliates shall, directly or indirectly, contest in writing in any manner the effectiveness, validity, binding nature or enforceability of any Transaction Document or any Lien or security interest thereunder or (iii) any security interest securing any obligation under any Transaction Document shall, in whole or in part, cease to be a first priority perfected security interest (subject to Permitted Liens) except as otherwise expressly permitted to be released in accordance with the applicable Transaction Document; provided that there shall be no Event of Default under this clause (g)(iii) to the extent such Event of Default arises from the action (or inaction) of the Account Bank, the Collateral Custodian, the Administrative Agent, the Facility Servicer or a Lender;

(h) any Change of Control shall occur; or

(i) any representation, warranty or certification made by the Borrower or Holdings in any Transaction Document or in any agreement, instrument, certificate or other document delivered pursuant to any Transaction Document shall prove to have been incorrect in any material respect when made;

then the Administrative Agent shall, at the direction of the Majority Lenders, or the Majority Lenders may, in each case, by notice to the Borrower, declare the Maturity Date to have occurred; provided that, in the case of any event described in Section 6.01(d), the Maturity Date is deemed to have occurred automatically upon the occurrence of such event. Upon the occurrence and during the continuation of any Event of Default, (i) the Administrative Agent shall, at the direction of the Majority Lenders, or the Majority Lenders may declare the Advances to be immediately due and payable in full (without presentment, demand, protest or notice of any kind all of which are hereby waived by the Borrower) and any other Obligations to be immediately due and payable; provided that, in the case of any event described in Section 6.01(d), the Advances and other Obligations become immediately due and payable in full (without presentment, demand, protest or notice of any kind all of which are hereby waived by the Borrower) without the need of any notice to the Borrower upon the occurrence of such event and (ii) the Administrative Agent shall, at the direction of the Majority Lenders, instruct the Account Bank to distribute all amounts on deposit in the Collection Account as described in Section 2.08(c) (provided that the Borrower shall in any event remain liable to pay such Advances and all such amounts and Obligations immediately in accordance with Section 2.08(c)). In addition, upon the occurrence and during the continuation of any Event of Default, the Lenders and the Administrative Agent, on behalf of the Secured Parties, shall have, in addition to all other rights and remedies under this Agreement, the other Transaction Documents or otherwise, all other rights and remedies provided under the UCC of the applicable jurisdiction and other Applicable Law, which rights shall be cumulative.

SECTION 6.02 Pledged Equity.

(a) Except as otherwise set forth in Section 6.02(b) or 6.02(c):

(i) Holdings shall be entitled to exercise any and all voting or other consensual rights and powers inuring to an owner of Pledged Equity or any part thereof and Holdings agrees that it shall exercise such rights for purposes not in contravention of the terms of this Agreement and the other Transaction Documents.

(ii) Holdings shall be entitled to receive and retain any and all dividends and other distributions paid on or distributed in respect of the Pledged Equity (without any obligation to contribute such amounts to the Collection Account), to the extent and only to the extent that such dividends and other distributions are not prohibited by the terms and conditions of this Agreement; provided that any noncash dividends or other distributions that would constitute Pledged Equity, shall be and become part of the Pledged Equity, and, if received by Holdings, shall not be commingled by Holdings with any of its other property but shall be held separate and apart therefrom, shall be held in trust for the benefit of the Administrative Agent and the Secured Parties and Holdings shall promptly take all steps reasonably necessary to ensure the validity, perfection and priority (subject to Permitted Liens), including promptly delivering the same to the Administrative Agent in the same form as so received (with any necessary endorsement reasonably requested by the Administrative Agent). So long as no Event of Default has occurred and is continuing, the Administrative Agent shall cooperate with Holdings with respect to making exchanges of Pledged Equity in connection with any exchange or redemption of such Pledged Equity not prohibited by this Agreement, which such cooperation shall include delivery of any such Pledged Equity in exchange for replacement Pledged Equity. For the avoidance of doubt, the Borrower agrees to reimburse the Administrative Agent for any costs or expenses incurred due to the provisions of this Section 6.02(a)(ii).

(b) Upon the occurrence and during the continuance of an Event of Default (and after the delivery of notice to Holdings) or upon the occurrence of any event described in Section 6.01(d) (without notice), all rights of Holdings to dividends or other distributions that Holdings is authorized to receive pursuant to Section 6.02(a)(ii) shall cease, and all such rights shall thereupon become vested in the Administrative Agent, which shall have the sole and exclusive right and authority to receive and retain such dividends or other distributions during the continuance of an Event of Default. All dividends or other distributions received by Holdings contrary to the provisions of this Section 6.02(b) shall be held in trust for the benefit of the Administrative Agent, shall be segregated from other property or funds of Holdings and shall be promptly delivered to the Administrative Agent in the same form as so received (with any necessary endorsement reasonably requested by the Administrative Agent). Any and all money and other property paid over to or received by the Administrative Agent pursuant to the provisions of this Section 6.02(b) shall be retained by the Administrative Agent in the Collection Account and shall be applied in accordance with the terms of this Agreement. After all Events of Default have been waived or are no longer continuing, the Administrative Agent, upon written direction from the Majority Lenders, shall promptly repay to Holdings (without interest) all dividends or other distributions that Holdings would otherwise be permitted to retain pursuant to the terms of Section 6.02(a)(ii) and that remain in such account.

(c) Upon the occurrence and during the continuance of an Event of Default (and after the delivery of notice to Holdings) or upon the occurrence of any event described in Section 6.01(d) (without notice), then (i) all rights of Holdings to exercise the voting and consensual rights and powers it is entitled to exercise pursuant to Section 6.02(a)(i) shall cease, and all such rights shall thereupon become vested in the Administrative Agent, which shall have the sole and exclusive right and authority to exercise such voting and consensual rights and powers acting at the direction of the Majority Lenders; provided that, unless otherwise directed by the Majority Lenders, the Administrative Agent shall have the right from time to time following and during the continuance of an Event of Default to permit Holdings to exercise such rights and (ii) in order to permit the Administrative Agent to exercise the voting and other consensual rights which it may be entitled to exercise pursuant hereto and to receive all dividends and other distributions which it may be entitled to receive hereunder, Holdings shall promptly execute and deliver (or cause to be executed and delivered) to the Administrative Agent all proxies, dividend payment orders and other instruments as the Administrative Agent may from time to time reasonably request. After all Events of Default have been waived or are no longer continuing, Holdings shall have the exclusive right to exercise the voting or consensual rights and powers that Holdings would otherwise be entitled to exercise pursuant to the terms of Section 6.02(a)(i).

(d) Any notice given by the Administrative Agent to the Borrower under this Section 6.02 shall be given in writing.

SECTION 6.03 Additional Remedies.

(a) Upon the occurrence and during the continuation of an Event of Default, and without limiting the remedies provided in this Article VI, the Administrative Agent shall, at the direction of the Majority Lenders, (i) sell or otherwise dispose of any of the Collateral or the Pledged Equity at public or private sales and take possession of the proceeds of any such sale or disposition, (ii) instruct the obligor or obligors on any account, agreement, instrument or other obligation constituting Collateral or Pledged Equity to make any payment required by the terms of such account, agreement, instrument or other obligation to or at the direction of the Administrative Agent (acting at the direction of the Majority

Lenders), (iii) give notice of sole control or any other instruction under the Account Control Agreement or any Custodial and Account Control Agreement and take any action therein with respect to Collateral subject thereto, (iv) in accordance with Section 6.02, transfer and register in its name or in the name of its nominee the whole or any part of the Pledged Equity, exchange certificates or instruments representing or evidencing Pledged Equity for certificates or instruments of smaller or larger denominations, exercise the voting and all other rights as a holder with respect thereto, including exchange, subscription or any other rights, privileges or options pertaining to any Pledged Equity, and otherwise act with respect to the Pledged Equity as though the Administrative Agent was the absolute owner thereof and (v) in accordance with Section 6.02, collect and receive all cash dividends, interest, principal and other distributions made on any Pledged Equity.

(b) Any Collateral or Pledged Equity to be sold or otherwise disposed of pursuant to this Article VI may be sold or disposed of in one or more parcels at public or private sale or sales (which sales may be adjourned or continued from time to time with or without notice upon such terms and conditions, including price, as the Administrative Agent may deem commercially reasonable, for cash or on credit or for future delivery without assumption of any credit risk. Any sale or disposition of Collateral or Pledged Equity may be made without the Administrative Agent giving warranties of any kind with respect to such sale or disposition and the Administrative Agent may specifically disclaim any warranties of title or the like. The Administrative Agent may comply with any applicable State or federal law requirements in connection with a sale or disposition of the Collateral or Pledged Equity and compliance will not be considered to adversely affect the commercial reasonableness of any such sale or disposition. If any notice of a proposed sale or disposition of the Collateral or Pledged Equity is required by law, such notice is deemed commercially reasonable and proper if given at least ten days before such sale or disposition. The Administrative Agent has the right upon any public sale of Collateral or Pledged Equity and, to the extent permitted by law, upon any such private sale of Collateral or Pledged Equity, to purchase the whole or any part of the Collateral or Pledged Equity so sold or disposed of free of any right of equity redemption, which equity redemption the Borrower hereby waives. Upon any sale or disposition of Collateral or Pledged Equity, the Administrative Agent has the right to deliver and transfer to the purchaser or transferee thereof the Collateral or Pledged Equity so sold or disposed of.

(c) For the avoidance of doubt, this Agreement (including this Article VI) shall be subject to the special servicing activities provisions in Section 8.05.

ARTICLE VII.
THE ADMINISTRATIVE AGENT

SECTION 7.01 Appointment and Authority. Each of the Lenders hereby irrevocably appoints Wells Fargo Bank, National Association to act on its behalf as the Administrative Agent hereunder and under the other Transaction Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article VII are solely for the benefit of the Administrative Agent, the Lenders and the other Secured Parties, and neither the Borrower nor Holdings shall have rights as a third-party beneficiary of any of such provisions (except Section 7.05(a)). It is understood and agreed that the use of the term "agent" herein or in any other Transaction Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any Applicable Law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

SECTION 7.02 Exculpatory Provisions.

(a) The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Transaction Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent:

(i) shall not be subject to any fiduciary or other implied duties, regardless of whether an Event of Default or Unmatured Event of Default has occurred and is continuing;

(ii) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Transaction Documents that the Administrative Agent is required to exercise as directed in writing by the Majority Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Transaction Documents); provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Transaction Document or Applicable Law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Bankruptcy Law; and

(iii) shall not, except as expressly set forth herein and in the other Transaction Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower, Holdings or any of their respective Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

(b) The Administrative Agent shall not be liable for any action taken or not taken by it or errors in judgment made (i) with the consent or at the request of the Majority Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Article VI and Section 11.01), or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment. The Administrative Agent shall not be deemed to have knowledge of any default, Event of Default, Unmatured Event of Default or event or information, or be required to act upon any default, Event of Default, Unmatured Event of Default or event or information (including the sending of any notice) unless a Responsible Officer of the Administrative Agent shall have received written notice or has actual knowledge of such default, Event of Default, Unmatured Event of Default or event or information, and shall have no duty to take any action to determine whether any such event, default, Unmatured Event of Default or Event of Default has occurred. Delivery of any reports, information and documents to the Administrative Agent provided for herein is for informational purposes only and the Administrative Agent' s receipt of such reports (including monthly distribution reports) and any publicly available information, shall not constitute actual or constructive knowledge or notice of any information contained therein or determinable from information contained therein.

(c) The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Transaction Document, (ii) the contents or accuracy of any certificate, report or other

document delivered hereunder or thereunder or in connection herewith or therewith and shall not be required to recalculate, certify or verify any information therein, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Event of Default or Unmatured Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Transaction Document or any other agreement, instrument or document, or (v) the satisfaction of any condition set forth in Article III or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

(d) Knowledge of the Administrative Agent shall not be attributed or imputed to Wells Fargo' s other roles in the transaction and knowledge of the Collateral Custodian shall not be attributed or imputed to the Administrative Agent (other than those where the roles are performed by the same group or division within Wells Fargo or otherwise share the same Responsible Officers), or any affiliate, line of business, or other division of Wells Fargo (and vice versa).

(e) Any organization or entity into which the Administrative Agent may be merged or converted or with which it may be consolidated, or any organization or entity resulting from any merger, conversion or consolidation to which the Administrative Agent shall be a party, or any organization or entity succeeding to all or substantially all of the corporate trust business of the Administrative Agent, or of any business line or product type within the corporate trust business of the Administrative Agent, shall be the successor of the Administrative Agent hereunder, without the execution or filing of any paper or any further act on the part of any of the parties hereto.

(f) To the fullest extent permitted by applicable law, the Borrower shall not assert, and hereby waives, any claim against the Administrative Agent, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages), including lost profits, arising out of, in connection with, or as a result of, this Agreement, any other Transaction Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Advance, or the use of the proceeds thereof.

(g) Before the Administrative Agent acts or refrains from taking any action under this Agreement, it may require an officer' s certificate or an opinion of counsel (which may come from internal counsel) from the party requesting that the Administrative Agent act or refrain from acting in form and substance reasonably acceptable to the Administrative Agent. The Administrative Agent shall not be liable for any action it takes or omits to take in good faith in reliance on such officer' s certificates or opinions of counsel.

(h) The Administrative Agent shall not be required to expend or risk its own funds or otherwise incur any liability, financial or otherwise, in the performance of any of its duties, or the exercise of any of its rights or powers.

(i) The Administrative Agent shall incur no liability if, by reason of any provision of any future law or regulation thereunder, or by any force majeure event, including but not limited to natural disaster, act of war or terrorism, or other circumstances beyond its reasonable control, the Administrative Agent shall be prevented or forbidden from doing or performing any act or thing which the terms of this Agreement provide shall or may be done or performed, or by reason of any exercise of, or failure to exercise, any discretion provided for in this Agreement or any other Transaction Document.

(j) The right of the Administrative Agent to perform any permissive or discretionary act enumerated in this Agreement or any related document shall not be construed as a duty.

(k) The Administrative Agent shall not be responsible for, and makes no representation or warranty as to, the validity, legality, enforceability, sufficiency or adequacy of this Agreement, the other Transaction Documents or any related document, or as to the correctness of any statement contained in any thereof. The recitals contained herein and in the other Transaction Documents shall be construed as the statements of the Borrower. The Administrative Agent shall not be accountable for the Borrower' s use of the Advances or any money paid to the Borrower pursuant to the provisions hereof, and it shall not be responsible for any statement of the Borrower in this Agreement or in any other Transaction Document.

(l) The Administrative Agent shall not be liable for any action or inaction of the Borrower, Holdings, the Lenders, the Collateral Custodian, the Facility Servicer, the Portfolio Asset Servicer or any other party (or agent thereof) to this Agreement or any related document and may assume compliance by such parties with their obligations under this Agreement or any related agreements, unless a Responsible Officer of the Administrative Agent shall have received written notice to the contrary at the office of the Administrative Agent set forth in Section 11.02.

(m) The rights, benefits, protections, immunities and indemnities afforded the Administrative Agent hereunder shall extend to the Administrative Agent (in any of its capacities) under any other Transaction Document or related agreement as though set forth therein in their entirety mutatis mutandis.

SECTION 7.03 Reliance by Administrative Agent. The Administrative Agent shall be entitled to rely conclusively upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, opinion, statement, instrument, document or other writing (including any electronic message, internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of an Advance that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Advance. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower or Holdings), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice or opinion of any such counsel, accountants or experts. As to any matters not expressly provided for by any Transaction Document, the Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, under any Transaction Document in accordance with instructions given by the Majority Lenders or, if provided in this Agreement, in accordance with the instructions given by the Majority Lenders or all Lenders as is required in such circumstance, and such instructions of such Lenders and any action taken or failure to act pursuant to such instructions shall be binding on all of the Lenders.

SECTION 7.04 Delegation of Duties. The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Transaction Document by or through any one or more agents, sub-agents, affiliates or attorneys appointed by the Administrative Agent. The

Administrative Agent and any such agents, sub-agent, affiliates or attorneys may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such party and to the Related Parties of the Administrative Agent and any such party. The Administrative Agent shall not be responsible for the supervision, negligence or misconduct of any agent, sub-agents or attorney appointed by it with due care.

SECTION 7.05 Resignation of Administrative Agent.

(a) The Administrative Agent may at any time give notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Majority Lenders shall have the right to appoint a successor (with the consent of the Borrower, such consent not to be unreasonably withheld, conditioned or delayed and no such consent being required when an Event of Default has occurred and is continuing); provided that in no event shall any such successor be a Competitor. If no such successor shall have been so appointed by the Majority Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation (or such earlier day as shall be agreed by the Majority Lenders) (the "Resignation Effective Date"), then the retiring Administrative Agent may (but shall not be obligated to), on behalf of the Lenders, may petition a court of competent jurisdiction for the appointment of a successor Administrative Agent. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) With effect from the Resignation Effective Date (i) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Transaction Documents and (ii) except for any fees, expenses and indemnity payments owed to the retiring Administrative Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly, until such time, if any, as the Majority Lenders appoint a successor Administrative Agent as provided for above. Upon the acceptance of a successor' s appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Administrative Agent (other than any rights to fees, expenses and indemnity payments owed to the retiring Administrative Agent), and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Transaction Documents. The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Administrative Agent' s resignation hereunder and under the other Transaction Documents, the provisions of this Article VII and Section 11.07 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as Administrative Agent.

SECTION 7.06 Non-Reliance on Agents and Other Lenders. Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Transaction Document or any related agreement or any document furnished hereunder or thereunder.

SECTION 7.07 Reimbursement by Lenders. To the extent that the Borrower for any reason fails to pay any amount required under Article X or Section 11.07 to be paid by it to the Administrative Agent (or any sub-agent thereof) or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent) or such Related Party, as the case may be, such Lender' s Pro Rata Share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender' s Pro Rata Share at such time) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender); provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent) in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent) in connection with such capacity. The obligations of the Lenders to make payments pursuant to this Section 7.07 are several and not joint. The failure of any Lender to make any such payment on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its payment under this Section 7.07.

SECTION 7.08 Administrative Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Bankruptcy Relief Law or any other judicial proceeding relative to the Borrower or Holdings, the Administrative Agent (irrespective of whether the principal of any Advance shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Advances and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Secured Parties (including any claim for the reasonable compensation, expenses, disbursements and advances of the Secured Parties and their respective agents and counsel and all other amounts due the Secured Parties under Section 11.07) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Section 11.07.

SECTION 7.09 Collateral Matters.

(a) Each Lender authorizes the Administrative Agent to release any Lien on any Collateral granted to or held by the Administrative Agent, for the benefit of the Secured Parties, under this Agreement or any other Transaction Document (i) as provided in Section 2.11 or (ii) if approved, authorized or ratified in writing in accordance with Section 11.01. Upon request by the Administrative Agent at any time, the Majority Lenders will confirm in writing the Administrative Agent' s authority to release its interest in particular types or items of property. In each case as specified in this Section 7.09, the Administrative Agent will, at the Borrower' s expense, execute and deliver to the Facility Servicer such documents as the Facility Servicer may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under this Agreement or the other Transaction Documents in accordance with the terms of the Transaction Documents and this Section 7.09.

(b) The Administrative Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, for the legality, enforceability, effectiveness or sufficiency of the Transaction Documents, the existence, priority, creation, validity, enforceability or perfection of the Administrative Agent' s Lien thereon, or any certificate prepared by the Borrower or the Facility Servicer or the Portfolio Asset Servicer in connection therewith, nor shall the Administrative Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral or the Lien thereon.

(c) It is understood and agreed that the Administrative Agent (i) shall have no responsibility with respect to the determination of whether any Pledged Equity is certificated or uncertificated and (ii) the Administrative Agent shall only be responsible for holding Pledged Equity to the extent actually received.

(d) The Administrative Agent shall monitor any UCC financing statements filed by the Initial Lender in connection with this Agreement solely to the extent that the Initial Lender provides such financial statements to the Administrative Agent. The Administrative Agent shall notify the Lenders when the time-period to file continuation statements for such financing statements has commenced and at least 60 days prior to the date such financing statements would terminate; provided that the Administrative Agent shall have no liability or obligation to file any such continuation statements. The Administrative Agent shall have no other duty to see to, or be responsible for the correctness or accuracy of, any recording, filing or depositing of this Agreement or any agreement referred to herein, or any financing statement or continuation statement evidencing a security interest, or to see to the maintenance of any such recording or filing or depositing or to any rerecording, refilling or re-depositing of any thereof.

ARTICLE VIII.
ADMINISTRATION AND SERVICING OF COLLATERAL PORTFOLIO

SECTION 8.01 Appointment and Designation of the Applicable Servicer.

(a) Initial Applicable Servicer.

(i) The Borrower hereby appoints Massachusetts Mutual Life Insurance Company, pursuant to the terms and conditions of this Agreement, as Facility Servicer, with the authority to service, administer and exercise rights and remedies, on behalf of Borrower, in respect of the Collection Account, and to take the actions required of it hereunder and under the other Transaction Documents. Massachusetts Mutual Life Insurance Company hereby accepts such appointment and agrees to perform the duties and responsibilities of the Facility Servicer pursuant to the terms hereof until such time as it resigns or is removed as Facility Servicer pursuant to the terms hereof. The Facility Servicer and Borrower hereby acknowledge that the Administrative Agent and the Secured Parties are third party beneficiaries of the obligations undertaken by the Facility Servicer hereunder.

(ii) The Borrower hereby appoints ACRES Capital Servicing LLC, pursuant to the terms and conditions of this Agreement, as Portfolio Asset Servicer, with the authority to service, administer and exercise rights and remedies, on behalf of Borrower, in respect of the payments to Borrower or Portfolio Asset Servicer under the Collateral Portfolio that are to be Collections, and to take the actions required of it hereunder and under the other Transaction Documents. ACRES Capital Servicing LLC hereby accepts such appointment and agrees to perform the duties and responsibilities of the Portfolio Asset Servicer pursuant to the terms hereof until such time as it resigns or is removed as Portfolio Asset Servicer pursuant to the terms hereof. The Portfolio Asset Servicer and Borrower hereby acknowledge that the Administrative Agent and the Secured Parties are third party beneficiaries of the obligations undertaken by the Portfolio Asset Servicer hereunder.

(b) Servicer Termination Notice. The Borrower, each Applicable Servicer and the Administrative Agent hereby agree that, upon the occurrence of a Servicer Termination Event, the Administrative Agent, by written notice to an Applicable Servicer (a "Servicer Termination Notice"), shall, upon the direction of the Majority Lenders, terminate all of the rights, obligations, power and authority of such Applicable Servicer under this Agreement. On and after the receipt by such Applicable Servicer of a Servicer Termination Notice pursuant to this Section 8.01(b), such Applicable Servicer shall continue to perform all servicing functions under this Agreement until the date specified in the Servicer Termination Notice or otherwise specified by the Administrative Agent (upon the direction of the Majority Lenders) in writing or, if no such date is specified in such Servicer Termination Notice or otherwise specified by the Administrative Agent (upon direction of the Majority Lenders), until a date mutually agreed upon by such Applicable Servicer and the Administrative Agent (upon direction of the Majority Lenders). If such Applicable Servicer is the Facility Servicer, such Applicable Servicer shall be entitled to receive, to the extent of funds available therefor pursuant to Section 2.08, the Facility Servicing Fees accrued until such termination date as well as any other fees, amounts, expenses or indemnities it is entitled to pursuant to the provisions of this Agreement and the Facility Servicer Fee Letter (collectively, the "Servicer Termination Expenses"). To the extent amounts held in the Collection Account and paid in accordance with Section 2.08 are insufficient to pay the Servicer Termination Expenses, Borrower (and to the extent Borrower fails to so pay, the Lenders based on their Pro Rata Share) agree to pay the Servicer Termination Expenses within ten Business Days of receipt of an invoice therefor. On the termination date specified in this Section 8.01(b), such Applicable Servicer agrees that it will terminate its activities as Facility Servicer or Portfolio Asset Servicer, as applicable, hereunder in a manner that the Administrative Agent (acting at the direction of the Majority Lenders) and, if no Event of Default has occurred and is continuing at such time, the Borrower, believes will facilitate the transition of the performance of such activities to a Replacement Servicer, and the Replacement Servicer shall assume each and all of such Applicable Servicer' s obligations under this Agreement and the other Transaction Documents, on the terms and subject to the conditions herein set forth, and such Applicable Servicer shall use its commercially reasonable efforts to assist the Replacement Servicer in assuming such obligations.

(c) Appointment of Replacement Servicer. At any time following the delivery of a Servicer Termination Notice or receipt of any notice of resignation under Section 8.09, the Administrative Agent (acting at the direction of the Majority Lenders) shall, with the consent of Borrower (such consent not to be unreasonably withheld or delayed and such consent not being required if an Event of Default has

occurred and is continuing), appoint a new servicer (the "Replacement Servicer"), which appointment shall take effect upon the Replacement Servicer accepting such appointment by a written assumption in a form satisfactory to the Administrative Agent (acting at the direction of the Majority Lenders) and, if no Event of Default has occurred and is continuing at such time, Borrower (such approval not to be unreasonably withheld or delayed). Any Replacement Servicer shall be an established financial institution, having a net worth of not less than $50,000,000 and whose regular business includes the servicing of assets similar to the Collateral Portfolio; provided that in no event shall any such Replacement Servicer be a Competitor.

(d) Liabilities and Obligations of Replacement Servicer. Upon its appointment, any Replacement Servicer shall be the successor in all respects to such Applicable Servicer with respect to servicing functions under this Agreement and shall be subject to all the responsibilities, duties and liabilities relating thereto placed on such Applicable Servicer by the terms and provisions hereof, and all references in this Agreement to such Applicable Servicer shall be deemed to refer to the Replacement Servicer; provided that any Replacement Servicer shall have (i) no liability with respect to any action performed by the prior Applicable Servicer prior to the date that the Replacement Servicer becomes the successor to such Applicable Servicer or any claim of a third party based on any alleged action or inaction of the prior Applicable Servicer, (ii) no obligation with respect to any Taxes on behalf of Borrower, except for any payment made out of the Collection Account as provided in Section 2.13, (iii) no obligation to pay any of the fees and expenses of any other party to the transactions contemplated hereby and (iv) no liability or obligation with respect to any prior Applicable Servicer indemnification obligations of any prior Applicable Servicer. The indemnification obligations of the Replacement Servicer upon becoming an Applicable Servicer, are expressly limited to those arising on account of its gross negligence or willful misconduct, or the failure to perform materially in accordance with its duties and obligations set forth in this Agreement.

(e) Authority and Power. All authority and power granted to an Applicable Servicer under this Agreement shall automatically cease and terminate on the Facility Termination Date and shall pass to and be vested in the Borrower thereafter. Each Applicable Servicer agrees to cooperate with the Borrower in effecting the termination of the responsibilities and rights of each Applicable Servicer to conduct servicing of this Agreement (including the right to direct remittances out of the Collection Accounts).

(f) Subcontracts. The Facility Servicer may subcontract with any other Person for servicing and administering in respect of the payments to the Borrower or Portfolio Asset Servicer under the Collateral Portfolio that are to be Collections under this Agreement; provided that (A) the Facility Servicer shall select any such Person with reasonable care and shall be solely responsible for the fees and expenses payable to any such Person, (B) the Facility Servicer shall not be relieved of, and shall remain liable for, the performance of the duties and obligations of the Facility Servicer pursuant to the terms hereof without regard to any subcontracting arrangement and (C) any such subcontract shall be terminable upon the occurrence of a Servicer Termination Event. The Facility Servicer shall not be responsible for the negligence or misconduct of any sub-agent or attorney in fact that it selects with reasonable care.

SECTION 8.02 Duties of the Portfolio Asset Servicer.

(a) Duties. The Portfolio Asset Servicer shall take or cause to be taken all such actions as may be necessary or advisable to service, administer and collect on the Collateral Portfolio from time to time, all in accordance with Applicable Law and the Servicing Standard and to take the actions of the Portfolio Asset Servicer under this Agreement and the other Transaction Documents. Without limiting the foregoing, the duties of the Portfolio Asset Servicer shall include the following:

(i) maintaining the following records for each Portfolio Asset:

a. any Portfolio Asset Assignment;

b. the instructions from the Borrower (or the Portfolio Asset Servicer on Borrower' s behalf) to the Obligors, Underlying Agent, Underlying Servicers, Counterparty Lenders or issuers of any Portfolio Asset to make all payments in respect of such Portfolio Asset directly to the Collection Account;

c. as applicable, any Participation Agreement, any related supplement to such Participation Agreement and the related direction from the related Counterparty Lender to the related Obligor or Underlying Servicer (1) to make all payments in respect of such Portfolio Asset directly to the Collection Account and (2) to deliver to the Portfolio Asset Servicer a copy of all requests, notices and reports required to be delivered by such Counterparty Lender or such Underlying Servicer to Borrower under such Participation Agreement, in each case, acknowledged by such Underlying Servicer;

d. the related Portfolio Asset Checklist or a supplement thereto, copies of the related Loan Agreement and each other agreement instrument or certificate and other document identified in such Portfolio Asset Checklist, and copies of any amendment, waiver, supplement or modification of any thereof that is delivered to the Portfolio Asset Servicer;

e. each request, notice and report delivered by an Obligor, Counterparty Lender, Underlying Agent, Underlying Servicer or issuer of a Portfolio Asset to the Portfolio Asset Servicer, to the extent received by the Portfolio Asset Servicer hereunder, and all requests, notices and other correspondence delivered by the Portfolio Asset Servicer, under a Loan Agreement or Participation Agreement; and

f. all account statements, reports and other documents and correspondence received by the Portfolio Asset Servicer from the Collection Account.

(ii) maintaining all necessary servicing records with respect to the Collateral Portfolio received from the Underlying Servicers and providing such records to the Administrative Agent and each Lender (with a copy to the Collateral Custodian) together with such other information with respect to the Collateral Portfolio (including information relating to the Portfolio Asset Servicer' s performance under this Agreement) as may be required hereunder or as the Administrative Agent, the Initial Lender or the Majority Lenders may reasonably request, including but not limited to:

a. on a monthly basis, as soon as available, but no later than when sent to Borrower, a remittance report for each Portfolio Asset showing the date any payments are or were required to be made with respect to such Portfolio Asset during such month and a description of the type of payment (for example, principal, Interest Collections or a combination thereof) to be made on such date;

b. the financial reporting package and all other servicing and other reports for each Obligor and Portfolio Asset described in Section 8.08(c); and

c. any Underlying Obligor Default and the nature thereof.

(iii) maintaining and implementing administrative and operating procedures (including an ability to recreate servicing records received from the Underlying Servicers evidencing the Collateral Portfolio in the event of the destruction of the originals thereof) and keeping and maintaining all documents, books, records and other information received from the Underlying Servicers or pursuant to this Agreement reasonably necessary or advisable for the collection of the Collateral Portfolio;

(iv) promptly delivering to the Administrative Agent, the Collateral Custodian and the Facility Servicer from time to time, such information and servicing records (to the extent received by the Portfolio Asset Servicer), including information relating to the Portfolio Asset Servicer' s performance under this Agreement, as the Administrative Agent, the Collateral Custodian or the Facility Servicer may from time to time reasonably request;

(v) notifying a Responsible Officer of the Administrative Agent of any material action, suit, proceeding, dispute, offset, deduction, defense or counterclaim that is or is threatened to be asserted by an Obligor with respect to any Portfolio Asset (or portion thereof) of which it has knowledge or has received notice;

(vi) monitoring and recording in the records for the Collateral Portfolio any interest rate adjustments in connection with the Loan Agreements to the extent notice thereof is provided by the Underlying Servicers;

(vii) monitoring and recording in the records for the Collateral Portfolio any Tax and insurance escrows and payment with respect to the Underlying Collateral to the extent such information is received from the Underlying Servicers;

(viii) monitoring and recording in the records for the Collateral Portfolio any casualty losses or condemnation proceedings in respect of any related Underlying Collateral and administering any proceeds related thereto in accordance with the applicable Loan Agreements, in each case to the extent such information is provided to the Portfolio Asset Servicer;

(ix) monitoring all payments made with respect to the Portfolio Assets; and

(x) identifying principal, Interest Collections and Excluded Amounts and preparing statements with respect to Collections, all as required by this Agreement.

(b) Notwithstanding anything to the contrary contained herein, the exercise by the Administrative Agent and the Secured Parties of their rights hereunder shall not release the Portfolio Asset Servicer or the Borrower from any of their duties or responsibilities with respect to the Collateral Portfolio. The Secured Parties and the Administrative Agent shall not have any obligation or liability with respect to any Collateral Portfolio, nor shall any of them be obligated to perform any of the obligations of the Portfolio Asset Servicer or the Borrower hereunder.

SECTION 8.03 Duties of the Facility Servicer.

(a) The Facility Servicer shall take or cause to be taken all such actions as may be necessary or advisable to service, administer and collect on this Agreement from time to time, all in accordance with Applicable Law. Without limiting the foregoing, the Facility Servicer shall (i) prepare and provide a Payment Date Report as set forth in Section 8.08(b) and (ii) instruct the Account Bank to apply funds on deposit in the Collection Account as described in Section 2.08 and in accordance with the Payment Date Report.

(b) The Facility Servicer is not required to take any action under this Agreement or any other Transaction Document that, in its opinion or the opinion of its counsel, may expose the Facility Servicer to liability or that is contrary to any Transaction Document or Applicable Law. The Facility Servicer shall not be liable for any action taken or not taken by it under this Agreement or any other Transaction Document with the consent or at the request of the Borrower, the Administrative Agent or the Majority Lenders (or all Lenders, as applicable and as set forth in Sections 6.01 and 11.01). In the event the Facility Servicer requests the consent of a Lender pursuant to the foregoing provisions and the Facility Servicer does not receive a response (either positive or negative) from such Person within ten Business Days of such Person' s receipt of such request, then such Lender shall be deemed to have declined to consent to the relevant action.

(c) The Facility Servicer shall not be liable for any action taken or omitted to be taken by it under or in connection with this Agreement or any of the other Transaction Documents in the absence of its own gross negligence or willful misconduct as determined in a final decision by a court of competent jurisdiction. Without limiting the foregoing, the Facility Servicer (i) may consult with legal counsel (including counsel for the Borrower, the Administrative Agent or the Facility Servicer), independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken in good faith by it in accordance with the advice of such counsel, accountants or experts, (ii) shall not be responsible for or have any duty to ascertain or inquire into (A) any statement, warranty or representation made in or in connection with this Agreement or any other Transaction Document, (B) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith (other than by the Facility Servicer), (C) except as otherwise expressly provided herein, the performance or observance by any party (other than the Facility Servicer) of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Event of Default or Unmatured Event of Default, (D) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Transaction Document or any other agreement, instrument or document or (E) the satisfaction of any condition set forth in Article III or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Facility Servicer (if any) and (iii) shall incur no liability under or in respect of this Agreement or any of the other Transaction Documents for relying on any notice (including notice by telephone), consent, certificate or other instrument or writing believed by it to be genuine and signed or sent by the proper party or parties.

(d) The Facility Servicer shall be entitled to rely conclusively upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, opinion, statement, instrument, document or other writing (including any electronic message, internet or intranet website posting or other distribution) reasonably believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person, or to inquire as to or verify the veracity of any information or statement made or contained therein. The Facility Servicer also may rely upon any statement made to it orally or by telephone and reasonably believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. As to any matters not expressly provided for by any Transaction Document, the Facility Servicer shall in all cases be fully protected in acting, or in refraining from acting, under any Transaction Document in accordance with instructions given by the Administrative Agent, Initial Lender or, if provided in this Agreement, in accordance with the instructions given by the Majority Lenders or all Lenders as is required in such circumstance, and such instructions of such Lenders and any action taken or failure to act pursuant to such instructions shall be binding on all of the Lenders.

SECTION 8.04 Authorization of the Portfolio Asset Servicer.

(a) Each of the Borrower, the Administrative Agent and each Lender hereby authorizes the Portfolio Asset Servicer (including any successor thereto) to take any and all reasonable steps in its name and on its behalf necessary or desirable in the determination of the Portfolio Asset Servicer and not inconsistent with the security interest of the Administrative Agent, for the benefit of the Secured Parties, in the Collateral, to collect all amounts due under the Collateral Portfolio, including endorsing any of their names on checks and other instruments representing Collections, executing and delivering any and all instruments of satisfaction or cancellation, or of partial or full release or discharge, and all other comparable instruments, with respect to the Collateral Portfolio and, after the delinquency of any Portfolio Asset, and to the extent permitted under and in compliance with Applicable Law, to commence proceedings with respect to enforcing payment thereof. The Borrower and the Administrative Agent on behalf of the Secured Parties shall furnish the Portfolio Asset Servicer (and any successors thereto) with any powers of attorney and other documents necessary or appropriate to enable the Portfolio Asset Servicer to carry out its servicing and administrative duties hereunder, and shall cooperate with the Portfolio Asset Servicer to the fullest extent in order to facilitate the collectability of the Collateral Portfolio. In no event shall the Portfolio Asset Servicer be entitled to make the Secured Parties, the Administrative Agent or any Lender a party to any litigation without such party' s express prior written consent, or to make the Borrower a party to any litigation (other than any routine foreclosure or similar collection procedure) without the Administrative Agent' s (at the direction of the Majority Lenders) consent. In the performance of its obligations hereunder, the Portfolio Asset Servicer shall not be obligated to take, or to refrain from taking, any action which the Borrower or any Lender requests that the Portfolio Asset Servicer take or refrain from taking to the extent that the Portfolio Asset Servicer determines in its reasonable and good faith judgment that such action or inaction (i) may cause a violation of applicable laws, regulations, codes, ordinances, court orders or restrictive covenants with respect to any Portfolio Asset, the Borrower or any Obligor, (ii) may cause a violation of any provision of this Agreement, a Fee Letter or a Required Portfolio Document or any other Transaction Document or (iii) may be a violation of the Servicing Standard.

(b) After the Maturity Date, at the direction of the Administrative Agent (acting at the direction of the Majority Lenders), the Portfolio Asset Servicer shall take such action as the Administrative Agent may deem necessary or advisable to enforce collection of the Portfolio Assets; provided that the Administrative Agent may (at the direction of the Majority Lenders), at any time that an Event of Default

has occurred and is continuing, notify the Obligor, agent, administrative agent, Counterparty Lender, Underlying Agent or Underlying Servicer, as applicable, with respect to any Portfolio Asset of the assignment of such Portfolio Asset to the Administrative Agent for the benefit of the Secured Parties and direct that payments of all amounts due or to become due thereunder be made directly to the Administrative Agent or any servicer, collection agent or account designated by the Administrative Agent and, upon such notification and at the expense of the Borrower, the Administrative Agent (acting at the direction of the Majority Lenders) may enforce collection of any such Portfolio Asset, and adjust, settle or compromise the amount or payment thereof. Upon the written request of the Facility Servicer or the Administrative Agent, the Borrower shall furnish the Facility Servicer and Administrative Agent, as applicable, with an appropriate power of attorney to send (at the direction of the Majority Lenders) notification forms to the Obligors or any agent, administrative agent, Counterparty Lender, Underlying Agent, Underlying Servicer or issuer of a Portfolio Asset of the Administrative Agent' s interest in the Collateral and the obligation to make payments as directed by the Administrative Agent (acting at the direction of the Majority Lenders).

SECTION 8.05 Collection of Payments; Accounts.

(a) Collection Efforts, Modification of Collateral Portfolio. The Portfolio Asset Servicer shall use commercially reasonable efforts to collect or cause to be collected, all payments called for under the terms and provisions of the Portfolio Assets included in the Collateral Portfolio as and when the same become due, all in accordance with the Servicing Standard. The Portfolio Asset Servicer may not waive, modify or otherwise vary any provision of a Portfolio Asset in any manner contrary to the Servicing Standard. If the Portfolio Asset Servicer does not receive from the related Underlying Servicer, Counterparty Lender or Obligor the payments to be paid to Borrower or the Portfolio Asset Servicer as Collections on the date when such payments are scheduled to be made (to the extent the Portfolio Asset Servicer has received such payment information from the Underlying Servicer), the Portfolio Asset Servicer shall promptly notify Borrower and such Underlying Servicer, Counterparty Lender or Obligor.

(b) Collection Account. Each of the parties hereto hereby agrees that (i) the Collection Account is intended to be a "deposit account" within the meaning of the UCC and (ii) only the Administrative Agent and the Facility Servicer shall be entitled to exercise the rights with respect to the Collection Account and have the right to direct the disposition of funds in the Collection Account in accordance with Section 2.08. Each of the parties hereto hereby agrees to cause the Account Bank to agree with the parties hereto that regardless of any provision in any other agreement, for purposes of the UCC, with respect to the Collection Account, New York shall be deemed to be the Account Bank' s jurisdiction (within the meaning of Section 9-304 of the UCC).

(c) Loan and Participation Agreements. Notwithstanding any term hereof to the contrary, neither the Administrative Agent or the Collateral Custodian shall be under any duty or obligation in connection with the acquisition by the Borrower of, or the grant of a security interest by the Borrower to the Administrative Agent in, any Portfolio Asset to examine or evaluate the sufficiency of the documents or instruments delivered to it by or on behalf of the Borrower under the related Loan Agreements or Participation Agreements, or otherwise to examine the Loan Agreements and Participation Agreements, in order to determine or compel compliance with any applicable requirements of or restrictions on transfer (including any necessary consents). The Collateral Custodian shall hold any instrument delivered to it evidencing any Portfolio Asset granted to the Administrative Agent hereunder as custodial agent for the Administrative Agent in accordance with the terms of this Agreement.

(d) Adjustments. If (i) the Portfolio Asset Servicer makes a deposit into the Collection Account in respect of a Collection of a Portfolio Asset and such Collection was received by the Portfolio Asset Servicer in the form of a check that is not honored for any reason or (ii) the Portfolio Asset Servicer makes a mistake with respect to the amount of any Collection and deposits an amount that is less than or more than the actual amount of such Collection, the Portfolio Asset Servicer shall appropriately adjust the amount subsequently deposited into the Collection Account to reflect such dishonored check or mistake. Any Scheduled Payment in respect of which a dishonored check is received shall be deemed not to have been paid.

SECTION 8.06 Realization Upon Portfolio Assets.

(a) Consistent with the applicable Loan Agreement or Participation Agreement, the Portfolio Asset Servicer will monitor efforts of each Counterparty Lender or Underlying Servicer with respect to any Eligible Portfolio Asset as to which no satisfactory arrangements can be made for collection of delinquent payments, and any analysis by such Counterparty Lender or Underlying Servicer proposing a course of action to maximize value with respect to any related Underlying Collateral, including whether to hold for value, sell or transfer any equity or other securities it has received in connection with a default, workout, restructuring or plan of reorganization with respect to the related Underlying Loan Obligations. After the occurrence and during the continuance of an Event of Default, the Portfolio Asset Servicer will comply with the applicable Loan Agreement and Participation Agreement and Applicable Law in directing a Counterparty Lender or Underlying Servicer to realize upon Underlying Collateral, and employ practices and procedures, to direct the related Counterparty Lender or Underlying Servicer to enforce the obligations of Obligors by foreclosing upon, repossessing and causing the sale of such Underlying Collateral at public or private sale.

(b) Notwithstanding anything to the contrary herein, the Facility Servicer shall not take any action with respect to the Collateral Portfolio, nor shall it be required to take any actions, relating to any special servicing activities (it being understood and agreed that the Facility Servicer shall determine whether any obligations or actions of the Facility Servicer expressly set forth in this Agreement or the other Transaction Documents shall constitute special servicing activities), except to the extent (i) agreed to between the Loan Parties, the Lenders and the Facility Servicer, pursuant to a separate fee letter agreement and (ii) the parties to such fee agreement agree to address any conflicts presented by such performance of special servicing activities reasonably requested by the Facility Servicer.

SECTION 8.07 Payment of Certain Expenses. The Borrower (or the Facility Servicer on its behalf to the extent amounts are available in the Collection Account), shall be required to pay all fees and expenses owing to any financial institution in connection with the maintenance of the Collection Account. The Facility Servicer shall be reimbursed for any out-of-pocket expenses incurred hereunder (including out-of-pocket expenses paid by the Facility Servicer on behalf of the Borrower), subject to the availability of funds pursuant to Section 2.08; provided that, to the extent funds are not available for such reimbursement, the Facility Servicer shall be entitled to repayment of such expenses from the Borrower and if the Borrower fails to so reimburse the Facility Servicer, the Facility Servicer shall be entitled to be reimbursed by the Lenders (and each Lender hereby agrees to so reimburse the Facility Servicer as provided herein) within ten Business Days of receipt of an invoice therefor.

SECTION 8.08 Reports.

(a) Servicing Report. On each Reporting Date, the Portfolio Asset Servicer shall provide to the Borrower, the Administrative Agent and the Facility Servicer a monthly report containing the information set forth on (and substantially in the form of) Exhibit C, including (i) a certification from the Portfolio Asset Servicer that a copy of each amendment, restatement, supplement, waiver or other modification to the Loan Agreement of any Portfolio Asset has been provided in accordance with Section 8.08(d), (ii) the outstanding principal balance of each Eligible Portfolio Asset that is a First Lien Senior Secured Portfolio Asset as of the Determination Date for such Reporting Date, (iii) the identification of Collections as principal, Interest Collections or Excluded Amounts, (iv) a calculation of LTV as of such Determination Date for such Reporting Date, (v) the amounts to be transferred from the Collection Account pursuant to Section 2.08(a)(i) and (vi) the amount of any distributions to be made to the Borrower under Section 2.08(a)(vi) as reported by the Borrower pursuant to Section 5.01(p)(iv).

(b) Payment Date Report. On each Reporting Date, the Facility Servicer shall provide to the Administrative Agent and the Initial Lender a Payment Date Report containing the information set forth on (and substantially in the form of) Exhibit D, including the amounts to be remitted pursuant to Section 2.08 to the applicable parties on the related Payment Date (which shall include any applicable wiring instructions of the parties receiving payment) with respect to such Payment Date.

(c) Obligor Financial Statements; Valuation Reports; Other Reports. The Portfolio Asset Servicer shall, with respect to each Obligor for each Portfolio Asset that was an Eligible Portfolio Asset at any time during the applicable fiscal quarter, make available to the Administrative Agent and Initial Lender (which may be done through an online file sharing platform that is reasonably acceptable to the Administrative Agent and the Initial Lender or deliver via email to the Administrative Agent and the Initial Lender) (i) within 60 days after the end of each fiscal quarter of such Obligor, financial reporting packages (including applicable financial statements) delivered by such Obligor pursuant to the applicable Loan Agreement to the extent such financial reporting packages have been received by the Portfolio Asset Servicer during such quarter and (ii) within 30 days of receipt thereof, each servicing report and such other reports in respect of the Loan Agreements prepared by an Underlying Servicer with respect to an Eligible Portfolio Asset to the extent such reports have been received by the Portfolio Asset Servicer (in each case, all to the extent received by the Portfolio Asset Servicer).

(d) Amendments to Portfolio Assets. The Portfolio Asset Servicer will deliver to the Administrative Agent, the Facility Servicer and the Collateral Custodian a copy of any amendment, restatement, supplement, waiver or other modification to the Required Portfolio Documents of any Portfolio Asset (along with any internal documents that are not privileged prepared by its investment committee (or prepared by the Counterparty Lender and provided to the Counterparty Lender' s investment committee) in connection with such amendment, restatement, supplement, waiver or other modification) (i) with respect to any Material Modification or Material CLO Modification, promptly after receipt thereof and (ii) with respect to any amendment, restatement, supplement, waiver or other modification which is not a Material Modification or Material CLO Modification, within 30 days after the end of each quarter (in each case, to the extent received by the Portfolio Asset Servicer). The Portfolio Asset Servicer shall also deliver to the Administrative Agent any notice or other correspondence that it receives hereunder or with respect to any Eligible Portfolio Asset, in each case, to the extent it deems such material, promptly upon receipt thereof.

(e) Delivery Methods. Notwithstanding anything to the contrary contained herein, information required to be delivered or submitted to any Secured Party pursuant to this Agreement shall be deemed to have been delivered on the date upon which such information is received through e-mail or another delivery method acceptable to the Administrative Agent.

SECTION 8.09 Applicable Servicer Not to Resign. An Applicable Servicer shall not resign from the obligations and duties hereby imposed on it except (a) upon such Applicable Servicer' s determination that (i) the performance of its duties hereunder is or becomes impermissible under Applicable Law and (ii) there is no reasonable action that such Applicable Servicer could take to make the performance of its duties hereunder permissible under Applicable Law or (b) upon at least 60 days' prior notice to the other parties hereto. If no Replacement Servicer shall have been appointed and an instrument of acceptance by a Replacement Servicer shall not have been delivered to such Applicable Servicer within 30 days after the giving of such notice of resignation, the resigning Applicable Servicer may petition any court of competent jurisdiction for the appointment of a Replacement Servicer. No such resignation shall become effective until a Replacement Servicer shall have assumed the responsibilities and obligations of such Applicable Servicer in accordance with Section 8.01. Any Fees then due and owing to such Applicable Servicer and accrued through such date, including any expenses or indemnities it is entitled to pursuant to the provisions of this Agreement and any Fee Letter, shall be due and payable on such discharge date and shall be paid from amounts in the Collection Account in accordance with Section 2.08 and if such amounts are insufficient to pay such amounts then due and owing, shall be paid by the Borrower (or the Lenders if the Borrower fails to so pay such amounts) within ten Business Days of receipt of an invoice therefor.

SECTION 8.10 Indemnification of the Facility Servicer. Each Lender agrees to indemnify the Facility Servicer from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever which may be imposed on, incurred by, or asserted against the Facility Servicer in any way relating to or arising out of this Agreement or any of the other Transaction Documents, or any action taken or omitted by the Facility Servicer hereunder or thereunder; provided that (a) the Lenders shall not be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from the Facility Servicer' s gross negligence or willful misconduct as determined in a final decision by a court of competent jurisdiction and (b) no action taken in accordance with the directions of the Majority Lenders, Lenders or the Borrower shall be deemed to constitute gross negligence or willful misconduct for purposes of this Article VIII. Without limitation of the foregoing, each Lender agrees to reimburse the Facility Servicer, promptly upon demand, for any Fees due to it hereunder, out-of-pocket expenses (including reasonable fees of counsel) incurred by the Facility Servicer in connection with the administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement and the other Transaction Documents, to the extent that such expenses are incurred in the interests of or otherwise in respect of the Facility Servicer or Lenders hereunder or thereunder and to the extent that the Facility Servicer is not reimbursed for such expenses by the Borrower under Section 2.08.

ARTICLE IX.
COLLATERAL CUSTODIAN

SECTION 9.01 Designation of Collateral Custodian.

(a) Initial Collateral Custodian. The role of Collateral Custodian with respect to the Required Portfolio Documents shall be conducted by the Person designated as Collateral Custodian hereunder from time to time in accordance with this Section 9.01. Each of the Borrower and the Administrative Agent hereby designates and appoints the Collateral Custodian to act as its agent and hereby authorizes the Collateral Custodian to take such actions on its behalf and to exercise such powers and perform such duties as are expressly granted to the Collateral Custodian by this Agreement; provided, that the Administrative Agent shall have no liability with respect to such appointment. The Collateral Custodian hereby accepts such agency appointment to act as Collateral Custodian pursuant to the terms of this Agreement, until its resignation or removal as Collateral Custodian pursuant to the terms hereof. Wells Fargo will perform its duties as Collateral Custodian hereunder through its Document Custody division (including, as applicable, any agents or affiliates appointed hereby).

(b) Successor Collateral Custodian. Upon the Collateral Custodian' s receipt of a Collateral Custodian Termination Notice from the Administrative Agent of the designation of a successor Collateral Custodian pursuant to the provisions of Section 9.05, the Collateral Custodian agrees that it will terminate its activities as Collateral Custodian hereunder in accordance with the terms of Section 9.05.

SECTION 9.02 Duties of Collateral Custodian.

(a) Duties. The Collateral Custodian shall perform, on behalf of Administrative Agent, the following duties and obligations:

(i) The Collateral Custodian shall take and retain custody of the Portfolio Asset Files and the Required Portfolio Documents delivered by the Portfolio Asset Servicer and Borrower pursuant to Section 3.02(c) or 3.04(d), all for the benefit of the Administrative Agent on behalf of the Secured Parties. Within five Business Days of receipt of any Required Portfolio Documents (if the Collateral Custodian receives no more than 10 Portfolio Asset Files during such five Business Day period) or within a reasonable timeframe as mutually agreed upon, the Collateral Custodian shall review such Required Portfolio Documents to confirm that (A) the principal amount and the Obligor name on the applicable Loan Agreement and any related promissory note matches that on the Portfolio Asset Schedule and the Portfolio Asset number on the applicable Loan Agreement matches that on the Portfolio Asset Schedule, as applicable, (B) such Required Portfolio Documents, have been executed (either an original or a copy, as indicated on the related Portfolio Asset Checklist), appear to relate to such Portfolio Asset and have no mutilated pages, (C) filed copies of the UCC financing statements and other filings identified on the related Portfolio Asset Checklist are included and (D) if listed on the related Portfolio Asset Checklist, a copy of an Insurance Policy or insurance certificate with respect to any real or personal property constituting the Underlying Collateral for such Portfolio Asset is included (the items to be reviewed pursuant to this sentence, collectively, the "Review Criteria"). In order to facilitate the foregoing review by the Collateral Custodian, in connection with each delivery of a Portfolio Asset File hereunder to the Collateral Custodian, the Portfolio Asset Servicer shall provide to the Collateral Custodian a hard copy (which may be proceeded by an electronic copy and separately uploaded by the

Borrower or the Portfolio Asset Servicer or its designee to the designated CTSLink.com; provided that each .pdf document will be identified with the loan number in the format "LoanNumber.DocumentName.pdf" (example, 12345.mortgage.pdf)) of the related Portfolio Asset Checklist which contains the Portfolio Asset information with respect to the Portfolio Asset File being delivered, identification number and the name of the Obligor with respect to such Portfolio Asset. Notwithstanding anything herein to the contrary, the Collateral Custodian' s obligation to review the Portfolio Asset File shall be limited to the Review Criteria and based on the information provided on the related Portfolio Asset Checklist. If, at the conclusion of such review, the Collateral Custodian shall determine that (1) the principal balance of the Portfolio Asset with respect to which it has received the Portfolio Asset File does not match the principal balance set forth on the Portfolio Asset Schedule, the Collateral Custodian shall notify the Administrative Agent, Initial Lender and the Facility Servicer of such discrepancy within one Business Day or (2) any other Review Criteria is not satisfied, the Collateral Custodian shall within one Business Day notify the Borrower, Administrative Agent, Initial Lender and the Facility Servicer of such determination and provide the Borrower and Facility Servicer with a list of the non-complying Portfolio Assets and the applicable Review Criteria that they fail to satisfy. The Borrower shall have ten Business Days after notice or knowledge thereof to correct any non-compliance with any Review Criteria. In addition, if requested in writing by the Borrower or Portfolio Asset Servicer in accordance with Section 9.08 and approved by the Administrative Agent (acting at the direction of the Majority Lenders) within ten Business Days of the Collateral Custodian' s delivery of such report, the Collateral Custodian shall return any Portfolio Asset File which fails to satisfy a Review Criteria to the Borrower. Other than the foregoing, the Collateral Custodian shall not have any responsibility for reviewing any Portfolio Asset File.

(ii) In taking and retaining custody of the Portfolio Asset Files, the Collateral Custodian shall be deemed to be acting as the agent of the Administrative Agent on behalf of the Secured Parties; provided that (A) the Collateral Custodian makes no representations as to the existence, perfection or priority of any Lien on the Portfolio Asset Files or the instruments therein and (B) the Collateral Custodian' s duties shall be limited to those expressly contemplated herein.

(iii) All Portfolio Asset Files shall be continuously stored in fire resistant vaults, rooms or cabinets at the locations specified as the address of the Collateral Custodian on Schedule IV or at such other office as shall be specified to the Administrative Agent, Facility Servicer and the Borrower by the Collateral Custodian in a written notice delivered at least 30 days prior to such change. The Collateral Custodian shall segregate the Portfolio Asset Files on its inventory system.

(iv) On each Reporting Date following the first delivery of Required Portfolio Documents to the Collateral Custodian, the Collateral Custodian shall provide a written report to the Administrative Agent, the Borrower and the Lenders (in a form mutually agreeable to the Administrative Agent (at the direction of the Majority Lenders) and the Collateral Custodian) identifying each Portfolio Asset for which it holds a Portfolio Asset File and the applicable Review Criteria that any Portfolio Asset File fails to satisfy. The Borrower shall have ten Business Days after notice or knowledge thereof to correct any non-compliance with any Review Criteria.

(v) The Collateral Custodian shall have no duties or obligations other than those specifically set forth herein or as may subsequently be agreed to in writing by the parties hereto.

(b) Notwithstanding any provision to the contrary elsewhere in the Transaction Documents, the Collateral Custodian shall not have any fiduciary relationship with any party hereto or any Secured Party in its capacity as such, and no implied covenants, functions, obligations or responsibilities shall be read into this Agreement, the other Transaction Documents or otherwise exist against the Collateral Custodian. Without limiting the generality of the foregoing, it is hereby expressly agreed and stipulated by the other parties hereto that the Collateral Custodian shall not be required to exercise any discretion hereunder and shall have no investment or management responsibility.

(c) Collateral Matters.

(i) The Collateral Custodian agrees to cooperate with the Administrative Agent, Facility Servicer and the Portfolio Asset Servicer regarding the delivery of any Portfolio Asset File to the Facility Servicer, Portfolio Asset Servicer or Administrative Agent (pursuant to a written request in the form of Exhibit G), as applicable, as requested in order to take any action that the Administrative Agent (acting at the direction of the Majority Lenders) or the Facility Servicer deems necessary or desirable in order to perfect, protect or more fully evidence the security interests granted by the Borrower hereunder, or to enable any of them to exercise or enforce any of their respective rights hereunder, including any rights arising with respect to Article VI. In the event the Collateral Custodian receives instructions from the Facility Servicer or the Portfolio Asset Servicer which conflict with any instructions received by the Administrative Agent, the Collateral Custodian shall rely on and follow the instructions given by the Administrative Agent.

(ii) The Administrative Agent (acting at the direction of the Majority Lenders) may direct the Collateral Custodian to take any such incidental action hereunder. With respect to other actions which are incidental to the actions specifically delegated to the Collateral Custodian hereunder, the Collateral Custodian shall not be required to take any such incidental action hereunder, but shall be required to act or to refrain from acting (and shall be fully protected in acting or refraining from acting) upon the direction of the Administrative Agent; provided that the Collateral Custodian shall not be required to take any action hereunder at the request of the Administrative Agent, any Secured Party or otherwise if the taking of such action, in the reasonable determination of the Collateral Custodian, (A) shall be in violation of any Applicable Law or contrary to any provisions of this Agreement or (B) shall expose the Collateral Custodian to liability hereunder or otherwise (unless it has received indemnity which it reasonably deems to be satisfactory with respect thereto). In the event the Collateral Custodian requests the consent of the Administrative Agent and the Collateral Custodian does not receive a consent (either positive or negative) from the Administrative Agent within ten Business Days of its receipt of such request, then the Administrative Agent shall be deemed to have declined to consent to the relevant action.

(iii) The Collateral Custodian shall not be liable for any action taken, suffered or omitted by it in accordance with the request or direction of any Secured Party, to the extent that this Agreement provides such Secured Party the right to so direct the Collateral Custodian, or the Administrative Agent. The Collateral Custodian shall not be deemed to have notice or knowledge of any matter hereunder, including an Event of Default, unless a Responsible Officer of the Collateral Custodian has actual knowledge of such matter or written notice thereof is received by the Collateral Custodian.

(iv) In performing its duties, the Collateral Custodian shall comply with the standard of care and express terms of this Agreement with respect to the collateral that it holds hereunder.

SECTION 9.03 Merger or Consolidation. Any Person (a) into which the Collateral Custodian may be merged or consolidated, (b) that may result from any merger or consolidation to which the Collateral Custodian shall be a party or (c) that may succeed to the properties and assets of the Collateral Custodian substantially as a whole, which Person in any of the foregoing cases executes an agreement of assumption to perform every obligation of the Collateral Custodian hereunder, shall be the successor to the Collateral Custodian under this Agreement without further act of any of the parties to this Agreement.

SECTION 9.04 Collateral Custodian Compensation. As compensation for its Collateral Custodian activities hereunder, the Collateral Custodian shall be entitled to the Collateral Custodian Fees from the Borrower as set forth on Schedule XI, payable pursuant to the extent of funds available therefor pursuant to the provisions of Section 2.08; provided that if such amounts are insufficient then Sections 9.12 and 11.07 shall be applicable. The Collateral Custodian' s entitlement to receive the Collateral Custodian Fees shall cease on the earlier to occur of (i) its removal as Collateral Custodian pursuant to Section 9.05, (ii) its resignation as Collateral Custodian pursuant to Section 9.07 of this Agreement or (iii) the termination of this Agreement; provided that the Collateral Custodian shall be entitled to any fees accrued and payable up to such date to the extent not previously paid.

SECTION 9.05 Collateral Custodian Removal. The Administrative Agent may (upon the direction of the Majority Lenders) terminate all of the rights, obligations, power and authority of the Collateral Custodian under this Agreement by giving at least 30 days advance written notice thereof to the Collateral Custodian, the Facility Servicer, the Portfolio Asset Servicer and the Borrower (such notice, the "Collateral Custodian Termination Notice"). On and after the receipt by the Collateral Custodian of a Collateral Custodian Termination Notice, the Collateral Custodian shall continue to act in such capacity until the date specified in the Collateral Custodian Termination Notice (such date not to exceed 30 days after the date of such notice) or otherwise specified by the Administrative Agent (at the direction of the Majority Lenders) in writing or, if no such date is specified in such Collateral Custodian Termination Notice or otherwise specified by the Administrative Agent (at the direction of the Majority Lenders), until a date mutually agreed upon by the Collateral Custodian and the Administrative Agent (at the direction of the Majority Lenders). Upon any such removal, the Majority Lenders shall appoint a successor Collateral Custodian; provided that (i) the consent of the Borrower shall be required to appoint any such successor, unless an Event of Default has occurred and is continuing, and (ii) in no event shall any such successor Collateral Custodian be a Competitor. If no successor Collateral Custodian shall have been appointed and an instrument of acceptance by a successor Collateral Custodian shall not have been delivered to the Majority Lenders and the Borrower within 30 days after the giving of such notice of removal, the removed Collateral Custodian may petition any court of competent jurisdiction for the appointment of a successor Collateral Custodian and all fees, out-of-pocket costs and reasonable expenses (including reasonable attorneys' fees and out-of-pocket expenses of outside counsel) incurred by the Collateral Custodian, in connection with any such petition shall be paid or otherwise reimbursed to the Collateral Custodian by Borrower. No such removal shall become effective until a successor Collateral Custodian shall have assumed the responsibilities and obligations of the Collateral Custodian in accordance with this Section 9.05. The Collateral Custodian shall be entitled to receive, to the extent of funds available therefor pursuant to Section 2.08, any Fees accrued until such termination date as well as any other fees, amounts, expenses or indemnities it is entitled to pursuant to the provisions of this Agreement and any Fee Letter (the "Collateral Custodian Termination Expenses"). To the extent amounts held in the Collection Account

and paid in accordance with Section 2.08 are insufficient to pay the Collateral Custodian Termination Expenses, the Borrower (and to the extent the Borrower fails to so pay, the Lenders) agree to pay the Collateral Custodian Termination Expenses within ten Business Days of receipt of an invoice therefor. After the earlier of (a) the termination date specified in the applicable Collateral Custodian Termination Notice and (b) 30 days thereafter as provided above, the Collateral Custodian agrees that it will terminate its activities as Collateral Custodian hereunder in a manner that the Administrative Agent (at the direction of the Majority Lenders) and prior written consent of the Borrower (provided that the consent of the Borrower shall not be required after the occurrence, and during the continuance, of an Event of Default) believes will facilitate the transition of the performance of such activities to a successor Collateral Custodian, and the successor Collateral Custodian shall assume each and all of the Collateral Custodian' s obligations under this Agreement, on the terms and subject to the conditions herein set forth, and the Collateral Custodian shall use its commercially reasonable efforts to assist the successor Collateral Custodian in assuming such obligations. The cost of shipping any Loan Asset Files arising out of the removal of the Collateral Custodian shall be an expense of Borrower. With respect to any Electronic Portfolio Asset Files upon the removal of the Collateral Custodian, the Collateral Custodian will remove from its possession and shall delete all Electronic Portfolio Asset Files held in its possession pursuant to this Agreement and in accordance with the Collateral Custodian' s customary retention and purging policies and procedures of electronic files and data.

SECTION 9.06 Limitation on Liability.

(a) The Collateral Custodian may conclusively rely on and shall be fully protected in acting upon any certificate, instrument, opinion, notice, letter or other document delivered to it and that in good faith it reasonably believes to be genuine and that has been signed by the proper party or parties. The Collateral Custodian may rely conclusively on and shall be fully protected and shall not be liable in acting upon (in the absence of bad faith, gross negligence or willful misconduct) (i) the written instructions of any designated officer of the Administrative Agent or (ii) the verbal instructions of the Administrative Agent reasonably believed by the Collateral Custodian to be genuine and to have been signed or presented by the applicable designated officer and conforming to the requirements of this Agreement; provided that in the case of any Portfolio Asset File or other request, instruction, document or certificate which by any provision hereof is specifically required to be furnished to the Collateral Custodian, the Collateral Custodian shall be under a duty to examine the same in accordance with the requirements of this Agreement.

(b) The Collateral Custodian may consult with counsel selected by it in good faith and with reasonable care and the advice or opinion of such counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in reasonable reliance thereon, in good faith and in accordance with the advice or opinion of such counsel and reasonably believed by Collateral Custodian to be authorized or within the discretion of the rights and powers conferred upon it by this Agreement.

(c) The Collateral Custodian shall not be liable for any error of judgment, or for any act done or step taken or omitted by it, in good faith, or for any mistakes of fact or law, or for anything that it may do or refrain from doing in connection herewith, including, but not limited to, in connection with any requirement to obtain certificated Pledged Equity from Borrower or Holdings, except in the case of its willful misconduct or grossly negligent performance or omission of its duties.

(d) The Collateral Custodian makes no warranty or representation (except as expressly set forth in this Agreement) and shall have no responsibility (except as expressly set forth in this Agreement) as to the content, enforceability, completeness, validity, sufficiency, value, genuineness, ownership or transferability of any Portfolio Asset File, and will not be required to and will not make any representations as to the validity or value (except as expressly set forth in this Agreement) of any of the Portfolio Assets. The Collateral Custodian shall not be obligated to take any legal action hereunder that might in its judgment involve any expense or liability unless it has been furnished with an indemnity reasonably satisfactory to it.

(e) The Collateral Custodian shall have no duties or responsibilities except such duties and responsibilities as are specifically set forth in this Agreement and no covenants or obligations shall be implied in this Agreement against the Collateral Custodian.

(f) The Collateral Custodian shall not be required to expend or risk its own funds in the performance of its duties hereunder and shall not be required to take such action where the timely payment of its fees and expenses or the repayment of such funds or adequate indemnity against such risk or liability is not assured to it.

(g) It is expressly agreed and acknowledged that the Collateral Custodian is not guaranteeing or overseeing performance of or assuming any liability for the obligations of the other parties hereto or any parties to a Portfolio Asset.

(h) Subject in all cases to Section 9.02(b), in case any reasonable question arises as to its duties hereunder, the Collateral Custodian may, prior to the occurrence of, and continuance of, an Event of Default, request instructions from the Portfolio Asset Servicer and may, after the occurrence of, and during the continuance of, an Event of Default, request instructions from the Administrative Agent, and shall be entitled at all times to refrain from taking any action unless it has received instructions from the Portfolio Asset Servicer or the Administrative Agent, as applicable. The Collateral Custodian shall in all events have no liability, risk or cost for any action taken pursuant to and in compliance with the instruction of the Administrative Agent reasonably believed by the Collateral Custodian to be genuine and to have been signed or presented by the applicable designated office and conforming to the requirements of this Agreement. In no event shall the Collateral Custodian be liable for special, indirect punitive or consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Collateral Custodian has been advised of the likelihood of such loss or damage and regardless of the form of action.

(i) It is expressly acknowledged by the parties hereto that application and performance by the Collateral Custodian of its various duties hereunder shall be based upon, and in reliance upon, data, information and notice provided to it by the Administrative Agent, the Borrower and/or any related bank agent, obligor or similar party, and the Collateral Custodian shall have no responsibility for the accuracy of any such information or data provided to it by such persons and shall be entitled to update its records (as it may deem necessary or appropriate).

(j) The parties acknowledge that in accordance with the Customer Identification Program (CIP) requirements under the USA Patriot Act and its implementing regulations, the Collateral Custodian in order to help fight the funding of terrorism and money laundering, is required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an

account with the Collateral Custodian. The Borrower hereby agrees that it shall provide the Collateral Custodian with such information as it may request including, but not limited to, the Borrower' s name, physical address, tax identification number and other information that will help the Collateral Custodian to identify and verify the Borrower' s identity such as organizational documents, certificate of good standing, license to do business, or other pertinent identifying information.

(k) The Collateral Custodian shall not be responsible for preparing or filing any reports or returns relating to federal, state or local income taxes with respect to this Agreement, other than for the Collateral Custodian' s compensation or for reimbursement of expenses.

(l) The Collateral Custodian shall be under no obligation to make any investigation into the facts or matters stated in any resolution, exhibit, request, representation, opinion, certificate, statement, acknowledgement, consent, order or document in the Portfolio Asset File or any other document or instrument other than as expressly provided for herein.

(m) The Collateral Custodian shall have no duty to see to, or be responsible for the correctness or accuracy of, any recording, filing or depositing of this Agreement or any agreement referred to herein or any financing statement or continuation statement or other similar filing evidencing a security interest, or to see to the maintenance of any such recording or filing or depositing or to any rerecording, refilling or re-depositing of any thereof.

(n) The Collateral Custodian shall use the same degree of care and skill as is reasonably expected of financial institutions acting in comparable capacities; provided that this subsection shall not be interpreted to impose upon the Collateral Custodian a higher standard of care than that set forth herein.

(o) The Collateral Custodian may perform any and all of its duties and exercise its rights and powers hereunder or under any other Transaction Document by or through any one or more agents, affiliates, sub-agents or attorneys appointed by the Collateral Custodian. The Collateral Custodian and any such agents, affiliate, sub-agent or attorneys may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such party and to the Related Parties of the Collateral Custodian and any such party. The Collateral Custodian shall not be responsible for the negligence or misconduct of any agent, affiliate, sub-agents or attorney appointed by it with due care.

(p) The Collateral Custodian shall not be responsible for or have any duty to ascertain or inquire into (i) any recital, statement, warranty or representation made in or in connection with this Agreement or any other Transaction Document, (ii) the contents or accuracy of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith and shall not be required to recalculate, certify or verify any information therein, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Event of Default or Unmatured Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Transaction Document or any other agreement, instrument or document, or (v) the satisfaction of any condition set forth in Article III or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Collateral Custodian.

(q) The Collateral Custodian shall incur no liability if, by reason of any provision of any future law or regulation thereunder, or by any force majeure event, including but not limited to natural disaster, epidemic or pandemic, act of war or terrorism, or other circumstances beyond its reasonable control, the Collateral Custodian shall be prevented or forbidden from doing or performing any act or thing which the terms of this Agreement provide shall or may be done or performed, or by reason of any exercise of, or failure to exercise, any discretion provided for in this Agreement or any other Transaction Document.

(r) Knowledge of the Collateral Custodian shall not be attributed or imputed to Wells Fargo' s other roles in the transaction (other than those where the roles are performed by the same group or division within Wells Fargo or otherwise share the same Responsible Officers), or any affiliate, line of business, or other division of Wells Fargo (and vice versa).

(s) The Collateral Custodian shall not be responsible for the acts or omissions of any other party to this Agreement.

SECTION 9.07 Collateral Custodian Resignation.

(a) The Collateral Custodian shall not resign from the obligations and duties hereby imposed on it except (i) upon the Collateral Custodian' s determination that (A) the performance of its duties hereunder is or becomes impermissible under Applicable Law and (B) there is no reasonable action that the Collateral Custodian could take to make the performance of its duties hereunder permissible under Applicable Law or (ii) upon at least 60 days' prior notice to the other parties hereto. Upon any such resignation, the Borrower and the Initial Lender acting jointly shall appoint a successor Collateral Custodian (provided that the consent of the Borrower shall not be required after the occurrence, and during the continuance, of an Event of Default); provided that in no event shall any successor Collateral Custodian be a Competitor. If no successor Collateral Custodian shall have been appointed and an instrument of acceptance by a successor Collateral Custodian shall not have been delivered to the Collateral Custodian within 45 days after the giving of such notice of resignation, the resigning Collateral Custodian may petition any court of competent jurisdiction for the appointment of a successor Collateral Custodian and all fees, out-of-pocket costs and reasonable expenses (including without limitation, reasonable attorneys' fees and out-of-pocket expenses of outside counsel) incurred by the Collateral Custodian, in connection with any such petition shall be paid (or otherwise reimbursed to the Collateral Custodian) by the Borrower. No such resignation shall become effective until a successor Collateral Custodian shall have assumed the responsibilities and obligations of the Collateral Custodian.

(b) Upon the effective date of such resignation, or if the Administrative Agent gives Collateral Custodian written notice of an earlier termination pursuant to Section 9.05, the Collateral Custodian shall (i) be reimbursed for any costs, fees and expenses that the Collateral Custodian shall incur in connection with its resignation or with the termination of its duties under this Agreement and (ii) deliver all of the Required Portfolio Documents in the possession of Collateral Custodian to the Administrative Agent or to such Person as the Administrative Agent may designate to Collateral Custodian in writing upon the receipt of a request in the form of Exhibit G. With respect to any Electronic Portfolio Asset Files upon the resignation of the Collateral Custodian, the Collateral Custodian will remove from its possession and shall delete all Electronic Portfolio Asset Files held in its possession pursuant to this Agreement and in accordance with the Collateral Custodian' s customary retention and purging policies and procedures of electronic files and data.

SECTION 9.08 Release of Documents.

(a) Release for Servicing. From time to time and as appropriate for the enforcement or servicing of any Portfolio Asset, the Collateral Custodian is hereby authorized (unless and until such authorization is revoked by the Administrative Agent), upon written receipt from an Authorized Person of the Portfolio Asset Servicer of a request for release of documents and receipt in the form of Exhibit G, to release to the Portfolio Asset Servicer within two Business Days of receipt of such request, the related Portfolio Asset File or the documents set forth in such request. All documents so released to the Portfolio Asset Servicer shall be held by the Portfolio Asset Servicer in trust for the benefit of the Administrative Agent, on behalf of the Secured Parties, in accordance with the terms of this Agreement. The Portfolio Asset Servicer shall return to the Collateral Custodian such Portfolio Asset File or other such documents (i) promptly upon the request of the Administrative Agent (at the direction of the Majority Lenders) or (ii) when the Portfolio Asset Servicer' s need therefor in connection with such enforcement or servicing no longer exists, unless the related Portfolio Asset is liquidated, in which case, an Authorized Person of the Portfolio Asset Servicer shall deliver an additional request for release of documents to the Collateral Custodian and receipt certifying such liquidation from the Portfolio Asset Servicer to the Administrative Agent, all in the form of Exhibit G. All Electronic Portfolio Asset Files in the Collateral Custodian' s possession that are requested for release pursuant to this section for a permanent reason will be removed and deleted from the Collateral Custodian' s electronic storage facilities in accordance with the Collateral Custodian' s customary retention and purging policies and procedures of electronic files and data.

(b) Limitation on Release. Promptly after delivery to the Collateral Custodian of any request for release of documents, the Portfolio Asset Servicer shall provide notice of the same to the Administrative Agent. Any additional Required Portfolio Documents or documents requested to be released by the Portfolio Asset Servicer may be released only upon written authorization of the Administrative Agent (at the direction of the Majority Lenders). The limitations of this Section 9.08(b) shall not apply to the release of Required Portfolio Documents to the Portfolio Asset Servicer pursuant to Section 9.08(a).

SECTION 9.09 Return of Required Portfolio Documents. The Borrower (or the Portfolio Asset Servicer on their behalf) may require that the Collateral Custodian return each Portfolio Asset File (a) delivered to the Collateral Custodian in error or (b) released from the Lien of the Administrative Agent hereunder pursuant to Section 2.11, in each case by submitting to the Collateral Custodian a written request in the form of Exhibit G (signed by the Borrower or Portfolio Asset Servicer, as applicable) specifying the Portfolio Asset File to be so returned and reciting that the conditions to such release have been met (and specifying the Section or Sections of this Agreement being relied upon for such release). The Collateral Custodian shall upon its receipt of each such request for return executed by the Borrower or Portfolio Asset Servicer, as applicable, promptly, but in any event within five Business Days, return the Portfolio Asset File so requested to the Borrower or Portfolio Asset Servicer.

SECTION 9.10 Access to Certain Documentation and Information Regarding the Collateral Portfolio; Audits of Portfolio Asset Servicer. The Collateral Custodian shall provide to the Administrative Agent, the Facility Servicer, the Portfolio Asset Servicer and the Borrower access to the Portfolio Asset Files and all other documentation regarding the Collateral Portfolio including in such cases where the Administrative Agent, the Facility Servicer, the Portfolio Asset Servicer or the Borrower is required in connection with the enforcement of the rights or interests of the Secured Parties, or by applicable statutes or regulations, to review such documentation, such access being afforded without charge but only (a) upon two Business

Days prior written request, (b) during normal business hours and (c) subject to the Collateral Custodian' s normal security and confidentiality procedures. Periodically on and after the Closing Date, the Administrative Agent or Initial Lender may review the Portfolio Asset Servicer' s collection and administration of the Portfolio Asset Files in order to assess compliance by the Portfolio Asset Servicer with the Servicing Standard, as well as with this Agreement and may conduct an audit of the Portfolio Asset Files in conjunction with such a review. Such review shall be reasonable in scope and shall be completed in a reasonable period of time. Without limiting the foregoing provisions of this Section 9.10, from time to time, upon at least two (2) Business Days prior written notice to the Collateral Custodian, the Collateral Custodian shall permit Persons appointed by the Portfolio Asset Servicer or Facility Servicer to conduct, at the expense of the Borrower, a review of the Portfolio Asset Files and all other documentation regarding the Collateral Portfolio not more than one time per calendar year for such Applicable Servicer.

SECTION 9.11 Bailment. The Collateral Custodian agrees that, with respect to any Portfolio Asset File at any time or times in its possession, the Collateral Custodian is the agent and bailee of the Administrative Agent, for the benefit of the Secured Parties, for purposes of perfecting (to the extent not otherwise perfected) the Administrative Agent' s security interest in the Collateral Portfolio and for the purpose of ensuring that such security interest is entitled to first priority status under the UCC.

SECTION 9.12 Indemnification of the Collateral Custodian. Each Lender agrees to indemnify the Collateral Custodian, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements (including reasonable attorney' s fees and expenses and court costs) of any kind or nature whatsoever which may be imposed on, incurred by, or asserted against the Collateral Custodian in any way relating to or arising out of this Agreement or any of the other Transaction Documents, including those incurred in connection with any action, claim or suit brought by the Collateral Custodian to enforce its rights to indemnification, or any action taken or omitted by the Collateral Custodian hereunder or thereunder; provided that (a) the Lenders shall not be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from the Collateral Custodian' s gross negligence or willful misconduct as determined in a final decision by a court of competent jurisdiction and (b) no action taken in accordance with the directions of the Majority Lenders, the Lenders or the Borrower shall be deemed to constitute gross negligence or willful misconduct for purposes of this Article IX. The indemnification provided for in this Section 9.12 shall.

survive the resignation or removal of the Collateral Custodian or the termination of this Agreement

SECTION 9.13 Borrower' s Certification. Solely as between the Borrower and the Collateral Custodian, the Borrower hereby certifies to the Collateral Custodian that, notwithstanding anything to the contrary in this Agreement, the review contemplated by Article IX (the "Review") is a review to be performed by the Collateral Custodian solely for the purpose of acknowledging receipt of Portfolio Asset Files by the Collateral Custodian from the Borrower. Any custodial certification (the "Certification") related to such Review prepared by the Collateral Custodian and furnished to the Borrower is produced solely in connection with this purpose. The Borrower did not engage the Collateral Custodian to perform the Review, produce the Certification or perform any of the services in this Agreement for the purpose of making findings with respect to the accuracy of the information or data regarding the Portfolio Asset Files provided to the Collateral Custodian by the Borrower for the Review as contemplated by Rule 17g-10 under the Exchange Act. Given the purpose and scope of the Collateral Custodian' s services with respect

to the Borrower under this Agreement (including the Review and any Certification) and given the Borrower' s treatment and use of the Review and Certification, the Borrower and the Collateral Custodian agree that the Collateral Custodian' s Review is not commonly understood in the market to be "due diligence services" for purposes of Rule 17g-10 under the Exchange Act. The Borrower does not consider the Review and the Certification to be "due diligence services" for purposes of Rule 17g-10 under the Exchange Act, and unless the Borrower notifies the Collateral Custodian to the contrary, the Borrower will not treat the Certification as a "third-party due diligence report" for purposes of Rule 15Ga-2 under the Exchange Act. The Borrower hereby acknowledges that the Collateral Custodian is relying on this certification for purposes of determining that its Review does not constitute "due diligence services" under Rule 17g-10 under the Exchange Act.

ARTICLE X.
INDEMNIFICATION

SECTION 10.01 Indemnities by the Loan Parties.

(a) Without limiting any other rights which the Secured Parties or any of their respective Affiliates may have hereunder or under Applicable Law, the Loan Parties indemnify the Secured Parties and each of their respective Affiliates, assigns, officers, directors, employees and agents (each, an "Indemnified Party" for purposes of this Article X), on a joint and several basis, from and against any and all damages, losses, claims, liabilities and related costs and expenses, including reasonable attorneys' fees and disbursements and court costs (all of the foregoing being collectively referred to as "Indemnified Amounts"), incurred by or asserted against such Indemnified Party arising out of or as a result of (i) this Agreement or the other Transaction Documents or in respect of the transactions contemplated thereby or with respect to any of the Collateral, (ii) any action taken or omitted to be taken by any Indemnified Party under this Agreement or any Transaction Document, (iii) any Advance or the use or proposed use of the proceeds therefrom, (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by a Loan Party, and regardless of whether any Indemnified Party is a party thereto or (v) any action, claim or suit brought by an Indemnified Party related to the foregoing to enforce its right to indemnification hereunder, excluding, however, Indemnified Amounts to the extent (A) resulting from gross negligence, bad faith or willful misconduct on the part of an Indemnified Party as determined in a final decision by a court of competent jurisdiction or (B) in the case of any Indemnified Party other than the Administrative Agent or the Collateral Custodian in their capacities as such, resulting from a dispute between Indemnified Parties. This Section 10.01(a) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(b) Any amounts subject to the indemnification provisions of this Section 10.01 shall be paid by the Loan Parties to the applicable Indemnified Party within 30 days following receipt by the Borrower of such Indemnified Party' s written demand therefor. Any Indemnified Party making a request for indemnification under this Section 10.01, shall submit to the Borrower a certificate setting forth in reasonable detail the basis for and the computations of the Indemnified Amounts with respect to which such indemnification is requested, which certificate shall be conclusive absent demonstrable error.

(c) If for any reason the indemnification provided above in this Section 10.01 is unavailable to the Indemnified Party or is insufficient to hold an Indemnified Party harmless in respect of any losses, claims, damages or liabilities, then the Loan Parties shall contribute to the amount paid or payable by such

Indemnified Party as a result of such losses, claims, damages or liabilities in such proportion as is appropriate to reflect not only the relative benefits received by such Indemnified Party on the one hand and the Loan Parties on the other hand but also the relative fault of such Indemnified Party as well as any other relevant equitable considerations.

(d) If a Loan Party has made any payments in respect of Indemnified Amounts to an Indemnified Party pursuant to this Section 10.01 and such Indemnified Party thereafter collects any of such amounts from others, such Indemnified Party will promptly repay such amounts collected to the Loan Parties in an amount equal to the amount it has collected from others in respect of such Indemnified Amounts, without interest.

(e) The obligations of the Loan Parties under this Section 10.01 shall survive the resignation or removal of the Administrative Agent, the Facility Servicer, the Portfolio Asset Servicer or the Collateral Custodian or the termination or assignment of this Agreement.

SECTION 10.02 Legal Proceedings. In the event an Indemnified Party becomes involved in any action, claim, or legal, governmental or administrative proceeding (an "Action") for which it seeks indemnification hereunder, the Indemnified Party shall promptly notify the other party or parties against whom it seeks indemnification (the "Indemnifying Party") in writing of the nature and particulars of the Action; provided that its failure to do so shall not relieve the Indemnifying Party of its obligations hereunder except to the extent such failure has a material adverse effect on the Indemnifying Party. Upon written notice to the Indemnified Party acknowledging in writing that the indemnification provided hereunder applies to the Indemnified Party in connection with the Action, the Indemnifying Party may assume the defense of the Action at its expense with counsel reasonably acceptable to the Indemnified Party. The Indemnified Party shall have the right to retain separate counsel in connection with the Action, and the Indemnifying Party shall not be liable for the legal fees and expenses of the Indemnified Party after the Indemnifying Party has done so; provided that if the Indemnified Party determines in good faith that there may be a conflict between the positions of the Indemnified Party and the Indemnifying Party in connection with the Action, or that the Indemnifying Party is not conducting the defense of the Action in a manner reasonably protective of the interests of the Indemnified Party, the reasonable legal fees and expenses of the Indemnified Party shall be paid by the Indemnifying Party. If the Indemnifying Party elects to assume the defense of the Action, it shall have full control over the conduct of such defense; provided that the Indemnifying Party and its counsel shall, as reasonably requested by the Indemnified Party or its counsel, consult with and keep them informed with respect to the conduct of such defense. The Indemnifying Party shall not settle an Action without the prior written approval of the Indemnified Party unless such settlement provides for the full and unconditional release of the Indemnified Party from all liability in connection with the Action. The Indemnified Party shall reasonably cooperate with the Indemnifying Party in connection with the defense of the Action. Each applicable Indemnified Party shall deliver to the Indemnifying Party within a reasonable time after such Indemnified Party' s receipt thereof, copies of all notices and documents (including court papers) received by such Indemnified Party relating to the claim giving rise to the Indemnified Amounts.

ARTICLE XI.
MISCELLANEOUS

SECTION 11.01 Amendments and Waivers.

(a) Except as set forth herein, (i) no amendment or modification of any provision of this Agreement or any other Transaction Document shall be effective without the written agreement of the Loan Parties party thereto and the Majority Lenders (or the Administrative Agent at the direction of the Majority Lenders) and, solely if such amendment or modification would adversely affect the rights or obligations of the Administrative Agent, the Facility Servicer, the Portfolio Asset Servicer or the Collateral Custodian, the written agreement of the Administrative Agent, the Facility Servicer, the Portfolio Asset Servicer or the Collateral Custodian, as applicable, and (ii) no termination or waiver of any provision of this Agreement or any other Transaction Document or consent to any departure therefrom by the Loan Parties shall be effective without the written concurrence of the Majority Lenders. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

(b) Notwithstanding the provisions of Section 11. 01(a), the written consent of all of the Lenders affected thereby shall be required for any amendment, modification or waiver (i) reducing (without payment thereon) the principal amount due and owing under any outstanding Advance or the interest thereon, (ii) postponing any date for any payment of any Advance or the interest thereon, (iii) modifying the provisions of this Section 11.01 or the definition of Majority Lenders or change any other provision specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights or make any determination or grant any consent, (iv) extending the Maturity Date, (v) of any provision of Section 2.08, (vi) extending or increasing any Commitment of any Lender, (vii) changing Section 11.15 in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender directly and adversely affected thereby, (viii) waiving any condition set forth in Section 3.01 or (ix) consenting to a Loan Party' s assignment or transfer of its rights and obligations under this Agreement or any other Transaction Document or releasing all or substantially all of the Collateral except as expressly authorized in this Agreement.

(c) In addition, notwithstanding anything in this Section 11.01 to the contrary, if the Initial Lender and the Borrower shall have jointly identified an obvious error or any error or omission of a technical nature, in each case, in any provision of the Loan Documents, then the Initial Lender and the Borrower shall be permitted to amend such provision, and, in each case, such amendment shall become effective without any further action or consent of any other party to any Loan Document if the same is not objected to in writing by the Required Lenders to the Administrative Agent within ten Business Days following receipt of notice thereof

SECTION 11.02 Notices, Etc. All notices and other communications hereunder shall, unless otherwise stated herein, be in writing (which shall include communication by e-mail) and faxed, e-mailed or delivered, to each party hereto, at its address set forth on Schedule IV or at such other address as shall be designated by such party in a written notice to the other parties hereto. Notices and communications by e-mail shall be effective when sent (and shall be followed by hard copy sent by regular mail), and notices and communications sent by other means shall be effective when received.

The Borrower will provide to any NRSRO with (i) a copy of any amendments or waivers under Section 11.01, (ii) copies of each Servicing Report and Payment Date Report and (iii) copies of any notices delivered by the Borrower to the Administrative Agent pursuant to Sections 5.01(g), (h), (i), (j) and (k).

SECTION 11.03 No Waiver Remedies. No failure on the part of the Administrative Agent or any Lender 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 right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

SECTION 11.04 Binding Effect; Assignability; Multiple Lenders.

(a) This Agreement shall be binding upon and inure to the benefit of the Borrower, the Facility Servicer, the Portfolio Asset Servicer, the Administrative Agent, each Lender, the Collateral Custodian and their respective successors and permitted assigns. Each Lender and their respective successors and assigns may assign, or grant a security interest in, (i) this Agreement and such Lender' s rights and obligations hereunder and interest herein in whole or in part or (ii) any Advance (or portion thereof) or any Note (or any portion thereof) to any Eligible Assignee; provided that unless an Event of Default pursuant to Section 6.01(a) or (d) has occurred and is continuing, the consent of the Borrower (such consent not to be unreasonably withheld) shall be required for a Lender to assign to any Person that is not an Affiliate of such Lender; provided that at all times, Massachusetts Mutual Life Insurance Company and its Affiliates shall hold more than 50% of, (x) during the Availability Period, of the aggregate Commitment and (y) after the Availability Period, Advances Outstanding unless agreed to in writing by the Borrower in its sole discretion. Any such assignee shall execute and deliver to the Borrower, the Facility Servicer, the Portfolio Asset Servicer, and the Administrative Agent a fully-executed Assignment and Assumption Agreement. The parties to any such assignment shall execute and deliver to the Administrative Agent for its acceptance and recording in its books and records, such agreement or document as may be satisfactory to such parties and the Administrative Agent. Neither the Facility Servicer nor the Portfolio Asset Servicer may assign, or permit any Lien to exist upon, any of its rights or obligations hereunder or under any Transaction Document or any interest herein or in any Transaction Document without the prior written consent of the Majority Lenders unless otherwise contemplated hereby. Borrower may not assign, or permit any Lien to exist upon, any of its rights or obligations hereunder or under any Transaction Document or any interest herein or in any Transaction Document without the prior written consent of the Lenders unless otherwise contemplated hereby. Each Lender may sell a participation in its interests hereunder as provided in Section 11.04(d). No assignment or sale of a participation under this Section 11.04 shall be effective unless and until properly recorded in the Register or Participant Register, as applicable, pursuant to Section 2.03.

(b) Notwithstanding any other provision of this Section 11.04, any Lender may at any time pledge or grant a security interest in all or any portion of its rights (including rights to payment of principal and interest) under this Agreement to secure obligations of such Lender to a Federal Reserve Bank (such agreement, a "Liquidity Agreement"), without notice to or consent of the Borrower or the Administrative Agent; provided that no such pledge or grant of a security interest shall release such Lender from any of its obligations hereunder or under such Liquidity Agreement, or substitute any such pledgee or grantee for such Lender as a party hereto or to such Liquidity Agreement, as the case may be.

(c) Each Indemnified Party shall be an express third party beneficiary of this Agreement.

(d) Any Lender may at any time (i) without the consent of, or notice to, the Borrower and (ii) without the consent of, but with notice to, the Administrative Agent, sell participations to any Person (other than a natural Person, or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person, or the Borrower or any of the Borrower' s Affiliates) (each, a "Participant") in all or a portion of such Lender' s rights or obligations under this Agreement (including all or a portion of its Commitment or the Advances owing to it); provided that (i) such Lender' s obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, (iii) the Borrower, the Administrative Agent and Lenders shall continue to deal solely and directly with such Lender in connection with such Lender' s rights and obligations under this Agreement and (iv) such Lender shall register such participation in its Participant Register pursuant to Section 2.03(c). Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in Section 11.01(b) that affects such Participant. The Borrower agrees that each Participant shall be entitled to the benefits of Section 2.13 (subject to the requirements and limitations therein, including the requirement to provide the forms required by Section 2.13(e) (it being understood that the documentation required under Section 2.13(e) shall be delivered to the participating Lender) to the same extent as if it were a Lender and had acquired its interest by assignment; provided that such Participant (A) agrees to be subject to the provisions of Section 2.13 as if it were an assignee under paragraph (a) of this Section; and (B) shall not be entitled to receive any greater payment under Sections 2.12 or 2.13, with respect to any participation, than its participating Lender would have been entitled to receive.

(e) No assignment or participation shall be made to any Person that was a Competitor as of the date (the "Trade Date") on which the assigning Lender or participating Lender entered into a binding agreement to sell and assign or participate all or a portion of its rights and obligations under this Agreement to such Person (unless the Borrower has provided prior written consent to such assignment or participation, in its sole and absolute discretion, in which case such Person will not be considered a Competitor for the purpose of such assignment or participation). For the avoidance of doubt, with respect to any assignee or Participant that becomes a Competitor after the applicable Trade Date, (x) such assignee or Participant shall not retroactively be disqualified from becoming a Lender or Participant and, (y) with respect to an assignee, the execution by the Borrower of an Assignment and Assumption with respect to such assignee will not by itself result in such assignee no longer being considered a Competitor.

(i) If any assignment or participation is made to any Competitor without the Borrower' s prior written consent in violation of clause (i) above, or if any Person becomes a Competitor after the applicable Trade Date, the Borrower may, at its sole expense and effort, upon notice to the applicable Competitor and the Administrative Agent, (A) terminate the Commitment of such Competitor and repay all obligations of the Borrower owing to such Competitor in connection with such Commitment and/or (B) require such Competitor to assign, without recourse (in accordance with and subject to the restrictions contained in this Section), all of its interest, rights and obligations under this Agreement to one or more Eligible Assignees at the lesser of (x) the principal amount thereof and (y) the amount that such Competitor paid to acquire such interests, rights and obligations, in each case plus accrued interest, accrued fees and all other amounts (other than principal amounts) payable to it hereunder.

(ii) Notwithstanding anything to the contrary contained in this Agreement, Competitors (A) will not (x) have the right to receive information, reports or other materials provided to Lenders by the Borrower, the Administrative Agent, any other Lender or any other party hereto, (y) attend or participate in meetings attended by the Lenders, the Administrative Agent or any party hereto, or (z) access any electronic site established for the Lenders or confidential communications from counsel to or financial advisors of the Administrative Agent, the Lenders or any other party hereto and (B) (x) for purposes of any consent to any amendment, waiver or modification of, or any action under, and for the purpose of any direction to the Administrative Agent or any Lender to undertake any action (or refrain from taking any action) under this Agreement or any other Loan Document, each Competitor will be deemed to have consented in the same proportion as the Lenders that are not Competitors consented to such matter, and (y) for purposes of voting on any a plan of reorganization or plan of liquidation pursuant to any Bankruptcy Laws ("Debtor Relief Plan"), each Competitor party hereto hereby agrees (1) not to vote on such Debtor Relief Plan, (2) if such Competitor does vote on such Debtor Relief Plan notwithstanding the restriction in the foregoing clause (1), such vote will be deemed not to be in good faith and shall be "designated" pursuant to Section 1126(e) of the Bankruptcy Code (or any similar provision in any other Bankruptcy Laws), and such vote shall not be counted in determining whether the applicable class has accepted or rejected such Debtor Relief Plan in accordance with Section 1126(c) of the Bankruptcy Code (or any similar provision in any other Bankruptcy Laws) and (3) not to contest any request by any party for a determination by the Bankruptcy Court (or other applicable court of competent jurisdiction) effectuating the foregoing clause (2).

SECTION 11.05 Term of This Agreement. This Agreement, including the Borrower' s representations and covenants set forth in Articles IV and V, Holdings' representations and covenants set forth in Articles IV and V and the Collateral Custodian' s representations, covenants and duties set forth in Article IX shall remain in full force and effect until this Agreement has been terminated by the Borrower and the Facility Termination Date has occurred; provided that any representation made or deemed made hereunder survive the execution and delivery hereof and the provisions of Section 2.06, Section 2.12, Section 2.13, Section 11.07, Section 11.08 and Article VII, Article VIII, Article IX and Article X shall be continuing and shall survive any termination of this Agreement.

SECTION 11.06 **GOVERNING LAW; JURY WAIVER. THIS AGREEMENT IS GOVERNED BY THE LAWS OF THE STATE OF NEW YORK. EACH OF THE PARTIES HERETO WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION ARISING DIRECTLY OR INDIRECTLY OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREUNDER.**

SECTION 11.07 Costs and Expenses. In addition to the rights of indemnification hereunder, the Loan Parties, on a joint and several basis, shall pay on demand (a) all out-of-pocket costs and expenses of the Administrative Agent, the Facility Servicer, Initial Lender, and the Collateral Custodian incurred in connection with the pre-closing due diligence, preparation, execution, delivery, administration, syndication, renewal, amendment or modification of, any waiver or consent issued in connection with, this Agreement, the Transaction Documents and the other documents to be delivered hereunder or in connection herewith, including the fees, disbursements and other charges of rating agency and accounting costs and fees, (b) the reasonable out-of-pocket fees and expenses of (i) counsel for the Administrative Agent, the Facility Servicer, Initial Lender, and the Collateral Custodian with respect

thereto and (ii) a single counsel to the Lenders other than the Initial Lender, in each case, with respect to advising the Administrative Agent, the Facility Servicer, the Lenders and the Collateral Custodian as to their respective rights and remedies under this Agreement and the other documents to be delivered hereunder or in connection herewith and (c) all out-of-pocket costs and expenses, if any (including reasonable fees and expenses of counsel), incurred by the Administrative Agent, the Facility Servicer, the Lenders, or the Collateral Custodian in connection with the enforcement or potential enforcement of its rights under this Agreement or any other Transaction Document and the other documents to be delivered hereunder or in connection herewith or in connection with the Advances made hereunder, including all such out of pocket expenses incurred during any workout, restructuring or negotiations in respect of such Advances.

SECTION 11.08 Recourse Against Certain Parties; Non-Petition.

(a) No recourse under or with respect to any obligation, covenant or agreement (including the payment of any fees or any other obligations) of the Borrower, the Facility Servicer, the Portfolio Asset Servicer, Holdings, the Collateral Custodian, the Administrative Agent, the Lenders or any Secured Party as contained in this Agreement or any other agreement, instrument or document entered into by the Borrower, the Facility Servicer, Portfolio Asset Servicer, Holdings, the Collateral Custodian, the Administrative Agent, the Lenders or any Secured Party pursuant hereto or in connection herewith shall be had against any administrator of the Borrower (other than with respect to fraud), the Facility Servicer, the Portfolio Asset Servicer, Holdings, the Collateral Custodian, the Administrative Agent, the Lenders or any Secured Party or any incorporator, affiliate, stockholder, officer, employee or director of the Borrower, the Facility Servicer, the Portfolio Asset Servicer, Holdings, the Collateral Custodian, the Administrative Agent, the Lenders or any Secured Party or of any such administrator, as such, by the enforcement of any assessment or by any legal or equitable proceeding, by virtue of any statute or otherwise; it being expressly agreed and understood that the agreements of each party hereto contained in this Agreement and all of the other agreements, instruments and documents entered into by the Borrower, the Facility Servicer, the Portfolio Asset Servicer, Holdings, the Collateral Custodian, the Administrative Agent, the Lenders or any Secured Party pursuant hereto or in connection herewith are, in each case, solely the corporate obligations of such party (and nothing in this Section 11.08 shall be construed to diminish in any way such corporate obligations of such party), and that no personal liability whatsoever shall attach to or be incurred by any administrator of the Administrative Agent, the Lenders or any Secured Party or any incorporator, stockholder, affiliate, officer, employee or director of the Lenders, the Borrower, the Facility Servicer, the Portfolio Asset Servicer, Holdings, the Collateral Custodian or the Administrative Agent or of any such administrator, as such, or any of them, under or by reason of any of the obligations, covenants or agreements of the Borrower, the Facility Servicer, the Portfolio Asset Servicer, Holdings, the Collateral Custodian, the Administrative Agent, the Lenders or any Secured Party contained in this Agreement or in any other such instruments, documents or agreements, or are implied therefrom, and that any and all personal liability of every such administrator of the Borrower, the Facility Servicer, the Portfolio Asset Servicer, Holdings, the Collateral Custodian, the Administrative Agent, the Lenders or any Secured Party and each incorporator, stockholder, affiliate, officer, employee or director of the Borrower, the Facility Servicer, the Portfolio Asset Servicer, Holdings, the Collateral Custodian, the Administrative Agent, the Lenders or any Secured Party or of any such administrator, or any of them, for breaches by the Borrower, the Facility Servicer, the Portfolio Asset Servicer, Holdings, the Collateral Custodian, the Administrative Agent, the Lenders or any Secured Party of any such obligations, covenants or agreements, which liability may arise either at common law or in equity, by statute or constitution, or otherwise, is hereby expressly waived as a condition of and in consideration for the execution of this Agreement.

(b) Notwithstanding any contrary provision set forth herein, no claim may be made by any party hereto against any other party hereto or their respective Affiliates, directors, officers, employees, attorneys or agents for any special, indirect, consequential or punitive damages in respect to any claim for breach of contract or any other theory of liability arising out of or related to the transactions contemplated by this Agreement or any other Loan Document, or any act, omission or event occurring in connection therewith; and each party hereto hereby waives, releases, and agrees not to sue upon any claim for any such damages, whether or not accrued and whether or not known or suspected; provided, that nothing contained in this sentence shall limit such Person' s indemnification obligations hereunder to the extent such damages are included in a third party claim in connection with which an indemnified party is entitled to indemnification hereunder.

(c) No obligation or liability to any Obligor under any of the Portfolio Assets is intended to be assumed by the Facility Servicer, the Portfolio Asset Servicer, the Collateral Custodian, the Administrative Agent, the Lenders or any Secured Party under or as a result of this Agreement and the transactions contemplated hereby.

(d) Each of the parties hereto hereby agrees that it will not institute against, or join any other Person in instituting against, the Borrower any bankruptcy or insolvency proceeding so long as there shall not have elapsed one year and one day (or such longer preference period as shall then be in effect) since the Facility Termination Date unless the Majority Lenders otherwise consent to any such action.

(e) The provisions of this Section 11.08 survive the termination of this Agreement.

SECTION 11.09 Execution in Counterparts; Severability; Integration. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by e-mail in portable document format (.pdf) or facsimile shall be effective as delivery of a manually executed counterpart of this Agreement. In the event that any provision in or obligation under this Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby. This Agreement and any agreements or letters (including Fee Letters) executed in connection herewith contains the final and complete integration of all prior expressions by the parties hereto with respect to the subject matter hereof and shall constitute the entire agreement among the parties hereto with respect to the subject matter hereof, superseding all prior oral or written understandings.

This Agreement shall be valid, binding, and enforceable against a party when executed and delivered by an authorized individual on behalf of the party by means of (i) an original manual signature; (ii) a faxed, scanned, or photocopied manual signature, or (iii) any other electronic signature permitted by the federal Electronic Signatures in Global and National Commerce Act, state enactments of the Uniform Electronic Transactions Act, and/or any other relevant electronic signatures law, including any relevant provisions of the UCC (collectively, "Signature Law"), in each case to the extent applicable. Each faxed, scanned, or photocopied manual signature, or other electronic signature, shall for all purposes have the same validity,

legal effect, and admissibility in evidence as an original manual signature. Each party hereto shall be entitled to conclusively rely upon, and shall have no liability with respect to, any faxed, scanned, or photocopied manual signature, or other electronic signature, of any other party and shall have no duty to investigate, confirm or otherwise verify the validity or authenticity thereof. For the avoidance of doubt, original manual signatures shall be used for execution or indorsement of writings when required under the UCC or other Signature Law due to the character or intended character of the writings.

SECTION 11.10 Consent to Jurisdiction; Service of Process.

(a) Each party hereto hereby irrevocably submits to the exclusive jurisdiction of any New York State or Federal court sitting in New York City in any action or proceeding arising out of or relating to the Transaction Documents, and each party hereto hereby irrevocably agrees that all claims in respect of such action or proceeding may be heard and determined in such New York State court or, to the extent permitted by law, in such Federal court. The parties hereto hereby irrevocably waive, to the fullest extent they may effectively do so, the defense of an inconvenient forum to the maintenance of such action or proceeding. The parties hereto agree that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(b) Each party hereto agrees that service of process may be effected by mailing a copy thereof by registered or certified mail, postage prepaid, to the Borrower at its address specified in Section 11.02 or at such other address as the Administrative Agent shall have been notified in accordance herewith. Nothing in this Section 11.10 shall affect the right of the Lenders or the Administrative Agent to serve legal process in any other manner permitted by law.

SECTION 11.11 Confidentiality.

(a) Each of the Administrative Agent, the Lenders, the Facility Servicer, the Portfolio Asset Servicer, and the Collateral Custodian shall maintain and shall cause each of its employees and officers to maintain the confidentiality of all Information (as defined below), including all Information regarding the business of the Borrower and their respective businesses obtained by it or them in connection with the structuring, negotiating and execution of the transactions contemplated herein, except that Information may be disclosed (i) to its Affiliates, accountants, investigators, auditors, attorneys or other agents, including any rating agency or valuation firm engaged by such party in connection with any due diligence or comparable activities with respect to the transactions and Portfolio Assets contemplated herein, and the agents of such Persons, taxing authorities and governmental agencies ("Excepted Persons"); provided that each Excepted Person is informed of the confidential nature of such Information and instructed to keep such Information confidential, (ii) as is required by Applicable Law, (iii) in accordance with the Servicing Standard, (iv) when required by any law, regulation, ordinance, court order or subpoena, (v) to the extent the Portfolio Asset Servicer is disseminating general statistical information relating to the mortgage loans being serviced by the Portfolio Asset Servicer (including the Portfolio Assets) hereunder so long as the Portfolio Asset Servicer does not identify the Borrower, any Lender or the Obligors, or (vi) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder. Notwithstanding the foregoing provisions of this Section 11.11(a), the Borrower may, subject to Applicable Law and the terms of any Loan Agreements, make available copies of the documents in the Portfolio Asset Files and such other documents it holds pursuant to the terms of this Agreement, to any of its creditors.

(b) Anything herein to the contrary notwithstanding, the Borrower hereby consents to the disclosure of any Information with respect to it (i) to the Administrative Agent, the Lenders, the Facility Servicer, the Portfolio Asset Servicer or the Collateral Custodian by each other, (ii) by the Administrative Agent, the Lenders, the Facility Servicer, the Portfolio Asset Servicer and the Collateral Custodian to any prospective or actual assignee or participant of any of them provided such Person agrees to hold such information confidential, or (iii) by the Administrative Agent, the Lenders, the Facility Servicer, the Portfolio Asset Servicer, and the Collateral Custodian to any rating agency, commercial paper dealer or provider of a surety, guaranty or credit or liquidity enhancement to any Lender or any Person providing financing to, or holding equity interests in, any Lender, as applicable, and to any officers, directors, employees, outside accountants and attorneys of any of the foregoing, provided each such Person is informed of the confidential nature of such information. In addition, the Lenders, the Administrative Agent, the Facility Servicer, the Portfolio Asset Servicer, and the Collateral Custodian may disclose any such Information as required pursuant to any law, rule, regulation, direction, request or order of any judicial, administrative or regulatory authority or proceedings (whether or not having the force or effect of law).

(c) Notwithstanding anything herein to the contrary, the foregoing shall not be construed to prohibit (i) disclosure of any and all Information that is or becomes publicly known, (ii) any disclosure authorized by the Borrower or (iii) disclosure of any and all Information that becomes available to the Administrative Agent, any Lender, the Facility Servicer, the Portfolio Asset Servicer, or the Collateral Custodian on a nonconfidential basis from a source other than the Borrower who did not acquire such information as a result of a breach of this Section 11.11.

(d) The parties hereto may disclose the existence of the Agreement (but not the financial terms hereof, including all fees and other pricing terms), all Events of Default, and priority of payment provisions, in each case except in compliance with this Section 11.11.

(e) "Information" means all information received from the Borrower relating to the Borrower or its businesses, other than any such information that is available to the Administrative Agent, Collateral Custodian, the Facility Servicer, the Portfolio Asset Servicer or any Lender on a nonconfidential basis prior to disclosure by the Borrower; provided that, in the case of information received from the Borrower after the Closing Date, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Article XI shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

SECTION 11.12 Non-Confidentiality of Tax Treatment. All parties hereto agree that each of them and each of their employees, representatives, and other agents may disclose to any and all Persons, without limitation of any kind, the tax treatment and tax structure of the transaction and all materials of any kind (including opinions or other tax analyses) that are provided to any of them relating to such tax treatment and tax structure. "Tax treatment" and "tax structure" shall have the same meaning as such terms have for purposes of Treasury Regulation Section 1.6011-4; provided that with respect to any document or similar item that in either case contains information concerning the tax treatment or tax structure of the transaction as well as other information, the provisions of this Section 11.12 shall only apply to such portions of the document or similar item that relate to the tax treatment or tax structure of the transactions contemplated hereby.

SECTION 11.13 Waiver of Set Off. If an Event of Default has occurred and is continuing, the Administrative Agent, each Lender and each of its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by Applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held, and other obligations (in whatever currency) at any time owing, by the Administrative Agent, such Lender or any such Affiliate, to or for the credit or the account of the Borrower against any and all of the Obligations, irrespective of whether or not the Administrative Agent, such Lender or Affiliate shall have made any demand under this Agreement or any other Transaction Document and although such Obligations may be contingent or unmatured or are owed to a branch office or Affiliate of the Administrative Agent or such Lender different from the branch office or Affiliate holding such deposit or obligated on such indebtedness. Each party shall notify the Borrower and the Administrative Agent (if applicable) promptly after any such setoff and application; provided that the failure to give such notice shall not affect the validity of such setoff and application.

SECTION 11.14 Headings, Schedules and Exhibits. The headings herein are for purposes of references only and shall not otherwise affect the meaning or interpretation of any provision hereof. The schedules and exhibits attached hereto and referred to herein shall constitute a part of this Agreement and are incorporated into this Agreement for all purposes.

SECTION 11.15 Ratable Payments. If any Lender, whether by setoff or otherwise, shall obtain any payment (whether voluntary, involuntary, through the exercise of any right of setoff, or otherwise) on account of Advances owing to it (other than pursuant to Section 2.12 or Section 2.13) in excess of its ratable share of payments on account of the Advances obtained by all the Lenders, such Lender shall forthwith purchase from the other Lenders such participations in the Advances owing to them as shall be necessary to cause such purchasing Lender to share the excess payment ratably with each of them; provided that, if all or any portion of such excess payment is thereafter recovered from such purchasing Lender, such purchase from each Lender shall be rescinded and such Lender shall repay to the purchasing Lender the purchase price to the extent of such recovery together with an amount equal to such Lender' s ratable share (according to the proportion of (a) the amount of such Lender' s required repayment to (b) the total amount so recovered from the purchasing Lender) of any interest or other amount paid or payable by the purchasing Lender in respect of the total amount so recovered.

SECTION 11.16 Failure of Borrower to Perform Certain Obligations. If the Borrower fails to perform any of its agreements or obligations under Section 5.01, the Administrative Agent may (but shall not be required to, and in any case, acting at the direction of the Majority Lenders) itself perform, or cause performance of, such agreement or obligation, and the expenses of the Administrative Agent incurred in connection therewith shall be payable by the Borrower promptly upon the Administrative Agent' s demand therefore.

SECTION 11.17 Power of Attorney. Each of the Borrower and Holdings irrevocably authorizes (without any obligation to do so) the Administrative Agent and appoints the Administrative Agent, as applicable, as its attorney-in-fact to act on its behalf as substantially set forth on Exhibit H to, among other things, perfect and to maintain the perfection and priority of the interest of the Administrative Agent, for the benefit of the Secured Parties, in the Collateral, in all cases, acting at the direction of the Majority Lenders. This appointment is coupled with an interest and is irrevocable.

SECTION 11.18 Delivery of Termination Statements, Releases, Etc. Upon the occurrence of the Facility Termination Date, the Administrative Agent shall, upon written direction, execute and deliver to the Portfolio Asset Servicer and Borrower termination statements, reconveyances, releases and other documents and instruments of release as are necessary or appropriate to evidence the termination of the Liens securing the Obligations, all at the expense of the Borrower.

SECTION 11.19 Exclusive Remedies. Except as otherwise expressly provided in this Agreement, no remedy provided for by this Agreement shall be exclusive of any other remedy, and each and every remedy shall be cumulative and in addition to any other remedy, and no delay or omission to exercise any right or remedy shall impair any such right or remedy.

SECTION 11.20 Post-Closing Performance Conditions. The parties hereto agree to cooperate with reasonable requests made by any other party hereto after signing this Agreement to the extent reasonable necessary for such party to comply with laws and regulations applicable to financial institutions in connection with this transaction (e.g., the USA PATRIOT Act, OFAC and related regulations).

SECTION 11.21 PATRIOT Act. The parties hereto acknowledge that in accordance with the Customer Identification Program (CIP) requirements established under the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Title III of Pub. L. 107 56 (signed into law October 26, 2001) and its implementing regulations (collectively, USA PATRIOT Act), the Administrative Agent and the Lenders in order to help fight the funding of terrorism and money laundering, are required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Administrative Agent and the Lenders. Each party hereby agrees that it shall provide the Administrative Agent and the Lenders with such information as the Administrative Agent or the Lenders may request from time to time in order to comply with any applicable requirements of the Patriot Act.

SECTION 11.22 Wells Fargo. The parties expressly acknowledge and consent to Wells Fargo Bank, National Association acting in the possible multiple capacities of the Collateral Custodian, and Account Bank and in the capacity as Administrative Agent. Wells Fargo Bank, National Association may, in such multiple capacities, discharge its separate functions fully, without hindrance or regard to conflict of interest principles or other breach of duties to the extent that any such conflict or breach arises from the performance by Wells Fargo Bank, National Association of express duties set forth in Agreement in any of such capacities, all of which defenses, claims or assertions are hereby expressly waived by the other parties hereto except in the case of gross negligence (other than errors in judgment) and willful misconduct by Wells Fargo Bank, National Association.

SECTION 11.23 Platform. Each party agrees that the Administrative Agent may, but is not obligated to, make the Communications (as defined below) available to the Lenders by posting the Communications on the Platform. The Platform is provided “as is” and “as available.” The Agent Parties (as defined below) do not warrant the adequacy of the Platform and expressly disclaim liability for errors or omissions in the Communications. 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 the Communications or the

Platform. In no event will the Administrative Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to any Person for damages of any kind, including direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of Borrower' s, the Portfolio Asset Servicer, the Facility Servicer, any Loan Party' s or the Administrative Agent' s transmission of communications through the Platform. "Communications" means, collectively, any notice, demand, communication, information, document or other material provided by or on behalf of Borrower, the Portfolio Asset Servicer or the Facility Servicer pursuant to any Transaction Document or the transactions contemplated therein that is distributed to the Administrative Agent or any Lender by means of electronic communications pursuant to this Section, including through the Platform. "Platform" means Debt Domain, Intralinks, Syndtrak or a substantially similar electronic transmission system.

[Signature Pages Follow]

Executed as of the date first above written.

The Borrower:

RCC REAL ESTATE SPE 9 LLC

By: /S/ Mark Fogel
Name: Mark Fogel
Title: President

Holdings:

RCC REAL ESTATE SPE HOLDINGS LLC

By: /s/ Mark Fogel
Name: Mark Fogel
Title: President

The Initial Lender:

MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY

By: /s/ Andrew C. Dickey
Name: Andrew C. Dickey
Title: Head of Alternative and Private Equity

The Facility Servicer:

MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY,
in its capacity as Facility Servicer

By: /s/ Andrew C. Dickey
Name: Andrew C. Dickey
Title: Head of Alternative and Private Equity

[Signature Page – Loan and Servicing Agreement]

The Portfolio Asset Servicer:

ACRES CAPITAL SERVICING LLC,
in its capacity as Portfolio Asset Servicer

By: /s/ Mark Fogel
Name: Mark Fogel
Title: President & CEO

[Signature Page – Loan and Servicing Agreement]

The Administrative Agent:

WELLS FARGO BANK, NATIONAL ASSOCIATION,
in its capacity as Administrative Agent

By: /s/ José M. Rodríguez
Name: José M. Rodríguez
Title: Vice President

[Signature Page – Loan and Servicing Agreement]

The Collateral Custodian:

WELLS FARGO BANK, NATIONAL ASSOCIATION,
in its capacity as Collateral Custodian

By: /s/ Mee Lee
Name: Mee Lee
Title: Vice President

[Signature Page – Loan and Servicing Agreement]

EXHIBITS
TO
LOAN AND SERVICING AGREEMENT

Dated as of July 31, 2020

RCC REAL ESTATE SPE 9 LLC

EXHIBITS

EXHIBIT A	Form of Note
EXHIBIT B	Form of Notice of Borrowing
EXHIBIT C	Form of Servicing Report
EXHIBIT D	Form of Payment Date Report
EXHIBIT E	Form of Quarterly LTV Certificate
EXHIBIT F	Form of U.S. Tax Compliance Certificate
EXHIBIT G	Form of Release of Required Portfolio Documents
EXHIBIT H	Form of Power of Attorney
EXHIBIT I	Form of Portfolio Asset Assignment
EXHIBIT J	Form of Custodial and Account Control Agreement
EXHIBIT K	Form of Portfolio Asset Checklist
EXHIBIT L	Form of Account Control Agreement

FORM OF NOTE

$_____ [Date]

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"). NEITHER THIS NOTE NOR ANY PORTION HEREOF MAY BE OFFERED OR SOLD EXCEPT IN COMPLIANCE WITH THE REGISTRATION PROVISIONS OF THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM SUCH REGISTRATION PROVISIONS.

THIS NOTE IS NOT PERMITTED TO BE TRANSFERRED, ASSIGNED, EXCHANGED OR OTHERWISE PLEDGED OR CONVEYED EXCEPT IN COMPLIANCE WITH THE TERMS OF THE LOAN AND SERVICING AGREEMENT REFERRED TO HEREIN.

FOR VALUE RECEIVED, RCC Real Estate SPE 9 LLC, a Delaware limited liability company (the "Borrower"), hereby promises to pay to [_____] ("Lender") and its registered assigns, the principal sum of $_____or, if less, the unpaid principal amount of the aggregate advances (the "Advances") made by the Lender to the Borrower pursuant to the Loan and Servicing Agreement (as defined below), on the dates specified in the Loan and Servicing Agreement, and to pay interest on the unpaid principal amount of each Advance made by Lender from the date of such Advance for each day that such unpaid principal amount is outstanding, at such interest rates related to such Advance as provided in the Loan and Servicing Agreement, on each Payment Date and each other date specified in the Loan and Servicing Agreement.

This Note (the "Note") is issued pursuant to the Loan and Servicing Agreement dated as of July 31, 2020 (as amended, restated, supplemented or otherwise modified from time to time, the "Loan and Servicing Agreement"), among the Borrower, RCC Real Estate SPE Holdings LLC, as Holdings, the Lenders from time to time party thereto, Wells Fargo Bank, National Association, as Administrative Agent, Massachusetts Mutual Life Insurance Company, as the Facility Servicer, ACRES Capital Servicing LLC, as the Portfolio Asset Servicer, and Wells Fargo Bank, National Association, as the Collateral Custodian. Capitalized terms used herein and not otherwise defined have the meanings set forth for such terms in the Loan and Servicing Agreement.

Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Advance, together with all fees, charges and other amounts that are treated as interest on such Advance under Applicable Law (collectively, "charges"), exceed the maximum lawful rate (the "Maximum Rate") that may be contracted for, charged, taken, received or reserved by the Lender in accordance with Applicable Law, the rate of interest payable in respect of such Advance hereunder, together with all charges payable in respect thereof, shall be limited to the Maximum Rate. To the extent lawful, the interest and charges that would have been paid in respect of such Advance but were not paid as a result of the operation of this paragraph shall be cumulated and the interest and charges payable to the Lender in respect of such Advance or periods shall be increased (but not above the amount collectible at the Maximum Rate therefor) until such cumulated amount shall have been received by the Lender. Any amount collected by the Lender that exceeds the maximum amount collectible at the Maximum Rate shall be applied to the reduction of the principal balance of such Advance or refunded to the Borrower so that at no time shall the interest and charges paid or payable in respect of such Advance exceed the maximum amount collectible at the Maximum Rate.

Payments of the principal of, and interest on, the Advances shall be made by or on behalf of the Borrower to the Administrative Agent (for the benefit of the Lenders) in immediately available funds in the manner specified for such purpose as provided in the Loan and Servicing Agreement, without the presentation or surrender of this Note or the making of any notation on this Note.

If any payment under this Note falls due on a day that is not a Business Day, then such due date is extended to the next succeeding Business Day.

If any amount is not paid when due, such amount shall bear interest, to be paid upon demand, from the date of such nonpayment until such amount is paid in full (as well after as before judgment) computed at the per annum rate set forth in the Loan and Servicing Agreement.

Portions or all of the principal amount of the Note shall become due and payable at the time or times set forth in the Loan and Servicing Agreement. Any portion or all of the principal amount of this Note may be prepaid, together with interest thereon (and, as set forth in the Loan and Servicing Agreement, certain costs and expenses of the Lender) at the time and in the manner set forth in, but subject to the provisions of, the Loan and Servicing Agreement.

Except as provided in the Loan and Servicing Agreement, the Borrower expressly waives presentment, demand, diligence, protest and all notices of any kind whatsoever with respect to this Note.

The Lender may sell, assign, transfer, negotiate, grant participations in or otherwise dispose of all or any portion of any Advances made by the Lender and represented by this Note and the indebtedness evidenced by this Note, subject to the applicable provisions of the Loan and Servicing Agreement.

The Advances are secured by the Collateral and the Pledged Equity granted pursuant to the Loan and Servicing Agreement. The Lender is entitled to the benefits of the Loan and Servicing Agreement and the other Transaction Documents and may enforce the agreements of the Borrower contained in the Loan and Servicing Agreement and the other Transaction Documents and exercise the remedies provided for by, or otherwise available in respect of, the Loan and Servicing Agreement and the other Transaction Documents, all in accordance with, and subject to the restrictions contained in, the terms of the Loan and Servicing Agreement and the other Transaction Documents. In accordance with the terms of the Loan and Servicing Agreement, if an Event of Default exists, the unpaid balance of the principal of all Advances, together with accrued interest thereon, may be declared, and may become, due and payable in the manner and with the effect provided in the Loan and Servicing Agreement.

The Borrower, the Lender, the Servicer, the Administrative Agent and the Collateral Custodian each intend, for federal, state and local income and franchise tax purposes only, that this Note be evidence of indebtedness of the Borrower secured by the Collateral and the Pledged Equity and the Lender under the Loan and Servicing Agreement, by the acceptance hereof, agrees to treat the Note for federal, state and local income and franchise tax purposes as indebtedness of the Borrower.

This Note is a “Note” as referred to in Section 2.03(a) of the Loan and Servicing Agreement. This Note shall be construed in accordance with and governed by the laws of the State of New York.

[Remainder of Page Intentionally Left Blank; Signature Page Follows]

The undersigned has executed this Note as on the date first written above.

RCC REAL ESTATE SPE 9 LLC

By: _____
Name:
Title:

EXHIBIT B

FORM OF NOTICE OF BORROWING

[Date]

RCC REAL ESTATE SPE 9 LLC

To: Wells Fargo Bank, National Association, as the Administrative Agent
9062 Old Annapolis Road
Columbia, MD 21045
Telephone: 410-884-2271 or 443-367-3924
E-mail: ctsbankdebtadministrationteam@wellsfargo.com
Attention: Jason Prisco or Lance Yeagle – RCC REAL ESTATE SPE 9, LLC

and

Massachusetts Mutual Life Insurance Company, as Initial Lender
1500 Main Street
Springfield, MA 01115

Re: Loan and Servicing Agreement dated as of July 31, 2020

Ladies and Gentlemen:

This Notice of Borrowing is delivered to you pursuant to Sections 2.02 and [3.02][3.03] of the Loan and Servicing Agreement dated as of July 31, 2020 (as amended, restated, supplemented or otherwise modified from time to time, the "Loan and Servicing Agreement"), among RCC Real Estate SPE 9 LLC, as the Borrower, RCC Real Estate SPE Holdings LLC, as Holdings, the Lenders from time to time party thereto, Wells Fargo Bank, National Association, as Administrative Agent, Massachusetts Mutual Life Insurance Company, as the Facility Servicer, ACRES Capital Servicing LLC, as the Portfolio Asset Servicer, and Wells Fargo Bank, National Association, as the Collateral Custodian. Capitalized terms used herein and not otherwise defined have the meanings set forth for such terms in the Loan and Servicing Agreement.

The undersigned, being a duly elected Responsible Officer of the Borrower and holding the office set forth below such officer' s name, hereby certifies as follows:

1. The Borrower hereby requests an Advance in the principal amount of $_____.[1]

2. The Borrower hereby requests that such Advance be made on _____.[2]

3. That such Advance would not cause (A) the aggregate Advances (without giving effect to any repayment or prepayment thereof) to exceed the Total Facility Amount or (B) LTV to exceed 55% on the date of such Advance (after giving effect to such Advance and any Transfer effectuated from the use of proceeds thereof).

---

1 The amount must be at least equal to $250,000.

2 Delivery of the Notice of Borrowing to be no later than 2:00 pm two Business Days immediately prior to the proposed date of such advance.

4. The proceeds of the Advance are to be distributed to the following account:

Account Name:
Account #:
Bank Name:
ABA:

5. All of the conditions applicable to the Advance requested herein as set forth in Section [3.02][3.03] of the Loan and Servicing Agreement have been satisfied and will remain satisfied on the date of such Advance.

[Remainder of Page Intentionally Left Blank; Signature Page Follows]

The undersigned has executed this Notice of Borrowing as of the date first written above.

RCC REAL ESTATE SPE 9 LLC

By: _____
Name:
Title:

EXHIBIT C

FORM OF SERVICING REPORT

[SEE ATTACHED]

Ex. C-1

Exhibit C
RCC REAL ESTATE SPE 9, LLC
Servicing Report
9/15/2020

i. Material Modifications and Amendment Notices **Date**

ii. Identification of Collections **Amounts**
Principal Balance
Interest Collection Balance
Excluded Amounts

iii. Amounts transferred to Borrower pursuant to section 2.08 (a)(i) and (vi) **Amounts**
Amounts transferred pursuant to section 2.08 (a)(i)
Amounts transferred pursuant to section 2.08 (a)(vi)

iv. Principal Balance of Eligible First Lien Assets[1]
Property Name Property Type Lien Position Mortgage Asset Cut-Off Date Balance ($) Most Recent Period Most Recent NOI ($)

Note: 1 - see also attached detailed asset schedule

EXHIBIT D

FORM OF PAYMENT DATE REPORT

So long as no Event of Default has occurred and is continuing, the Facility Servicer (on behalf of the Borrower) shall instruct the Account Bank to transfer Collections held by the Account Bank in the Collection Account, in accordance with the Payment Date Report, and shall instruct the Administrative Agent to distribute such funds to the following Persons in the following amounts, calculated as of the most recent Determination Date, subject to the minimum balance requirement included in the Account Control Agreement, in the following order and priority, with respect to Collections:

Available funds for distribution: $_____

a. first, to the Borrower for payment of Borrower Taxes, registration and filing fees and operating expenses then due and owing by the Borrower that are attributable solely to the operations of the Borrower; provided that transfers from the Account Bank for registration and filing fees and operating expenses payable pursuant to this clause (i) shall not, individually or in the aggregate, exceed (A) $75,000 in any calendar quarter and (B) $200,000 in any calendar year; $_____

b. second, to the Administrative Agent for the ratable distribution to the Administrative Agent and the Collateral Custodian in payment in full for all accrued fees, expenses and indemnities due and payable to such party hereunder or under any other Transaction Document and under the Fee Letters and Schedule XI; $_____

c. third, to the Facility Servicer in payment in full for all accrued fees, expenses and indemnities due and payable to the Facility Servicer hereunder or under any other Transaction Document and under the Fee Letters; $_____

d. fourth, to the Administrative Agent for the ratable distribution to the Lenders in payment in full for all accrued fees, expenses and indemnities due and payable to such party hereunder or under any other Transaction Document and under the Fee Letters; $_____

e. fifth, to the Administrative Agent for distribution to each Lender to pay such Lender' s Pro Rata Share of accrued and unpaid interest owing to such Lender under this Agreement (including any such accrued and unpaid interest or fees from a prior period); $_____

f. sixth, if no Event of Default or Cash Trap Event has occurred and is continuing, to the Borrower or as the Borrower may direct (including to make a Restricted Junior Payment to Holdings or for Holdings to make a Restricted Junior Payment to its member or members), an amount equal to the lesser of (a) an amount equal to the minimum amount necessary for the Sponsor to maintain its status as a real estate investment trust for U.S. federal income tax purposes and to avoid income and excise tax under Section 857 and 4981 of the Code (after giving effect to any other available funds of the Sponsor and its Affiliates) as specified in the Servicing Report delivered pursuant to Section 8.08(a) for the most recent Reporting Date and (b) the amount by which Interest Collections exceed the required payments and distributions in clauses (a) through (e) inclusive; $_____

g. seventh, first to the Administrative Agent and the Collateral Custodian for any amounts not paid pursuant to clause (b) above and second, to the Administrative Agent for distribution to each other Secured Party to pay any other Obligations (other than the principal of the Advances) that are then due and owing to such Secured Party; $_____

h. eighth, if a Cash Trap Event has occurred and is continuing, to the Administrative Agent for distribution to each Lender to repay such Lender' s Pro Rata Share of the Advances Outstanding until (A) if such Cash Trap Event arises under clause (a) of the definition thereof, the Advances Outstanding are repaid to an amount where LTV, when recalculated giving effect to such repayment, is equal to the applicable Maximum Quarterly LTV Percentage at the time of such Payment Date or (B) if such Cash Trap Event arises under clauses (b), (c) or (d) of the definition thereof, the Advances Outstanding are paid in full (it being understood that such amount may be only a portion of the outstanding amount with respect to the Advances); and $_____

i. ninth, if no Cash Trap Event has occurred and is continuing or would result after giving effect to the payment under this clause (g), to the Borrower or as the Borrower may direct (including to make a Restricted Junior Payment to Holdings or for Holdings to make a Restricted Junior Payment to its member or members). $_____

Cash Trap Event: [Yes/No]

LTV: [_____]%

Wire Instructions

Account Bank will wire the following amount to [_____]:

Wire Instructions: [_____]
Bank: [_____]

ABA: [_____]
Acct #: [_____]
Acct. Name: [_____]
FBO: [_____]

Account Bank will wire the following amount to [_____]:

Wire Instructions: [_____]
Bank: [_____]
ABA: [_____]
Acct #: [_____]
Acct. Name: [_____]
FBO: [_____]

Total of Outgoing Wires: $_____

FORM OF QUARTERLY LTV CERTIFICATE

[DATE]

RCC REAL ESTATE SPE 9 LLC

To: Wells Fargo Bank, National Association, as the Administrative Agent
9062 Old Annapolis Road
Columbia, MD 21045
Telephone: 410-884-2271 or 443-367-3924
E-mail: ctsbankdebtadministrationteam@wellsfargo.com
Attention: Jason Prisco or Lance Yeagle – RCC REAL ESTATE SPE 9, LLC

and

Massachusetts Mutual Life Insurance Company, as Facility Servicer
1500 Main Street
Springfield, MA 01115

Re: Loan and Servicing Agreement dated as of July 31, 2020

Ladies and Gentlemen:

This Quarterly LTV Certificate (this "Certificate") is given by RCC Real Estate SPE 9 LLC (the "Borrower") pursuant to [Sections 2.02(a) and [3.02(c)][3.03(a)]][1] [Section 5.01(p)(ii)(B)][2] of the Loan and Servicing Agreement, dated as of July 31, 2020 (as the same may be amended, restated, or otherwise modified from time to time, the "Loan and Servicing Agreement"), among the Borrower, RCC Real Estate SPE Holdings LLC ("Holdings"), the Lenders from time to time party thereto, Wells Fargo Bank, National Association, as Administrative Agent, Massachusetts Mutual Life Insurance Company, as the Facility Servicer, ACRES Capital Servicing LLC, as the Portfolio Asset Servicer, and Wells Fargo Bank, National Association, as the Collateral Custodian. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Loan and Servicing Agreement.

The officer executing this Certificate is a Responsible Officer of Borrower and as such is duly authorized to execute and deliver this Certificate on behalf of the Borrower. By executing this Certificate, such officer hereby certifies as of the date hereof to the Lenders, the Facility Servicer and the Administrative Agent, on behalf of the Borrower, solely in a capacity as an officer and not individually, that:

(a) set forth on Schedule I attached hereto is a correct calculation of the LTV as of the last day of the most recent fiscal quarter ending on and a correct calculation of the Maximum Quarterly LTV Percentage [in each case updated to the date such Advance is requested and giving pro forma effect to the advance requested and the use of proceeds thereof][3]; and

1 To be included in connection with Notice of Borrowing.
2 To be included in connection with quarterly financial reporting.

(b) the calculation of the Total Portfolio Value is in accordance with the calculation given in the definition in Section 1.01 of the Agreement.

[Remainder of Page Intentionally Left Blank; Signature Page Follows]

3 To be included in connection with Notice of Borrowing.

The undersigned has executed this Certificate as of the date first written above.

RCC REAL ESTATE SPE 9 LLC

By: _____
Name:
Title:

SCHEDULE I

[SEE ATTACHED]

Ex. E-4

EXHIBIT E

Form of Quarterly LTV Certificate

RCC REAL ESTATE SPE 9, LLC

Payment Date: 2020-09-22
Determination Date: 2020-09-15

Maximum Facility Amount	**$250,000,000**	
***Numerator* (Designated Amount)**	*$239,510,503*	
Accrued and Unpaid Interest	*$2,010,503*	
Advances Outstanding	*$237,500,000*	
Denominator	*$706,288,471*	
Value of all Portfolio Assets	$408,770,271	
Specified CLO Assets	$297,518,200	
***less** Portfolio Assets reduced due to Material Modification*	$–	
A. LTV:		34%
LTV Trigger Threshold		55%
Compliance Check		OK

B. Debt Service Coverage Ratio	**2.23**	
NOI of first lien assets	30,449,531.50	
Current interest rate	5.75	%
Annualized interest amount	$13,656,250.00	
DSCR Trigger	1.00	
Compliance check	OK	

C. Eligible Loan Assets + CLO Assets + Collections	
Eligible Portfolio Assets:	408,770,271
Specified CLO Assets:	178,510,920
Collection Account:	6,124,030
Total	593,405,220
D. First Lien Assets	
First Lien Assets (Loan Asset + CLO Asset):	361,345,376
Cash Trap Event Check	Fail
Closing date	2020-07-24
Day Count from Closing	53

Triggers

Fiscal Year	Date	LTV Trigger	
Up to 5th			
Anniversary of Close	2025-07-24	55	%
5th - 6th			
Anniversary of Closing	2026-07-24	20	%
On or after [December 24], 2026	2026-12-24	0	%

Triggers

0 to 1st anniversary	1.0	Monday, July 19, 2021
1st to 3rd anniversay	1.2	Monday, July 17, 2023
3rd anniversary to maturity	1.3	Monday, July 19, 2027

DSCR = (WA of NOI of First Lien Assets/Commitments * Interest Rate)

Trigger

Trigger Amount	380,000,000
Compliance Check	OK

Trigger

Trigger Amount	440,460,893
Compliance Check	Fail

FORM OF

U.S. TAX COMPLIANCE CERTIFICATE

(For Non-U.S. Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is made to the Loan and Servicing Agreement, dated as of July 31, 2020 (as amended, restated, supplemented or otherwise modified from time to time, the "Loan and Servicing Agreement"), among RCC Real Estate SPE 9 LLC, as the Borrower, RCC Real Estate SPE Holdings LLC, as Holdings, the Lenders from time to time party thereto, Wells Fargo Bank, National Association, as Administrative Agent, Massachusetts Mutual Life Insurance Company, as the Facility Servicer, ACRES Capital Servicing LLC, as the Portfolio Asset Servicer, and Wells Fargo Bank, National Association, as the Collateral Custodian. Capitalized terms used herein and not otherwise defined have the meanings set forth for such terms in the Loan and Servicing Agreement.

Pursuant to the provisions of Section 2.13 of the Loan and Servicing Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the loan(s) (as well as any note(s) evidencing such loan(s)) in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (iv) it is not a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower with a certificate of its non-U.S. Person status on IRS Form W-8BEN or W-8BEN-E as applicable. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent, and (2) the undersigned shall have at all times furnished the Borrower and the Administrative Agent, with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[NAME OF LENDER]

By: _____

Name:

Title:

Date:

FORM OF

U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is made to the Loan and Servicing Agreement, dated as of July 31, 2020 (as amended, restated, supplemented or otherwise modified from time to time, the "Loan and Servicing Agreement"), among RCC Real Estate SPE 9 LLC, as the Borrower, RCC Real Estate SPE Holdings LLC, as Holdings, the Lenders from time to time party thereto, Wells Fargo Bank, National Association, as Administrative Agent, Massachusetts Mutual Life Insurance Company, as the Facility Servicer, ACRES Capital Servicing LLC, as the Portfolio Asset Servicer, and Wells Fargo Bank, National Association, as the Collateral Custodian. Capitalized terms used herein and not otherwise defined have the meanings set forth for such terms in the Loan and Servicing Agreement.

Pursuant to the provisions of Section 2.13 of the Loan and Servicing Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code, and (iv) it is not a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with a certificate of its non-U.S. Person status on IRS Form W-8BEN or W-8BEN-E, as applicable. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender in writing, and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[NAME OF PARTICIPANT]

By: _____

Name:

Title:

Date:

FORM OF

U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Participants That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is made to the Loan and Servicing Agreement, dated as of July 31, 2020 (as amended, restated, supplemented or otherwise modified from time to time, the "Loan and Servicing Agreement"), among RCC Real Estate SPE 9 LLC, as the Borrower, RCC Real Estate SPE Holdings LLC, as Holdings, the Lenders from time to time party thereto, Wells Fargo Bank, National Association, as Administrative Agent, Massachusetts Mutual Life Insurance Company, as the Facility Servicer, ACRES Capital Servicing LLC, as the Portfolio Asset Servicer, and Wells Fargo Bank, National Association, as the Collateral Custodian. Capitalized terms used herein and not otherwise defined have the meanings set forth for such terms in the Loan and Servicing Agreement.

Pursuant to the provisions of Section 2.13 of the Loan and Servicing Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the participation in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such participation, (iii) with respect such participation, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or W-8BEN-E, as applicable, or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or W-8BEN-E, as applicable, from each of such partner' s/member' s beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[NAME OF PARTICIPANT]

By: _____

Name:

Title:

Date:

FORM OF

U.S. TAX COMPLIANCE CERTIFICATE

(For Non-U.S. Lenders That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is made to the Loan and Servicing Agreement, dated as of July 31, 2020 (as amended, restated, supplemented or otherwise modified from time to time, the "Loan and Servicing Agreement"), among RCC Real Estate SPE 9 LLC, as the Borrower, RCC Real Estate SPE Holdings LLC, as Holdings, the Lenders from time to time party thereto, Wells Fargo Bank, National Association, as Administrative Agent, Massachusetts Mutual Life Insurance Company, as the Facility Servicer, ACRES Capital Servicing LLC, as the Portfolio Asset Servicer, and Wells Fargo Bank, National Association, as the Collateral Custodian. Capitalized terms used herein and not otherwise defined have the meanings set forth for such terms in the Loan and Servicing Agreement.

Pursuant to the provisions of Section 2.13 of the Loan and Servicing Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the loan(s) (as well as any note(s) evidencing such loan(s)) in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such loan(s) (as well as any note(s) evidencing such loan(s)), (iii) with respect to the extension of credit pursuant to the Loan and Servicing Agreement or any other Transaction Document, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or W-8BEN-E, as applicable, or (ii) an IRS Form W- 8IMY accompanied by an IRS Form W-8BEN or W-8BEN-E, as applicable, from each of such partner' s/member' s beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent, and (2) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[NAME OF LENDER]

By:
Name:
Title:

Date:

EXHIBIT G

FORM OF RELEASE OF REQUIRED LOAN DOCUMENTATION

[Date]

RCC REAL ESTATE SPE 9 LLC

To: Wells Fargo Bank, National Association, as the Collateral Custodian
1055 Tenth Avenue S.E.
Minneapolis, Minnesota 55414
Telephone: (612) 667-1015
Email: cmbscustody@wellsfargo.com
Attention: CMBS - MASSRESOURCE

Re: Loan and Servicing Agreement dated as of July 31, 2020

Reference is made to the Loan and Servicing Agreement dated as of July 31, 2020 (as amended, restated, supplemented or otherwise modified from time to time, the "Loan and Servicing Agreement"), among RCC Real Estate SPE 9 LLC, as the Borrower, RCC Real Estate SPE Holdings LLC, as Holdings, the Lenders from time to time party thereto, Wells Fargo Bank, National Association, as Administrative Agent, Massachusetts Mutual Life Insurance Company, as the Facility Servicer, ACRES Capital Servicing LLC, as the Portfolio Asset Servicer, and Wells Fargo Bank, National Association, as the Collateral Custodian. Capitalized terms used herein and not otherwise defined have the meanings set forth for such terms in the Loan and Servicing Agreement.

In connection with the administration of the Portfolio Asset Files held by the Collateral Custodian under the Loan and Servicing Agreement, we request the release of the Portfolio Asset Files (or such documents as specified below) for the Portfolio Assets described below for the reason indicated below:

Obligor' s Name, Address & Zip Code:

Portfolio Asset Number:

Portfolio Asset File:

Reason for Requesting Portfolio Asset File (check one):

____ 1. Portfolio Asset Sold in accordance with Section 2.10 of the Loan and Servicing Agreement. The Facility Servicer hereby certifies that all amounts received in connection with such Portfolio Asset have been credited to the Collection Account.[1]

____ 2. Portfolio Asset File returned due to a failure to satisfy the Review Criteria pursuant to Section 9.02(a)(i) of the Loan and Servicing Agreement.[2]

____ 3. Resignation of Collateral Custodian pursuant to Section 9.07 of the Loan and Servicing Agreement. The Required Loan Documents to be returned to Administrative Agent.[3]

____ 4. Portfolio Asset File requested in order to take any action that the Administrative Agent, Facility Servicer or Portfolio Asset Servicer deems necessary or desirable in order to perfect, protect or more fully evidence the security interests granted by the Borrower under the Loan and Servicing Agreement, or to enable the Administrative Agent, Facility Servicer or Portfolio Asset Servicer to exercise or enforce any of their respective rights under the Loan and Servicing Agreement or under any Transaction Document.[4]

____ 5. Portfolio Asset paid in full. The Facility Servicer hereby certifies that all amounts received in connection with such Portfolio Asset have been credited to the Collection Account.[5]

____ 6. Portfolio Asset liquidated by . The Portfolio Asset Servicer hereby certifies that all proceeds of foreclosure, insurance, condemnation or other liquidation have been finally received and credited to the Collection Account.[6]

____ 7. Portfolio Asset File needed for the enforcement or servicing of the Portfolio Asset.[7]

____ 8. Portfolio Asset File delivered to the Collateral Custodian in error.[8]

____ 9. Other (explain).

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1 Facility Servicer signature required.
2 Collateral Custodian signature required.
3 Administrative Agent signature required.
4 Administrative Agent, Facility Servicer or Portfolio Asset Servicer signature required, as applicable.
5 Facility Servicer signature required.
6 Portfolio Asset Servicer signature required.
7 Portfolio Asset Servicer signature required.
8 Borrower signature required.

The undersigned has executed this Release of Required Loan Documents as of the date first written above.

[COLLATERAL CUSTODIAN]
[BORROWER]
[ADMINISTRATIVE AGENT]
[FACILITY SERVICER]
[PORTFOLIO ASSET SERVICER]

By: _____
Name:
Title:

FORM OF POWER OF ATTORNEY
RCC REAL ESTATE SPE 9 LLC

[Date]

This Power of Attorney is executed and delivered by RCC Real Estate SPE 9 LLC, a Delaware limited liability company, as the Borrower (the "Borrower") under the Loan and Servicing Agreement (as defined below), to Wells Fargo Bank, National Association, as the Administrative Agent under the Loan and Servicing Agreement (in such capacity, the "Attorney"), pursuant to the Loan and Servicing Agreement dated as of July 31, 2020 (as amended, restated, supplemented or otherwise modified from time to time, the "Loan and Servicing Agreement"), among the Borrower, RCC Real Estate SPE Holdings LLC, as Holdings, the Lenders from time to time party thereto, the Attorney, Massachusetts Mutual Life Insurance Company, as the Facility Servicer, ACRES Capital Servicing LLC, as the Portfolio Asset Servicer, and Wells Fargo Bank, National Association, as the Collateral Custodian. Capitalized terms used herein and not otherwise defined have the meanings set forth for such terms in the Loan and Servicing Agreement.

No person to whom this Power of Attorney is presented, as authority for Attorney to take any action or actions contemplated hereby, shall inquire into or seek confirmation from the Borrower as to the authority of Attorney to take any action described below, or as to the existence of or fulfillment of any condition to this Power of Attorney, which is intended to grant to Attorney unconditionally the authority to take and perform the actions contemplated herein, and the Borrower irrevocably waives any right to commence any suit or action, in law or equity, against any person or entity that acts in reliance upon or acknowledges the authority granted under this Power of Attorney, except in the case of gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgement. The power of attorney granted hereby is coupled with an interest and may not be revoked or canceled by the Borrower until the Facility Termination Date.

With effect after the occurrence and during the continuance of an Event of Default, the Borrower, hereby irrevocably constitutes and appoints Attorney (and all officers, employees or agents designated by Attorney), solely in connection with the enforcement of the rights and remedies of the Administrative Agent, the Lenders and the other Secured Parties under the Loan and Servicing Agreement and the other Transaction Documents, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the Borrower' s place and stead and at the Borrower' s expense and in the Borrower' s name or in Attorney' s own name, to take any and all appropriate action and to execute and deliver any and all documents and instruments that may be necessary or desirable to accomplish the purposes of the Loan and Servicing Agreement and the other Transaction Documents, and, without limiting the generality of the foregoing, hereby grants to Attorney the power and right, on its behalf, without notice to or assent by it, to do the following, each in accordance with the Loan and Servicing Agreement and the other Transaction Documents (provided, that Attorney shall not be obligated to take any such action): (a) open mail for the Borrower, and ask, demand, collect, give acquittances and receipts for, take possession of, or endorse and receive payment of, any checks, drafts, notes, acceptances, or other instruments for the payment of moneys due, and sign and endorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts, drafts against debtors, assignments, verifications, and notices; (b) effect any repairs to any of the Borrower' s assets, or continue or obtain any insurance and pay all or any part of the premiums therefor and costs thereof, and make, settle and adjust all claims under such policies of insurance, and make all determinations and decisions with respect to such policies; (c) pay or discharge any taxes, Liens, or other encumbrances levied or placed on or threatened against the

Borrower or the Borrower' s property; (d) to the extent related to the Collateral and the transactions contemplated by the Transaction Documents, defend any suit, action or proceeding brought against the Borrower if the Borrower does not defend such suit, action or proceeding or if Attorney reasonably believes that it is not pursuing such defense in a manner that will maximize the recovery to Attorney, and settle, compromise or adjust any suit, action, or proceeding described above and, in connection therewith, give such discharges or releases as Attorney may deem appropriate; (e) file or prosecute any claim, litigation, suit or proceeding in any court of competent jurisdiction or before any arbitrator, or take any other action otherwise deemed appropriate by Attorney for the purpose of collecting any and all such moneys due to the Borrower whenever payable and to enforce any other right in respect of the Borrower' s property; (f) sell, transfer, pledge, make any agreement with respect to, or otherwise deal with, any of the Borrower' s property, and execute, in connection with such sale or action, any endorsements, assignments or other instruments of conveyance or transfer in connection therewith; (g) to give any necessary receipts or acquittance for amounts collected or received under the Loan and Servicing Agreement; (h) to make all necessary transfers of the Collateral in connection with any such sale or other disposition made pursuant to the Loan and Servicing Agreement; (i) to execute and deliver for value all necessary or appropriate bills of sale, assignments and other instruments in connection with any such sale or other disposition of the Collateral, the Borrower hereby ratifying and confirming all that such Attorney (or any substitute) shall lawfully do or cause to be done hereunder and pursuant hereto; (j) to send such notification forms as the Attorney deems appropriate to give notice to Obligors of the Secured Parties' interest in the Collateral Portfolio; (k) to sign any agreements, orders or other documents in connection with or pursuant to any Transaction Document; and (l) to cause the certified public accountants then engaged by the Borrower to prepare and deliver to the Attorney at any time and from time to time, promptly upon Attorney' s request, any reports required to be prepared by or on behalf of the Borrower under the Transaction Documents, all as though Attorney were the absolute owner of the Borrower' s property for all purposes, and to do, at Attorney' s option (acting at the written direction of the Majority Lenders) and the Borrower' s expense, at any time or from time to time, all acts and other things reasonably necessary to perfect, preserve or realize upon the Collateral and the Liens of the Administrative Agent, for the benefit of the Secured Parties, thereon, all as fully and effectively as the Borrower might do. The Borrower hereby ratifies, to the extent permitted by law, all that said attorneys shall lawfully do or cause to be done by virtue hereof.

The undersigned has executed this Power of Attorney as of the date first written above.

RCC REAL ESTATE SPE 9 LLC

By: _____
Name:
Title:

FORM OF POWER OF ATTORNEY
RCC REAL ESTATE SPE HOLDINGS LLC

[Date]

This Power of Attorney is executed and delivered by RCC Real Estate SPE Holdings LLC, a Delaware limited liability company, as Holdings ("Holdings") under the Loan and Servicing Agreement (as defined below), to Wells Fargo Bank, National Association, as the Administrative Agent under the Loan and Servicing Agreement (in such capacity, the "Attorney"), pursuant to the Loan and Servicing Agreement dated as of July 31, 2020 (as amended, restated, supplemented or otherwise modified from time to time, the "Loan and Servicing Agreement"), among RCC Real Estate SPE 9 LLC, as the Borrower, Holdings, the Lenders from time to time party thereto, the Attorney, Massachusetts Mutual Life Insurance Company, as the Facility Servicer, ACRES Capital Servicing LLC, as the Portfolio Asset Servicer, and Wells Fargo Bank, National Association, as the Collateral Custodian. Capitalized terms used herein and not otherwise defined have the meanings set forth for such terms in the Loan and Servicing Agreement.

No person to whom this Power of Attorney is presented, as authority for Attorney to take any action or actions contemplated hereby, shall inquire into or seek confirmation from Holdings as to the authority of Attorney to take any action described below, or as to the existence of or fulfillment of any condition to this Power of Attorney, which is intended to grant to Attorney unconditionally the authority to take and perform the actions contemplated herein, and Holdings irrevocably waives any right to commence any suit or action, in law or equity, against any person or entity that acts in reliance upon or acknowledges the authority granted under this Power of Attorney, except in the case of gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgement. The power of attorney granted hereby is coupled with an interest and may not be revoked or canceled by Holdings until the Facility Termination Date.

With effect after the occurrence and during the continuance of an Event of Default, Holdings, hereby irrevocably constitutes and appoints Attorney (and all officers, employees or agents designated by Attorney), solely in connection with the enforcement of the rights and remedies of the Administrative Agent, the Lenders and the other Secured Parties under the Loan and Servicing Agreement and the other Transaction Document, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in Holdings' place and stead and at Holdings' expense and in Holdings' name or in Attorney' s own name, to take any and all appropriate action and to execute and deliver any and all documents and instruments that may be necessary or desirable to accomplish the purposes of the Loan and Servicing Agreement and the other Transaction Documents, and, without limiting the generality of the foregoing, hereby grants to Attorney the power and right, on its behalf, without notice to or assent by it, to do the following, each in accordance with the Loan and Servicing Agreement and the other Transaction Documents (provided, that Attorney shall not be obligated to take any such action): (a) to make all necessary transfers of the Pledged Equity in connection with any such sale or other disposition made pursuant to the Loan and Servicing Agreement; (b) to execute and deliver for value all necessary or appropriate bills of sale, assignments and other instruments in connection with any such sale or other disposition of the Pledged Equity, Holdings hereby ratifying and confirming all that such Attorney (or any substitute) shall lawfully do or cause to be done hereunder and pursuant hereto; and (c) to sign any agreements, orders or other documents in connection with or pursuant to any Transaction Document to the extent related to the Pledged Equity, all as though Attorney were the absolute owner of the Pledged Equity for all purposes, and to do, at Attorney' s option (acting at the written direction of the Majority Lenders) and Borrower' s expense, at any time or from time to time, all acts and other things reasonably

necessary to perfect, preserve or realize upon the Pledged Equity and the Liens of the Administrative Agent, for the benefit of the Secured Parties, thereon, all as fully and effectively as Holdings might do. Holdings hereby ratifies, to the extent permitted by law, all that said attorneys shall lawfully do or cause to be done by virtue hereof.

The undersigned has executed this Power of Attorney as of the date first written above.

RCC REAL ESTATE SPE HOLDINGS LLC

By: _____
Name:
Title:

FORM OF PORTFOLIO ASSET ASSIGNMENT

OMNIBUS ASSIGNMENT

THIS OMNIBUS ASSIGNMENT (this "***Assignment***"), is made as of the _____day of [_____], 20[__], by **[_____]**, a [_____] limited liability company, having an address at [_____] ("***Assignor***"), to **RCC REAL ESTATE SPE 9 LLC**, a Delaware limited liability company, having an address at c/o ACRES Capital Corp., 865 Merrick Avenue, Suite 2005, Westbury, New York 11590, and their successors and/or assigns ("***Assignee***").

KNOW ALL MEN BY THESE PRESENTS, that in consideration of the sum of TEN DOLLARS ($10.00) lawful money of the United States and other good and valuable consideration, to it in hand paid at or before the ensealing and delivery of these presents, the Assignor transferred and set over, and by these presents does grant, bargain, sell, assign, transfer and set over unto Assignee, the loan (the "***Loan***") made under the Loan Agreement (as defined in Schedule A), and all documents evidencing, securing, governing or otherwise affecting the rights of the holder of the Promissory Note (as defined in Schedule A), including without limitation, the loan documents referenced in Schedule A attached hereto and made a part hereof (the "***Loan Documents***") and all of Assignor' s right, title and interest in, to and under the Loan Documents, and all of Assignor' s right, title and interest in any collateral, certificates of deposit, letters of credit, demands, certificates, bank accounts, operating accounts, reserve accounts, escrow accounts and other accounts, opinions, financial statements of Borrower (as defined in Schedule A) and any guarantors (if any) of the Loan and any other collateral with respect to the Loan Documents (the "***Collateral***"), all rights and benefits of Assignor related to the Loan Documents, and all claims and choses in action related to the Loan Documents and all of Assignor' s rights, title and interest in, to and under such claims and choses in action.

Unless otherwise stated herein, all capitalized terms used in this Assignment shall have the meanings specified in the Loan Agreement.

Assignor represents and warrants as of the date hereof that: (a) Schedule A represents a complete list of all documents evidencing and securing the Loan, (b) true and complete counterpart originals or copies of the Loan Documents and true and complete copies of the opinions, organizational documents and consents made by Borrower or guarantors (if any) of the Loan on the Closing Date in connection with the Loan have been delivered by Assignor to Assignee, (c) Assignor is the sole owner of the Loan Documents and the Loan and has not transferred the Loan Documents or the Loan (or any direct or indirect interest therein) to another party and the Loan Documents and the Loan are not otherwise subject to any encumbrance, participation interest, lien, pledge, charge or security agreement as of the date of the execution and delivery of this Assignment and the Loan Documents have not been cancelled, satisfied, rescinded or subordinated in whole or part, nor has any instrument been executed that would effect such cancellation, satisfaction, rescission or subordination, (d) the principal amount outstanding under the Loan Documents as of the date of the execution and delivery of this Assignment is $_____, (e) interest payable under the Loan Documents has been paid through the date hereof, (f) the Loan Documents have not been amended, modified, supplemented or restated except as otherwise set forth on Schedule A, (g) Assignor is duly organized, validly existing and in good standing under the laws of the jurisdiction under which it was organized with full power to execute and deliver (1) this Assignment, (2)

that certain Assignment of Security Instrument dated as of the date hereof by Assignor, as assignor, in favor of Assignee, as assignee, (3) that certain Assignment of Assignment of Leases and Rents, dated as of the date hereof by Assignor, as assignor, in favor of Assignee, as assignee, and (4) that certain Allonge to Promissory Note, dated as of the date hereof, by Assignor, as assignor, in favor of Assignee, as assignee (collectively, the "***Assignment Documents***") with respect to the Security Instrument, the Assignment of Leases and Rents, and the Promissory Note, respectively, (h) all actions necessary to authorize the execution, delivery, and performance of the Assignment Documents on behalf of Assignor have been duly taken, and all such actions continue in full force and effect as of the date hereof, (i) the proceeds of the Loan have been fully disbursed, (j) the Collateral has not been pledged for any other loan made by Assignor, (k) the execution and delivery of the Assignment Documents by Assignor will not constitute a violation of any law, any order or decree of any court or arbiter, or any order, regulation or demand of any federal, state or local government or regulatory authority, agency or body, (l) no litigation is pending or, to the best of Assignor' s knowledge, threatened against Assignor which, if determined adversely to Assignor, would prohibit Assignor from entering into and delivering the Assignment Documents or would materially and adversely affect the ability of Assignor to perform its obligations hereunder or under the other Assignment Documents, (m) no consent, license, approval, authorization or order of, or registration or filing with, or notice to, any court or governmental agency or body is required for the execution and delivery by Assignor hereunder or under the other Assignment Documents, (n) Assignor has not executed any instrument purporting to effect any release, cancellation, subordination or rescission of the Security Instrument, and (o) the Loan is not cross-collateralized and/or cross-defaulted with any other loan.

When the term "Assignor' s knowledge" or terms of similar import are used herein, it means the actual (and not constructive) current awareness, without investigation, of Assignor and any senior personnel of Assignor who are involved with the administration of the Loan Documents and the sale thereof to Assignee.

TO HAVE AND TO HOLD unto Assignee, its successors, participants and assigns forever

[Remainder of Page Intentionally Left Blank; Signature Page Follows]

IN WITNESS WHEREOF, the Assignor has caused these presents to be duly executed as of the day and year first above written.

ASSIGNOR:

_____, a

_____

By: _____
Name: _____
Title: _____

SCHEDULE "A"

Loan Documents (documents dated as of _____, 20____, unless otherwise indicated):

1. Loan Agreement by and between _____, a _____ ("***Borrower***"), and [_____], a [_____] limited liability company ("***Lender***") (the "***Loan Agreement***").

2. Promissory Note made by Borrower payable to the order of Lender, in the original principal amount of $_____ (the "***Promissory Note***").

3. [Deed of Trust][Mortgage] from Borrower to Lender (the "***Security Instrument***").

4. Assignment of Leases and Rents from Borrower to Lender (the "***Assignment of Leases and Rents***").

5. UCC-1 Financing Statement (State).

6. UCC-1 Financing Statement recorded as a fixture filing (County).

7. [List all other loan documents].

8. All other documents and instruments relating to the Loan, all certificates and receipts executed by Borrower, all appraisal reports, all environmental, engineering and other reports relating to the operation or condition of the real property securing the Loan, and all casualty insurance policies, liability insurance policies, title insurance policies and/or UCC plus policies and opinions of counsel

EXHIBIT J

FORM OF CUSTODIAL AND ACCOUNT CONTROL AGREEMENT

[SEE ATTACHED]

CUSTODIAL AND ACCOUNT CONTROL AGREEMENT

THIS CUSTODIAL AND ACCOUNT CONTROL AGREEMENT (this "Agreement") dated as of _____, 2020, is entered into among RCC REAL ESTATE SPE 9 LLC (the "Owner"), WELLS FARGO BANK, NATIONAL ASSOCIATION, in its capacity as administrative agent, as secured party (in such capacity, the "Secured Party") and WELLS FARGO BANK, NATIONAL ASSOCIATION, as securities custodian (in such capacity, the "Custodian").

W I T N E S S E T H:

WHEREAS, the Owner has acquired or will acquire, from time to time, certain [INSERT DESCRIPTION OF ASSETS TO BE DELIVERED] (the "Assets") and desires to deposit the Assets with the Custodian to hold on the Owner' s behalf and to direct the Custodian with respect to the transfer and release thereof subject to the terms hereof; and

WHEREAS, the Owner and the Secured Party have entered into the Loan and Servicing Agreement dated as of July 31, 2020 (the "Loan and Servicing Agreement"), among RCC Real Estate SPE Holdings LLC, the Owner, Massachusetts Mutual Life Insurance Company and the other lenders from time to time party thereto, the Secured Party, Massachusetts Mutual Life Insurance Company, as the facility servicer, Acres Capital Servicing LLC, as the portfolio asset servicer, and Wells Fargo Bank, National Association, as collateral custodian, pursuant to which, among other things, a security interest in the Assets and the Account (defined below) has been granted to the Secured Party on behalf of the Secured Parties (as defined in the Loan and Servicing Agreement).

NOW, THEREFORE, the parties hereto agree as follows:

1. (a) The Owner hereby appoints the Custodian as custodian of the Assets pursuant to the terms of this Agreement and the Custodian accepts such appointment. The Custodian hereby agrees to accept the Assets delivered to the Custodian by the Owner pursuant to the terms hereof, and agrees to hold, release and transfer the same in accordance with the provisions of this Agreement. The Custodian' s services hereunder shall be conducted through its Corporate Trust Services division (including, as applicable, any agents or Affiliates utilized thereby). There shall be, and hereby is, established by the Owner with the Custodian a non-interest bearing securities account which will be designated the "RCC Real Estate SPE 9 LLC-Custodial Account" (referred to herein as the "Custody Account") and into which the Assets shall be held and which shall be governed by and subject to this Agreement. In addition, on and after the date hereof, the Custodian may establish any number of subaccounts to the Custody Account deemed necessary or appropriate by the Custodian and Owner in administering the Custody Account (each such subaccount, a "Subaccount" and collectively with the Custody Account, the "Account"). All Assets to be delivered in physical form to the Custodian shall be delivered to the address set forth in Section 12 hereof and all Assets to be delivered in book-entry form to the Custodian shall be delivered in accordance with delivery instructions separately provided by the Custodian. The Custodian shall not be responsible for any other assets of the Owner held or received by the Owner or others or any assets not delivered to Custodian as set forth herein and accepted by the Custodian as hereinafter provided. The Custodian shall have no obligation to accept or hold any security or other asset pursuant to the terms of this Agreement to the extent it reasonably determines that such security or asset does not fall within the definition of "Asset" or holding such security or asset would violate any law, rule, regulation or internal policy applicable to the Custodian. For the avoidance of doubt, other than delivery of the physical certificate in the possession of the Custodian to the Owner, the Custodian shall

have no obligations in connection with the transfer or re-registration of any physical certificates representing Assets in connection with any transfer thereof and the Owner shall be responsible for all aspects of transferring re-registering such Assets. Assets or proceeds thereof shall be withdrawn from and credited to the Account only upon Proper Instructions pursuant to Section 4 hereof.

(b) For the avoidance of doubt, the Account (including income, if any, earned on the investments of funds in such account) will be owned by the Owner, for federal income tax purposes. Such Owner is required to provide to the Custodian (i) an IRS Form W-9 or appropriate IRS Form W-8 no later than the Closing Date, and (ii) any additional IRS forms (or updated versions of any previously submitted IRS forms) or other documentation at such time or times required by applicable law or upon the reasonable request of the Custodian as may be necessary (i) to reduce or eliminate the imposition of U.S. withholding taxes and (ii) to permit Custodian to fulfill its tax reporting obligations under applicable law with respect to the Account or any amounts paid to Owner. If any IRS form or other documentation previously delivered becomes obsolete or inaccurate in any respect, Owner shall timely provide to the Custodian accurately updated and complete versions of such IRS forms or other documentation. Wells Fargo Bank, National Association, both in its individual capacity and in its capacity as Custodian, shall have no liability to Owner or any other person in connection with any tax withholding amounts paid or withheld from the Account pursuant to applicable law arising from Owner' s failure to timely provide an accurate, correct and complete IRS Form W-9, an appropriate IRS Form W-8 or such other documentation contemplated under this paragraph. For the avoidance of doubt, no funds shall be invested with respect to such Account absent the Custodian having first received (i) the requisite Proper Instructions, and (ii) the IRS forms and other documentation required by this paragraph.

(c) The Custodian hereby agrees that (i) the Account is a "securities account" as such term is defined in Section 8-501(a) of the UCC, (ii) each Asset and each other item of property (whether investment property, financial asset, security, instrument or cash), credited to the Account shall be treated as a "financial asset" within the meaning of Section 8-102(a)(9) of the UCC, (iii) subject to Section 4, the Custodian shall treat the Secured Party as entitled to exercise the rights that comprise any financial asset credited to the Account and (iv) subject to Section 4, the Custodian will comply with the "entitlement orders" (as defined in Section 8-102(a)(8) of the UCC) (an "Entitlement Order") of the Secured Party without the further consent of the Owner or any other person.

(d) Nothing in this Agreement affects the obligations of Wells Fargo Bank, National Association, in its capacity as Collateral Custodian under, and as defined in, the Loan and Servicing Agreement.

2. Notwithstanding anything herein to the contrary, upon receipt of any cash distributions attributable to the Assets, until such time as the Custodian otherwise receives a Proper Instruction from the Secured Party to the contrary, the Custodian is hereby instructed (such instruction a Proper Instruction hereunder) to remit such amounts pursuant to the following wire instructions:

Wells Fargo Bank, National Association
ABA #:
Account Name:[1]
Account #:

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1 To be the Collection Account.

The Custodian shall not invest immediately available funds held hereunder in the absence of Proper Instructions from the Secured Party (acting solely at the direction of the Majority Lenders (as defined in the Loan and Servicing Agreement)) or from the Owner as consented to by the Secured Party (acting solely at the direction of the Majority Lenders) and shall not be liable for not investing or reinvesting funds in accordance with this Agreement in the absence of such Proper Instructions. In connection with investments of available cash pursuant to Proper Instructions described above, the Custodian may without liability use a broker-dealer of its own selection, including a broker-dealer owned by or affiliated with the Custodian or any of its affiliates. The Custodian is not responsible for the assets of the Owner which have been placed in accounts with brokers, prime brokers, counterparties, futures commission merchants and other intermediaries. The Custodian or any of its affiliates may receive reasonable compensation with respect to any such investment. It is expressly agreed and understood by the parties hereto that the Custodian shall not in any way whatsoever be liable for losses on any investments, including, but not limited to, losses from market risks due to premature liquidation or resulting from other actions taken pursuant to this Agreement.

(b) In the event the Custodian receives instructions from the Owner to effect a securities transaction as contemplated in 12 CFR 12.1, the Owner acknowledges that upon its written request and at no additional cost, it has the right to receive the notification from the Custodian after the completion of such transaction as contemplated in 12 CFR 12.4(a) or (b). The Owner agrees that, absent specific request, such notifications shall not be provided by the Custodian hereunder, and in lieu of such notifications, the Custodian shall make available periodic account statements in the manner required by this Agreement

3. The Custodian shall only act pursuant to Proper Instructions with regard to (a) the exercise of any rights or remedies with respect to the Assets, including, without limitation, waivers and voting rights, and (b) taking any other action in connection with the Assets, including, without limitation, any purchase, sale, conversion, redemption, exchange, retention or other transaction relating to the Assets. In the absence of any instructions provided to the Custodian by the Owner, the Custodian shall have no obligation to take any action with respect to the Assets. Notwithstanding anything herein to the contrary, under no circumstances shall the Custodian be obligated to bring legal action or institute proceedings against any person on behalf of the Owner.

4. The Custodian shall hold the Assets in safekeeping and shall release and transfer same only in accordance with Proper Instructions. "Proper Instructions" shall mean:

(i) in all instances and at any time, written instructions or cabled, telexed, facsimile or electronically transmitted instructions in respect of any of the matters referred to in this Agreement purported to be signed (except in the case of electronically transmitted instructions) by one or more persons duly authorized to sign on behalf of the Secured Party as set forth in the Authorized Signers List of Secured Party on Exhibit A hereto (each such person, an "Authorized Signer of the Secured Party"). All electronically transmitted instructions, including by email or facsimile, received from or on behalf of any Authorized Signer of the Secured Party, or any email or facsimile received from another individual on behalf of the Secured Party in which any Authorized Signers of the Secured Party are also identified as copied, shall constitute Proper Instructions of the Secured Party; and

(ii) in the case of (a) the investment or reinvestrment of funds held hereunder in accordance with Section 2 hereof (with the consent of the Secured Party (acting solely at the direction of the Majority Lenders) as described thereby) and (b) the furnishing of reports described in Section 5 hereof, written instructions or cabled, telexed, facsimile or electronically transmitted instructions in respect of any of the matters referred to in this Agreement purported to be signed (except in the case of electronically transmitted instructions) by one or more persons duly authorized to sign on behalf of the Owner as set forth in the Authorized Signers List of Owner on Exhibit B hereto (each such person, an "Authorized Signer of Owner"). All electronically transmitted instructions, including by email or facsimile, received from or on behalf of any Authorized Signer of the Owner, or any email or facsimile received from another individual on behalf of the Owner in which any Authorized Signers of the Owner are also identified as copied, shall constitute Proper Instructions of the Owner.

In addition, Proper Instructions may include instructions and directions given by electronic transmission administered by the Society for Worldwide Interbank Financial Telecommunication ("SWIFT Messaging"), as well as certain other electronically transmitted instructions, such as FTP or other online portal. The Owner understands that the Custodian cannot determine the identity of the actual sender of Proper Instructions sent by SWIFT Messaging and such other methods of electronically transmitted instructions, and agrees that the Custodian may conclusively presume that such directions have been sent by an Authorized Signer. The Owner shall assure that only Authorized Signers shall transmit Proper Instructions from the Owner to the Custodian and shall safeguard the use and confidentiality of applicable user and authorization codes, passwords, and/or authentication keys upon receipt by the Owner. The Custodian shall not be liable for any losses, costs, or expenses arising directly or indirectly from the Custodian' s reliance upon and compliance with such instructions or directions given by SWIFT Messaging or any other electronically transmitted instructions for which the identity of the actual sender cannot be identified, including but not limited to any overdrafts. The Owner shall assume all risks arising out of the use of SWIFT Messaging and any other electronic transmission methods to submit instructions and directions to the Custodian, including without limitation the risk of the Custodian acting on unauthorized instructions and the risk of interception and misuse by third parties, shall fully inform itself of the protections and risks associated with transmitting instructions and directions to the Custodian by SWIFT Messaging and other electronic transmission methods. The Owner acknowledges that there may be more secure methods of transmitting instructions and directions than SWIFT Messaging and other electronic messaging.

5. The Custodian shall be obligated only for the performance of such duties as are specifically set forth in this Agreement with respect to the Assets and the Custodian shall satisfy those duties expressly set forth herein so long as it acts in good faith and without gross negligence or willful misconduct. The Custodian may rely and shall be protected in acting or refraining from acting on any written notice, request, waiver, consent or instrument believed by it to be genuine and to have been signed or presented by the proper party or parties. The Custodian shall have no duty to determine or inquire into the happening or occurrence of any event or contingency, and it is agreed that its duties are purely ministerial in nature. The Custodian may consult with and obtain advice from legal counsel as to any provision hereof or its duties hereunder and shall not be liable for action taken or omitted by it in good faith and the advice of such counsel or any opinion of counsel shall be full and complete authorization and protection in respect of any action taken or omitted by it hereunder in good faith and in reliance thereon. The Custodian shall not be liable for any action taken or omitted by it in good faith and reasonably believed by it to be authorized hereby, except for actions arising from the gross negligence or willful misconduct of the Custodian. The Custodian shall have no liability for loss arising from any cause beyond its control, including but not limited to, the act, failure or neglect of any agent or correspondent selected with due care by the Custodian, any delay, error, omission or default of any mail, telegraph, cable or wireless agency or operator; or the acts or edicts of any government or governmental agency or other group or entity exercising governmental powers. Notwithstanding anything in this Agreement to the contrary, in no event shall the Custodian be liable for special, punitive, indirect or consequential loss or damage of any kind whatsoever (including but not limited to lost profits).

Without limiting the generality of the foregoing, the Custodian shall not be subject to any fiduciary or other implied duties and the Custodian shall not be required to exercise any discretion hereunder and shall have no investment or management responsibility and, accordingly, shall have no duty to, or liability for its failure to, provide investment recommendations or investment advice to the parties hereto. It is the intention of the parties hereto that the Custodian shall never be required to use, advance or risk its own funds or otherwise incur financial liability in the performance of any of its duties or the exercise of any of its rights and powers hereunder. The Custodian may exercise any of its rights or powers hereunder or perform any of its duties hereunder either directly or, by or through affiliates, agents or attorneys, and the Custodian shall not be responsible for any misconduct or negligence on the part of any non-affiliated agent or attorney appointed hereunder with due care by it.

The Custodian is not responsible or liable in any manner whatsoever for the sufficiency, correctness, genuineness or validity of this Agreement or any part hereof (except with respect to the Custodian' s obligations hereunder) or for the transaction or transactions requiring or underlying the execution of this Agreement, the form or execution hereof or for the identity or authority of any person executing this Agreement or any part hereof (except with respect to the Custodian) or depositing the Assets. The Custodian shall not be deemed to have notice or knowledge of any matter hereunder unless written notice thereof is received by the Custodian. It is expressly acknowledged by the Owner that application and performance by the Custodian of its various duties hereunder may be based upon, and in reliance upon, data, information and notice provided to it by the Owner and/or any related bank agent, obligor or similar party with respect to the Assets, and the Custodian shall have no responsibility for the accuracy of any such information or data provided to it by such persons and shall be entitled to update its records (as it may deem necessary or appropriate). The Custodian shall not be liable for the actions or omissions of, or any inaccuracies in the records of, the Owner or any clearing agency or depository or any other Person and without limiting the foregoing, the Custodian shall not be under any obligation to monitor, evaluate or verify compliance by the Owner or any other Person with any agreement or applicable law.

For the avoidance of doubt and notwithstanding anything herein to the contrary, the Owner agrees that the Custodian shall not have nor shall be implied to have any duties with respect to furnishing reports of the Owner or other information as contemplated by the Investment Advisors Act of 1940 (the "Act") or Rule 206(4)-2 under the Act, and the Custodian shall only be obligated to furnish information to the Owner or to any third party to the extent directed by the Owner pursuant to Proper Instructions as set forth in this Agreement and agreed to by the Custodian, or as the Owner and Custodian may otherwise agree.

6. The Owner agrees to indemnify, defend and hold the Custodian, its officers, directors, employees and agents (collectively, "Indemnified Persons") harmless from and against any and all losses, claims, damages, demands, expenses, costs, causes of action, judgments or liabilities that may be incurred by any Indemnified Person arising directly or indirectly out of or in connection with this Agreement, including the reasonable legal costs and expenses as such expenses are incurred (including, without limitation, the expenses of any experts, counsel or agents) of (a) investigating, preparing for or defending itself against any action , claim or liability in connection with its performance hereunder or thereunder or (b) the enforcement of the indemnification obligations hereunder. The Owner also hereby agrees to hold the Custodian harmless from any liability or loss resulting from any taxes or other governmental charges, and any expense related thereto, which may be imposed, or assessed with respect to any Assets in the Account and also agrees to hold the Custodian and its respective nominees harmless from any liability as record holder of Assets in the Account. The Owner may remit payment for expenses and indemnities owed to the Custodian hereunder or, in the absence thereof, the Custodian may from time to time deduct payment of such amounts from the Account. In no event, however, shall the Owner be obligated to indemnify any

Indemnified Person and hold any Indemnified Person harmless if a court of competent jurisdiction determines, on a judgment not subject to appeal, that such losses, claims, damages, demands, expenses, costs, causes of action, judgments or liabilities were incurred by any Indemnified Person as a result of its own bad faith, willful misconduct or gross negligence. The provisions of this section shall survive the termination of this Agreement.

7. The Custodian shall be entitled to be paid by the Owner a fee as compensation for its services as set forth in the separate Fee Letter (the "Fee Letter") agreed to by the parties hereto. Except as otherwise noted, this fee covers account acceptance, set up and termination expenses, plus usual and customary related administrative services such as safekeeping, investment, collection and distribution of assets, including normal record-keeping/ reporting requirements. Any additional services beyond those specified in this Agreement, or activities requiring excessive administrator time or out-of-pocket expenses, shall be performed only after reasonable prior notice is given to the Custodian by the Owner and shall be deemed extraordinary expenses for which related costs, transaction charges and additional fees will be billed at the Custodian' s standard charges for such items. The Owner agrees to pay or reimburse the Custodian for all out-of-pocket costs and expenses (including without limitation reasonable fees and expenses of legal counsel) incurred, and any disbursements and advances made, in connection with the preparation, negotiation or execution of this Agreement, or in connection with or pursuant to consummation of the transactions contemplated hereby, or the administration of this Agreement or performance by the Custodian of its duties and services under this Agreement.

8. The Owner hereby grants to the Custodian a lien on all Assets for all indebtedness that may become owing to the Custodian hereunder, which lien may be enforced by the Custodian by set-off or appropriate foreclosure proceedings. In this regard, if the Owner is unwilling or unable to pay the Custodian any amounts due hereunder or to indemnify any indemnified party hereunder, the Custodian may, in its sole discretion, withdraw any cash in the account, or, if insufficient, liquidate a portion of the Assets, and the Custodian shall use such cash or deduct from such proceeds any fees, expenses and indemnities that it (or any indemnified party) may be due hereunder. The Owner and Secured Party hereby consent to and authorize such action by the Custodian, and the Custodian shall have no liability for any action taken pursuant to this authorization. The Custodian agrees to provide Owner and Secured Party with written notice prior to taking any action pursuant to this Section 8.

The Custodian subordinates its lien on the Assets and any right that the Custodian may have or acquire to set off or otherwise apply any Asset against the payment of any liabilities from time to time owing to the Custodian from the Owner hereunder to the security interest of the Secured Party on behalf of the Secured Parties under, and as defined in, the Loan and Servicing Agreement in the Assets and the Account; provided, however, that the Custodian retains the right to withdraw any cash in the account as provided in this Section 8.

9. The Custodian may at any time resign hereunder by giving written notice of its resignation to the Owner and the Secured Party at least sixty (60) days prior to the date specified for such resignation to take effect, and upon the effective date of such resignation, the Assets hereunder shall be delivered by it to such person as may be designated pursuant to Proper Instructions from the Secured Party, whereupon all the Custodian' s obligations hereunder shall cease and terminate. If no such person shall have been designated by such date, all obligations of the Custodian hereunder shall, nevertheless, cease and terminate. The Custodian' s sole responsibility thereafter shall be to keep safely all Assets then held by it and to deliver the same to a person designated pursuant to Proper Instructions from the Secured Party or in accordance with the direction of a final order or judgment of a court of competent jurisdiction.

The Secured Party or the Owner with the Secured Party' s prior written consent may remove the Custodian at any time by giving the Custodian at least sixty (60) days' prior written notice. Upon receipt of the identity of the successor Custodian as designated by the Secured Party in writing, the Custodian shall either deliver the Assets then held hereunder to the successor Custodian, less the Custodian' s fees, costs and expenses or other obligations owed to the Custodian, or hold such Assets (or any portion thereof), pending distribution, until all such fees, costs and expenses or other obligations are paid. Upon delivery of the Assets to successor Custodian, the Custodian shall have no further duties, responsibilities or obligations hereunder.

10. This Agreement shall be construed in accordance with, and governed by, the laws of the State of New York, without giving effect to the conflict of law principles thereof. The parties hereto hereby irrevocably submit to the non-exclusive jurisdiction of any New York State or Federal Court sitting in the Borough of Manhattan in the City of New York in any proceeding arising out of or relating to this Agreement, and the parties hereby irrevocably agree that all claims in respect of any such proceeding may be heard and determined in any such New York State or Federal court. The parties hereby irrevocably waive, to the fullest extent that they may legally do so, the defense of an inconvenient forum to the maintenance of such proceeding. The parties agree that a final non-appealable judgment in any such proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

11. This Agreement may not be assigned or transferred by the Owner. This Agreement shall remain in full force and effect until the earlier to occur of (a) the transfer or release of all of the Assets in accordance with the written instructions of the Owner in respect thereto and (b) the transfer by the Owner of its rights and interests in the Assets. The parties hereto shall not be bound by any modification, amendment, termination, cancellation, recission or supersession of this Agreement unless the same shall be in writing and signed by the Custodian and the Owner. Any organization or entity into which the Custodian may be merged or converted or with which it may be consolidated, or any organization or entity resulting from any merger, conversion or consolidation to which the Custodian shall be a party, or any organization or entity succeeding to all or substantially all of the corporate trust business of the Custodian, shall be the successor of the Custodian hereunder, without the execution or filing of any paper or any further act on the part of any of the parties hereto.

12. Any delivery of physical Assets or any notices or other communications hereunder (including Proper Instructions delivered to the Custodian) shall be in writing and given at the addresses stated below, by prepaid first class mail, overnight courier or facsimile.

If to the Owner:

RCC REAL ESTATE SPE 9 LLC
c/o ACRES Capital Corp.
865 Merrick Avenue, Suite 200S
Westbury, New York 11590 Attn: Mark Fogel
Fax: 516-500-9149
Email: mf@acrescap.com

If to the Secured Party:

Wells Fargo Bank, National Association, as administrative agent
9062 Old Annapolis Road
Columbia, MD 21045
Telephone: 410-884-2271 or 443-367-3924
E-mail: ctsbankdebtadministrationteam@wellsfargo.com
Attention: Jason Prisco or Lance Yeagle – RCC REAL ESTATE SPE 9, LLC

If to the Custodian:

Wells Fargo Bank, National Association
Corporate Trust Services Division
9062 Old Annapolis Rd.
Columbia, Maryland 21045
Attn: CDO Trust Services– RCC Real Estate SPE 9 LLC
Fax: (410) 715-3748
Email: [ ]

13. EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT OR ANY OTHER TRANSACTION DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF THE PARTIES HERETO. EACH PARTY HERETO ACKNOWLEDGES AND AGREES THAT IT HAS RECEIVED FULL AND SUFFICIENT CONSIDERATION FOR THIS PROVISION (AND EACH OTHER PROVISION OF EACH OTHER TRANSACTION DOCUMENT TO WHICH IT IS A PARTY) AND THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR ITS ENTERING INTO THIS AGREEMENT AND EACH SUCH OTHER TRANSACTION DOCUMENT. All references herein to the "UCC" shall mean the Uniform Commercial Code as in effect in the State of New York. Any terms used herein that are not defined herein and are defined in the UCC shall have the meanings assigned to such terms in the UCC.

14. The Owner acknowledges that in accordance with the Customer Identification Program (CIP) requirements under the USA PATRIOT Act and its implementing regulations, the Custodian in order to help fight the funding of terrorism and money laundering, is required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Custodian. The Owner hereby agrees that it shall provide the Custodian with such information as it may request including, but not limited to, the Owner' s name, physical address, tax identification number and other information that will help the Custodian to identify and verify the Owner' s identity such as organizational documents, certificate of good standing, license to do business, or other pertinent identifying information.

15. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same instrument. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Facsimile signatures and signature pages provided in the form of a "pdf" or similar imaged document transmitted by electronic mail shall be deemed original signatures for all purposes hereunder.

16. The Secured Party, in acting or refraining from acting hereunder, shall do so solely at the direction of Majority Lenders. The rights, benefits, protections, immunities and indemnities afforded the Administrative Agent under the Loan and Servicing Agreement shall extend to the Secured Party hereunder as though set forth herein in their entirety *mutatis mutandis*.

[SIGNATURE PAGE FOLLOWS]

Executed as of the date first above written.

RCC REAL ESTATE SPE 9 LLC, as Owner

By: _____
Name:
Title:

WELLS FARGO BANK, NATIONAL ASSOCIATION, as Secured Party

By: _____
Name:
Title:

WELLS FARGO BANK, NATIONAL ASSOCIATION, as Custodian

By: _____
Name:
Title:

Exhibit A

Authorized Signers List of Secured Party

Each of the following named officers is authorized to act for, and bind, Wells Fargo Bank, National Association, as Secured Party (the "Secured Party") with respect to matters concerning that certain Custodial and Account Control Agreement dated as of _____, 2020, among Wells Fargo Bank, National Association, the Secured Party and RCC Real Estate SPE 9 LLC, as the Owner:

Signature	Name of Officer	Title
	Business Address	
Signature	Name of Officer	Title
	Business Address	
Signature	Name of Officer	Title
	Business Address	
Signature	Name of Officer	Title
	Business Address	

Exhibit B

Authorized Signers List of Owner

Each of the following named officers is authorized to act for, and bind, RCC Real Estate SPE 9 LLC, as Owner (the "Owner") with respect to matters concerning that certain Custodial and Account Control Agreement dated as of _____, 2020, among Wells Fargo Bank, National Association, the Owner and Wells Fargo Bank, National Association, as the Secured Party:

	Mark Fogel	**President**
Signature	Name of Officer	Title
	865 Merrick Avenue, Suite 200S Westbury, New York 11590	
	Business Address	

	David Bryant	**Senior Vice President and Chief Financial Officer**
Signature	Name of Officer	Title
	865 Merrick Avenue, Suite 200S Westbury, New York 11590	
	Business Address	

	Michael Pierro	**Senior Vice President**
Signature	Name of Officer	Title
	865 Merrick Avenue, Suite 200S Westbury, New York 11590	
	Business Address	

FORM OF PORTFOLIO ASSET CHECKLIST

[Date]

FORM OF PORTFOLIO ASSET CHECKLIST

Date: _____
Loan number: _____
Underlying Obligor: _____
Original principal balance or face amount: __

Check one: Initial shipment _____	Trailing documents _____	Final shipment _____
Closing attorney: _____	Phone/fax number: _____	Email address: _____
Servicer contact: _____	Phone/fax number: _____	Email address: _____
Owner contact: _____	Phone/fax number: _____	Email address: _____

Capitalized terms used but not defined herein have the meanings given to such terms in the Custodial and Account Control Agreement, dated as of July [__], 2020 (as amended, modified, waived, supplemented, extended, restated or replaced from time to time, the "Custodial Agreement"), among RCC Real Estate SPE 9 LLC, as owner (together with its successors and permitted assigns, "Owner"), Wells Fargo Bank, National Association, as Custodian (together with its successors and permitted assigns, the "Custodian"), and Wells Fargo Bank, National Association, as administrative agent (together with its successors and assigns, "Secured Party").

	DOCUMENT NAME[1]	REQUIRED[2]	ENCLOSED[3]	STATUS[4]	PROPERTY[5]
1.	Mortgage Note				
2.	Allonge(s)/endorsements to Mortgage Note Endorsed to _____ List complete chain				
3.	Mortgage(s)				
4.	Interim Assignment of Mortgage Assignee (if any): _____				
5.	Assignment of Mortgage to Owner				

1 The assignments identified below are to be provided as and to the extent required by the Loan and Servicing Agreement (as defined in the Custodian Agreement)
2 Indicate whether or not the document is part of the loan structure.
3 Applies to this delivery only – do not list if documents were previously sent.
4 Indicate if the document is an original, jurisdiction certified copy or copy. For recordable documents – indicate if the document is recorded, sent for recordation, not sent for recordation.
5 In the event that the document applies to more than one property but not all of the properties associated with the loan, the checklist must describe which properties relate to each document.

	DOCUMENT NAME[1]	REQUIRED[2]	ENCLOSED[3]	STATUS[4]	PROPERTY[5]
6.	Assignment of Mortgage in blank				
7.	Assumption, modification, consolidation or restatement agreement List all underlying notes				
8.	Interim assignment of assumption, modification, consolidation or restatement agreement Assignee (if any): _____				
9.	Assignment of assumption, modification, consolidation or restatement agreement to Owner				
10.	Assignment of assumption, modification, consolidation or restatement agreement in blank				
11.	Assignment(s) of Leases				
12.	Interim assignment of Assignment of Leases and Rents Assignee (if any): _____				
13.	Assignment of Assignment of Leases and Rents to Owner				
14.	Assignment of Assignment of Leases and Rents in blank				
15.	Security Agreement				
16.	Interim assignment of Security Agreement Assignee (if any): _____				
17.	Assignment of Security Agreement to Owner				
18.	Assignment of Security Agreement in blank				
19.	Title policies and endorsements				
20.	Copies of all recorded documents affecting the Underlying Mortgaged Property				
21.	Survey (with surveyor' s certificate thereon)				
22.	Tenant estoppel certificates				
23.	Title policies and endorsements				
24.	Copies of all recorded documents affecting the Underlying Mortgaged Property				
25.	Survey (with surveyor' s certificate thereon)				
26.	Tenant estoppel certificates				
27.	Major Tenant Leases				
28.	SNDA' s				
29.	Appraisals				
30.	Escrow letter				
31.	Insured closing letter				
32.	Bailment letters or agreements				
33.	Evidence of zoning compliance				
34.	Environmental reports				

	DOCUMENT NAME[1]	REQUIRED[2]	ENCLOSED[3]	STATUS[4]	PROPERTY[5]
35.	Assignment of assignment and subordination of property management agreement in blank				
36.	Assignment of contracts, permits, licenses and other rights				
37.	Interim assignment of assignment of contracts, permits, licenses and other rights Assignee (if any): _____				
38.	Assignment of contracts, permits, licenses and other rights to Owner				
39.	Assignment of contracts, permits, licenses and other rights in blank				
40.	Legal opinions and reliance letters				
41.	Ground Lease				
42.	Memorandum of Ground Lease				
43.	Ground Lease estoppel				
44.	Agreements with ground lessor and/or lender to ground lessor				
45.	Power of attorney				
46.	Owner' s Release Letter, Warehouse Lender' s Release Letter and/or other release letter				
47.	Insurance policies and/or certificates				
48.	Stock, certificates or other similar interests				
49.	Stock, certificate or similar powers undated and executed in blank				
50.	UCC financing Statement (personal property) - State = _____				
51.	Interim UCC- 3 assignment and/or amendment (personal property) State =_____ Assignee =_____				
52.	UCC- 3 assignment and/or amendment (personal property) State =_____ Assignee = Owner_____				
53.	UCC- 3 assignment and/or amendment (personal property) State =_____ Assignee = blank_____				
54.	UCC financing Statement (fixtures) - Fixture filing jurisdiction =_____				
55.	Interim UCC- 3 assignment and/or amendment (fixtures) Fixture filing jurisdiction =_____ Assignee =_____				

	DOCUMENT NAME[1]	REQUIRED[2]	ENCLOSED[3]	STATUS[4]	PROPERTY[5]
56.	UCC-3 assignment and/or amendment (fixtures) Fixture filing jurisdiction =_____ Assignee = Owner_____				
57.	UCC-3 assignment and/or amendment (fixtures) Fixture filing jurisdiction =_____ Assignee = blank_____				
58.	UCC financing Statement (Pledged Stock) - Pledge filing jurisdiction =_____				
59.	Interim UCC-3 assignment and/or amendment (Pledged Stock) Pledge filing jurisdiction =_____ Assignee =_____				
60.	UCC-3 assignment and/or amendment (Pledged Stock) Pledge filing jurisdiction =_____ Assignee = Owner_____				
61.	UCC-3 assignment and/or amendment (Pledged Stock) Pledge filing jurisdiction =_____ Assignee = blank_____				
62.	UCC financing Statement (other) - Other filing jurisdiction =_____				
63.	Interim UCC-3 assignment and/or amendment (other) Other filing jurisdiction =_____ Assignee =_____				
64.	UCC-3 assignment/UCC financing Statement assignment and/or amendment (other) Other filing jurisdiction =_____ Assignee = Owner_____				
65.	UCC-3 assignment and/or amendment (other) Other filing jurisdiction =_____ Assignee = blank_____				
66.	Loan agreement				
67.	Interim assignment of loan agreement Assignee (if any): _____				
68.	Assignment of loan agreement to Owner				
69.	Assignment of loan agreement in blank				
70.	Reserve agreement (if multiple reserve agreements, list each by name)				

	DOCUMENT NAME[1]	REQUIRED[2]	ENCLOSED[3]	STATUS[4]	PROPERTY[5]
71.	Interim assignment of each reserve agreement Assignee (if any): _____				
72.	Assignment of each reserve agreement to Owner				
73.	Assignment of each reserve agreement in blank				
74.	Letters of credit ("LOC") Issuing bank _____ LOC amount _____				
75.	Interim assignment of LOC Assignee (if any): _____				
76.	Assignment of LOC to Owner				
77.	Assignment of LOC in blank				
78.	Cash management, blocked account, control and/or lockbox agreement (if multiple agreements, list each)				
79.	Interim assignment of cash management/lockbox agreement Assignee (if any): _____				
80.	Assignment of cash management/block account/control/lockbox agreement to Owner				
81.	Assignment of cash management/block account/control/lockbox agreement in blank				
82.	Guaranty and/or indemnity agreement				
83.	Interim assignment of guaranty and/or indemnity agreement Assignee (if any): _____				
84.	Assignment of guaranty and/or indemnity agreement to Owner				
85.	Assignment of guaranty and/or indemnity agreement in blank				
86.	Environmental indemnity				
87.	Interim assignment of environmental indemnity Assignee (if any): _____				
88.	Assignment of environmental indemnity to Owner				
89.	Assignment of environmental indemnity in blank				
90.	Operations and maintenance agreement				
91.	Interim assignment of operations and maintenance agreement Assignee (if any): _____				
92.	Assignment of operations and maintenance agreement to Owner				

	DOCUMENT NAME[1]	REQUIRED[2]	ENCLOSED[3]	STATUS[4]	PROPERTY[5]
93.	Assignment of operations and maintenance agreement in blank				
94.	Intercreditor agreement, co-lender agreement or similar agreement				
95.	Interim assignment of intercreditor agreement, co-lender agreement, tri-party agreement or similar agreement Assignee (if any): _____				
96.	Assignment of intercreditor agreement, co-lender agreement or similar agreement to Owner				
97.	Assignment of intercreditor agreement, co-lender agreement or similar agreement in blank				
98.	Pledge Agreement				
99.	Interim assignment of Pledge Agreement Assignee (if any): _____				
100.	Assignment of Pledge Agreement to Owner				
101.	Assignment of Pledge Agreement in blank				
102.	Interest Rate Protection Agreement				
103.	Interim Assignment of Interest Rate Protection Agreement Assignee (if any): _____				
104.	Assignment of Interest Rate Protection Agreement to Owner				
105.	Assignment of Interest Rate Protection Agreement in blank				
106.	Governing documents for the entity in which any Pledged Stock represents an ownership interest				
107.	UCC-9 Policy				
108.	Chattel Mortgage and chattel paper				
109.	Interim assignment of chattel mortgage and chattel paper Assignee (if any): _____				
110.	Assignment of chattel mortgage and paper to Owner				
111.	Assignment of chattel mortgage and paper in blank				
112.	Interim omnibus or general assignment (covering all Mortgage Loan Documents not separately assigned) Assignee (if any): _____				

	DOCUMENT NAME[1]	REQUIRED[2]	ENCLOSED[3]	STATUS[4]	PROPERTY[5]
113.	Omnibus or general assignment (covering all Mortgage Loan Documents not separately assigned) to Owner				
114.	Omnibus or general assignment (covering all Mortgage Loan Documents not separately assigned) in blank				
115.	General Assignment				
116.	Assignment, assignment and assumption agreement or similar document(s) required under the terms of any of the Mortgage Loan Documents to effectuate an assignment thereunder of the Asset				
117.	Interim assignment (if any): _____				
118.	Assignment to Owner				
119.	Assignment in blank				
120.	Other loan documents, agreements, certificates or other documents related to or affecting the Asset or identified on a closing checklist or closing index but not otherwise covered by any other item on this checklist				
121.	Interim assignment of other loan documents, agreements, certificates or other documents related to or affecting the Asset or identified on a closing checklist or closing index but not otherwise covered by any other item on this checklist Assignee (if any): _____				
122.	Assignment of other loan documents, agreements, certificates or other documents related to or affecting the Asset or identified on a closing checklist or closing index but not otherwise covered by any other item on this checklist to Owner				
123.	With respect to Pledged Stock or collateral for an Asset that is an uncertificated security, a securities entitlement or is held in a securities account, an executed control agreement				
124.	Any additional documents required by the Custodial Agreement or the Loan and Servicing Agreement				
125.	Interim Assignment of additional documents Assignee (if any): _____				
126.	Assignment of additional documents to Owner				
127.	Assignment of additional documents in blank				

	DOCUMENT NAME[1]	REQUIRED[2]	ENCLOSED[3]	STATUS[4]	PROPERTY[5]
128.	All construction related documents for any construction loan not otherwise listed in this checklist (list all by name)				
129.	Interim assignment of construction documents Assignee (if any):_____				
130.	Assignment of construction documents Assignee = Owner				
131.	Assignment of construction documents Assignee = blank				
132.	For each Asset that involves a condominium: (i) a copy of the declaration of condominium; (ii) copies of the Governing Documents of the condominium association; (iii) a copy of the plat or map establishing or depicting the condominium; and (iv) an original condominium endorsement to the title policy				
133.	As applicable, notice to applicable party that Administrative Agent is a pledgee of the Asset under the Loan and Servicing Agreement				
134.	As needed - List all other documents/collateral[6] being delivered, including all required assignments thereof				

6 The Checklist documents should match the headings listed on the individual documents. Documents should be sent in the order listed on the Checklist.

EXHIBIT L

FORM OF ACCOUNT CONTROL AGREEMENT

[SEE ATTACHED]

DEPOSIT ACCOUNT CONTROL AGREEMENT

(Hard Lockbox)

This **Deposit Account Control Agreement** (the "Agreement") is made as of [ ], 2020, by and among **RCC REAL ESTATE SPE 9 LLC** ("Borrower"), **WELLS FARGO BANK, NATIONAL ASSOCIATION**, as the Administrative Agent ("Administrative Agent"), **MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY**, as the Facility Servicer ("Facility Servicer"), and **WELLS FARGO BANK, NATIONAL ASSOCIATION** ("Bank") and sets forth the rights and obligations of the parties with respect to the DACA Account (defined below). Capitalized terms used herein but not otherwise defined herein shall have the meanings ascribed to them in that certain Loan and Servicing Agreement dated as of July 31, 2020 by and among: RCC Real Estate SPE Holdings LLC, Borrower, Massachusetts Mutual Life Insurance Company and each of the other lenders for time to time party thereto, Administrative Agent, Facility Servicer, ACRES Capital Servicing LLC, as the Portfolio Asset Servicer, and Wells Fargo Bank, National Association, as the Collateral Custodian (the "Loan and Servicing Agreement").

1. Establishment of Account.

a. Borrower and Bank acknowledge and confirm that Borrower has established with Bank an account with account number [ ] (the "DACA Account") pursuant to Sections 2.07 and 3.01(c) of the Loan and Servicing Agreement.

b. The DACA Account shall be in the name of Borrower for the benefit of Administrative Agent for the benefit of the Secured Parties (or in such other name as Administrative Agent (as directed by the Secured Parties) may direct in writing and agreed to by Bank).

c. Each account designated as a DACA Account includes, for purposes of this Agreement, and without the necessity of separately listing subaccount numbers, all subaccounts presently existing or hereafter established for deposit reporting purposes and integrated with the DACA Account by an arrangement in which deposits made through subaccounts are posted only to the DACA Account.

d. The DACA Account shall at all times have a minimum balance of $5,000 (the "Minimum Balance").

e. The DACA Account shall be treated and maintained as a "deposit account" within the meaning of Section 9-102(a)(29) of the Uniform Commercial Code as in effect in the State of New York (the "NYUCC") and with respect to which Bank shall be acting as a "bank" within the meaning of Section 9-102(a)(8) of the NYUCC. The DACA Account is an Eligible Account. As used herein, (i) "Eligible Account" shall mean a separate and identifiable account from all other funds held by the holding institution that is either (a) an account or accounts maintained with a federal or state-chartered depository institution or trust company which complies with the definition of Eligible Institution or (b) a segregated trust account or accounts maintained with a federal or state chartered depository institution or trust company acting in its fiduciary capacity which, in the case of a state chartered depository institution or trust company is subject to regulations substantially similar to 12 C.F.R. §9.10(b), having in either case a combined capital and surplus of at least $50,000,000 and subject to supervision or examination by federal and state authority. An Eligible Account will not be evidenced by a certificate of deposit, passbook or other instrument and (ii) "Eligible Institution" shall mean a depository institution or trust company insured by the Federal Deposit Insurance Corporation the short term unsecured debt obligations

or commercial paper of which are rated at least "A-1" by Standard & Poor' s Ratings Group ("S&P"), "P-1" by Moody' s Investors Service, Inc. ("Moody' s"), and "F-1" by Fitch, Inc. ("Fitch") in the case of accounts in which funds are held for thirty (30) days or less or, in the case of letters of credit or accounts in which funds are held for more than thirty (30) days, the long term unsecured debt obligations of which are rated at least "A" by Fitch and S&P and "A2" by Moody' s.

2. **Administrative Agent' s Interest in DACA Account.** Borrower represents that it has granted, or intends to grant, a security interest in the DACA Account to Administrative Agent for the benefit of the Secured Parties. Borrower hereby confirms the security interest granted, or to be granted, by Borrower to Administrative Agent for the benefit of the Secured Parties in all of Borrower' s right, title and interest in and to the DACA Account and all sums now or hereafter on deposit in or payable or withdrawable from the DACA Account (the "DACA Account Funds", which includes, if applicable, all financial assets, security entitlements, investment property, and other property and the proceeds thereof now or at any time hereafter held in the DACA Account). Administrative Agent (at the direction of the Secured Parties) hereby appoints Bank as agent for Administrative Agent solely for the purpose of perfecting the security interest of the Secured Parties in the DACA Account and the DACA Account Funds.

3. **Administrative Agent Control.** Except as otherwise provided in this Agreement, Borrower agrees that the DACA Account and the DACA Account Funds are subject to the sole dominion, control and discretion of Administrative Agent acting for the benefit of the Secured Parties (and Facility Servicer as the agent of Administrative Agent). Bank, Administrative Agent, Facility Servicer and Borrower each agree that Bank will comply with instructions originated by Administrative Agent directing disposition of the funds in the DACA Account (collectively "Disposition Instructions") without further consent by Borrower. Except as otherwise required by law, Bank will not agree with any third party to comply with instructions for disposition of funds in the DACA Account.

   The parties acknowledge and agree that in accordance with Section 2.07(d), 2.08(a) and 2.08(c) of the Loan and Servicing Agreement, Administrative Agent has granted to Facility Servicer a revocable right and power to act as Administrative Agent' s representative prior to Administrative Agent' s delivery, upon the occurrence of an Event of Default under the Loan and Servicing Agreement, of a written notice of Administrative Agent' s exercise of exclusive control of the DACA Account to Bank, Facility Servicer and, to the extent permitted by applicable law, Borrower (such notice, the "Notice of Exclusive Control") (until such Notice of Exclusive Control is withdrawn), for the purpose of managing and administrating the DACA Account in all respects, including, without limitation, the disposition of funds on deposit in the DACA Account, making deposits thereto and withdrawals therefrom, initiating electronic funds transfers therefrom, obtaining in the ordinary course of business any other bank services then provided by Bank relating thereto, and deleting, adding, or changing authorized signatories for Facility Servicer, in each case, in accordance with this Agreement, the Account Documentation (as defined below) and the standard policies and procedures of the Bank. Administrative Agent will provide written notice to Bank of the appointment of any successor Facility Servicer. Until Bank receives, and has had a reasonable opportunity to act upon, a Notice of Exclusive Control from Administrative Agent, Facility Servicer is authorized to act as stated herein, and Bank is entitled to rely upon such authority. If Facility Servicer resigns as Facility Servicer, Facility Servicer may, with ten (10) days prior written notice to all other parties to this Agreement, withdraw from being a party to this Agreement. In the event of such withdrawal or in the event the Bank receives, and has had a reasonable opportunity to act upon, a Notice of Exclusive Control from Administrative Agent, the Bank shall comply only with instructions provided by Administrative Agent, unless and until Administrative Agent provides written notice to Bank of the appointment of any successor Facility Servicer or withdraws such Notice of Exclusive Control, as applicable.

4. **No Access to DACA Account.** Borrower acknowledges and agrees that (a) subject to the terms hereof, neither Borrower nor any other person claiming on behalf of, or through, Borrower (other than Facility Servicer) shall have any right, title or interest, whether express or implied, in the DACA Account or to withdraw or make use of any amounts from the DACA Account and (b) unless required by applicable law, Borrower shall not be entitled to any interest on amounts held in the DACA Account.

5. **Disbursements from DACA Account.**

a. (i) Until further written notice from Facility Servicer (or, following delivery of a Notice of Exclusive Control which has not been withdrawn, Administrative Agent), to the extent that the Disposition Instructions require remittances to Administrative Agent, such remittances shall be wired to:

Bank Name: Wells Fargo Bank, N.A.
ABA Number: 121000248
Account Number: 6355067033
Account Name: CDO Clearing Account
Reference: FFC: 92078600, RCC Real Estate SPE 9, LLC- Loan and Servicing Agreement
Attention: Lance Yeagle

(ii) Until further written notice from Borrower, to the extent that the Disposition Instructions require remittances to Borrower, such remittances shall be wired to:

Bank Name: [ ]
Bank Address: [ ]
ABA Number: [ ]
Account Number: [ ]
Account Name: [ ]
Reference: [ ]

b. Facility Servicer (or, following a Notice of Exclusive Control which has not been withdrawn, Administrative Agent) shall deliver Disposition Instructions to Bank no later than 4:00 p.m. (Eastern Time) three (3) Business Days prior to the proposed date of any disbursements of funds held in the DACA Account (collectively, the "Remittance Date"). Facility Servicer (or, following a Notice of Exclusive Control which has not been withdrawn, Administrative Agent) shall provide Bank with at least one (1) Business Day advance written notice of any change in the Remittance Date. Any other Disposition Instructions relating to the DACA Account shall be delivered to the Bank no later than 4:00 p.m. (Eastern Time) one (1) Business Day prior to the date of any disbursement of funds held therein. The Bank shall have no obligation to act hereunder in the absence of timely and complete instructions in accordance with this Agreement. Bank agrees that on each Business Day after it receives and has had a reasonable opportunity to act on any Disposition Instructions, it will transfer to the accounts specified by Facility Servicer (or, following a Notice of Exclusive Control which has not been withdrawn, Administrative Agent), as applicable (the "Destination Accounts") the full amount of the collected and available balance in the DACA Account at the beginning of such Business Day (after deduction of the Minimum Balance and other amounts permitted to be deducted pursuant to Section 6 hereof) in accordance with the Disposition Instructions. The parties hereto agree that Bank may disburse funds to the Destination Accounts in accordance with this Agreement pursuant to standing instructions. Any disposition of funds or assets which Bank makes in response to Disposition Instructions is subject to Bank' s standard policies, procedures and documentation governing the type of disposition made; provided, however, that under no circumstances shall any such disposition require Borrower' s consent.

c. In addition to or in lieu of disbursements by Bank as described above, so long as Borrower and Bank maintain a currently effective agreement under which Borrower is entitled to use Bank' s Commercial Electronic Office® or other online internet portal operated by Bank to transfer funds from accounts at Bank to which Borrower has access, Facility Servicer may from time to time make transfers of collected and available funds from the DACA Account to such Destination Accounts as Facility Servicer may determine. Such transfers will be governed by Bank' s standard Master Agreement for Treasury Management Services or other applicable treasury management services agreement and any applicable service description(s). Further, any such transfer will be deemed an instruction or request of Facility Servicer for purposes of this Agreement, including without limitation Sections 12 and 22.a hereof.

"Business Day" means any day on which Bank is open to conduct its regular banking business, other than a Saturday, Sunday or public holiday.

6. **Partial Subordination of Bank' s Rights.** Bank hereby subordinates to the security interest of Administrative Agent on behalf of the Secured Parties in the DACA Account and the DACA Account Funds (i) any security interest which Bank may have or acquire in the DACA Account and (ii) any right which Bank may have or acquire to set off or otherwise apply any DACA Account Funds against the payment of any liabilities from time to time owing to Bank from Borrower; provided, however, that, Bank retains the right to set off against and to charge the DACA Account for (A) any Bank Fees (as defined in Section 9), (B) all items deposited in and credited to such account and subsequently returned unpaid or with respect to which Bank fails to receive final settlement and (C) all items deposited in and credited to such account in error. If amounts in the DACA Account are insufficient to fully reimburse Bank for such amounts, Borrower agrees to pay such deficiency to Bank in immediately available funds, without setoff or counterclaim, within five (5) Business Days after demand of Bank.

7. **Bank Obligations with respect to DACA Account.**

a. The parties agree that items deposited in the DACA Account shall be deemed to bear the valid and legally binding endorsement of the payee and to comply with all of Bank' s requirements for the supplying of missing endorsements, now or hereafter in effect. As between Borrower, Facility Servicer and Administrative Agent on behalf of the Secured Parties, any deposit made by or on behalf of Borrower into the DACA Account shall be deemed deposited into the DACA Account when the funds in respect of such deposit shall become collected funds.

b. Any item deposited by or on behalf of Borrower in the DACA Account which is returned for insufficient or uncollected funds will be re-deposited by Bank one time.

8. **Balance Reports and Bank Statements.** Borrower agrees that it shall, at its sole cost and expense, make available to Administrative Agent and Facility Servicer information directly related to the DACA Account, including granting Administrative Agent and Facility Servicer online access to Borrower' s treasury reporting with Bank (if any). Bank will, at the telephone or written request of Administrative Agent or Facility Servicer, provide Administrative Agent or Facility Servicer, as applicable, such information by a transmission method determined by Bank, in Bank' s sole discretion, which may include granting Administrative Agent or Facility Servicer, as applicable, online access to Borrower' s treasury reporting (if any), and Borrower consents to the provision of such information to Administrative Agent and Facility Servicer.

9. **Bank Fees.** Borrower agrees to pay all Bank' s standard and customary fees and charges for the maintenance and administration of the DACA Account and for the treasury management and other account services provided with respect to the DACA Account (collectively, the "Bank Fees"), including, but not limited to, the fees for (a) treasury reporting (including online access thereto) provided on the DACA Account, (b) funds transfer services received with respect to the DACA Account, (c) funds advanced to cover overdrafts in the DACA Account (but without Bank being in any way obligated to make any such advances), (d) duplicate bank statements, (e) any treasury management service(s) that

may be required to block the DACA Account as contemplated hereunder, and (f) the Acceptance Fee and other fees and expenses described in Exhibit A attached hereto, in each case, to the extent applicable. The Bank Fees will be paid by Bank debiting the DACA Account on the Business Day that the Bank Fees are due, without notice to Administrative Agent or Borrower. If there are not sufficient funds in the DACA Account to cover fully the Bank Fees on the Business Day Bank attempts to debit them from the DACA Account, such shortfall or the amount of such Bank Fees will be paid by Borrower to Bank, without setoff or counterclaim, within five (5) Business Days after demand from Bank.

10. **Account Documentation.** Except as specifically provided in this Agreement, Administrative Agent and Borrower agree that the DACA Account will be subject to, and Bank' s operation of the DACA Account will be in accordance with, the terms of Bank' s applicable deposit account agreement and other related service documentation governing the DACA Account (the "Account Documentation"). Borrower agrees, upon Bank' s request, to promptly execute and deliver the Account Documentation to Bank. For the avoidance of doubt, the parties hereto acknowledge and agree that pursuant to the Account Documentation, the DACA Account may be subject to Bank' s sweep product services; provided, that such services are not inconsistent with the terms and conditions set forth herein. The parties agree that, in the event of a conflict between this Agreement and the Account Documentation with respect to the DACA Account, this Agreement shall control.

11. **Legal Compliance.**

    a. If Bank at any time receives notice of the commencement of a bankruptcy case or other insolvency or liquidation proceeding by or against Borrower, Bank will continue to comply with its obligations under this Agreement, except to the extent that any action required of Bank under this Agreement is prohibited under applicable bankruptcy laws or regulations or is stayed pursuant to the automatic stay imposed under the United States Bankruptcy Code or by order of any court or agency.

    b. Bank will comply with any legal process, legal notice or court order it receives in relation to the DACA Account if Bank determines in its sole discretion that the legal process, legal notice or court order is legally binding on it.

    c. If at any time Bank, in good faith, is in doubt as to the action it should take under this Agreement, Bank shall have the right (i) to commence an interpleader in the United States District Court in the State of New York, and/or (ii) to take no further action, except, in each case, in accordance with joint instructions from Administrative Agent (at the direction of the Secured Parties) and Borrower or in accordance with the final order of the court in such action.

12. **Indemnification.** Borrower will indemnify, defend and hold harmless Bank and its officers, directors, employees, and agents (collectively, the "Indemnified Parties") from and against any and all claims, demands, losses, liabilities, damages, costs and expenses (including reasonable attorneys' fees) (collectively "Losses and Liabilities") Bank may suffer or incur as a result of or in connection with (a) Bank complying with any binding legal process, legal notice or court order referred to in the immediately preceding Section of this Agreement, (b) Bank following any instruction or request of Administrative Agent or Facility Servicer, including but not limited to any Disposition Instructions, or (c) Bank complying with its obligations under this Agreement, except, in each case, to the extent such Losses and Liabilities are directly caused by Bank' s gross negligence or willful misconduct.

13. **Termination.** This Agreement may be terminated by Administrative Agent or Bank at any time by either of them giving thirty (30) calendar days prior written notice of such termination to the other parties to this Agreement at their contact addresses specified after their signatures to this Agreement; provided, however, that this Agreement may be terminated (i) ten (10) Business Days upon prior written notice from Bank to Borrower and Administrative Agent (with a copy to Facility Servicer) (x) should Borrower fail to make any payment when due to Bank from Borrower under the terms of this Agreement or (y) should Bank close the DACA Account pursuant to applicable law, regulation or policy, or (ii)

immediately upon prior written notice from Administrative Agent to Bank (with a copy to Facility Servicer) on termination or release of the Administrative Agent' s security interest in the DACA Account for the benefit of the Secured Parties; provided that any notice from Administrative Agent under clause (ii) of this sentence must contain Administrative Agent' s acknowledgement of the termination or release of its security interest in the DACA Account for the benefit of the Secured Parties. Borrower' s payment obligations hereunder, as well as the indemnifications made, and the limitations on the liability of Bank accepted by Borrower, Facility Servicer and Administrative Agent under this Agreement will continue after the termination of this Agreement with respect to all the circumstances to which they are applicable, existing or occurring before such termination, and any liability of any party to this Agreement, as determined under the provisions of this Agreement, with respect to acts or omissions of such party prior to such termination will also survive such termination. Upon any termination of this Agreement, Bank will transfer all collected and available balances (less any deductions permitted under Section 6 hereof) in the DACA Account on the date of such termination in accordance with Facility Servicer or, following a Notice of Exclusive Control which has not been withdrawn, Administrative Agent' s (at the direction of the Secured Parties) or Facility Servicer' s written instructions.

14. **Modifications, Amendments, and Waivers.** This Agreement may not be modified or amended, or any provision thereof waived, except in a writing signed by all the parties to this Agreement.

15. **Notices.** All notices from one party to another must be in writing, must be delivered (including via electronic transmission) to Borrower, Administrative Agent, Facility Servicer and/or Bank at their contact addresses specified after their signatures to this Agreement, or any other address of any party communicated to the other parties in writing, and will be effective on receipt. Any notice sent by a party to this Agreement to another party other than Disposition Instructions must also be sent to all other parties to this Agreement. Bank is authorized by Borrower, Administrative Agent and Facility Servicer to act on any instructions or notices received by Bank if (a) such instructions or notices purport to be made in the name of Administrative Agent or Facility Servicer, (b) Bank reasonably believes that they are so made and (c) they do not conflict with the terms of this Agreement as such terms may be amended from time to time, unless such conflicting instructions or notices are supported by a court order.

16. **Successors and Assigns.** Borrower may not assign or transfer its rights or obligations under this Agreement to any person or entity without the prior written consent of Bank, Facility Servicer and Administrative Agent (at the direction of the Secured Parties). Neither Administrative Agent nor Facility Servicer may assign or transfer its rights or obligations under this Agreement to any person or entity without the prior written consent of Bank, which consent will not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Administrative Agent and Facility Servicer may transfer its rights and obligations under this Agreement to (i) a transferee to which, by contract or operation of law, Administrative Agent or Facility Servicer transfers substantially all of its rights and duties under the financing or other arrangements between Administrative Agent, Facility Servicer and Borrower, or (ii) if Administrative Agent is acting as a representative in whose favor a security interest is created or provided for, a transferee that is a successor representative. In the event of a permitted assignment or transfer by Administrative Agent or Facility Servicer of its rights or obligations under this Agreement, Administrative Agent or Facility Servicer will not be released from its obligations under this Agreement unless and until Bank receives transferee' s binding written agreement to assume all of Administrative Agent' s or Facility Servicer' s obligations hereunder. Bank may not assign or transfer its rights or obligations under this Agreement to any person or entity without the prior written consent of Administrative Agent (at the direction of the Secured Parties) and Facility Servicer and, so long as no Event of Default has occurred and is continuing, Borrower (which consent will not be unreasonably withheld or delayed); provided, however, that no such consent will be required if such assignment or transfer takes place as part of a merger, acquisition or corporate reorganization affecting Bank.

17. **Governing Law.** This Agreement will be governed by and be construed in accordance with the laws of the State of New York. New York will also be deemed to be Bank' s jurisdiction for purposes of Article 9 of the Uniform Commercial Code as it applies to this Agreement.

18. **Severability.** To the extent that the terms of this Agreement are inconsistent with, or prohibited or unenforceable under, any applicable law or regulation, they will be deemed ineffective only to the extent of such prohibition or unenforceability, and will be deemed modified and applied in a manner consistent with such law or regulation. Any provision of this Agreement which is deemed unenforceable or invalid in any jurisdiction will not affect the enforceability or validity of the remaining provisions of this Agreement or the same provision in any other jurisdiction.

19. **Counterparts.** This Agreement may be executed in any number of counterparts each of which will be an original with the same effect as if the signatures were on the same instrument. Delivery of an executed counterpart of a signature page of this Agreement by telecopier or electronic image scan transmission (such as a "pdf" file) will be effective as delivery of a manually executed counterpart of the Agreement.

20. **Entire Agreement.** This Agreement, together with the Account Documentation, contains the entire and only agreement among all the parties to this Agreement and between Bank and Borrower, on one hand, Bank and Administrative Agent, on another hand, and Bank and Facility Servicer on another hand, with respect to (a) the interest of Administrative Agent on behalf of the Secured Parties and Facility Servicer in the DACA Account and DACA Account Funds, and (b) Bank' s obligations to Administrative Agent and Facility Servicer in connection with the DACA Account and DACA Account Funds.

21. **Waiver of Jury Trial.** To the extent permitted by law, the parties hereto hereby waive all rights to a trial by jury in any action or proceeding relating to the DACA Account or this Agreement.

22. **Certain Matters Affecting Bank**.

    a. Bank may rely and shall be protected in acting or refraining from acting upon any notice, request, consent, order, certificate, report, opinion or document (including, but not limited to, electronically confirmed facsimiles thereof) believed by it to be genuine and to have been signed or presented by the proper party or parties. Bank shall have no obligation to review or confirm that actions taken pursuant to the foregoing in accordance with this Agreement comply with any other agreement or document to which it is not a party.

    b. The duties and obligations of Bank set forth in this Agreement shall be determined solely by the express provisions of this Agreement. Bank shall not be liable except for the performance for its duties and obligations as are specifically set forth herein. No implied covenants or obligations shall be read into this Agreement against Bank. Bank makes no express or implied representations or warranties with respect to its obligations under this Agreement, except for those expressly set forth herein.

    c. Bank will not be liable to Borrower, Administrative Agent, Facility Servicer or any other person for any Losses and Liabilities caused by (i) circumstances beyond Bank' s reasonable control (including, without limitation, computer malfunctions, interruptions of communication facilities, labor difficulties, acts of God, wars, or terrorist attacks) or (ii) any other circumstances, except, in each case, to the extent that such Losses and Liabilities are directly caused by Bank' s gross negligence or willful misconduct.

    D. **IN NO EVENT WILL BANK BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, WHETHER OR NOT THE LIKELIHOOD OF SUCH DAMAGES WAS KNOWN TO BANK, AND REGARDLESS OF THE FORM OF THE CLAIM OR ACTION, OR THE LEGAL THEORY ON WHICH IT IS BASED.**

E. Any action against Bank by Borrower, Administrative Agent or Facility Servicer under or related to this Agreement must be brought within twelve (12) months after the cause of action accrues.

[SIGNATURE PAGES FOLLOW]

This Agreement has been signed by the duly authorized officers or representatives of Borrower, Administrative Agent, Facility Servicer and Bank on the date specified above.

RCC REAL ESTATE SPE 9 LLC, as Borrower

By: _____

Name: _____

Title: _____

Address for Notices:

c/o ACRES Capital Corp.
865 Merrick Avenue, Suite 200S
Westbury, New York 11590
Attention: Mark Fogel
Facsimile No.: 516-500-9149
E-mail: mf@acrescap.com

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Administrative Agent

By: _____

Name: _____

Title: _____

Address for Notices:

Wells Fargo Bank, National Association
9062 Old Annapolis Road
Columbia, MD 21045
Telephone: 410-884-2271 or 443-367-3924
E-mail: ctsbankdebtadministrationteam@wellsfargo.com
Attention: Jason Prisco or Lance Yeagle – RCC REAL ESTATE SPE 9, LLC

MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY, as Facility Servicer

By: _____

Name: _____

Title: _____

Address for Notices:

Massachusetts Mutual Life Insurance Company
One Marina Park Drive, 8th Floor
Boston, MA 02210
Email: CIOMandates@massmutual.com
Attention: Investment Operations

and

Massachusetts Mutual Life Insurance Company
1295 State Street
Springfield, MA 01111
Email: hpereira@massmutual.com
Attention: Corporate Law Department

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Bank

By: _____

Name: _____

Title: _____

Address for Notices:

[ ]

[Signature Page – Deposit Account Control Agreement]

EXHIBIT A

Fees

Acceptance Fee **$250**

The Acceptance Fee is a one-time fee payable upon execution of this Agreement and includes review of this Agreement and supporting documentation.

Servicing Administration Fee **$250/month****

The monthly Servicing Administration Fee will be assessed upon the opening of the DACA Account and will continue thereafter on a monthly basis for so long as the DACA Account remains open. The Servicing Administration Fee is subject to change Bank' s discretion.

** Assumes that Bank disburses funds once per month and there is no mezzanine structure. If funds are disbursed more frequently or there is a mezzanine structure, the following Servicing Administration Fee shall apply:

$450/month - For weekly allocations and disbursements and/or there is a mezzanine structure
$700/month - For more than weekly allocations and disbursements
$1,300/month - For daily allocations and disbursements

Account/Treasury Management Services Fees **Amount varies**

These fees will vary based upon usage/volume and include all account and treasury management services fees incurred on a monthly basis in accordance with Bank' s standard fees for such services then in effect, including, without limitation, the following: treasury account maintenance fee, funds transfer services fees, credit/disbursement fees, account analysis and statement fees, and treasury reporting and online access fees.

Out-of-Pocket Expenses **As incurred**

Out-of-pocket expenses, including without limitation expenses of foreign depositaries, stationery, overnight courier, and messenger costs, will be billed at Bank' s cost when incurred.

Exhibit 10.3

Execution Version

GUARANTY

GUARANTY, dated as of July 31, 2020, by EXANTAS CAPITAL CORP., a Maryland corporation (the "Guarantor"), and each of Exantas Real Estate Funding 2018-RS06 Investor, LLC ("RS06"), Exantas Real Estate Funding 2019-RS07 Investor, LLC ("RS07"), Exantas Real Estate Funding 2020-RS08 Investor, LLC ("RS08" and together with RS06 and RS07, collectively, the "Applicable Subsidiaries" and each, an "Applicable Subsidiary"), in favor of the Secured Parties under, and as defined in, the Loan and Servicing Agreement referred to below (together with the Guarantor and the Applicable Subsidiaries, the "Parties" and each, a "Party").

The Guarantor owns, directly and indirectly, all of the equity interests of RCC REAL ESTATE SPE HOLDINGS LLC, Delaware limited liability company ("Holdings"), RCC REAL ESTATE SPE 9 LLC, Delaware limited liability company (the "Borrower"), and each of the Applicable Subsidiaries.

The Borrower is indebted to the Secured Parties pursuant to the Loan and Servicing Agreement dated as of the date hereof (as amended, restated, supplemented, replaced or otherwise modified, the "Loan and Servicing Agreement"), among Holdings, the Borrower, the lenders party thereto, Wells Fargo Bank, National Association, as administrative agent, Massachusetts Mutual Life Insurance Company, as facility servicer, ACRES Capital Servicing LLC, as portfolio asset servicer, and Wells Fargo Bank, National Association, as collateral custodian. It is a condition under the Loan and Servicing Agreement that the Guarantor and the Applicable Subsidiaries have executed and delivered this Guaranty. The Guarantor will obtain substantial direct and indirect benefits from the extensions of credit made by the lenders under the Loan and Servicing Agreement.

Accordingly, the Parties agree as follows:

SECTION 1. INTERPRETATION:

Capitalized terms used in this Guaranty and not otherwise defined have the meanings set forth for such terms in the Loan and Servicing Agreement. As used in this Guaranty, the plural includes the singular and the singular includes the plural. All pronouns and any variations thereof refer to masculine, feminine, neuter, singular or plural as the identity of the Person or Persons may require. As used in this Guaranty, "include," "includes" and "including" have the inclusive meaning of "including without limitation." Section and other headings are for reference only, and do not affect the interpretation or meaning of any provision of this Guaranty.

SECTION 2. GUARANTY:

2.1 Guarantee. The Guarantor hereby, irrevocably and unconditionally, guarantees to the Secured Parties the payment of the Guaranteed Obligations as and when such Guaranteed Obligations are due and payable, whether by lapse of time, by acceleration of maturity or otherwise. "Guaranteed Obligations" means the (a) the full amount of the Obligations then due and payable, and whether for principal, interest, reimbursement obligations, fees, expenses or otherwise, and interest accruing thereon following the commencement of any bankruptcy, insolvency, reorganization, receivership or similar proceeding under any state or federal bankruptcy, insolvency, reorganization or other law affecting the rights of creditors generally (each, an "Insolvency Proceeding") by or against a Loan Party at the applicable rate specified for the advances in the Loan and Servicing Agreement, whether or not such interest is allowed as a claim in such Insolvency Proceeding and (b) all losses, fees, costs and expenses (including, all court costs and reasonable attorneys' and paralegals' fees, costs and expenses) paid or incurred by the

Secured Parties in (i) endeavoring to collect all or any part of the Obligations from, or in prosecuting any action against, a Loan Party relating to the Loan and Servicing Agreement, the other Transaction Documents or the transactions contemplated thereby, (ii) taking any action with respect to any collateral securing the Obligations or the Guarantor' s obligations and (iii) preserving, protecting or defending the enforceability of, or enforcing, this Guaranty or the Secured Parties' rights or remedies under this Guaranty or applicable law, together with interest on such losses, fees, costs and expenses from the date of demand under this Agreement until paid in full at the applicable rate specified for the advances in the Loan and Servicing Agreement.

2.2 Nature of Guarantee. The guarantee hereunder is a guarantee of payment and not of collection. The Guarantor expressly waives any requirement that the Secured Parties exhaust any right, remedy or power or proceed against the Loan Parties under the Transaction Documents or against any other Person under any other guarantee of, or security for, any of the Guaranteed Obligations. The guarantee hereunder is a continuing guarantee and applies to all Guaranteed Obligations whenever arising. The guarantee hereunder is absolute and unconditional, irrespective of the value, genuineness or enforceability of the obligations of the Loan Parties under the Loan and Servicing Agreement or any other agreement, instrument or other document executed or delivered in connection therewith, any substitution, release or exchange of any other guarantee of, or security for, any of the Guaranteed Obligations or to the fullest extent permitted by applicable law, any other circumstance that might otherwise constitute a legal or equitable discharge or defense of a guarantor or surety.

2.3 Guarantee Irrevocable. The Guarantor may not revoke this Guaranty and this Guaranty continues to be effective with respect to any Guaranteed Obligations arising or created after any attempted revocation by the Guarantor.

2.4 Limitation on Guarantee. In any Insolvency Proceeding or any action or proceeding involving any corporate or other organizational law, if the Guarantor' s obligations hereunder would, taking into account any of the Guarantor' s rights to contribution, be held or determined to be void, invalid or unenforceable, or subordinated to the claims of any other creditors, on account of the amount of its liability hereunder, then notwithstanding any other provision hereof to the contrary, the amount of such liability is automatically limited and reduced, without any further action by the Guarantor, the Secured Parties or any other Person, to the highest amount that is valid and enforceable and not subordinated to the claims of other creditors as determined in such action or proceeding.

2.5 Reinstatement of Guaranteed Obligations. If at any time payment 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 any obligee of the Guaranteed Obligations, whether as a "voidable preference," "fraudulent conveyance" or otherwise, all as though such payment or performance had not been made, then this Guaranty is reinstated and the Guaranteed Obligations are deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

SECTION 3. WAIVERS:

3.1 Guarantee Absolute. Without limiting the generality of any other provision of this Guaranty, the Guarantor' s obligations hereunder are not released, diminished, impaired, reduced or adversely affected by any of the following:

(A) the unenforceability of all or any part of the Guaranteed Obligations or any agreement, instrument or other document executed or delivered in connection with the Guaranteed Obligations for any reason whatsoever;

(B) any performance or nonperformance of any of the agreements or covenants of the Transaction Documents or any extension of the time for performance of, or the waiver of compliance with, any of the Guaranteed Obligations at any time or from time to time;

(C) any acceleration of the maturity of any of the Guaranteed Obligations;

(D) any renewal, extension, increase, amendment or other modification of any of the Guaranteed Obligations in any respect, any waiver, forbearance, indulgence or compromise of any right under the Loan and Servicing Agreement or any other Transaction Document or any assignment, transfer or other disposition of all or part of the Secured Parties' interests under the Transaction Documents;

(E) the taking or accepting of any other security, collateral or guarantee, or other assurance of payment, for all or any part of the Guaranteed Obligations;

(F) any full or partial release of a Loan Party any other guarantor of the Guaranteed Obligations or any release, exchange or other disposition, in whole or in part, of any security for any of the Guaranteed Obligations;

(G) any lien or security interest granted to, or in favor of, the Secured Parties as security for any of the Guaranteed Obligations being unperfected;

(H) any failure or delay of the Secured Parties to exercise any of its rights or remedies under the Transaction Documents or applicable law or with respect to any other guarantee of, or security for, any of the Guaranteed Obligations;

(I) any Insolvency Proceeding of a Loan Party, the Guarantor or any other guarantor of the Guaranteed Obligations;

(J) any dissolution of a Loan Party, the Guarantor or any other guarantor of the Guaranteed Obligations, any sale, lease, transfer or other disposition of any or all of such Person' s assets or any reorganization, merger or consolidation of any such Person;

(K) any failure of the Secured Parties to notify the Guarantor of any of the foregoing; or

(L) any other action taken or omitted to be taken with respect to the Transaction Documents, the Guaranteed Obligations or the security and collateral therefor, whether such action or omission prejudices the Guarantor or increases the likelihood that the Guarantor will be required to pay the Guaranteed Obligations pursuant to the terms hereof.

3.2 Waivers. The Guarantor hereby waives:

(A) diligence, presentment, demand of payment, notice of dishonor and protest;

(B) all rights of subrogation, reimbursement, indemnification and contribution and any other rights and defenses that are or may become available to the Guarantor or other surety by reason of Applicable Law;

(C) any rights or defenses the Guarantor or other surety may have in respect of its obligations as a guarantor or other surety by reason of any election of remedies by the Secured Parties; and

(D) any common law, equitable, statutory or other rights (including rights to notice) that the Guarantor might otherwise have as a result of or in connection with any of the circumstances described in Section 3.1.

3.3 Subrogation. So long as this Guaranty is in effect, the Guarantor shall not exercise any right or remedy arising by reason of its performance of its guarantee, whether by subrogation, reimbursement, indemnification, contribution or otherwise, against a Loan Party or any other guarantor of the Guaranteed Obligations or any security therefor.

SECTION 4. REPRESENTATIONS:

The Guarantor makes the following representations to the Secured Parties, which representations survive the execution and delivery of this Guaranty:

(A) the execution and delivery of this Guaranty and the performance of its obligations hereunder (a) are within the Guarantor' s organizational power and authority, (b) have been authorized by all necessary organizational action by the Guarantor and (c) do not require the consent or approval of any other Person other than any consent or approval that has been obtained;

(B) the written information with respect to the Specified CLO Assets that is provided to the Initial Lender is true and correct as of the date so provided;

(C) the Guarantor and its subsidiaries, taken as a whole, are "solvent" within the meaning give that term and similar terms under applicable laws relating to fraudulent transfers or conveyances;

(D) the Guarantor has received, or will receive, direct or indirect substantial benefits from the extensions of credit made by the lenders under the Loan and Servicing Agreement and the making of this Guaranty with respect to the Guaranteed Obligations; and

(E) neither a Secured Party nor any other Person has made any representation, warranty or statement to such Person to induce such Person to execute this Guaranty.

Each Applicable Subsidiary makes, severally, the following representations to the Secured Parties, which representations survive the execution and delivery of this Guaranty:

(A) the execution and delivery of this Guaranty and the performance of its obligations hereunder (a) are within such Applicable Subsidiary' s organizational power and authority, (b) have been authorized by all necessary organizational action by such Applicable Subsidiary and (c) do not require the consent or approval of any other Person other than any consent or approval that has been obtained;

(B) the written information with respect to the Specified CLO Assets that is provided to the Initial Lender by such Applicable Subsidiary is true and correct as of the date so provided; and

(C) neither a Secured Party nor any other Person has made any representation, warranty or statement to such Applicable Subsidiary to induce such Applicable Subsidiary to execute this Guaranty.

SECTION 5. COVENANTS:

5.1 Indebtedness. Nether the Guarantor nor any Applicable Subsidiary shall create, incur, assume or suffer to exist any indebtedness for borrowed money or for the deferred purchase price of property or services (other than accounts payable incurred in the ordinary course of business and payable in accordance with customary trade practices) or that is evidenced by a note, bond, debenture or similar instrument or other evidence of indebtedness customary for indebtedness of that type ("Indebtedness") other than:

(A) Indebtedness hereunder;

(B) Indebtedness existing on the date hereof and any Permitted Refinancing thereof;

(C) Indebtedness described in Section 5.2(G);

(D) Indebtedness of the Guarantor that is junior in right of payment to the payment of the Guaranteed Obligations by the Guarantor;

(E) Indebtedness under the Senior Notes and any Permitted Refinancing thereof;

(F) Indebtedness under the Convertible Notes and any Permitted Refinancing thereof;

(G) guarantees of Warehouse Lines in an aggregate committed amount not to exceed $100,000,000 at any time outstanding;

(H) Indebtedness incurred in respect of bona fide hedge obligations in the ordinary course of business and not for speculative purposes;

(I) intercompany Indebtedness with its subsidiaries;

(J) Indebtedness in respect of performance bonds, bid bonds, appeal bonds, surety bonds and completion guarantees and similar obligations not in connection with money borrowed, in each case provided in the ordinary course of business, including those incurred to secure health, safety and environmental obligations in the ordinary course of business;

(K) Indebtedness (i) resulting from a bank or other financial institution honoring a check, draft or similar instrument in the ordinary course of business or (ii) arising under or in connection with cash management services in the ordinary course of business;

(L) Indebtedness consisting of the financing of insurance premiums payable within one (1) year;

(M) Disqualified Equity Interests; and

(N) Indebtedness in an aggregate principal amount, together with all Indebtedness incurred under this clause (N) by any other Person, not exceeding $30,000,000 at any time outstanding.

As used in this Section 5.1, the following terms have the following meanings:

"Convertible Notes" means $143,750,000 in aggregate principal amount of the Guarantor' s 4.50% convertible senior notes due 2022 issued pursuant to the indenture among the Guarantor, as issuer, and Wells Fargo Bank, National Association, as may be amended, modified, amended and restated or supplemented from time to time.

"Disqualified Equity Interest" means any equity interest that, by its terms (or the terms of any security or other equity interest into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition (a) matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, (b) is redeemable at the option of the holder thereof, in whole or in part, (c) provides for scheduled payments of dividends in cash, or (d) is or becomes convertible into or exchangeable for indebtedness or any other equity interest that would constitute Disqualified Equity Interests.

"Permitted Refinancing" means any Indebtedness ("Refinancing Indebtedness") issued in exchange for, or to refinance, renew, replace, defease, discharge or refund, any other Indebtedness ("Refinanced Indebtedness"); provided that the principal amount of such Refinancing Indebtedness does not exceed the principal amount of the Refinanced Indebtedness (plus all accrued interest thereon and the amount of all out-of-pocket fees, expenses and premiums incurred in connection with such exchange, refinancing, renewal, replacement, defeasance, discharge or refunding).

"Senior Notes" means $125,000,000 (plus any increase due to paid in kind interest) in aggregate principal amount of the Guarantor' s 12.00% senior notes due 2027 issued pursuant to the note purchase agreement among the Guarantor, as issuer, and the purchasers signatory thereto, as may be amended, modified, amended and restated or supplemented from time to time.

"Warehouse Lines" means warehouse lines of credit, repurchase agreements and Indebtedness secured by commercial real estate mortgage loans and other commercial real estate-related debt investments (including any instrument evidencing the same and any instrument, security or other asset acquired through collection efforts with respect to the same), equity interests issued by the borrower or seller party thereto, and all files, documents, agreements, real estate, collections and other related rights and assets.

5.2 Liens. Neither the Guarantor nor any Applicable Subsidiary shall create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than:

(A) Liens for Taxes not yet due or that are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;

(B) carriers' , warehousemen' s, mechanics' , materialmen' s, repairmen' s or other like Liens arising in the ordinary course of business that are not overdue for a period of more than 30 days or that are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person;

(C) pledges or deposits in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation, other than any Lien imposed by ERISA;

(D) deposits to secure the performance of bids, trade contracts and leases (other than Indebtedness), statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business;

(E) easements, rights-of-way, restrictions and other similar encumbrances affecting real property that, in the aggregate, are not substantial in amount, and that do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the applicable Person, and any zoning or similar law or right reserved to or vested in any Governmental Authority to control or regulate the use of any real property that does not materially interfere with the ordinary conduct of the business of such Person;

(F) Liens securing judgments for the payment of money;

(G) Liens securing capital leases and purchase money obligations for fixed or capital assets so long as (i) such Liens do not at any time encumber any property other than the property financed by such indebtedness and (ii) the indebtedness secured thereby does not exceed the cost or fair market value, whichever is lower, of the property being acquired on the date of acquisition;

(H) Liens (i) of a collecting bank arising under Section 4-210 of the UCC on items in the course of collection and (ii) in favor of a banking institution arising as a matter of law encumbering deposits (including the right of setoff) that are customary in the banking industry;

(I) any interest or title of a lessor, sublessor, licensor or sublicensor under leases or licenses entered into in the ordinary course of business;

(J) leases, licenses, subleases or sublicenses granted to others in the ordinary course of business that do not (i) interfere in any material respect with the ordinary conduct of the business of such Person or (ii) secure any Indebtedness; and

(K) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods in the ordinary course of business.

5.3 Material CLO Modifications. Subject to the following sentence, the Guarantor and the Applicable Subsidiary holding such Specified CLO Asset shall give prior written notice to the Lenders of any Material CLO Modification with respect to a Specified CLO Asset. If notified by the Guarantor and such Applicable Subsidiary, the Majority Lenders shall have ten Business Days to consent or decline to consent to such Material CLO Modification. Whether or not such notice is given or such consent is obtained, the Guarantor or the Applicable Subsidiary, as the case may be, may proceed with such Material CLO Modification, but, if such consent is not obtained, the Borrower shall make any necessary adjustments to the calculation of Value and Total Portfolio Value as a result thereof as required by the Loan and Servicing Agreement. For the avoidance of doubt, if the Majority Lenders do not respond to the request for consent for any proposed Material CLO Modification within the ten Business Day period such consent shall be deemed to have been declined.

5.4 Payment By Guarantor. If any part of the Guaranteed Obligations are not paid when due, whether at demand, maturity, acceleration or otherwise, the Guarantor shall, immediately upon demand by the Secured Parties (or by the Administrative Agent on behalf of the Secured Parties, at the direction of the Secured Parties) and without presentment, protest, notice of protest, notice of non-payment, notice of intention to accelerate the maturity, notice of acceleration of the maturity or any other notice whatsoever, pay in lawful money of the United States of America the amount due on the Guaranteed Obligations to the Secured Parties at the Secured Parties' address as set forth herein. Such demand(s) may be made at any time coincident with or after the time for payment of any of the Guaranteed Obligations and may be made from time to time with respect to the same or different items of Guaranteed Obligations. Such demand is deemed made, given and received in accordance with the notice provisions hereof.

5.5 Guaranteed Obligations Not Reduced by Offset. The Guaranteed Obligations and the Guarantor' s obligations hereunder are not reduced, discharged or released because or by reason of any existing or future offset, claim or defense of a Loan Party or any other Person against a Secured Party or against payment of the Guaranteed Obligations, whether such offset, claim or defense arises in connection with the Guaranteed Obligations (or the transactions creating the Guaranteed Obligations) or otherwise.

5.6 Acceleration of Obligations. As between the Guarantor and the Secured Parties, the Borrower' s obligations under the Transaction Documents may be declared to be due and payable (and are deemed to have become automatically due and payable in the circumstances provided in the Loan and Servicing Agreement) while an Event of Default has occurred and is continuing for purposes of this Guaranty notwithstanding any stay, injunction or other prohibition preventing such declaration (or such obligations from becoming automatically due and payable) as against a Loan Party and in the event of such declaration (or such obligations being deemed to have become automatically due and payable), such obligations (whether due and payable by the Loan Parties) immediately become due and payable by the Guarantor for purposes of this Guaranty.

5.7 Set-Off. If an Event of Default has occurred and is continuing, the Secured Parties and their respective Affiliates are authorized at any time and from time to time, to the fullest extent permitted by applicable law, to set off and apply any and all indebtedness at any time owing by such Secured Party or Affiliate to or for the credit or the account of the Guarantor against any and all of the Guaranteed Obligations, irrespective of whether or not the Secured Parties have made any demand under this Guaranty. Each Secured Party shall notify the Guarantor promptly after any such setoff and application; provided that the failure to give such notice shall not affect the validity of such setoff and application.

SECTION 6. MISCELLANEOUS:

6.1 Governing Law. This Guaranty is governed by, and construed in accordance with, the laws of the State of New York.

6.2 Expenses. The Guarantor shall reimburse the Secured Parties for any and all out-of-pocket expenses and charges (including reasonable attorneys' , auditors' and accountants' fees) paid or incurred by the Secured Parties in connection with the enforcement of this Guaranty. Any and all costs and expenses incurred by the Guarantor in the performance of actions required pursuant to the terms of this Guaranty are borne solely by the Guarantor.

6.3 Severability. Any provision of this Guaranty held to be invalid, illegal or unenforceable in any jurisdiction is, as to such jurisdiction, ineffective to the extent of such invalidity, illegality or unenforceability without effecting the validity, legality and enforceability of the remaining provisions of this Guaranty; and the invalidity of a particular provision in a particular jurisdiction does not invalidate such provision in any other jurisdiction.

6.4 Integration. This Guaranty constitutes the entire contract among the Parties relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof.

6.5 Notices. All notices and other communications provided for in this Guaranty must be in writing and will be deemed to have been duly given (a) when received if personally delivered, (b) within five days after being sent by registered or certified mail, return receipt requested, postage prepaid, (c) upon receipt after being sent by facsimile or electronic transmission, with confirmed answer back or receipt, during normal business hours on a Business Day or otherwise on the next occurring Business Day or (d) within one Business Day of being sent by priority delivery by established overnight courier to the parties at their respective addresses set forth as follows:

(i) if to the Secured Parties:

Wells Fargo Bank, National Association
9062 Old Annapolis Road
Columbia, MD 21045
Telephone: 410-884-2271 or 443-367-3924
E-mail: ctsbankdebtadministrationteam@wellsfargo.com
Attention: Jason Prisco or Lance Yeagle – RCC REAL ESTATE SPE 9, LLC

(ii) if to the Guarantor or any Applicable Subsidiary:

c/o ACRES Capital Corp.
865 Merrick Avenue, Suite 200S
Westbury, New York 11590
Attention: Mark Fogel
Facsimile No.: 516-500-9149
E-mail: mf@acrescap.com

Any Party may change its address, telephone, email or facsimile number for notices and other communications hereunder by notice to the other Party.

6.6 Amendments. Neither this Guaranty nor any provision hereof may be amended, modified or waived except pursuant to an agreement or agreements in writing entered into by the Guarantor, the Applicable Subsidiaries and the Administrative Agent (at the direction of the Secured Parties).

6.7 No Implied Waivers. No failure to exercise and no delay in exercising any right or remedy under this Guaranty operates as a waiver thereof. No single or partial exercise of any right or remedy under this Guaranty, or any abandonment or discontinuance thereof, precludes any other or further exercise thereof or the exercise of any other right or remedy. No waiver or consent under this Guaranty is applicable to any events, acts or circumstances except those specifically covered thereby.

6.8 Successors and Assigns. This Guaranty is binding upon, and inures to the benefit of, the Parties and their respective successors and permitted assigns. Neither the Guarantor nor any Applicable Subsidiary may assign or transfer any of its interests or rights, or delegate its duties or obligations, under this Guaranty, in whole or in part, without the prior written consent of the Lenders. The Lenders may assign or transfer any of their respective its interests, rights or remedies, and delegate its duties or obligations, under this Guaranty in connection with an assignment or transfer of its interests under the Loan and Servicing Agreement. Nothing in this Guaranty, expressed or implied, may be construed to confer upon any Person (other than the parties hereto, their respective successors and permitted assigns) any legal or equitable right, remedy or claim under or by reason of this Guaranty.

6.9 Submission to Jurisdiction; Waiver of Jury Trial.

(A) The Parties agree that any action or proceeding with respect to this Guaranty or any judgment entered by any court in respect thereof may be brought in the United States District Court for the Southern District of New York or the courts of the State of New York and each Party submits to the jurisdiction of such court for the purpose of any such action, proceeding or judgment.

(B) Each Party irrevocably consents to service of process in the manner provided for notice in Section 6.5. Nothing in this Guaranty affects the right of any Party to service process in any other manner permitted by applicable law.

(C) Each Party irrevocably and unconditionally waives, to the fullest extent permitted by applicable law, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Guaranty in any court referred to in Section 6.9(A). Each Party irrevocably waives, to the fullest extent permitted by applicable law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(D) EACH PARTY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATED TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER REASON).

6.10 Termination. This Guaranty continues in effect (notwithstanding the fact that from time to time there may be no Guaranteed Obligations outstanding) until the Facility Termination Date.

6.11 Counterparts. This Guaranty may be executed in counterparts (and by different parties hereto in different counterparts), each of which constitutes an original, but all of which when taken together constitute a single contract. Delivery of an executed counterpart of a signature page of this Guaranty by electronic transmission is as effective as delivery of a manually executed counterpart of this Guaranty.

6.12 Obligations Several. The representations, covenants and other agreements and obligations of the Guarantor and the Applicable Subsidiaries are several and not joint.

(Signature page(s) follow)

The Guarantor and the Applicable Subsidiaries have executed and delivered this Guaranty as of the date first above written.

EXANTAS CAPITAL CORP

By: /s/ Matthew Stern
Name: Matthew Stern
Title: President

EXANTAS REAL ESTATE FUNDING 2018-RS06 INVESTOR, LLC

By: /s/ Matthew Stern
Name: Matthew Stern
Title: Executive Vice President

EXANTAS REAL ESTATE FUNDING 2019-RS07 INVESTOR, LLC

By: /s/ Matthew Stern
Name: Matthew Stern
Title: Executive Vice President

EXANTAS REAL ESTATE FUNDING 2020-RS08 INVESTOR, LLC

By: /s/ Matthew Stern
Name: Matthew Stern
Title: Executive Vice President

[Signature Page to Guaranty]

Accepted:

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as administrative agent

By: /s/ Josè M. Rodrìguez
Name: Josè M. Rodrìguez
Title: Vice President

[Signature Page to Guaranty]

Exhibit 10.4

EXECUTION VERSION

EXANTAS CAPITAL CORP.

12.00% Senior Notes due July 31, 2027

NOTE AND WARRANT PURCHASE AGREEMENT

Dated as of July 31, 2020

TABLE OF CONTENTS

EXANTAS CAPITAL CORP.

12.00% Senior Notes due July 31, 2027

Dated as of
July 31, 2020

TO THE PURCHASERS SIGNATORY HERETO:

Ladies and Gentlemen:

EXANTAS CAPITAL CORP., a corporation organized under the laws of Maryland (the "*Company*" or the "*Issuer*"), agrees with the Purchasers signatory hereto as follows:

SECTION 1. AUTHORIZATION OF NOTES AND WARRANTS.

Section 1.1. Authorization of Notes. The Company has authorized (i) the issuance and sale of $50,000,000 of 12.00% Senior Notes, due July 31, 2027 (the "*Initial Notes*"), at the Initial Closing (as defined below) and (ii) the issuance and sale of up to $75,000,000 of additional 12.00% Senior Notes, due July 31, 2027 (the "*Additional Notes*"), which may, subject to the terms and conditions set forth herein, be issued from time to time hereunder after the Initial Closing on the same terms and conditions as the Initial Notes. The "*Initial Notes*" and the "*Additional Notes*" are collectively referred to herein as the "*Notes*". The "*Notes*" shall include any such notes issued in substitution therefor pursuant to Section 15. The Notes shall be substantially in the forms set out in Exhibit 1, with such changes therefrom, if any, as may be mutually approved by the applicable Purchaser and the Company. All capitalized terms used in this Agreement shall have the meanings ascribed to such terms in Annex B or as otherwise defined elsewhere in this Agreement.

Section 1.2. Authorization of Warrants. The Company (i) has duly authorized the issuance and sale of warrants entitling the holders to purchase from the Company 1,400,000 shares (in the aggregate) of the Company' s common stock ("*Common Stock*"), $0.001 par value per share (such warrants, the "*Initial Warrants*"), and (ii) in connection with the issuance and sale of Additional Notes pursuant to the terms hereof, has authorized the issuance and sale of warrants entitling the holders to purchase from the Company up to 2,100,000 shares (in the aggregate) of the Common Stock (such warrants, the "*Additional Warrants*"), in each case, on the terms set forth in the Form of Warrant attached hereto as Exhibit 3. The "*Initial Warrants*" and the "*Additional Warrants*" are together referred to herein as the "*Warrants*."

SECTION 2. NOTES.

Section 2.1. Sale and Purchase of Notes. Subject to the terms and conditions of this Agreement, including the satisfaction of the conditions precedent set forth in Section 5, the Company will issue and sell to each Purchaser and each Purchaser will purchase from the Company, at the Initial Closing, the Initial Notes in the principal amount specified opposite such Purchaser' s name in Annex A under the column entitled "Initial Purchase Amount" for a purchase price equal to 100% of the aggregate principal amount of such Initial Notes. The aggregate principal amount of Initial Notes is $50,000,000.

The Company may in its sole discretion, from time to time after the date hereof but on or prior to the eighteen-month anniversary of the date hereof, require that the Purchasers purchase Additional Notes from the Company by delivery of one or more written notices (each, an "*Additional Notes Notice*") to the Purchasers. Subject to the conditions specified in Section 6, on the tenth Business Day after delivery of an Additional Notes Notice (each such date, a "*Subsequent Purchase Date*"), the Company shall issue and sell and the Purchasers shall purchase the Additional Notes in an aggregate principal amount equal to the amount specified in the Additional Notes Notice; provided, that each purchase of Additional Notes shall be in an aggregate principal amount that is not less than $10,000,000 and shall be in additional increments of $1,000,000 (provided that such amount may be less than $10,000,000 (or increments of $1,000,000) if such amount represents all remaining availability under the Remaining Additional Notes Amount). The purchase obligations of each Purchaser on each Subsequent Purchase Date shall be determined by multiplying the principal amount of Additional Notes to be purchased on such Subsequent Purchase Date by the percentage commitment of such Purchaser specified opposite such Purchaser' s name in Annex A. All Additional Notes shall be purchased for a purchase price equal to 100% of the principal amount of such Additional Notes. For the avoidance of doubt, the total aggregate principal amount of Additional Notes which may be issued under this Agreement on the Subsequent Purchase Dates shall not exceed $75,000,000.

If any of the Notes would otherwise constitute an "applicable high-yield discount obligation" within the meaning of Section 163(i) of the Code or any successor provisions, on each Interest Payment Date (as defined in the Note) ending after the fifth anniversary of the date hereof, the Company shall pay in cash a minimum amount of interest (including any original issue discount, as defined under the Code) that has been previously accrued and unpaid, as shall be necessary to ensure that the Notes shall not be considered an applicable high yield discount obligation.

The obligations of each Purchaser hereunder are several and not joint obligations and no Purchaser shall have any obligation or liability to any Person for the performance or nonperformance by any other Purchaser hereunder.

The Initial Notes and any Additional Notes will be treated as a single class for all purposes under this Agreement, including waivers, amendments, redemptions and offers to purchase. Unless the context requires otherwise, references to "Notes" for all purposes of this Agreement include any Additional Notes that are actually issued. The Initial Notes and any Additional Notes shall be issued and evidenced in electronic form (in "portable document format" (".pdf") form or any other electronic form).

Section 2.2. Tax Treatment. The parties hereto agree to treat the Notes as indebtedness of the Company and the Warrants as equity of the Company for U.S. federal income tax purposes. Each Purchaser and the Company hereby acknowledge and agree (i) to treat the Notes and the Warrants as part of an "investment unit" within the meaning of Section 1273(c)(2) of the Code and, correspondingly, the Notes as having been issued with original issue discount for U.S. federal income tax purposes to the extent of the fair market value of the Warrants

at the time of the issuance thereof, and (ii) that the aggregate fair market value of the Warrants will be based on a valuation as of the date hereof, which valuation shall be completed by the Company within thirty (30) calendar days of the date hereof; provided that the Company shall cooperate with the Purchasers and their Affiliates in completing such valuation, including by allowing the Purchasers or any of their Affiliates to review and comment on such valuation before it is finalized, and that such amount will be allocable ratably to the Warrants pursuant to Treasury Regulations Section 1.1273-2(h), with the balance of the issue price of the investment unit allocable to the Notes. The Purchasers and the Company shall prepare their respective U.S. federal and applicable state and local income tax returns in a manner consistent with the foregoing treatment.

SECTION 3. WARRANTS.

Subject to the terms and conditions of this Agreement, including the satisfaction of the conditions precedent set forth in Section 5 (with respect to the Initial Closing) and Section 6 (with respect to each Subsequent Closing), (a) at the Initial Closing, the Company will issue and sell to each Purchaser and each Purchaser will purchase from the Company, Initial Warrants to purchase the number of shares of Common Stock specified opposite such Purchaser' s name in Annex A under the column entitled "Initial Warrant Purchase" and (b) at each Subsequent Closing, the Company will issue and sell to each Purchaser and each Purchaser will purchase from the Company, their pro rata share of Additional Warrants to purchase a number of shares of Common Stock in an amount equal to the *product* of (i) the quotient obtained by dividing (A) the aggregate principal amount of Additional Notes to be sold on such Subsequent Purchase Date by (B) $75,000,000, *multiplied* by (ii) 2,100,000.

SECTION 4. CLOSING.

The sale and purchase of (i) the Initial Notes and the Initial Warrants shall occur at the offices of Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, NY, at a closing (the "*Initial Closing*") to take place simultaneously with the execution of this Agreement and (ii) any Additional Notes and Additional Warrants shall occur at the offices of Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, NY, at 11:00 A.M., New York time, at a closing (each a "*Subsequent Closing*", together with the "*Initial Closing*", and each a "*Closing*") on each Subsequent Purchase Date or on such other Business Day thereafter as may be agreed upon in writing by the Company, on the one hand, and the Purchasers holding at least a majority in aggregate principal amount of the Notes at the time outstanding, on the other hand. At each Closing, the Company shall deliver to each Purchaser (i) the Notes to be purchased by such Purchaser in the form of a single Note (or such greater number of Notes in denominations of at least $ 100,000 as such Purchaser may request) dated the date of the applicable Closing and registered in such Purchaser' s name (or in the name of such Purchaser' s nominee), against delivery by such Purchaser to the Company or its order of immediately available funds in the amount of the purchase price therefor by wire transfer of immediately available funds as set forth on Schedule 4 and (ii) the Warrants to be purchased by such Purchaser. If, at the applicable Subsequent Closing, the Company shall fail to tender such Additional Notes and such Additional Warrants to any Purchaser as provided above in this Section 4, or any of the applicable conditions specified in Section 6 shall not have been fulfilled, such Purchaser shall, at such Purchaser' s election, be relieved of its obligations under this Agreement to consummate the applicable purchase of Additional Notes and Additional Warrants on such Subsequent Closing.

SECTION 5. CONDITIONS TO INITIAL CLOSING.

The obligation of each Purchaser to purchase and pay for the Initial Notes to be sold to such Purchaser at the Initial Closing is subject to the fulfillment to such Purchaser' s reasonable satisfaction, prior to or at the Initial Closing, of the following conditions:

Section 5.1. Representations and Warranties of the Company. The representations and warranties of the Company in Section 7 shall (a) with respect to representations and warranties that contain a Material Adverse Effect or materiality qualification, be true and correct when made and at the time of, and immediately after giving effect to, the Initial Closing, and (b) with respect to representations and warranties that do not contain a Material Adverse Effect or materiality qualification, be true and correct in all material respects when made and at the time of, and immediately after giving effect to, the Initial Closing.

Section 5.2. Performance; No Default. The Company shall have performed and complied in all material respects with all agreements and conditions contained in this Agreement required to be performed or complied with by it prior to or at the Initial Closing assuming that Section 11 and Section 12 are applicable from the date of this Agreement. From the date of this Agreement until the Initial Closing, before and after giving effect to the issue and sale of the Initial Notes (and the application of the proceeds thereof as contemplated by Section 7.12), no Default or Event of Default shall have occurred and be continuing.

Section 5.3. Certificates.

(a) *Officer' s Certificate of Company*. The Company shall have delivered to the Purchasers an Officer' s Certificate, dated the date of the Initial Closing, certifying that the conditions specified in Section 5.1 and Section 5.2 have been fulfilled.

(b) *Secretary' s Certificate of Company*. The Company shall have delivered to the Purchasers a certificate of its Secretary or Assistant Secretary, dated the date of Initial Closing, certifying as to the bylaws and resolutions attached thereto, the incumbency of officers signatory thereto and other corporate proceedings relating to the authorization, execution and delivery of the Notes and this Agreement and the issuance of the Warrants required to be issued at the Initial Closing pursuant to Section 5.6.

(c) *Good Standing Certificates*. The Company shall have delivered to the Purchasers a certificate of good standing or existence dated as of a recent date from the Secretary of State of its state of incorporation.

(d) *Certified Articles.* The Company shall have delivered to the Purchasers certified copies of the articles or certificate of incorporation or other registered organizational documents from the Secretary of State of its state of incorporation.

(e) *Solvency Certificate.* The Company shall have delivered to the Purchasers a certificate dated the date of the Initial Closing from the chief executive officer or chief financial officer of the Company certifying as to the Solvency of the Company and its Subsidiaries (on a consolidated basis).

Section 5.4. Opinions of Counsel. The Purchasers shall have received from (i) Morrison & Foerster LLP, as counsel for the Company, an opinion in form and substance satisfactory to the Purchasers, dated the date of the Initial Closing and (ii) Ledgewood, as counsel for the Company, an opinion in form and substance satisfactory to the Purchasers, dated the date of the Initial Closing (and the Company hereby instructs such counsels to deliver such opinion to the Purchasers).

Section 5.5. Purchase Permitted by Applicable Law, Etc. On the date of the Initial Closing, each purchase of Initial Notes shall (i) be permitted by the Laws of each jurisdiction to which each Purchaser is subject, (ii) not violate any Law applicable to the Company (including Regulation T, U or X of the Board of Governors of the Federal Reserve System) and (iii) not subject any Purchaser to any tax, penalty or liability under or pursuant to any applicable Law.

Section 5.6. Warrants. The Company shall have issued to such Purchaser the Initial Warrants in the Form of Warrant attached as Exhibit 3 and in accordance with Section 3.

Section 5.7. Payment of Purchaser Counsel Fees. The Company shall have paid on or immediately prior to the time of the Initial Closing the reasonable and documented fees, charges and disbursements of Paul, Weiss, Rifkind, Wharton & Garrison LLP; *provided* that such fees, charges and disbursements shall not exceed $300,000.

Section 5.8. This Agreement. Such Purchaser shall have received this Agreement executed by the Company.

Section 5.9. Board Observer. As of the Initial Closing, Brian Laibow, as a representative of the Purchasers, shall have been appointed as the Board Observer pursuant to Section 11.6.

SECTION 6. CONDITIONS TO CLOSING OF ADDITIONAL NOTES.

The obligation of each Purchaser to purchase and pay for the Additional Notes to be sold to such Purchaser at each Subsequent Closing is subject to the fulfillment (or waiver by such Purchaser to the extent permitted by applicable Law) at or prior to such Subsequent Closing of the following conditions:

Section 6.1. Representations and Warranties of the Company. The representations and warranties of the Company in Section 7 shall (a) with respect to representations and warranties that contain a Material Adverse Effect or materiality qualification, be true and correct at the time of, and immediately after giving effect to, such Subsequent Closing, and (b) with respect to representations and warranties that do not contain a Material Adverse Effect or materiality qualification, be true and correct in all material respects at the time of, and immediately after giving effect to, such Subsequent Closing (in each case, except to the extent that any such representation and warranty expressly speaks as of a particular date or period of time, in which case such representation and warranty shall be so true and correct only as of such particular date or with respect to such period of time).

Section 6.2. No Default or Event of Default. Before and after giving effect to the issue and sale of the Additional Notes (and the application of the proceeds thereof as contemplated by Section 7.12), no Default or Event of Default shall have occurred and be continuing; *provided*, *however*, for purposes of fulfilling this Section 6.2, no Default or Event of Default resulting or arising in connection with any repurchase agreement or similar agreement or instrument governing any Debt (or any cross-defaults under any other Debt or preferred equity resulting therefrom) shall be taken into account when determining whether the condition set forth in this Section 6.2 has been fulfilled, to the extent that immediately after giving effect to such Subsequent Closing, any defaults or events of default under any such repurchase agreement or similar agreement or instrument, other Debt or preferred equity are cured (or such repurchase agreement or similar agreement or instrument is repaid in full and terminated) and no other defaults or events of default exist under any other Debt or preferred equity such that no Default or Event of Default shall be continuing.

Section 6.3. No Material Adverse Effect. No Material Adverse Effect shall have occurred following the date of the Initial Closing and is continuing as of the time immediately prior to such Subsequent Closing.

Section 6.4. *Compliance Certificates*.

(a) *Officer's Certificate of Company*. The Company shall have delivered the Purchasers an Officer' s Certificate, dated the Subsequent Closing Date, certifying that the conditions specified in Section 6.1 and Section 6.2 have been fulfilled.

(b) *Solvency Certificate*. The Company shall have delivered to the Purchasers a certificate dated the Subsequent Purchase Date from the chief executive officer or chief financial officer of the Company certifying as to the Solvency of the Company and its Subsidiaries (on a consolidated basis).

Section 6.5. Purchase Permitted by Applicable Law, Etc. On the date of each Subsequent Closing, such purchase of Additional Notes shall (i) be permitted by the Laws of each jurisdiction to which such Purchaser is subject, (ii) not violate any Law applicable to the Company (including Regulation T, U or X of the Board of Governors of the Federal Reserve System) and (iii) not subject such Purchaser to any tax, penalty or liability (other than *de minimis* taxes, penalties or liabilities) under or pursuant to any applicable Law.

Section 6.6. Initial Closing. The Initial Closing shall have occurred.

Section 6.7. Amount. Any Additional Notes issued under this Agreement shall be in an amount not in excess of the amount permitted by Section 2.1.

Section 6.8. Warrants. The Company shall have issued to such Purchaser Additional Warrants in the Form of Warrant attached as Exhibit 3 and in accordance with Section 3.

SECTION 7. REPRESENTATIONS AND WARRANTIES OF THE COMPANY.

Except as set forth in the disclosure letter delivered by the Company to the Purchasers concurrently with the execution and delivery of this Agreement (the "*Company Disclosure Letter*"), the Company represents and warrants to each Purchaser as follows:

Section 7.1. Organization; Power and Authority. The Company is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation. The Company is duly qualified as a foreign corporation and is in good standing in each jurisdiction in which such qualification is required by applicable Law, other than those jurisdictions as to which the failure to be so qualified or in good standing would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The Company has the corporate power and authority to own or hold under lease the properties it purports to own or hold under lease, and to transact the business it transacts, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 7.2. *Authorization; No Breach*.

(a) This Agreement, the Warrants and the Notes have been duly authorized by all necessary corporate action on the part of the Company, and, assuming the due authorization, execution and delivery by each such Purchaser, this Agreement constitutes, and upon execution and delivery thereof each Note will constitute, and upon issuance thereof each Warrant will constitute, a legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except as such enforceability may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(b) The execution and delivery of this Agreement, the Warrants and the Notes, the issuance and sale of the Notes, the issuance and sale of the Warrants, the issuance of the shares of Common Stock upon exercise of the Warrants and the fulfillment of, and compliance with, the respective terms hereof and thereof by the Company, do not and will not as of any Closing (i) conflict with or result in a breach of the terms, conditions or provisions of, (ii) constitute a default under, (iii) result in the creation of any Lien upon the Company' s capital stock or assets under, (iv) result in a violation of, or (v) require any authorization, consent, approval, exemption or other action by or notice or declaration to, or filing with, any Governmental Authority pursuant to (1) the Organizational Documents of the Company (in effect on the date hereof or as may be amended prior to completion of the contemplated Closing), or (2) except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, any Law to which the Company is subject or any agreement, order, judgment or decree to which the Company is subject, except in each case for any filings required after the date hereof under federal or state securities Laws.

Section 7.3. Absence of Certain Changes. Since June 30, 2020 through the date of this Agreement, there has not occurred any Effect that would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 7.4. Organization and Ownership of Shares of Subsidiaries.

(a) Schedule 7.4(a) is (except as noted therein) a complete and correct list of the Company' s Subsidiaries as of the Initial Closing, showing, as to each Subsidiary, the correct name thereof, the jurisdiction of its organization and the percentage of shares of each class of its outstanding capital stock or similar equity interests owned by the Company and each other Subsidiary and identifying such Subsidiary as a Subsidiary.

(b) All of the shares of capital stock or similar equity interests of each Subsidiary of the Company have been validly issued, are fully paid and nonassessable and are owned by the Company or another Subsidiary of the Company free and clear of any Lien (except for any Liens permitted by this Agreement or Liens under securities Laws).

(c) Each Subsidiary of the Company is a corporation or other legal entity duly organized, validly existing and in good standing under the laws of its jurisdiction of organization, and is duly qualified as a foreign corporation or other legal entity and is in good standing in each jurisdiction in which such qualification is required by applicable Law, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Each Subsidiary of the Company has the corporate or other power and authority to own or hold under lease the properties it purports to own or hold under lease and to transact the business it transacts, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 7.5. Financial Statements. The consolidated financial statements (including in each case the related schedules and notes) of the Company included in the Filed SEC Documents (if amended, as of the date of the last such amendment) fairly presented in all material respects the consolidated financial position of the Company and its consolidated Subsidiaries as of the respective dates thereof, and the consolidated statements of operations, comprehensive income (loss), changes in equity and cash flows for the respective periods then ended (subject, in the case of unaudited financial statements, to normal year-end audit adjustments and to any other adjustments described therein, including the notes thereto) and have been prepared in accordance with GAAP (except, in the case of unaudited financial statements, as permitted by the SEC or its rules and regulations) consistently applied throughout the periods involved (subject, in the case of unaudited quarterly financial statements, to normal year-end adjustments and the absence of footnote disclosure).

Section 7.6. Compliance with Other Instruments. Except as disclosed in Schedule 7.6, the (a) execution, delivery and performance by the Company of this Agreement, the Warrants and the Notes, (b) the issuance and sale of the Warrants and (c) the issuance of the shares of Common Stock upon exercise of the Warrants will not contravene, result in any breach of, or constitute a default under, or result in the creation of any Lien in respect of any property of the Company or any of its Subsidiaries under, any indenture, mortgage, deed of trust, Warehouse Line, loan, purchase or credit agreement, lease or any other agreement or instrument to which the Company or any of its Subsidiaries is bound or by which the Company or any of its Subsidiaries or any of their respective properties is bound or affected, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 7.7. Litigation; Observance of Statutes and Orders. (a) Except as disclosed in Schedule 7.7, there are no actions, suits, investigations or proceedings pending or, to the knowledge of the Company, threatened in writing against or affecting the Company or any of its Subsidiaries or any property of the Company or any of its Subsidiaries, in each case, in any court or before any arbitrator of any kind or before or by any Governmental Authority, except any such actions, suits, investigations or proceedings that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Neither the Company nor any of its Subsidiaries is (i) in default under any order, judgment, decree or ruling of any court, arbitrator or Governmental Authority or (ii) in violation of any applicable Law (including Environmental Laws, the USA PATRIOT Act or any of the other Laws that are referred to in Section 7.14), except in each case to the extent that any such default or violation, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

Section 7.8. Taxes. The Company and its Subsidiaries have filed all income and other Material tax returns that are required to have been filed in any jurisdiction, and have paid all taxes shown to be due and payable on such returns and all other taxes and assessments payable by them, to the extent such taxes and assessments have become due and payable and before they have become delinquent, except for any taxes and assessments (i) the amount of which is not individually or in the aggregate Material or (ii) the amount, applicability or validity of which is currently being contested in good faith by appropriate proceedings and with respect to which the Company or any of its Subsidiaries, as the case may be, has established adequate reserves in accordance with GAAP.

Section 7.9. Licenses, Permits, Etc. Except as disclosed in Schedule 7.9, the Company and its Subsidiaries own or possess all Material licenses, permits, franchises, authorizations, patents, copyrights, service marks, trademarks and trade names, or rights thereto, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 7.10. Compliance with ERISA. (a) The Company and each ERISA Affiliate have operated and administered each Plan (if any) in compliance with all applicable laws except for such instances of noncompliance as have not resulted in and would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. Neither the Company nor any ERISA Affiliate has incurred any liability pursuant to Title I or IV of ERISA (other than to satisfy the minimum funding standards of ERISA or to pay required premiums to the PBGC) or the penalty or excise tax provisions of the Code relating to employee benefit plans (as defined in section 3 of ERISA), and no event, transaction or condition has occurred or exists that would, individually or in the aggregate, reasonably be expected to result in the incurrence of any such liability by the Company or any ERISA Affiliate, or in the imposition of any Lien on any of the rights, properties or assets of the Company or any ERISA Affiliate, in either case pursuant to Title I or IV of ERISA or to sections 412, 430(k) or 436(f) of the Code or to any such penalty or excise tax provisions under the Code or federal law or section 4068 of ERISA or by the granting of a security interest in connection with the amendment of a Plan, other than such liabilities or Liens as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) The present value of the aggregate benefit liabilities under each of the Plans (other than Multiemployer Plans) (if any), determined as of the end of such Plan' s most recently ended plan year on the basis of the actuarial assumptions specified for funding purposes in such Plan' s most recent actuarial valuation report, did not exceed the aggregate current value of the assets of such Plan allocable to such benefit liabilities, unless such excess amount would not reasonably be expected to have a Material Adverse Effect. The term "*benefit liabilities*" has the meaning specified in section 4001 of ERISA and the terms "*current value*" and "*present value*" have the meanings specified in section 3 of ERISA.

(c) The Company and its ERISA Affiliates have not incurred any Material withdrawal liabilities (and are not subject to contingent withdrawal liabilities) under section 4201 or 4204 of ERISA in respect of Multiemployer Plans that individually or in the aggregate are reasonably expected to have a Material Adverse Effect.

(d) The expected post-retirement benefit obligation (determined as of the last day of the Company' s most recently ended fiscal year in accordance with Financial Accounting Standards Board Accounting Standards Codification Topic 715, without regard to liabilities attributable to continuation coverage mandated by section 4980B of the Code) of the Company and its Subsidiaries is not Material or is disclosed in the publicly filed audited financial statements for the fiscal year ended December 31, 2019.

Section 7.11. Private Offering by the Company. Neither the Company nor, to the knowledge of the Company, anyone acting on its behalf has engaged in a general solicitation or general advertising (within the meaning of Regulation D of the Securities Act) of investors with respect to offers or sales of securities, and neither the Company nor, to the knowledge of the Company, anyone acting on its behalf has made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would cause the offering or issuance of the Notes or Warrants to be integrated with prior offerings by the Company for purposes of the Securities Act that would result in none of Regulation D or any other applicable exemption from registration under the Securities Act to be available. The Company has not taken, nor will take, any action that would subject the issuance or sale of the Notes or the Warrants to the registration requirements of Section 5 of the Securities Act.

Section 7.12. Use of Proceeds; Margin Regulations. The Company will use the proceeds of the sale of the Notes for general corporate purposes, including Investments, Restricted Payments (including Permitted Payments) and other transactions not prohibited by this Agreement. No part of the proceeds from the sale of the Notes hereunder will be used, directly or indirectly, for the purpose of buying or carrying any margin stock within the meaning of Regulation U of the Board of Governors of the Federal Reserve System (12 CFR 221), or for the purpose of buying or carrying or trading in any securities under such circumstances as to involve the Company in a violation of Regulation X of said Board (12 CFR 224) or to involve any broker or dealer in a violation of Regulation T of said Board (12 CFR 220). As used in this Section, the terms "*margin stock*" and "*purpose of buying or carrying*" shall have the meanings assigned to them in said Regulation U.

Section 7.13. Existing Debt. Neither the Company nor any of its Subsidiaries is in default and no waiver of default is currently in effect, in the payment of any principal or interest on any Debt of the Company or any of its Subsidiaries and no event or condition exists with respect to any Debt for borrowed money of the Company or any of its Subsidiaries that would permit one or more Persons to cause such Debt to become due and payable before its stated maturity or before its regularly scheduled dates of payment.

Section 7.14. Foreign Assets Control Regulations, Etc.

(a) Neither the Company nor any of its Subsidiaries is (i) a Person whose name appears on the list of Specially Designated Nationals and Blocked Persons published by the Office of Foreign Assets Control, United States Department of the Treasury ("*OFAC*") (an "*OFAC Listed Person*"), (ii) an agent, department, or instrumentality of, or is otherwise beneficially owned by, controlled by or acting on behalf of, directly or indirectly, (x) any OFAC Listed Person or (y) any Person, entity, organization, foreign country or regime that is subject to any OFAC Sanctions Program, or (iii) otherwise blocked, subject to sanctions under or engaged in any activity in violation of other United States economic sanctions, including but not limited to, the Trading with the Enemy Act, the International Emergency Economic Powers Act, the Comprehensive Iran Sanctions, Accountability and Divestment Act ("*CISADA*") or any similar law or regulation with respect to Iran or any other country, the Sudan Accountability and Divestment Act, or any economic sanctions regulations administered and enforced by the United States or any enabling legislation or executive order relating to any of the foregoing (collectively, "*U.S. Economic Sanctions*") (each OFAC Listed Person and each other Person, entity, organization and government of a country described in clause (i), clause (ii) or clause (iii), a "*Blocked Person*"). Neither the Company nor any Subsidiary of the Company has been notified in writing that its name appears or may in the future appear on a state list of Persons that engage in investment or other commercial activities in Iran or any other country that is subject to U.S. Economic Sanctions.

(b) No part of the proceeds from the sale of the Notes hereunder constitutes or will constitute funds obtained on behalf of any Blocked Person or will otherwise be used by the Company or any Controlled Entity in violation of U.S. Economic Sanctions.

(c) Neither the Company nor any of its Subsidiaries (i) has been found in violation of, charged with, or convicted of, money laundering, drug trafficking, terrorist-related activities or other money laundering predicate crimes under the Currency and Foreign Transactions Reporting Act of 1970 (otherwise known as the Bank Secrecy Act), the USA PATRIOT Act or any other United States law or regulation governing such activities (collectively, "*Anti-Money Laundering Laws*") or any U.S. Economic Sanctions violations, (ii) to the Company' s actual knowledge, is under investigation by any Governmental Authority for possible violation of Anti-Money Laundering Laws or any U.S. Economic Sanctions violations, (iii) has been assessed civil penalties under any Anti-Money Laundering Laws or any U.S. Economic Sanctions, or (iv) has had any of its funds seized or forfeited in an action under any Anti-Money Laundering Laws. The Company has established procedures and controls which it reasonably believes are reasonably adequate to ensure that the Company and each of its Subsidiaries is and will continue to be in compliance with all applicable current and future Anti-Money Laundering Laws and U.S. Economic Sanctions.

(d) (1) Neither the Company nor any of its Subsidiaries (i) has been charged with, or convicted of bribery or any other anti-corruption related activity under any applicable Law in a U.S. or any non-U.S. country or jurisdiction, including the U.S. Foreign Corrupt Practices Act and the U.K. Bribery Act 2010 (collectively, "*Anti-Corruption Laws*"), (ii) to the Company' s actual knowledge, is under investigation by any U.S. or non-U.S. Governmental Authority for possible violation of Anti-Corruption Laws, (iii) has been assessed civil or criminal penalties under any Anti-Corruption Laws or (iv) has been or is the target of sanctions imposed by the United Nations or the European Union;

(2) To the Company' s actual knowledge, neither the Company nor any of its Subsidiaries has, within the last five years, directly or indirectly offered, promised, given, paid or authorized the offer, promise, giving or payment of anything of value to a Governmental Official or a commercial counterparty for the purposes of: (i) influencing any act, decision or failure to act by such Government Official in his or her official capacity or such commercial counterparty, (ii) inducing a Governmental Official to do or omit to do any act in violation of the Governmental Official' s lawful duty, or (iii) inducing a Governmental Official or a commercial counterparty to use his or her influence with a Governmental Authority to affect any act or decision of such Governmental Authority; in each case in order to obtain, retain or direct business or to otherwise secure an improper advantage in violation of any applicable Law; and

(3) No part of the proceeds from the sale of the Notes hereunder will be used for any unlawful payments, including bribes, to any Governmental Official or commercial counterparty in order to obtain, retain or direct business or obtain any improper advantage. The Company has established procedures and controls which it reasonably believes are reasonably adequate to ensure that the Company and each of its Subsidiaries is and will continue to be in compliance with all applicable current and future Anti-Corruption Laws.

Section 7.15. Investment Company Act. Neither the Company nor any of its Subsidiaries is an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

Section 7.16. Environmental Matters. (a) There is no Material claim or proceeding by or before any Governmental Authority pending against the Company or any of its Subsidiaries or any of their respective real properties or other assets now owned, leased or operated by any of them, alleging any violation of any Environmental Laws, or any Material claim or proceeding by or before any Governmental Authority pending against any real property or other assets formerly owned, leased or operated by the Company or any of its Subsidiaries alleging any violation of any Environmental Laws arising on account of any act or omission by the Company any of its Subsidiaries or any predecessor to the Company or any of its Subsidiaries during the period which such real property or other asset was owned, leased or operated by any of them, or such predecessors, except, in each case, as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect:

(1) the Company has no knowledge of any facts which would give rise to any violation of any applicable Environmental Laws (x) that in any way are related to real properties now owned, leased or operated by any of the Company or any of its Subsidiaries or their use, or (y) that in any way are related to real property formerly owned, leased or operated by the Company, any of its Subsidiaries or any predecessor to the Company or any of its Subsidiaries during the period which such real property was owned, leased or operated by any of them;

(2) neither the Company nor any of its Subsidiaries has stored any Hazardous Materials on real properties now or formerly owned, leased or operated by any of them or has disposed of any Hazardous Materials in a manner in violation of any applicable Environmental Laws; and

(3) all buildings on all real properties now owned, leased or operated by the Company or any of its Subsidiaries are in compliance with applicable Environmental Laws.

Section 7.17. REIT. The Company (i) from the date of the filing of its initial federal tax return through its last taxable year ended before the date hereof was subject to taxation and qualified as a REIT under the Code and (ii) has operated since the end of its last taxable year to the date of this representation in such a manner as would permit it to continue to qualify as a REIT.

Section 7.18. Title to Securities. Upon issuance in accordance with, and payment pursuant to, the terms hereof and the Warrants, the shares of Common Stock issuable upon exercise of the Warrants will be duly and validly issued, fully paid and nonassessable. Upon issuance in accordance with, and payment pursuant to, the terms hereof and the Warrants, the Warrants and the shares of Common Stock issuable upon exercise of such Warrants, will be free and clear of all Liens, other than (i) transfer restrictions hereunder and under the other agreements contemplated hereby, (ii) transfer restrictions under federal and state securities laws, (iii) restrictions imposed by the Company' s Organizational Documents, and (iv) Liens imposed due to the actions of the Purchaser.

Section 7.19. Regulation D. Neither the Company nor, to its knowledge, any of its officers, directors or beneficial stockholders of 20% or more of its outstanding securities, has experienced a disqualifying event as enumerated pursuant to Rule 506(d) of Regulation D under the Securities Act.

Section 7.20. Disclosure. This Agreement, the documents, certificates or other writings provided by the Company to any Purchaser prior to the Initial Closing and the Filed SEC Documents, taken as a whole, do not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein not misleading in light of the circumstances under which they were made.

Section 7.21. Title to Property; Leases. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, the Company and its Subsidiaries have good, valid and marketable title to, or a valid leasehold interest in or license to use, all of the assets, properties (including real and personal property) and rights reflected in the most recent audited balance sheet or acquired by the Company or any of its Subsidiaries after the date of such audited balance sheet (except as sold or otherwise disposed of after said date). Such assets, properties and rights are free and clear of Liens prohibited by this

Agreement, except for those defects in title and Liens that, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, all leases to which the Company and its Subsidiaries are party are valid and subsisting and are in full force and effect.

Section 7.22. Rank. The Notes rank senior to the Company' s unsecured junior subordinated debentures.

SECTION 8. REPRESENTATIONS OF THE PURCHASER.

Each Purchaser, severally and not jointly, represents and warrants to the Company as follows:

Section 8.1. Purchase for Investment. Such Purchaser is an "Accredited Investor" as defined in Rule 501 of Regulation D under the Securities Act. Such Purchaser is purchasing the Notes and the Warrants (and any shares of Common Stock issuable upon conversion of the Warrants) for its own account or for one or more separate accounts maintained by such Purchaser or for the account of one or more pension or trust funds and not with a view toward, or for sale in connection with, any distribution thereof in violation of any federal or state securities or "blue sky" law, or with any present intention of distributing or selling such Notes or Warrants (or any shares of Common Stock issuable upon conversion of the Warrants) in violation of the Securities Act. Such Purchaser has sufficient knowledge and experience in financial and business matters so as to be capable of evaluating the merits and risks of its investment in the Notes and the Warrants (and any shares of Common Stock issuable upon conversion of the Warrants) and is capable of bearing the economic risks of such investment. Such Purchaser has been provided a reasonable opportunity to undertake and has undertaken such investigation and has been provided with and has evaluated such documents and information as it has deemed necessary to enable it to make an informed and intelligent decision with respect to the execution, delivery and performance of this Agreement and the transactions contemplated hereby. Each Purchaser understands that the issuance of the Notes and the Warrants (and any shares of Common Stock issuable upon conversion of the Warrants) have not been registered under the Securities Act and may be resold only if registered pursuant to the provisions of the Securities Act or if an exemption from registration is available, except under circumstances where neither such registration nor such an exemption is required by Law, and that the Company is not required to register the resale of the Notes or the Warrants.

Section 8.2. Authorization; No Breach. (a) This Agreement has been duly authorized by all necessary corporate action on the part of such Purchaser, and, assuming the due authorization, execution and delivery by the Company, this Agreement constitutes a legal, valid and binding obligation of such Purchaser enforceable against such Purchaser in accordance with its terms, except as such enforceability may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(b) The execution and delivery of this Agreement and the fulfillment of, and compliance with, the respective terms hereof by such Purchaser, do not and will not as of any Closing (i) conflict with or result in a breach of the terms, conditions or provisions of, (ii) constitute a default under, (iii) result in the creation of any Lien upon such Purchaser' s capital stock or assets under, (iv) result in a violation of, or (v) require any authorization, consent, approval, exemption or other action by or notice or declaration to, or filing with, any Governmental Authority pursuant to the Organizational Documents of such Purchaser (in effect on the date hereof or as may be amended prior to completion of the contemplated Closing), or any material Law to which such Purchaser is subject, or any agreement, order, judgment or decree to which such Purchaser is subject, except in each case (x) for any filings required after the date hereof under federal or state securities Laws or (y) as would not reasonably be expected to materially and adversely affect or delay the consummation of the transactions contemplated hereby.

Section 8.3. Compliance with Laws. Each of such Purchaser and its Subsidiaries are in compliance with all applicable Laws, except to the extent that the failure to comply therewith would not reasonably be expected to materially and adversely affect or delay the consummation of the transactions contemplated hereby.

Section 8.4. Available Funds. Such Purchaser has cash in immediately available funds or uncalled and unrestricted capital commitments necessary to consummate the Initial Closing. At each applicable Subsequent Closing, such Purchaser shall have cash in immediately available funds or uncalled and unrestricted capital commitments necessary to consummate such Subsequent Closing.

Section 8.5. Brokers and Finders. Such Purchaser has not retained, utilized or been represented by, or otherwise become obligated to, any broker, placement agent, financial advisor or finder in connection with the transactions contemplated by this Agreement whose fees the Company would be required to pay.

Section 8.6. Ownership of Shares. None of such Purchaser or its Affiliates owns any capital stock or other equity or equity-linked securities of the Company (without giving effect to the issuance of the Notes or Warrants hereunder), other than the Convertible Notes.

SECTION 9. INFORMATION AS TO COMPANY.

Section 9.1. Financial and Business Information. The Company shall deliver to each holder of Notes:

(a) *Quarterly Statements* − within 45 days after the end of each quarterly fiscal period in each fiscal year of the Company (other than the last quarterly fiscal period of each such fiscal year), duplicate copies of:

(1) an unaudited consolidated balance sheet of the Company and its Subsidiaries as at the end of such quarter, and

(2) unaudited consolidated statements of income, changes in shareholders' equity and cash flows of the Company and its Subsidiaries for such quarter and (in the case of the second and third quarters) for the portion of the fiscal year ending with such quarter, setting forth in each case in comparative form the figures for the corresponding periods in the

previous fiscal year, all in reasonable detail, prepared in accordance with GAAP applicable to quarterly financial statements generally, and certified by a Senior Financial Officer of the Company as fairly presenting, in all material respects, the consolidated financial position of the companies being reported on and their consolidated results of operations and cash flows, subject to changes resulting from year-end adjustments;

provided that the requirement under this Section 9.1(a) shall be deemed to have been satisfied if on or prior to such date the Company files its quarterly report on Form 10-Q for the applicable fiscal quarter with the SEC;

(b) *Annual Statements* − within 90 days after the end of each fiscal year of the Company, duplicate copies of:

(1) a consolidated balance sheet of the Company and its Subsidiaries, as at the end of such year, and

(2) consolidated statements of income, changes in shareholders' equity and cash flows of the Company and its Subsidiaries for such year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail, prepared in accordance with GAAP, and accompanied by an opinion thereon of independent certified public accountants of recognized national standing; which opinion shall (x) state that such financial statements present fairly, in all material respects, the consolidated financial position of the companies being reported upon and their consolidated results of operations and cash flows and have been prepared in conformity with GAAP, and that the examination of such accountants in connection with such financial statements has been made in accordance with generally accepted auditing standards, and that such audit provides a reasonable basis for such opinion in the circumstances (as such wording may be updated or amended from time to time in accordance with industry practice and standards) and (y) not be subject to any "going concern" or any qualification as to the scope of such audit;

provided that the requirement under this Section 9.1(b) shall be deemed to have been satisfied if on or prior to such date the Company files its annual report on Form 10-K for the applicable fiscal year with the SEC;

(c) *Notice of Default or Event of Default* − promptly, and in any event within three Business Days after a Responsible Officer becoming aware of the existence of any Default or Event of Default, a written notice specifying the nature and period of existence thereof and what action the Company is taking or proposes to take with respect thereto;

(d) *ERISA Matters* − promptly, and in any event within three Business Days after a Responsible Officer becoming aware of any of the following events, a written notice setting forth the nature thereof and the action, if any, that the Company or an ERISA Affiliate proposes to take with respect thereto:

(1) with respect to any Plan, any Reportable Event for which notice thereof has not been waived pursuant to the regulations under ERISA as in effect on the date hereof; or

(2) the taking by the PBGC of steps to institute, or the threatening by the PBGC of the institution of, proceedings under section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan, or the receipt by the Company or any ERISA Affiliate of a notice from a Multiemployer Plan that such action has been taken by the PBGC with respect to such Multiemployer Plan; or

(3) any event, transaction or condition that would reasonably be expected to result in the incurrence of any liability by the Company or any ERISA Affiliate pursuant to Title I or IV of ERISA or the penalty or excise tax provisions of the Code relating to employee benefit plans (as defined in section 3 of ERISA), or in the imposition of any Lien on any of the rights, properties or assets of the Company or any ERISA Affiliate pursuant to Title I or IV of ERISA (other than to satisfy the minimum funding standards of ERISA or to pay required premiums to the PBGC) or such penalty or excise tax provisions under the Code, if such liability or Lien, taken together with any other such liabilities or Liens then existing, would reasonably be expected to have a Material Adverse Effect;

(e) *Notices from Governmental Authority* − promptly, and in any event within three Business Days of receipt thereof, copies of any notice to the Company or any Subsidiary of the Company from any federal or state Governmental Authority relating to any order, ruling, statute or other Law that would reasonably be expected to have a Material Adverse Effect;

(f) *Notice of Material Adverse Event* − promptly, and in any event within three Business Days after a Responsible Officer shall have notice thereof, notice of any occurrence or event that would reasonably be expected to have a Material Adverse Effect;

(g) *Management's Discussion and Analysis* − concurrently with any delivery of financial statements pursuant to clause (a) or (b) above, a management' s discussion and analysis; *provided* that the requirement under this Section 9.1(g) shall be deemed satisfied if clause (a) or (b) above (as applicable) is deemed satisfied pursuant to the proviso in such clause; and

(h) *Requested Information* − with reasonable promptness, such other data and information relating to the business, operations, affairs, financial condition, assets or properties of the Company or any of its Subsidiaries or relating to the ability of the Company to perform its obligations hereunder and under the Notes as from time to time as may be reasonably requested by the Required Holders.

Section 9.2. Officer's Certificate. At substantially the same time as either the Company' s delivery of financial statements to holders of Notes or the Company' s filing of financial statements with the SEC, in either case pursuant to Section 9.1(b), the Company shall deliver to each holder of Notes a certificate of a Senior Financial Officer of the Company setting forth a statement that such officer has reviewed the relevant terms hereof and has made, or caused to be made, under his or her supervision, a review of the transactions and conditions of the Company and its Subsidiaries from the beginning of the annual period covered by the statements then being furnished to the date of the certificate and that such review shall not have disclosed the existence during such period of any condition or event that constitutes a Default or an Event of Default or, if any such condition or event existed or exists, specifying the nature and period of existence thereof and what action the Company shall have taken or proposes to take with respect thereto.

Section 9.3. Inspection. The Company shall permit the Representatives of the Required Holders to visit and inspect any of the offices or properties of the Company or any of its Subsidiaries, to examine all their respective books of account, records, reports and other papers, to make copies and extracts therefrom, and to discuss their respective affairs, finances and accounts with their respective officers and independent public accountants (and by this provision the Company authorizes said accountants to discuss the affairs, finances and accounts of the Company and its Subsidiaries), all at such times and as often as may be reasonably requested with reasonable prior notice; provided that if an Event of Default has occurred and is continuing, no prior notice shall be required; provided, further, that notwithstanding anything herein to the contrary, the holders of Notes (collectively, and not individually) shall be entitled to visit and inspect such property only two (2) times per year and one (1) time in any six-month period unless an Event of Default has occurred and is continuing.

Section 9.4. Electronic Delivery. Documents required to be delivered by the Company pursuant to Section 9.1 shall be deemed to have been delivered if the Company satisfies any of the following requirements with respect thereto:

(1) such documents are delivered to each holder of a Note by e-mail; or

(2) such documents are timely posted by or on behalf of the Company on IntraLinks or on any other similar website to which each holder of Notes has free access.

SECTION 10. PAYMENT OF THE NOTES AND INTEREST.

Section 10.1. Mandatory Payments Prior to Maturity. Upon the occurrence of a Change in Control (as defined below), the Company shall immediately repay each holder of the Notes, 100% of the principal amount of the Notes held by each such holder, together with (i) interest accrued thereon (including applicable default interest, if any) to the date of such repayment plus (ii) the applicable Make-Whole Amount (as defined below) as of the date of such repayment, if any.

"Change in Control" means the occurrence of any of the following:

(1) Any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended (the "*Exchange Act*")), is or becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that a Person will be deemed to have "beneficial ownership" of all securities that such Person has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of 35% or more of the total voting power of the then outstanding voting stock of the Company;

(2) within any twelve (12) month period after the date hereof, the board of directors (or equivalent governing body) of the Company shall cease to consist of a majority of Continuing Directors; or

(3) (x) the engagement of any Person as a manager of the business or affairs of the Company or any material portion thereof, or (y) with respect to a manager of the business or affairs of the Company or any material portion thereof, (A) an assignment by such manager of, or subcontracting of material obligations of such manager under, any agreement with respect to the management of the business or affairs of the Company or any material portion thereof to any Person, (B) the sale, lease or transfer to any Person (in one or a series of related transactions) of all or substantially all of the assets of such manager, (C) the acquisition by any Person or group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act, or any successor provision), including any group acting for the purpose of acquiring, holding or disposing of securities (within the meaning of Rule 13d-5(b)(1) under the Exchange Act, or any successor provision), in a single transaction or in a related series of transactions, by way of merger, consolidation or other business combination or purchase of beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act, or any successor provision), of 50% or more of the total voting power of the then outstanding voting capital interests of such manager, or (D) any other "Change in Control" (or similar event, however denominated), as defined in any agreement with respect to the management of the business or affairs of the Company or any material portion thereof, of such manager to or with any other Person, unless (in each case) such Person is (I) Acres Capital Corp. or a (direct or indirect) wholly-owned Subsidiary thereof or (II) a Purchaser or any Affiliate thereof.

Section 10.2. Optional Prepayments. The Company may, at its option, upon revocable notice as provided below, prepay at any time all, or from time to time any part, of the Notes, at 100% of the principal amount of the Notes so prepaid, together with (i) interest accrued thereon (including applicable default interest, if any) to the date of such prepayment plus (ii) the applicable Make-Whole Amount as of the date of such prepayment. The Company will give each holder of Notes to be prepaid written notice of each optional prepayment under this Section 10.2 not less than 30 days and not more than 60 days prior to the date fixed for such prepayment unless the Company and the Required Holders agree to another time period pursuant to Section 19. Each such revocable notice shall specify such prepayment date, the aggregate principal amount of the Notes to be prepaid on such date, the principal amount of each Note held by such holder to be prepaid (determined in accordance with Section 10.3), and the interest to be paid on the prepayment date with respect to such principal amount being prepaid, and shall be accompanied by a certificate of a Senior Financial Officer of the Company as to the estimated Make-Whole Amount, if any, setting forth the details of such computation; provided that if the Company shall subsequently revoke such notice, the Company shall be responsible for the reasonable and documented out-of-pocket costs and expenses incurred by each holder of Notes in connection with same. Two Business Days prior to any prepayment of the Notes, the Company shall deliver to each holder of the Notes to be prepaid a certificate of a Senior Financial Officer of the Company specifying the calculation of the Make-Whole Amount, if any.

Section 10.3. Allocation of Partial Payments. In the case of each partial payment of the Notes, the principal amount of the Notes to be paid shall be allocated among all of the Notes at the time outstanding in proportion, as nearly as practicable, to the respective unpaid principal amounts thereof.

Section 10.4. Surrender, Etc. In the case of each prepayment of Notes pursuant to this Section 10, the principal amount of each Note to be prepaid shall mature and become due and payable on the date fixed for such prepayment, together with interest (including applicable default interest, if any) on such principal amount accrued to such date and the applicable Make-Whole Amount as of the date of such prepayment, if any. From and after such date, unless the Company shall fail to pay such principal amount when so due and payable, together with the interest (including applicable default interest, if any) and the Make-Whole Amount, if any, interest on such principal amount shall cease to accrue. Any Note paid or prepaid in full shall be surrendered to the Company and cancelled and shall not be reissued, and no Note shall be issued in lieu of any prepaid principal amount of any Note.

Section 10.5. Purchase of Notes. The Company will not, and will not permit any of its Affiliates to, purchase, redeem, prepay or otherwise acquire, directly or indirectly, any of the outstanding Notes except upon the payment or prepayment of the Notes in accordance with the terms of this Agreement and the Notes.

Section 10.6. Make-Whole Amount. "*Make-Whole Amount*" means, with respect to a Note, (a) prior to the date that is two (2) years following the Initial Closing, an amount equal to (i) the Discounted Value of the Remaining Scheduled Payments with respect to the Called Principal of such Note (provided that the amount calculated pursuant to this clause (i) may in no event be less than 0.00%) plus (ii) 5.00% of the Called Principal of such Note, (b) on or after the date that is two (2) years following the Initial Closing, but prior to the date that is four (4) years following the Initial Closing, 3.00% of the Called Principal of such Note, (c) on or after the date that is four (4) years following the Initial Closing, but prior to the date that is five (5) years following the Initial Closing, 2.00% of the Called Principal of such Note, (d) on or after the date that is five (5) years following the Initial Closing, but prior to the date that is six (6) years following the Initial Closing, 1.00% of the Called Principal of such Note, and (e) on or after the date that is six (6) years following the Initial Closing, 0.00% of the Called Principal of such Note. For the purposes of determining the Make-Whole Amount, the following terms have the following meanings:

"*Called Principal*" means, with respect to a Note, the principal of such Note that is to be paid or prepaid pursuant to Section 10.1 or Section 10.2 or has become or is declared to be immediately due and payable pursuant to Section 14.1, as the context requires.

"*Discounted Value*" means, with respect to the Called Principal of a Note, the amount obtained by discounting all Remaining Scheduled Payments with respect to such Called Principal from their respective scheduled due dates to the Settlement Date with respect to such Called Principal, in accordance with accepted financial practice and at a discount factor (applied on the same periodic basis as that on which interest on the Notes is payable) equal to the Reinvestment Yield with respect to such Called Principal.

" *Reinvestment Yield*" means, with respect to the Called Principal of a Note, 0.50% over the yield to maturity implied by the yield(s) reported as of 10:00 a.m. (New York City time) on the second Business Day preceding the Settlement Date with respect to such Called Principal, on the display designated as "Page PX1" (or such other display as may replace Page PX1) on Bloomberg Financial Markets for the most recently issued actively traded on-the-run U.S. Treasury securities **(**"*Reported*"**)** having a maturity equal to the period from such Settlement Date to the two (2) year anniversary of the Initial Closing. If there are no such U.S. Treasury securities Reported having a maturity equal to such period, then such implied yield to maturity will be determined by (a) converting U.S. Treasury bill quotations to bond equivalent yields in accordance with accepted financial practice and (b) interpolating linearly between the yields Reported for the applicable most recently issued actively traded on-the-run U.S. Treasury securities with the maturities (1) closest to and greater than such period and (2) closest to and less than such period. The Reinvestment Yield shall be rounded to the number of decimal places as appears in the interest rate of the applicable Note.

If such yields are not Reported or the yields Reported as of such time are not ascertainable (including by way of interpolation), then "*Reinvestment Yield*" means, with respect to the Called Principal of a Note, 0.50% over the yield to maturity implied by the U.S. Treasury constant maturity yields reported, for the latest day for which such yields have been so reported as of the second Business Day preceding the Settlement Date with respect to such Called Principal, in Federal Reserve Statistical Release H.15 (or any comparable successor publication) for the U.S. Treasury constant maturity having a term equal to the period from such Settlement Date to the two (2) year anniversary of the Initial Closing of such Called Principal as of such Settlement Date. If there is no such U.S. Treasury constant maturity having a term equal to the period from such Settlement Date to the two (2) year anniversary of the Initial Closing, such implied yield to maturity will be determined by interpolating linearly between (1) the U.S. Treasury constant maturity so reported with the term closest to and greater than such period and (2) the U.S. Treasury constant maturity so reported with the term closest to and less than such period. The Reinvestment Yield shall be rounded to the number of decimal places as appears in the interest rate of the applicable Note.

"*Remaining Scheduled Payments*" means, with respect to the Called Principal of a Note, all payments of interest on such Called Principal that would be due after the Settlement Date and on or prior to the date that is two (2) years following the Initial Closing with respect to such Called Principal if no payment of such interest were made prior to its scheduled due date, *provided* that if such Settlement Date is not a date on which interest payments are due to be made under the Notes, then the amount of the next succeeding scheduled interest payment (but only if such next succeeding scheduled interest payment shall occur on or prior to the date that is two (2) years following the Initial Closing) will be reduced by the amount of interest accrued to such Settlement Date and required to be paid on such Settlement Date, *provided*, *further*, it shall be assumed as if all payments of interest on such Called Principal that would be due for the applicable period would be made in cash.

"*Settlement Date*" means, with respect to the Called Principal of a Note, the date on which such Called Principal is to be paid or prepaid pursuant to Section 10.1 or Section 10.2 or has become or is declared to be immediately due and payable pursuant to Section 14.1, as the context requires.

Section 10.7. Stated Maturity; Interest. The full principal balance outstanding on the Notes shall be due and payable on the Maturity Date. At all times that there is a principal balance outstanding on the Notes, interest shall accrue and be due and payable from time to time in accordance with the terms of the Notes.

Section 10.8. Tax Matters. The terms of Exhibit 2 hereto are incorporated herein by reference and shall apply as if set forth fully herein. All payments hereunder shall be subject to such Exhibit.

SECTION 11. AFFIRMATIVE COVENANTS.

The Company covenants that so long as any of the Notes are outstanding:

Section 11.1. Compliance with Law. The Company will, and will cause each of its Subsidiaries to, comply with all Laws to which each of them is subject, including, without limitation, ERISA, Environmental Laws, the USA PATRIOT Act and the other laws and regulations that are referred to in Section 7.14, and will obtain and maintain in effect all licenses, certificates, permits, franchises and other authorizations of Governmental Authorities necessary to the ownership of their respective properties or to the conduct of their respective businesses, in each case except to the extent that non-compliance with such Laws or the failure to obtain or maintain in effect such licenses, certificates, permits, franchises and other authorizations of Governmental Authorities would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 11.2. Insurance. The Company will, and will cause each of its Subsidiaries to, maintain, with financially sound and reputable insurers, insurance with respect to their respective properties and businesses against such casualties and contingencies, of such types, on such terms and in such amounts (including deductibles, co-insurance and self-insurance, if adequate reserves are maintained with respect thereto) as is customary in the case of companies engaged in the same or a similar business and similarly situated.

Section 11.3. Maintenance of Properties. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, the Company will, and will cause each of its Subsidiaries to, maintain and keep, or cause to be maintained and kept, their respective properties in good repair, working order and condition (other than ordinary wear and tear), so that the business carried on in connection therewith may be properly conducted at all times, provided that this Section shall not prevent the Company or any of its Subsidiaries from discontinuing the operation and the maintenance of any of its properties if such discontinuance is desirable in the conduct of its business.

Section 11.4. Payment of Taxes and Claims. The Company will, and will cause each of its Subsidiaries to, file all Material tax returns required to be filed in any jurisdiction and to pay and discharge (a) all taxes shown to be due and payable on such returns and all other taxes, assessments, governmental charges, or levies imposed on them or any of their properties, assets, income or franchises, in each case to the extent such taxes and assessments have

become due and payable and before they have become delinquent, and (b) all claims for which sums have become due and payable that have or might become a Lien on properties or assets of the Company or any Subsidiary, provided that neither the Company nor any of its Subsidiaries need pay any such taxes or assessments or claims referred to in clauses (a) and (b) above if (i) the amount, applicability or validity thereof is contested by the Company or such Subsidiary on a timely basis in good faith and in appropriate proceedings, and the Company or a Subsidiary of the Company has established adequate reserves therefor in accordance with GAAP on the books of the Company or such Subsidiary or (ii) the nonpayment of all such taxes and assessments and claims in the aggregate would not reasonably be expected to have a Material Adverse Effect.

Section 11.5. Corporate Existence, Etc. The Company will at all times preserve and keep in full force and effect its legal existence. The Company will at all times preserve and keep in full force and effect the legal existence of each of its Subsidiaries and all rights and franchises of the Company and its Subsidiaries unless, in the good faith judgment of the Company, the termination of or failure to preserve and keep in full force and effect such legal existence, right or franchise would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 11.6. Board Observer. (a) From and after the Initial Closing until the Board Observer Fall-Away, the Company shall cause one Oaktree Designee to be appointed as a non-voting observer of the Board (the "*Board Observer*"). The Board Observer shall be permitted to attend (whether in person or telephonically at his or her election) and participate in all meetings of the Board; *provided* that the Board Observer shall not (i) have any voting rights with respect to any matters considered or determined by the Board or any committee thereof, (ii) have any rights to attend or participate in meetings, sessions or deliberations which do not include the Manager Board Members acting in their capacity as such (for the avoidance of doubt, if an officer of the Company is also a Manager Board Member and such person attends or participates in such a meeting, session or deliberation solely in his or her capacity as an officer (and not as a Manager Board Member) then the Board Observer shall have no right to attend or participate therein), or (iii) be entitled to receive any compensation in his or her capacity as the Board Observer. Any action taken by the Board at any meeting will not be invalidated by the absence of the Board Observer at such meeting. Notices of any meeting of the Board shall be distributed to the Board Observer at substantially the same time as delivered to other non-executive directors. Oaktree shall be permitted to remove the Board Observer and/or appoint any successor Board Observer as it shall elect from time to time; *provided*, that if such successor Board Observer is not an employee or officer of Oaktree, such successor shall be reasonably satisfactory to the Company. The Company shall not be responsible for paying, or reimbursing, the expenses of the Board Observer in connection with attending any Board meetings. Notwithstanding the foregoing, the Board Observer shall not be entitled to any information, reports or other materials (i) in respect of which disclosure to any holder of Notes (or their respective Representatives) is prohibited by any applicable Law or any bona fide binding agreement with a party that is not an Affiliate, (ii) is subject to attorney-client or similar privilege or constitutes attorney work product that, in each case, would reasonably be expected to be adversely affected as a result of such disclosure, (iii) related to trade secrets of the Company or any of its Subsidiaries, (iv) that relates to matters relating to the Company' s or any of its Subsidiaries' relationship with (A) Oaktree or its Non-Excluded Affiliates, any holder of Notes or Warrants (or its Affiliates) and/or actions to be taken in connection with the Notes Documents or any Debt of the Company held by Oaktree or its Non-

Excluded Affiliates, including refinancings, amendments or modifications hereto or thereto, or (B) to the extent such information, reports or other materials are not distributed to the Manager Board Members, the Company' s external manager (but only for so long as Oaktree, or any of its Non-Excluded Affiliates, holds an equity interest in the Company' s external manager) or (v) to the extent such information, reports or materials are not distributed to the Manager Board Members, in respect of Oaktree' s interest in or relationship with the Company' s external manager (but only for so long as Oaktree, or any of its Non-Excluded Affiliates, holds an equity interest in the Company' s external manager).

(b) As a condition to the Oaktree Designee' s appointment as a non-voting observer pursuant to this Section 11.6, the Oaktree Designee must provide to the Company an undertaking in writing by the Oaktree Designee: (i) to be subject to, bound by and duly comply with a standard confidentiality agreement in a form acceptable to the Company and (ii) at the request of the Board to recuse himself or herself from any deliberations or discussion of the Board or any committee thereof to the extent regarding matters relating to (A) the Company' s or any of its Subsidiaries' relationship with Oaktree or its Non-Excluded Affiliates, any holder of Notes or Warrants (or its Affiliates) and/or actions to be taken in connection with the Notes Documents or any Debt of the Company held by Oaktree or its Non-Excluded Affiliates, including refinancings, amendments or modifications hereto or thereto, (B) to the extent such deliberations or discussions do not involve the Manager Board Members, the Company' s external manager (but only for so long as Oaktree, or any of its Non-Excluded Affiliates, holds an equity interest in the Company' s external manager), or (C) to the extent such deliberations or discussions do not involve the Manager Board Members, Oaktree' s interest in or relationship with the Company' s external manager (but only for so long as Oaktree, or any of its Non-Excluded Affiliates, holds an equity interest in the Company' s external manager).

Section 11.7. Use of Proceeds. The proceeds of any issuance of Initial Notes or Additional Notes shall be used for general corporate purposes, including Investments, Restricted Payments (including Permitted Payments) and other transactions not prohibited by this Agreement.

Section 11.8. Maintaining Records. The Company and its Subsidiaries shall maintain all financial records in accordance with GAAP.

SECTION 12. NEGATIVE COVENANTS.

The Company covenants that so long as any of the Notes are outstanding:

Section 12.1. Limitation on Debt. The Company will not, and will not permit any of its Subsidiaries to, create, assume or incur or in any manner be or become liable in respect of any Debt, except for:

(a) (x) Debt incurred in the ordinary course of the Company' s and its Subsidiaries' businesses under Warehouse Lines, (y) Debt of the Company' s Subsidiaries that are CLOs incurred in the ordinary course of the Company' s and its Subsidiaries' businesses, and (z) Debt incurred in the ordinary course of the Company' s and its Subsidiaries' businesses secured solely by any REO Property;

(b) the Notes (including the Initial Notes and any Additional Notes) and the other Notes Documents;

(c) Debt listed on Schedule 12.1(c) outstanding on the Initial Closing and any Permitted Refinancing thereof;

(d) Debt incurred in respect of bona fide hedge obligations in the ordinary course of business and not for speculative purposes;

(e) Debt outstanding as of the Initial Closing under the Convertible Notes and any Permitted Refinancing thereof;

(f) (x) Guarantees by any Subsidiary of the Company in respect of Debt otherwise permitted hereunder (provided that the Company is not the borrower or issuer of such Debt), (y) guarantees by any Subsidiary of the Company in respect of Debt of the Company otherwise permitted hereunder (provided that the aggregate amount of all such Debt incurred under this clause (f)(y) shall not exceed $5,000,000 at any time outstanding) and (z) guarantees by the Company in respect of Debt of any of its Subsidiaries incurred under clauses (a), (d), (g) or (n);

(g) Debt in respect of capital leases, synthetic lease obligations and purchase money obligations for fixed or capital assets within the limitations set forth in Section 12.2; provided that the aggregate amount of all such Debt incurred under this clause (g), together with all Debt incurred under clause (n), shall not exceed $5,000,000 at any time outstanding;

(h) Debt in respect of performance bonds, bid bonds, appeal bonds, surety bonds and completion guarantees and similar obligations not in connection with money borrowed, in each case provided in the ordinary course of business, including those incurred to secure health, safety and environmental obligations in the ordinary course of business;

(i) Debt (i) resulting from a bank or other financial institution honoring a check, draft or similar instrument in the ordinary course of business or (ii) arising under or in connection with cash management services in the ordinary course of business;

(j) Debt of (i) the Company owed to any of its Subsidiaries and (ii) any Subsidiary of the Company owed to the Company or any of its other Subsidiaries;

(k) Debt consisting of the financing of insurance premiums payable within one (1) year;

(l) any Debt of any Person who becomes a Subsidiary of the Company after the date hereof (including as a result of acquisition of a Subsidiary by foreclosure on Investments); provided that (i) such Debt is not created in contemplation of or in connection with such Person becoming a Subsidiary of the Company and (ii) such Debt exists on the date such Person becomes a Subsidiary;

(m) Subordinated Debt; and

(n) Debt in an aggregate principal amount, together with all Debt incurred under clause (g), not exceeding $5,000,000 at any time outstanding.

Section 12.2. Limitation on Liens. The Company will not, and will not permit any of its Subsidiaries to, directly or indirectly create, incur, assume or permit to exist (upon the happening of a contingency or otherwise), any Lien on or with respect to any property or asset of the Company or any such Subsidiary, whether now owned or held or hereafter acquired, except:

(a) Liens securing Debt permitted to be incurred pursuant to Section 12.1(a), so long as such Liens only attach to property customarily securing such debt of the Company and its Subsidiaries;

(b) Liens securing Debt permitted under Section 12.1(g); provided that (i) such Liens do not at any time encumber any property other than the property financed by such Debt and (ii) the Debt secured thereby does not exceed the purchase price or construction or improvement cost of such fixed or capital asset;

(c) Liens securing Debt permitted to be incurred pursuant to Section 12.1(d);

(d) Liens listed on Schedule 12.2(d) existing on the Initial Closing and any renewals or extensions thereof, provided that the property covered thereby is not changed;

(e) deposits and pledges of cash securing (i) obligations incurred in respect of workers' compensation, unemployment insurance or other forms of governmental insurance or benefits, (ii) the performance of bids, tenders, leases, contracts (other than for the payment of money) and statutory obligations or (iii) obligations on surety or appeal bonds, performance bonds and other obligations of like nature, but only to the extent such deposits or pledges are made or otherwise arise in the ordinary course of business;

(f) Liens of landlords and mortgagees of landlords (i) arising by statute or under any lease or related contractual obligation entered into in the ordinary course of business, (ii) on fixtures and movable tangible property located on the real property leased or subleased from such landlord, (iii) for amounts not yet due or that are being contested in good faith by appropriate proceedings diligently conducted and (iv) for which adequate reserves or other appropriate provisions are maintained on the books of such Person in accordance with GAAP;

(g) the title and interest of a lessor, sublessor, licensor or sublicensor in and to property leased, licensed, subleased or sublicensed (other than through a Capitalized Lease in the ordinary course of business), in each case extending only to such property;

(h) judgment liens;

(i) rights of set-off or bankers' liens upon deposits of cash in favor of banks or other depository institutions, solely to the extent incurred in connection with the maintenance of such deposit accounts in the ordinary course of business and not to secure Debt;

(j) Liens that are customary contractual rights of setoff relating to pooled deposit or sweep accounts of the Company or any of its Subsidiaries to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business;

(k) easements, rights-of-way, restrictions (including zoning restrictions), encroachments, protrusions, matters which would be disclosed by an accurate survey or inspection of any real property and other similar encumbrances and minor title defects affecting real property that do not in the aggregate materially interfere with the ordinary conduct of the business of the Company or any of its Subsidiaries;

(l) Liens for taxes, assessments or governmental charges that are not overdue or that are being contested in good faith and by appropriate proceedings, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;

(m) statutory or common law Liens of warehousemen, mechanics, materialmen, repairmen, construction contractors or other like Liens arising in the ordinary course of business securing obligations that are not overdue or that are being contested in good faith by appropriate proceedings, and in respect of which, if applicable, the Company or applicable Subsidiary shall have set aside on its books reserves in accordance with GAAP;

(n) any Lien existing on any property or asset prior to the acquisition thereof by the Company or any of its Subsidiaries (including acquisition by foreclosure of Investments); *provided* that (i) such Lien is not created in contemplation of or in connection with such acquisition, and (ii) such Lien shall not apply to any other property or assets of the Company or any Subsidiary of the Company;

(o) Liens securing Debt and other obligations in an aggregate amount exceeding $1,000,000 at any time outstanding; and

(p) leases, licenses, subleases or sublicenses granted to others in the ordinary course of business that do not (i) interfere in any material respect with the ordinary conduct of the business of the applicable Person, or (ii) secure any Debt.

Section 12.3. Merger, Consolidation, Etc. The Company will not, and will not permit any of its Subsidiaries to, consolidate or amalgamate with, merge with or into or liquidate or dissolve into any other Person pursuant to any transaction, except that (a) any such Subsidiary may consolidate or amalgamate with, merge with or into or liquidate or dissolve into the Company or any other wholly-owned Subsidiary of the Company, and (b) any Subsidiary of the Company may dissolve, liquidate or wind up its affairs if it owns no material assets, engages in no business and otherwise has no activities other than activities related to the maintenance of its existence and good standing.

Section 12.4. Sale of Assets. The Company will not, and will not permit any of its Subsidiaries to, sell, lease or otherwise dispose of any assets (other than sales of inventory in the ordinary course of business, but including Equity Interests in any of the Company' s Subsidiaries) of the Company and its Subsidiaries; provided the foregoing shall not prevent any of the following:

(a) a liquidation or disposition of obsolete or worn-out property or property no longer useful in their respective businesses by the Company or its Subsidiaries in the ordinary course of business;

(b) an asset sale, lease or other disposition of any assets (i) between the Company and any Subsidiary of the Company or (ii) between any Subsidiaries of the Company;

(c) an asset sale, lease or other disposition of any assets that is made for Fair Market Value and at least 75% of the consideration for such asset sale, lease or other disposition is in the form of cash or Cash Equivalents;

(d) the sale or disposition by a trustee, servicer, collateral agent or other Person with a similar role under any collateralized loan obligation of assets securing such collateral loan obligation;

(e) the sale or disposition of cash or Cash Equivalents in the ordinary course of business;

(f) the sale, lease or other disposition of equipment or real property to the extent that (A) such property is exchanged for credit against the purchase price of similar replacement property or (B) the proceeds of such sale, lease or other disposition are reasonably promptly applied to the purchase price of such replacement property;

(g) any taking or condemnation of any property of the Company or any Subsidiary by any Governmental Authority or any assets subject to a casualty;

(h) leases, licenses, subleases or sublicenses (including the provision of open source software under an open source license) granted in the ordinary course of business and on ordinary commercial terms that do not interfere in any material respect with the business of the Company and its Subsidiaries;

(i) the sale, lease or other disposition of intellectual property rights that are no longer used or useful in the business of the Company and its Subsidiaries;

(j) the discount, write-off, charge-off or sale or other disposition of accounts receivable overdue by more than 30 days or the sale of any such accounts receivable for the purpose of collection to any collection agency, in each case in the ordinary course of business;

(k) the unwinding of any hedge obligations in the ordinary course of business;

(l) Restricted Payments permitted by Section 12.9 (including Permitted Payments) and Investments permitted by Section 12.8;

(m) the sale or other disposition of real estate mortgage loans and other commercial real estate-related debt investments (including any instrument evidencing the same) to the obligor or guarantor thereof in connection with collection efforts with respect to the same in the ordinary course of the Company' s and its Subsidiaries' businesses; and

(n) so long as no Event of Default shall have occurred and be continuing or would result therefrom, the Company and its Subsidiaries may sell, transfer, convey or otherwise dispose of assets in an aggregate amount of up to $5,000,000.

Notwithstanding the foregoing, the Company will not, and will not permit any Subsidiary of the Company to, sell, lease or otherwise dispose of a portion (but not all) of the Equity Interests in any Subsidiary other than to the Company or another Subsidiary of the Company.

Section 12.5. Nature of Business. Neither the Company nor any Subsidiary of the Company will enter into any new line of business if, after entry into such new line of business, the general nature of the business of the Company and its Subsidiaries (taken on a consolidated basis) will no longer be the business engaged in as of the date of the Initial Closing.

Section 12.6. Transactions with Affiliates. The Company will not, and will not permit any Subsidiary of the Company to enter into directly or indirectly any transaction or group of related transactions with or for the benefit of any Affiliate (other than the Company or another Subsidiary of the Company) involving aggregate consideration in excess of $500,000, except (a) Restricted Payments permitted by Section 12.9 and (b) transactions in the ordinary course of business and on terms that are no less favorable to the Company or such Subsidiary than terms that would be obtained from a Person who is not an Affiliate (for the avoidance of doubt, the management agreement with the Company' s external manager shall be deemed to fall within this exception (b)).

Section 12.7. Terrorism Sanctions Regulations. The Company will not and will not permit any of its Subsidiaries (a) to become (including by virtue of being owned or controlled by a Blocked Person), own or control a Blocked Person or any Person that is the target of sanctions imposed by the United Nations or by the European Union, or (b) directly or indirectly to have any investment in or engage in any dealing or transaction (including, without limitation, any investment, dealing or transaction involving the proceeds of the Notes) with any Person if such investment, dealing or transaction (i) would cause any holder to be in violation of any applicable United States (federal or state) anti-terrorism law or regulation applicable to such holder, or (ii) is prohibited by or subject to sanctions under any U.S. Economic Sanctions, or (c) to engage, nor shall any Affiliate of either engage, in any activity that would subject such Person or any holder to sanctions under CISADA or any similar law or regulation with respect to Iran or any other country that is subject to U.S. Economic Sanctions.

Section 12.8. Investments. The Company shall not, and shall not permit any Subsidiary to, make any Investments in any third-party person, including joint ventures, other than:

(a) Investments listed on Schedule 12.8(a) outstanding on the Initial Closing;

(b) Investments in the Company or any Subsidiary;

(c) originating, purchasing, participating in, holding and managing commercial real estate mortgage loans and other commercial real estate-related debt investments (including any instrument evidencing the same and any instrument, security or other asset acquired through collection efforts with respect to the same), and all files, documents, agreements, real estate, collections and other related rights and assets in the ordinary course of business;

(d) Investments in Cash Equivalents;

(e) Guarantees permitted by Section 12.1;

(f) extensions of trade credit in the ordinary course of business (including any instrument evidencing the same and any instrument, security or other asset acquired through collection efforts with respect to the same);

(g) Investments consisting of the indorsement by the Company or any Subsidiary of negotiable instruments payable to such Person for deposit or collection in the ordinary course of business;

(h) to the extent constituting an Investment, transactions otherwise permitted by Section 12.1, Section 12.3 and Section 12.9;

(i) any Investment of any Person who becomes a Subsidiary of the Company after the date hereof (including as a result of acquisition of a Subsidiary by foreclosure on Investments); *provided* that such Investment is not created in contemplation of or in connection with such Person becoming a Subsidiary of the Company;

(j) Investments which are Permitted Acquisitions;

(k) Investments in REO Property; and

(l) other Investments in an aggregate amount outstanding at any time not to exceed $5,000,000.

Section 12.9. Restricted Payments. (a) The Company shall not, and shall not permit any Subsidiary of the Company, directly or indirectly, to (i) declare or pay any dividend or make any distribution on or in respect of its equity interests (including any such payment in connection with any merger or consolidation to which the Company is a party) except
(x) dividends or distributions payable solely in common equity interests of the Company and
(y) dividends or distributions payable to the Company or any Subsidiary in cash or other property, or (ii) purchase, redeem, retire or otherwise acquire for value any equity interests of the Company or any Subsidiary of the Company (any such dividend, distribution, purchase, repurchase, redemption, defeasance, other acquisition or retirement being herein referred to as a "Restricted Payment").

(b) The provisions of Section 12.9(a) shall not prohibit any of the following (each a "*Permitted Payment*"):

(1) dividends and distributions in respect of Common Stock made in the ordinary course not to exceed 100% of Core Earnings during the period in which such dividends or distributions are made; *provided* that dividends and distributions in respect of Common Stock shall be permitted to be made in excess of 100% of Core Earnings if necessary to maintain the Company' s status as a REIT and to avoid paying any corporate tax at the REIT level;

(2) dividends and distributions in respect of the Company' s 8.625% Fixed-to-Floating Series C Cumulative Redeemable Preferred Stock;

(3) other Restricted Payments in an aggregate amount not to exceed $5,000,000; and

(4) the items set forth on Schedule 12.9.

Section 12.10. Restrictive Agreements. The Company shall not, and shall not permit any Subsidiary of the Company to, enter into any contractual obligation that encumbers or restricts the ability of any such Person to (x) make Restricted Payments to the Company or any Subsidiary of the Company, (y) pay Debt or other obligations owed to the Company or any Subsidiary of the Company or (z) make loans or advances to the Company or any Subsidiary of the Company; provided that the foregoing shall not apply to restrictions and conditions imposed by: (A) applicable Law, (B) any Notes Document, or (C) any Debt permitted to be incurred pursuant to Section 12.1; *provided* that in the case of this clause (C), (i) at the time of any such incurrence after the Initial Closing, the Company reasonably determines in good faith that such restriction shall not impair the ability of the Company to satisfy the Obligations and (ii) such restrictions and conditions are customary for Debt of such type, and (D) any restrictions or conditions existing on the date of the Initial Closing and listed on Schedule 12.10.

Section 12.11. Organization Documents. The Company shall not, and shall not permit any Subsidiary of the Company, to amend its Organization Documents in any respect that would reasonably be expected to be adverse to the holders of the Notes without the prior written consent of the Required Holders.

SECTION 13. EVENTS OF DEFAULT.

An "*Event of Default*" shall exist if any of the following conditions or events shall occur and be continuing:

(a) the Company defaults in the payment of any principal or Make-Whole Amount, if any, on any Note when the same becomes due and payable, whether at maturity or at a date fixed for prepayment or by declaration or otherwise; or

(b) the Company defaults in the payment of any interest on any Note after the same becomes due and payable and such failure shall continue to be unremedied for a period of three or more Business Days; or

(c) the Company or any Subsidiary of the Company defaults in the performance of or compliance with any term contained in Section 12; or

(d) the Company or any Subsidiary of the Company defaults in the performance of or compliance with any term contained herein (other than those referred to in paragraphs (a), (b) and (c) of this Section 13), and such default is not remedied within thirty (30) days after the earlier of (i) a Responsible Officer obtaining knowledge of such default and (ii) the Company receiving written notice of such default from any holder of a Note (any such written notice to be identified as a "*notice of default*" and to refer specifically to this paragraph (d) of Section 13); or

(e) any representation or warranty made in writing by or on behalf of the Company or any Subsidiary of the Company by any officer of the Company or any such Subsidiary in this Agreement, any other Notes Document or in any writing furnished in connection with the transactions contemplated hereby proves to have been false or incorrect in any material respect on the date as of which made and such false or incorrect representation or warranty is not remedied within thirty (30) days after the earlier of (i) a Responsible Officer obtaining knowledge of such false or incorrect representation and (ii) the Company receiving written notice of such false or incorrect representation from any holder of a Note (any such written notice to be identified as a "*notice of default*" and to refer specifically to this paragraph (e) of Section 13); or

(f) the Company or any of its Subsidiaries (i) fails to make any payment beyond the applicable grace period with respect thereto, if any (whether by scheduled maturity or interest payment, required prepayment, acceleration, demand or otherwise) in respect of one or more items of Debt (other than the Debt hereunder) having an aggregate principal amount in excess of $20,000,000, or (ii) is in default (as principal or as guarantor or other surety) in the performance of or compliance with any term of one or more items of Debt having an unpaid principal amount aggregating in excess of $20,000,000 or any mortgage, indenture or other agreement relating thereto, or any other condition exists, and as a consequence of such default or condition such Debt has become, or has been declared, due and payable before its stated maturity or before its regularly scheduled dates of payment (and regardless of whether such Debt shall have been paid in full following any such acceleration); or

(g) the Company or any Significant Subsidiary of the Company (i) is generally not paying, or admits in writing its inability to pay, its debts as they become due, (ii) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy, for liquidation or to take advantage of any bankruptcy, insolvency, reorganization, moratorium or other similar law of any jurisdiction, (iii) makes an assignment for the benefit of its creditors, (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers with respect to it or with respect to any substantial part of its property, or (v) is adjudicated as insolvent or to be liquidated; or

(h) a Governmental Authority of competent jurisdiction enters an order appointing, without consent by the Company or any Significant Subsidiary of the Company, a custodian, receiver, trustee or other officer with similar powers with respect to the Company or such Significant Subsidiary or with respect to any substantial part of its property, or constituting an order for relief or approving a petition for relief or reorganization or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding-up or liquidation of the Company or any Significant Subsidiary, or any such petition shall be filed against the Company or any Significant Subsidiary and such petition shall not be dismissed within 60 days; or

(i) a final judgment or judgments for the payment of money aggregating in excess of $25,000,000 (except to the extent covered by valid and collectible insurance as to which the insurer does not dispute coverage (other than a reservation of rights letter delivered in the ordinary course)) are rendered against one or more of the Company or any Subsidiary of the Company and which judgments are not, within 30 days after entry thereof, bonded, discharged or stayed pending appeal, or are not discharged within 30 days after the expiration of such stay; or

(j) (i) any material provision of any Notes Document ceases to be in full force and effect other than as expressly permitted thereunder or following satisfaction in full of all Obligations or (ii) the Company denies in writing that it has any or further liability under any Notes Document, or purports in writing to revoke or rescind any Notes Document, other than following satisfaction in full of all Obligations; or

(k) if (i) any Plan shall fail to satisfy the minimum funding standards of ERISA or the Code for any plan year or part thereof or a waiver of such standards or extension of any amortization period is sought or granted under section 412 of the Code, (ii) a notice of intent to terminate any Plan shall have been filed with the PBGC or the PBGC shall have instituted proceedings under section 4042 of ERISA to terminate or appoint a trustee to administer any Plan or the PBGC shall have notified the Company or any ERISA Affiliate that a Plan may become a subject of any such proceedings, (iii) the aggregate "amount of unfunded benefit liabilities" (within the meaning of section 4001(a)(18) of ERISA) under all Plans, determined in accordance with Title IV of ERISA, shall exceed 5% of Consolidated Net Worth, (iv) the Company or any ERISA Affiliate shall have incurred or is reasonably expected to incur any liability pursuant to Title I or IV of ERISA (other than to satisfy the minimum funding standards of ERISA or to pay required premiums to the PBGC) or the penalty or excise tax provisions of the Code relating to employee benefit plans, (v) the Company or any ERISA Affiliate withdraws from any Multiemployer Plan, or (vi) the Company or any Subsidiary establishes or amends any employee welfare benefit plan that provides post-employment welfare benefits in a manner that would increase the liability of the Company or any Subsidiary thereunder; and any such event or events described in clauses (i) through (vi) above, either individually or together with any other such event or events, would reasonably be expected to have a Material Adverse Effect. As used in this Section 11(k), the terms "*employee benefit plan*" and "*employee welfare benefit plan*" shall have the respective meanings assigned to such terms in section 3 of ERISA; or

(l) the Company ceases to qualify as a REIT in any taxable year.

SECTION 14. REMEDIES ON DEFAULT, ETC.

Section 14.1. Acceleration. (a) If an Event of Default described in paragraph (g) or (h) of Section 13 has occurred, all the Notes then outstanding shall automatically become immediately due and payable and all commitments or obligations of any Purchaser to purchase any Additional Notes shall be terminated.

(b) If any Event of Default (other than those described in paragraph (g) or (h) of Section 13) has occurred and is continuing, the Required Holders may at any time at its or their option, by notice or notices to the Company, declare all the Notes then outstanding to be immediately due and payable and terminate all commitments or obligations of the Purchasers to purchase any Additional Notes.

(c) Upon any Note becoming due and payable under this Section 14.1, whether automatically or by declaration, such Note will forthwith mature and the entire unpaid principal amount of such Note, plus (i) all accrued and unpaid interest thereon (including applicable default interest, if any), plus (ii) the applicable Make-Whole Amount, if any, shall all be immediately due and payable, in each and every case without presentment, demand, protest or further notice, all of which are hereby waived. The Company acknowledges, and the parties hereto agree, that each holder of a Note has the right to maintain its investment in the Notes free from repayment by the Company (except as herein specifically provided for), and that the provision for payment of a Make-Whole Amount, if any, by the Company in the event that the Notes are prepaid, paid prior to their maturity or are accelerated as a result of an Event of Default, is intended to provide compensation for the deprivation of such right under such circumstances.

Without limiting the generality of the foregoing, in the event the Notes are accelerated or otherwise become due prior to the Maturity Date, in each case, in respect of any Event of Default (including, but not limited to, upon the occurrence of an Event of Default arising under Section 13(g) or Section 13(h)(including the acceleration of claims by operation of law)), the Make- Whole Amount with respect to an optional redemption pursuant to Section 10.2 will also be due and payable as though the Notes were optionally redeemed and shall constitute part of the Obligations, in view of the impracticability and extreme difficulty of ascertaining actual damages and by mutual agreement of the parties as to a reasonable calculation of each holder' s of Notes' lost profits as a result thereof. Any premium (including the Make-Whole Amount) payable above shall be presumed to be the liquidated damages sustained by each holder of Notes as the result of the early redemption and the Company agrees that it is reasonable under the circumstances currently existing. The premium (including the Make-Whole Amount) shall also be payable in the event the Notes (and/or this Agreement) are satisfied or released by foreclosure (whether by power of judicial proceeding), deed in lieu of foreclosure or by any other means. THE COMPANY EXPRESSLY WAIVES (TO THE FULLEST EXTENT IT MAY LAWFULLY DO SO) THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE OR LAW THAT PROHIBITS OR MAY PROHIBIT THE COLLECTION OF THE FOREGOING PREMIUM (INCLUDING THE MAKE-WHOLE AMOUNT) IN CONNECTION WITH ANY SUCH ACCELERATION. The Company expressly agrees (to the fullest extent it may lawfully do so) that: (A) the premium (including the Make-Whole Amount) is reasonable and is the product of an arm' s length transaction between sophisticated business people, ably represented by counsel; (B) the premium (including the Make-Whole Amount) shall be payable notwithstanding the then prevailing market rates at the time payment is made; (C) there has been a course of conduct between Purchasers and the Company giving specific consideration in this transaction for such agreement to pay the premium (including the Make-Whole Amount); and (D) the Company shall be estopped hereafter from claiming differently than as agreed to in this paragraph. The Company expressly acknowledges that its agreement to pay the premium (including the Make-Whole Amount) to holders of the Notes as herein described is a material inducement to the Purchasers to purchase the Notes.

Section 14.2. Other Remedies. If any Event of Default has occurred and is continuing, and irrespective of whether any Notes have become or have been declared immediately due and payable under Section 14.1, the holder of any Note at the time outstanding may proceed to protect and enforce the rights of such holder by an action at law, suit in equity or other appropriate proceeding, whether for the specific performance of any agreement contained herein or in any Note, or for an injunction against a violation of any of the terms hereof or thereof, or in aid of the exercise of any power granted hereby or thereby or by law or otherwise.

Section 14.3. Rescission. At any time after any Notes have been declared due and payable pursuant to clause (b) of Section 14.1, the Required Holders, by written notice to the Company, may rescind and annul any such declaration and its consequences if (a) the Company has paid all overdue interest on the Notes, all principal of and Make-Whole Amount, if any, on any Notes that are due and payable and are unpaid other than by reason of such declaration, and all interest on such overdue principal, Make-Whole Amount, if any, and (to the extent permitted by applicable law) any amounts outstanding under the Notes, at the Default Rate, (b) all Events of Default and Defaults, other than non-payment of amounts that have become due solely by reason of such declaration, have been cured or have been waived pursuant to Section 19, and (c) no judgment or decree has been entered for the payment of any monies due pursuant hereto or to the Notes. No rescission and annulment under this Section 14.3 will extend to or affect any subsequent Event of Default or Default or impair any right consequent thereon.

Section 14.4. No Waivers or Election of Remedies, Expenses, Etc. No course of dealing and no delay on the part of any holder of any Note in exercising any right, power or remedy shall operate as a waiver thereof or otherwise prejudice such holder' s rights, powers or remedies. No right, power or remedy conferred by this Agreement, any Notes Document or by any Note upon any holder thereof shall be exclusive of any other right, power or remedy referred to herein or therein or now or hereafter available at law, in equity, by statute or otherwise. Without limiting the obligations of the Company under Section 17, the Company will pay to the holder of each Note on demand such further amount as shall be sufficient to cover all costs and expenses of such holder incurred in any enforcement or collection under this Section 14, including, without limitation, reasonable attorneys' fees, expenses and disbursements.

SECTION 15. REGISTRATION; EXCHANGE; SUBSTITUTION OF NOTES.

Section 15.1. Registration of Notes. The Company shall keep at its principal executive office a register for the registration and registration of transfers of Notes. The name and address of each holder of one or more Notes, each transfer thereof and the name and address of each transferee of one or more Notes shall be registered in such register. Prior to due presentment for registration of transfer, the Person in whose name any Note shall be registered shall be deemed and treated as the owner and holder thereof for all purposes hereof, and the Company shall not be affected by any notice or knowledge to the contrary. The Company shall give to any holder of a Note promptly upon request therefor, a complete and correct copy of the names and addresses of all registered holders of Notes. This Section 15.1 shall be construed so that the Notes are at all times maintained in "registered form" within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code. In addition to and not in limitation of any representations contained herein, each holder of Notes acknowledges and agrees that the Notes have not been registered under the Securities Act and may not be transferred except pursuant to registration or an exemption therefrom.

Section 15.2. Transfer Restrictions

(a) Any Purchaser may at any time Transfer to one or more transferees, all or a portion of its Notes at the time owing to it, with the prior consent (such consent not to be unreasonably withheld, conditioned or delayed) of the Company; provided that no consent of the Company shall be required (x) after the occurrence and during the continuance of a Default or Event of Default, (y) in connection with the Transfer of such Notes to a Purchaser or an Affiliate of any Purchaser (but only (1) if the transferee agrees in writing prior to such Transfer for the express benefit of the Company (in form and substance reasonably satisfactory to the Company and with a copy thereof to be furnished to the Company) to be bound by the terms of this Agreement and the Warrants, and (2) if the transferee and the transferor agree in writing prior to such Transfer for the express benefit of the Company (in form and substance reasonably satisfactory to the Company and with a copy thereof to be furnished to the Company) that the transferee shall Transfer such Notes so Transferred back to the transferor at or before such time as the transferee ceases to be a Purchaser or an Affiliate of any Purchaser; provided, however that clauses (1) and (2) above shall not apply for so long as the Transfer is an indirect transfer and the record holder of the transferred Notes is already a Purchaser), or (z) in connection with any pledge of the Notes. Subject to the immediately preceding sentence, upon surrender of any Note at the principal executive office of the Company for registration of Transfer (and in the case of a surrender for registration of Transfer, duly endorsed or accompanied by a written instrument of Transfer duly executed by the registered holder of such Note or its attorney duly authorized in writing and accompanied by the address for notices of each transferee of such Note or part thereof), the Company shall execute and deliver, at the Company' s expense (except as provided below), one or more new Notes (as requested by the holder thereof) in exchange therefor, in an aggregate principal amount equal to the unpaid principal amount of the surrendered Note; provided that, such new Notes shall be in electronic form (in "portable document format" (".pdf") form or any other electronic form). Each such new Note shall be substantially in the form of Exhibit 1. Each such new Note shall be dated and bear interest from the date to which interest shall have been paid on the surrendered Note or dated the date of the surrendered Note if no interest shall have been paid thereon. The Company may require payment of a sum sufficient to cover any stamp tax or governmental charge imposed in respect of any such transfer of Notes. Notes shall not be transferred in denominations of less than $1,000,000, provided that, if necessary to enable the registration of transfer by a holder of its entire holding of Notes, one Note may be in a denomination of less than $1,000,000. Any attempted Transfer in violation of this Section 15.2 shall be null and void *ab initio*. Any Transfer of all or a portion of the Notes shall comply with federal and state securities Laws.

(b) Notwithstanding anything to the contrary herein, the Purchasers will not, and will cause their Affiliates not to, at any time, directly or indirectly (without the prior written consent of the Board), Transfer any Warrants or shares of Common Stock that were issued upon exercise of Warrants to any Person that is actually known to be a Schedule 13 Filer or an Activist Investor; provided that the foregoing shall not restrict Transfers (1) that have been approved by the Board or, in the case of a tender offer or exchange offer, that have been recommended by the Board or as to which the Board has otherwise taken a neutral position as of the fifth Business Day prior to the expiration date of such offer, in each case, subject to such conditions as the Board determines, (2) into the public market pursuant to a bona fide, underwritten public offering, in each case made pursuant to the registration rights set forth in the Warrants or

through a bona fide sale to the public without registration effected pursuant to Rule 144 under the Securities Act, or (3) to a broker-dealer in a block sale so long as such broker-dealer is purchasing such securities for its own account and makes block trades in the ordinary course of its business; provided that the prohibitions in this Section 15.2(b) shall not apply to MassMutual. In addition, notwithstanding the foregoing, Oaktree Purchaser shall not, and shall cause its Affiliates not to, Transfer any Warrants or shares of Common Stock that were issued upon exercise of Warrants to MassMutual.

Section 15.3. Replacement of Notes.

(a) Upon receipt by the Company of evidence reasonably satisfactory to it of the ownership of and the loss, theft, destruction or mutilation of any Note, and

(b) in the case of loss, theft or destruction, of indemnity reasonably satisfactory to it (provided that if the holder of such Note is, or is a nominee for, an original Purchaser or another holder of a Note with a minimum net worth of at least $50,000,000, such Person' s own unsecured agreement of indemnity shall be deemed to be satisfactory), and

(c) in the case of mutilation, upon surrender and cancellation thereof,

the Company at its own expense shall execute and deliver, in lieu thereof, a new Note, dated and bearing interest from the date to which interest shall have been paid on such lost, stolen, destroyed or mutilated Note or dated the date of such lost, stolen, destroyed or mutilated Note if no interest shall have been paid thereon.

SECTION 16. PAYMENTS ON NOTES.

The Company will pay all sums becoming due on such Note for principal, Make-Whole Amount, if any, and interest by the method and at the address the holder of the Note shall have from time to time specified to the Company in writing for such purpose, without the presentation or surrender of such Note or the making of any notation thereon, except that upon written request of the Company made concurrently with or reasonably promptly after payment or prepayment in full of any Note, such Purchaser shall surrender such Note for cancellation, reasonably promptly after any such request, to the Company at its principal executive office.

SECTION 17. EXPENSES, ETC.

Section 17.1. Transaction Expenses. The Company will pay all reasonable documented costs and expenses (including reasonable attorneys' fees of one firm of special counsel for all holders of Notes) incurred by each Purchaser or holder of a Note in connection with any amendments, waivers or consents under or in respect of this Agreement or the Notes (whether or not such amendment, waiver or consent becomes effective). The Company shall also pay the reasonable documented out of pocket costs and expenses incurred by each Purchaser or holder of a Note in enforcing or defending (or determining whether or how to enforce or defend) any rights under this Agreement or the Notes (limited to a single law firm representing all Purchasers and holders) to the extent such Purchaser or holder is successful in such enforcement or defense. In addition, the Company will also pay the reasonable documented out of pocket costs and expenses of each Purchaser or holder of a Note (i) except in connection with a lawsuit adverse

to the Company or its Subsidiaries (but subject to the immediately preceding sentence), in responding to any subpoena or other legal process or informal investigative demand issued in connection with this Agreement or the Notes, or by reason of being a holder of any Note (but only so long as such subpoena or other legal proceeding arises out of matters which are related to the Company and its Subsidiaries), and (ii) the costs and expenses, including financial advisors' fees, incurred in connection with any work-out or restructuring of the transactions contemplated hereby and by the Notes (limited to a single financial advisor and single law firm representing all Purchasers and holders). The Company will pay, and will save each Purchaser and each other holder of a Note harmless from, all claims in respect of any fees, costs or expenses, if any, of brokers and finders in connection with the transactions contemplated hereby (other than those retained by the Purchasers or any other holders).

Section 17.2. Survival. The obligations of the Company under this Section 17 will survive the payment or transfer of any Note, the enforcement, amendment or waiver of any provision of this Agreement or the Notes, and the termination of this Agreement.

SECTION 18. SURVIVAL OF REPRESENTATIONS AND WARRANTIES; ENTIRE AGREEMENT.

All representations and warranties contained herein shall survive the execution and delivery of this Agreement, the Warrants and the Notes, the purchase or Transfer by any Purchaser of any Note, any Warrant or any portion of either or interest therein and the payment of any Note or exercise of any Warrant, and may be relied upon by any subsequent holder of a Note or Warrant, regardless of any investigation made at any time by or on behalf of such Purchaser or any other holder of a Note or Warrant; provided, that no representation or warranty shall be deemed to be made as of any time other than (i) at the time of the Initial Closing, (ii) at the time of any Subsequent Closing or (iii) as otherwise specified in the specific representation or warranty. All statements contained in any certificate or other instrument delivered by or on behalf of the Company or any Subsidiary of the Company pursuant to this Agreement or the Warrants shall be deemed representations and warranties of the Company or such Subsidiary under this Agreement or the Warrants, as applicable, and subject to the proviso set forth in the immediately proceeding sentence. Subject to the preceding sentence, this Agreement, the Warrants, the Notes Documents and the Notes embody the entire agreement and understanding between each Purchaser and the Company and supersede all prior agreements and understandings relating to the subject matter hereof.

SECTION 19. AMENDMENT AND WAIVER.

Section 19.1. Requirements. This Agreement, the Notes Documents and the Notes may be amended, and the observance of any term hereof or of the Notes Documents or the Notes may be waived (either retroactively or prospectively), with (and only with) the written consent of the Company and the Required Holders, except that (a) no amendment or waiver of any of the provisions of Sections 1, 2, 3, 4, 5, 6, 7, 8, or 23, or any defined term (as it is used therein), will be effective as to any Purchaser unless consented to by such Purchaser in writing and (b) no such amendment or waiver may, without the written consent of the holder of each Note at the time outstanding affected thereby, (i) subject to the provisions of Section 14 relating to acceleration or rescission, change the amount or time of any prepayment or payment of principal of, or reduce the rate or change the time of payment or method of computation of interest or of the Make-Whole

Amount on the Notes, (ii) change the percentage of the principal amount of the Notes the holders of which are required to consent to any such amendment or waiver, (iii) amend any of Sections 10 (except as set forth in the second sentence of Section 10.2), 13(a), 13(b), 14, 19 or 22, or (iv) subordinate, in right of payment, any of the Obligations.

Section 19.2. Solicitation of Holders of Notes.

(a) *Solicitation*. The Company will promptly provide each holder of the Notes (irrespective of the amount of Notes then owned by it) with sufficient information sufficiently far in advance of the date a decision is required, to enable such holder to make an informed and considered decision with respect to any proposed amendment, waiver or consent in respect of any of the provisions hereof or of the Notes. The Company will deliver executed or true and correct copies of each amendment, waiver or consent effected pursuant to the provisions of this Section 19 to each holder of outstanding Notes promptly following the date on which it is executed and delivered by, or receives the consent or approval of, the requisite holders of Notes.

(b) *Payment*. The Company will not directly or indirectly pay or cause to be paid any remuneration, whether by way of supplemental or additional interest, fee or otherwise, or grant any security, to any holder of Notes as consideration for or as an inducement to the entering into by any holder of Notes of any waiver or amendment of any of the terms and provisions hereof or of the Notes unless such remuneration is concurrently paid, or security is concurrently granted, on the same terms, ratably to each holder of Notes then outstanding whether or not such holder consented to such waiver or amendment.

(c) *Consent in Contemplation of Transfer*. Any consent made pursuant to this Section 19 by a holder of Notes that has transferred or has agreed to transfer its Notes to the Company, any Subsidiary or any Affiliate of the Company and has provided or has agreed to provide such written consent as a condition to such transfer shall be void and of no force or effect except solely as to such holder, and any amendments effected or waivers granted or to be effected or granted that would not have been or would not be so effected or granted but for such consent (and the consents of all other holders of Notes that were acquired under the same or similar conditions) shall be void and of no force or effect except solely as to such holder.

Section 19.3. Binding Effect, Etc. Any amendment or waiver consented to as provided in this Section 19 applies equally to all holders of Notes and is binding upon them and upon each future holder of any Note and upon the Company without regard to whether such Note has been marked to indicate such amendment or waiver. No such amendment or waiver will extend to or affect any obligation, covenant, agreement, Default or Event of Default not expressly amended or waived or impair any right consequent thereon. No course of dealing between the Company and the holder of any Note nor any delay in exercising any rights hereunder or under any Note shall operate as a waiver of any rights of any holder of such Note or of the Company.

Section 19.4. Notes Held by Company, Etc. Solely for the purpose of determining whether the holders of the requisite percentage of the aggregate principal amount of Notes then outstanding approved or consented to any amendment, waiver or consent to be given under this Agreement, the Notes Documents or the Notes, or have directed the taking of any action provided herein, the Notes Documents or in the Notes to be taken upon the direction of the holders of a specified percentage of the aggregate principal amount of Notes then outstanding, Notes directly or indirectly owned by the Company or any of its Affiliates shall be deemed not to be outstanding.

SECTION 20. NOTICES.

Except to the extent otherwise provided in Section 9.4, all notices and communications provided for hereunder shall be in writing and sent by (1) e-mail and (2) accompanied by either (x) a registered or certified mailing with return receipt requested (postage prepaid) or (y) delivery by a recognized overnight delivery service (charges prepaid). Any such notice must be sent: (i) if to any holder of any Note, to the e-mail and mail address provided by such holder to the Company in writing, or (ii) if to the Company, to the Company at its e-mail address provided to the holders of the Notes.

Notices under this Section 20 will be deemed given only when actually received.

SECTION 21. REPRODUCTION OF DOCUMENTS.

This Agreement, the Notes Documents and all documents relating thereto, including, without limitation, (a) consents, waivers and modifications that may hereafter be executed,

(b) documents received by each Purchaser at the Closing (except the Notes themselves), and
(c) financial statements, certificates and other information previously or hereafter furnished to each Purchaser, may be reproduced by such Purchaser by any photographic, photostatic, microfilm, microcard, miniature photographic or other similar process and such Purchaser may destroy any original document so reproduced. The Company agrees and stipulates that, to the extent permitted by applicable law, any such reproduction (other than the Notes) shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made by such Purchaser in the regular course of business) and any enlargement, facsimile or further reproduction of such reproduction shall likewise be admissible in evidence. This Section 21 shall not prohibit the Company or any other holder of Notes from contesting any such reproduction to the same extent that it could contest the original, or from introducing evidence to demonstrate the inaccuracy of any such reproduction.

SECTION 22. CONFIDENTIAL INFORMATION.

For the purposes of this Section 22, "*Confidential Information*" means Information delivered before or after the date of this Agreement to a Purchaser or holder of Notes, provided that such term does not include Information that (a) other than as a result of a disclosure by any Purchaser or any holder of Notes or, in either case, its employees or agents in violation of this Section 22, was publicly known, (b) other than as a result of a disclosure by any Purchaser or any holder of Notes or, in either case, its employees or agents in violation of this Section 22, is or becomes publicly known through no act or omission by such Purchaser or any holder of Notes or, in either case, any Person acting on such Purchaser' s or holder' s behalf, (c) other than as a result of a disclosure by any Purchaser or any holder of Notes or, in either case, its employees or agents in violation of this Section 22, otherwise becomes known to such Purchaser or holder of Notes other than through disclosure by the Company, any Subsidiary of the Company or their respective

Representatives and from a source which such Purchaser or holder of Notes reasonably believes is not subject to a prohibition against disclosing such Information, or (d) constitutes financial statements delivered to such Purchaser or holder of Notes under Section 9.1 that are otherwise publicly available. For the purposes of this Section 22, "*Information*" means information concerning the Company or its Subsidiaries, irrespective of its source or form of communication, furnished by or on behalf of the Company, any of its Subsidiaries or their respective Representatives, including notes, analyses, compilations, studies or other documents or records prepared by any Purchaser or holder of Notes, which contain or reflect or were generated from information supplied by or on behalf of the Company or its Subsidiaries. Each Purchaser and holder of Notes will, and will cause its Affiliates and their respective Representatives to, keep confidential any Confidential Information and to use the Confidential Information solely for the purposes of monitoring, administering or managing the Notes and such Purchaser' s or such holder' s (as applicable) investment in the Company made pursuant to this Agreement (a "*Permitted Purpose*"); provided that such Purchaser or holder of Notes may deliver or disclose Confidential Information to (i) such Purchaser' s or holders' Representatives (to the extent such disclosure reasonably relates to the Permitted Purpose) and provided that each such recipient shall be informed of the confidential nature of the Confidential Information and shall agree to keep the Confidential Information confidential, (ii) such Purchaser' s or holder' s outside accounting firm and law firm (to the extent such disclosure reasonably relates to the Permitted Purpose) and provided that each such recipient shall be informed of the terms of this Section 22 and of the confidential nature of the Confidential Information and shall agree to keep the Confidential Information confidential in accordance with this Section 22, (iii) any other Purchaser or holder of any Note, (iv) any Person to which such Purchaser or holder of Notes sells or offers to sell such Note or any part thereof or any participation therein (if such Person has entered into an agreement prior to its receipt of such Confidential Information agreeing to be bound by the provisions of this Section 22 and the Company is a third party beneficiary of such agreement), (v) any federal or state regulatory authority having jurisdiction over such Purchaser or holder of Notes, (vi) S&P, Moody' s, Fitch IBCA, Duff & Phelps or the National Association of Insurance Commissioners or any similar organization that requires access to information about such Purchaser' s or holder' s investment portfolio, (vii) any other Person to which such delivery or disclosure may be necessary or appropriate as requested or required by applicable Law, stock exchange rule or other applicable judicial or governmental process (including by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process) to disclose any Confidential Information, in each of which instances such Purchaser and holder, its Affiliates and its and their respective Representatives, as the case may be, shall, to the extent permitted by applicable Law, provide notice to the Company promptly so that the Company will have a reasonable opportunity to timely seek to limit, condition or quash such disclosure (in which case such Purchaser or holder of Notes shall use reasonable efforts to assist the Company in this respect), all at the Company' s sole cost and expense, (viii) in connection with any litigation involving this Agreement, the Warrants, the Notes Documents or the Notes or in connection with the enforcement or for the protection of the rights and remedies under such Purchaser' s or holder' s Notes, the Notes Documents and this Agreement to which such Purchaser or holder of Notes is a party or (ix) if an Event of Default has occurred and is continuing, to the extent such Purchaser or holder of Notes may reasonably determine such delivery and disclosure to be necessary or appropriate in the enforcement or for the protection of the rights and remedies under such Purchaser' s or holder' s Notes, the Notes Documents or this Agreement. Each purchaser of a Note or holder of Notes, by its acceptance of

a Note, will be deemed to have agreed to be bound by and to be entitled to the benefits of this Section 22 as though it were a party to this Agreement. Notwithstanding the foregoing, none of the Purchasers and none of their Representatives shall provide Confidential Information to Brookfield or its Affiliates, other than Non-Excluded Affiliates.

SECTION 23. SUBSTITUTION OF PURCHASER.

Each Purchaser shall have the right to substitute any one of such Purchaser' s Affiliates as the purchaser of the Notes that such Purchaser has agreed to purchase hereunder, by written notice to the Company, which notice shall (a) be signed by both such Purchaser and such Purchaser' s Affiliate, (b) contain such Affiliate' s agreement to be bound by this Agreement and the Warrants, (c) contain a confirmation by such Affiliate of the accuracy with respect to it of the representations set forth in Section 8, and (d) attach a fully executed U.S. tax compliance certificate in the applicable form attached hereto as Exhibit 2, if applicable. Upon receipt of such notice, wherever the word "Purchaser" is used in this Agreement (other than in this Section 23), such word shall be deemed to refer to such Affiliate in lieu of such Purchaser. In the event that such Affiliate is so substituted as a Purchaser hereunder and such Affiliate thereafter desires to Transfer to such Purchaser Notes then held by such Affiliate, such Transfer shall comply with Section 15.2. For the avoidance of doubt, Oaktree Purchaser shall not have the right to substitute MassMutual as a purchaser of the Notes that Oaktree Purchaser has agreed to purchase hereunder.

SECTION 24. VOTING.

During the Standstill Period, (a) at each meeting of the stockholders of the Company and at every postponement or adjournment thereof, the Purchasers shall, and shall cause their Affiliates to, take such action as may be required so that all of the Voting Shares beneficially owned, directly or indirectly, by such Purchaser and its Affiliates and entitled to vote at such meeting of stockholders are voted (i) in favor of (x) each incumbent director as of the Closing nominated or recommended by the Board for election at any such meeting, and (y) each director (not described in clause (x)) nominated or recommended by the Board so long as such nomination or recommendation is approved by both of the Acres Board Members for election at any such meeting and (ii) in favor of any proposal by the Company relating to equity compensation that has been approved by the Board (which shall include the approval of both of the Acres Board Members); and (b) the Purchasers shall, and shall (to the extent necessary to comply with this Section 24) cause their Affiliates to, be present, in person or by proxy, at all meetings of the stockholders of the Company so that all Voting Shares beneficially owned by the Purchasers and their Affiliates may be counted for the purposes of determining the presence of a quorum and voted in accordance with Section 24 at such meetings (including at any adjournments or postponements thereof). Notwithstanding anything in the foregoing to the contrary, the provisions of this Section 24 shall not apply to MassMutual. Notwithstanding anything herein to the contrary, the Purchasers shall not be required at any time to exercise the Warrants to comply with this Section 24. The exercise of the Warrants shall be in the sole discretion of the Purchasers.

SECTION 25. STANDSTILL.

Section 25.1. Standstill Requirements. Each Purchaser (excluding MassMutual) agrees that during the Standstill Period, without the prior written approval of the Board, such Purchaser will not, directly or indirectly, and will cause its Non-Excluded Affiliates not to:

(a) acquire, offer or seek to acquire, agree to acquire or make a proposal to acquire, by purchase or otherwise, any equity securities or direct or indirect rights to acquire any equity securities of the Company or any of its Subsidiaries, any securities (other than the Convertible Notes) convertible into or exchangeable for any such equity securities, or any options or other derivative securities or contracts or instruments payment under which are determined with reference to the price of shares of Common Stock;

(b) make or in any way encourage or participate in any "solicitation" of "proxies" (whether or not relating to the election or removal of directors), as such terms are used in the rules of the SEC, to vote, or seek to advise or influence any Person with respect to voting of, any voting equity securities of the Company or any of its Subsidiaries, or call or seek to call a meeting of the Company' s stockholders or initiate any stockholder proposal for action by the Company' s stockholders, or seek election to or to place a representative on the Board or seek the removal of any director from the Board;

(c) make any public announcement with respect to, or offer, seek, propose or publicly indicate an interest in (in each case with or without conditions), any merger, consolidation, business combination, tender or exchange offer for the Company' s equity securities, recapitalization, reorganization or purchase of any material assets of the Company or its Subsidiaries, or any other extraordinary transaction involving the Company or any Subsidiary of the Company or any of their respective equity securities, or enter into any discussions, negotiations, arrangements, understandings or agreements (whether written or oral) with any other Person regarding any of the foregoing;

(d) make a public announcement or disclosure in connection with seeking to influence management or the board of directors, or the policies of the Company or any of its Subsidiaries, except as may be required under applicable law (but such Purchaser and its Non-Excluded Affiliates shall not take any discretionary acts that would trigger such requirement);

(e) acquire, offer or seek to acquire, by purchase or otherwise, any debt securities of the Company or any of its Subsidiaries other than for non-control purposes;

(f) make any proposal or statement of inquiry or disclose any intention, plan or arrangement inconsistent with any of the foregoing (except solely to MassMutual, its transferees or other holders of debt, only in connection with acquisitions or offers permitted by clause (e));

(g) advise, assist, encourage or direct any Person to do, or to advise, assist, encourage or direct any other Person to do, any of the foregoing (except solely MassMutual, its transferees or other holders of debt, only in connection with acquisitions or offers permitted by clause (e));

(h) take any action that would or would reasonably be expected to require the Company to make a public announcement regarding the possibility of a transaction or any of the events described in this Section;

(i) enter into any discussions, negotiations, communications, arrangements or understandings with any third party (including security holders of the Company (but excluding MassMutual, its transferees or other holders of debt, solely in connection with acquisitions or offers permitted by clause (e))) with respect to any of the foregoing, including forming, joining or in any way participating in a "group" (as defined in Section 13(d)(3) of the Exchange Act) with any third party with respect to the Company or any of its Subsidiaries or any securities of the Company or of any of its Subsidiaries or otherwise in connection with any of the foregoing;

(j) publicly request the Company or any of its Representatives, directly or indirectly, to amend or waive any provision of this Section; or

(k) contest the validity of this Section or make, initiate, take or participate in any action, claim or proceeding (legal or otherwise), demand or proposal to amend, waive or terminate any provision of this Section.

Section 25.2. Exceptions to Standstill. Notwithstanding anything to the contrary set forth in Section 25.1, nothing in Section 25.1 will restrict, and any Purchaser and its Non-Excluded Affiliates shall not have any liability under Section 25.1 relating to, (1) the acquisition of Additional Notes and Additional Warrants pursuant to the terms of this Agreement, (2) the acquisition of shares of Common Stock pursuant to any exercise of the Warrants in accordance with their terms, (3) the acquisition of shares of Common Stock pursuant to the conversion of the Convertible Notes held by such Purchaser and its Affiliates on the date of this Agreement in accordance with their terms (but subject to the ownership restrictions set forth in the Company' s charter) or the enforcement of any rights or remedies under the Convertible Notes instruments, (4) the ability to vote (subject to Section 24) or Transfer (subject to Section 15.2(b)) any shares of Common Stock, (5) the making and submitting (on a strictly private basis) to the Board of any proposal that is intended to be made and submitted on a non-publicly disclosed or announced basis (and would not reasonably be expected to require public disclosure by any Person), (6) the receipt of any dividends, similar distributions or interest with respect to any securities of the Company held by such Purchaser (including PIK Interest (as defined in the Notes)), (7) the enforcement of such Purchaser' s rights and remedies under this Agreement, including in connection with an Event of Default, and (8) the activities of the Company' s external manager and such Purchaser' s interest as an equity investor in such external manager and having and exercising various governance rights relating to the external manager.

Section 25.3. REIT Items.

(a) Oaktree Purchaser represents to the Company that Oaktree and its Non-Excluded Affiliates Beneficially Own or Constructively Own, as of the date hereof and as may be amended from time to time, $74,533,000 of Convertible Notes (the "*Oaktree Owned Convertible Notes*") and no shares of Common Stock (other than shares of Common Stock issuable upon conversion of Convertible Notes (the "*Underlying Oaktree Owned Convertible Notes Shares*")).

(b) Beginning on the date hereof and during any period that Oaktree and its Non-Excluded Affiliates Beneficially Own or Constructively Own Capital Stock of the Company, directly or through the exercise or conversion of securities convertible into Capital Stock of the Company, in excess of the Stock Ownership Limit, Oaktree Purchaser represents and covenants as follows:

(1) No Person who is treated as an individual under Section 542(a)(2) of the Code (determined after taking into account Section 856(h) of the Code) Beneficially Owns, or in the future will Beneficially Own, as a result of Oaktree and its Non-Excluded Affiliates' ownership of the Company' s Capital Stock, stock in excess of the Stock Ownership Limit. For purposes of the representation in this clause (1), "Beneficially Owns" means ownership, either directly or constructively, through the application of Section 544 of the Code as modified by Section 856(h)(1)(B) of the Code.

(2) Oaktree Purchaser shall, and shall cause its Non-Excluded Affiliates to, take such further reasonable steps to cooperate with the Company by way of providing additional factual information relevant to Oaktree' s and its Non-Excluded Affiliates' investments in the Company, as may be reasonably requested by the Company, such that the Company satisfies the requirements for qualification as a REIT under the Code.

(c) Based on the representations, covenants and agreements set forth in this Section 25.3, the Company agrees, and the Board has granted an exemption in accordance with Article VI of the Articles, that, notwithstanding Oaktree' s and its Non-Excluded Affiliates' Beneficial Ownership or Constructive Ownership of the Oaktree Owned Convertible Notes and the Underlying Oaktree Owned Convertible Notes Shares, Oaktree Purchaser shall not be precluded by Article VI of the Articles from acquiring and owning the Warrants or the Warrant Shares (as defined in the Warrants) to be acquired by Oaktree Purchaser hereunder. Notwithstanding the foregoing, Oaktree and its Non-Excluded Affiliates shall be precluded by Article VI of the Articles from converting any Oaktree Owned Convertible Notes into shares of Common Stock, to the extent that upon such conversion, the number of shares of Common Stock Beneficially Owned or Constructively Owned by Oaktree Purchaser and its Non-Excluded Affiliates (including any Warrants and Warrant Shares (as defined in the Warrants)) would be in excess of the Stock Ownership Limit.

(d) Capitalized terms used in this Section 25.3 but not defined in this Section 25.3 have the meanings ascribed to such terms in the Company' s Amended and Restated Articles of Incorporation (as amended from time to time, the "*Articles*").

SECTION 26. MISCELLANEOUS.

Section 26.1. Successors and Assigns. All covenants and other agreements contained in this Agreement, the Notes Documents or the Notes by or on behalf of any of the parties hereto bind and inure to the benefit of their respective successors and assigns (including any subsequent holder of a Note) whether so expressed or not.

Section 26.2. Payments Due on Non-Business Days. Anything in this Agreement, the Notes Documents or the Notes to the contrary notwithstanding, any payment of principal of or Make-Whole Amount or interest on any Note that is due on a date other than a Business Day shall be made on the next succeeding Business Day without including the additional days elapsed in the computation of the interest payable on such next succeeding Business Day; provided that if the Maturity Date is a date other than a Business Day, the payment otherwise due on the Maturity Date shall be made on the next succeeding Business Day and shall include the additional days elapsed in the computation of interest payable on such next succeeding Business Day.

Section 26.3. 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 (to the full extent permitted by law) not invalidate or render unenforceable such provision in any other jurisdiction.

Section 26.4. Construction. Each covenant contained herein shall be construed (absent express provision to the contrary) as being independent of each other covenant contained herein, so that compliance with any one covenant shall not (absent such an express contrary provision) be deemed to excuse compliance with any other covenant. Where any provision herein refers to action to be taken by any Person, or which such Person is prohibited from taking, such provision shall be applicable whether such action is taken directly or indirectly by such Person.

Section 26.5. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute one instrument. Each counterpart may consist of a number of copies hereof, each signed by fewer than all, but together signed by all, of the parties hereto.

Section 26.6. Legal Rate of Interest. Regardless of any provision contained in this Agreement, the rate of interest borne by the Notes shall not exceed the maximum amount of nonusurious interest that may be contracted for, taken, reserved, charged or received under any applicable law; any interest in excess of that maximum amount shall be credited on the principal of the Notes of the applicable series or, if that has been paid, refunded to the Company. On any acceleration or required or permitted prepayment, any such excess shall be canceled automatically as of the acceleration or prepayment or, if already paid, credited on the principal of the Notes of the applicable series or, if the principal of the Notes of such series has been paid, refunded to the Company. In determining whether or not the interest paid or payable, under any specific contingency, exceeds the maximum amount of nonusurious interest, the Company and holders of the Notes shall, to the maximum extent permitted under applicable law, (a) characterize any nonprincipal payment as an expense, fee or premium rather than as interest, (b) exclude voluntary prepayments and the effects thereof, and (c) spread the total amount of interest throughout the entire contemplated term of the Notes of the applicable series.

Section 26.7. Governing Law. This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the law of the State of New York excluding choice-of-law principles of the law of such State or any other jurisdiction that would require the application of the laws of a jurisdiction other than such State.

Section 26.8. Venue. Any legal action or proceeding arising under this Agreement, the Notes Documents, the Warrants or the Notes in any way connected or related or incidental to the dealings of the parties hereto or any of them with respect to this Agreement, the Warrants, the Notes Documents or the Notes, or the transactions related thereto, in each case whether now existing or hereafter arising, shall be brought in the courts of the State of New York sitting in the Borough of Manhattan or of the United States District Court for the Southern District of New York (provided that if none of such courts can and will exercise such jurisdiction, such exclusivity shall not apply), and by execution and delivery of this Agreement, the Company, each Subsidiary of the Company, each Purchaser and each holder of Notes consents, for itself and in respect of its property, to the exclusive jurisdiction of those courts. The Company, each Subsidiary of the Company, each Purchaser and each holder of Notes irrevocably waives any objection, including any objection to the laying of venue or based on the grounds of forum non conveniens, which it may now or hereafter have to the bringing of any action or proceeding in such jurisdiction in respect of this Agreement, the Warrants, the Notes or the Notes or any other document related thereto. Nothing in this Agreement, the Warrants, the Notes Documents or any other Notes shall affect any right that the Company, any Purchaser or any holder of Notes may otherwise have to bring any action or proceeding relating to this Agreement, the Warrants, the Notes Documents or the Notes in the courts of any jurisdiction (i) for purposes of enforcing a judgment or (ii) in connection with any pending bankruptcy, insolvency or similar proceeding in such jurisdiction.

Section 26.9. Interpretation.

(a) All article, section, subsection, annex, schedule and exhibit references used in this Agreement are to articles, sections and subsections of, and annexes, schedules and exhibits to, this Agreement unless otherwise specified. The annexes, exhibits and schedules attached to this Agreement constitute a part of this Agreement and are incorporated in this Agreement for all purposes.

(b) If a term is defined as one part of speech (such as a noun), it has a corresponding meaning when used as another part of speech (such as a verb). The word “or” is not exclusive. Words of the masculine, feminine or neuter gender shall mean and include the correlative words of other genders, and words in the singular shall include the plural, and vice versa. The words “include,” “includes” or “including” mean “including without limitation,” and the words “hereof,” “hereby,” “herein,” “hereunder” and similar terms refer to this Agreement as a whole and not any particular section or article in which such words appear. The words “shall” and “will” have the same meaning. The phrase “to the extent” shall mean the degree to which a subject or other thing extends, and such phrase shall not mean simply “if.”

(c) References to a contract, agreement or other document include references to such contract, agreement or document as amended, restated, reformed, supplemented or otherwise modified in accordance with the terms thereof and include any annexes, exhibits and schedules attached thereto.

(d) References to any Person include references to such Person' s successors and permitted assigns.

(e) Whenever this Agreement refers to a number of days, such number refers to calendar days unless Business Days are specified. Whenever any action must be taken hereunder on or by a day that is not a Business Day, then such action may be validly taken on or by the next day that is a Business Day. In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including"; the words "to" and "until" each mean "to but excluding"; and the word "through" means "to and including."

(f) Headings of the articles and sections of this Agreement and the table of contents, schedules, annexes and exhibits are for convenience of the Parties only and shall be given no substantive or interpretative effect whatsoever.

(g) An accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP.

(h) All monetary figures shall be in United States dollars unless otherwise specified.

Section 26.10. Specific Performance. Solely with respect to Section 11.6, Section 15.2, Section 22, Section 24, and Section 25 (the "*Specified Sections*"), the parties hereto agree that irreparable damage for which monetary relief, even if available, would not be an adequate remedy, would occur in the event that the parties hereto do not perform the provisions of the Specified Sections in accordance with their specified terms or otherwise breach such provisions. Accordingly the parties acknowledge and agree that the parties shall be entitled to an injunction or injunctions, specific performance or other equitable relief to prevent breaches (or threatened breaches) of the Specified Sections and to enforce specifically the terms and provisions of the Specified Sections in the courts without proof of damages or otherwise, this being in addition to any other remedy to which they are entitled under this Agreement and this right of specific performance is an integral part of the transactions contemplated hereby and without that right, the parties would not have entered into this Agreement. Solely with respect to the Specified Sections, the parties agree not to assert that a remedy of specific performance is unenforceable, invalid, contrary to Law or inequitable for any reason, and agree not to assert that a remedy of monetary damages would provide an adequate remedy or that the parties otherwise have an adequate remedy at law. The parties acknowledge and agree that any party shall not be required to provide any bond or other security in connection with its pursuit of an injunction or injunctions to prevent breaches of the Specified Sections and to enforce specifically such terms and provisions.

Section 26.11. Assignment. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned, in whole or in part, by operation of Law or otherwise, by any of the parties hereto without the prior written consent of the other parties hereto; *provided* that (a) any Purchaser may assign its rights, interests and obligations under this Agreement, in whole or in part, as contemplated by Section 15.2(a) and Section 23, and (b) in the event of such assignment, the assignee shall agree in writing to be bound by the provisions of this Agreement, including the rights, interests and obligations so assigned. Subject to the immediately preceding sentence, this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective successors and permitted assigns.

Section 26.12. WAIVER OF JURY TRIAL. THE PARTIES HERETO HEREBY WAIVE TRIAL BY JURY IN ANY ACTION BROUGHT ON OR WITH RESPECT TO THIS AGREEMENT, THE WARRANTS, THE NOTES DOCUMENTS, THE NOTES OR ANY OTHER DOCUMENT EXECUTED IN CONNECTION HEREWITH OR THEREWITH.

*****

The execution hereof by the Purchasers and the Company shall constitute a contract among the Purchasers and the Company for the uses and purposes hereinabove set forth.

Very truly yours,

EXANTAS CAPITAL CORP.

By: /s/ Matt Stern
Name: Matt Stern
Title: President

Accepted and agreed as of the date first written above:

OCM XAN HOLDINGS PT, LLC

By: Oaktree Fund AIF Series (Cayman), LP – Series G
its Manager
By: Oaktree AIF (Cayman) GP Ltd.
its General Partner
By Oaktree Capital Management, L.P.
its Director

By: /s/ Brain Laibow
Name: Brain Laibow
Title: Managing Director

By: /s/ Jordan Mikes
Name: Jordan Mikes
Title: Senior Vice President

By: Oaktree Fund AIF Series, L.P. – Series N
its Manager
By: Oaktree Fund GP AIF, LLC
its General Partner
By Oaktree Fund GP III, L.P.
its Managing Member

By: /s/ Brain Laibow
Name: Brain Laibow
Title: Authorized Signatory

By: /s/ Jordan Mikes
Name: Jordan Mikes
Title: Authorized Signatory

[Signature Page to Note and Warrant Purchase Agreement]

Accepted and agreed as of the date first written above:

MASSACHUSETTS MUTUAL LIFE
INSURANCE COMPANY

By: /s/ Andrew C. Dickey
Name: Andrew C. Dickey
Title: Head of Alternative and Private Equity

[Signature Page to Note and Warrant Purchase Agreement]

ANNEX A

PURCHASER COMMITMENTS

INITIAL NOTES

Purchaser	Percentage Commitment		Initial Purchase Amount	Initial Warrant Purchase
OCM XAN Holdings PT, LLC	84.00	%	$42,000,000.00	1,176,000
Massachusetts Mutual Life Insurance Company	16.00	%	$8,000,000.00	224,000
Total	100.00	%	$50,000,000.00	1,400,000

ADDITIONAL NOTES

Purchaser	Percentage Commitment		Additional Purchase Amount	Additional Warrant Purchase
OCM XAN Holdings PT, LLC	84.00	%	$63,000,000.00	1,764,000
Massachusetts Mutual Life Insurance Company	16.00	%	$12,000,000.00	336,000
Total	100.00	%	$75,000,000.00	2,100,000

ANNEX B

DEFINED TERMS

As used herein, the following terms have the respective meanings set forth below or set forth in the Section hereof following such term:

"*5% Beneficial Ownership Requirement*" means, as of the applicable time of determination, that Oaktree Purchaser and its Non-Excluded Affiliates continue to beneficially own Warrants and/or shares of Common Stock that represent, in the aggregate and on an as-exercised basis, at least 5% of the shares of Common Stock then outstanding; *provided* that the Convertible Notes and any shares of Common Stock underlying such notes shall not be included for the purposes of calculating such beneficial ownership.

"*Acres Board Members*" means the directors of the Board affiliated with Acres Capital Corp.

"*Activist Investor*" means, as of any date of determination, a Person that has, directly or indirectly through its Affiliates, whether individually or as a member of a "group" (as defined in Section 13(d)(3) of the Exchange Act), within the two-year period immediately preceding such date of determination (i) called or publicly sought to call a meeting of the stockholders or other equityholders of any Person (that has common stock registered under the Securities Exchange Act of 1934, as amended) not publicly approved (at the time of the first such action) by the board of directors or similar governing body of such Person, (ii) publicly initiated any proposal for action by stockholders or other equityholders of any Person (that has common stock registered under the Securities Exchange Act of 1934, as amended) initially publicly opposed by the board of directors or similar governing body of such Person, (iii) publicly sought election to, or to place a director or representative on, the board of directors or similar governing body of a Person (that has common stock registered under the Securities Exchange Act of 1934, as amended), or publicly sought the removal of a director or other representative from such board of directors or similar governing body, in each case which election or removal was not recommended or approved publicly (at the time such election or removal is first sought) by the board of directors or governing body of such Person or (iv) publicly disclosed any intention, plan or arrangement to do any of the foregoing.

"*Additional Notes Notice*" is defined in Section 2.1.

"*Additional Warrants*" is defined in Section 1.2.

"*Affiliate*" means, at any time, and with respect to any Person, any other Person that at such time directly or indirectly through one or more intermediaries Controls, or is Controlled by, or is under common Control with, such first Person. As used in this definition, "*Control*" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"*Agreement*" means this Note and Warrant Purchase Agreement, as from time to time amended, supplemented or otherwise modified.

"*Anti-Corruption Laws*" is defined in Section 7.14(d)(1).

"*Anti-Money Laundering Laws*" is defined in Section 7.14(c).

"*Board*" means the board of directors of the Company.

"*Board Observer*" is defined in Section 11.6(a).

"*Board Observer Fall-Away* " means the first day on which Oaktree Purchaser and its Non-Excluded Affiliates (a) fail to own at least $25 million of Notes, and (b) fail to satisfy the 5% Beneficial Ownership Requirement.

"*Blocked Person*" is defined in Section 7.14(a).

"Business Day" means any day other than a Saturday, a Sunday or a day on which commercial banks in New York, New York are required or authorized to be closed.

"*Called Principal*" is defined in Section 10.6.

" *Capitalized Lease* " means any lease the obligation for rentals with respect to which is required to be capitalized on a consolidated balance sheet of the lessee and its subsidiaries in accordance with GAAP. Notwithstanding anything herein to the contrary, it is understood and agreed that all obligations of any Person that are or would be characterized as operating lease obligations in accordance with GAAP on January 1, 2017 (whether or not such operating lease obligations were in effect on such date) shall continue to be accounted for as operating lease obligations (and not as Capitalized Leases) for purposes of this Agreement regardless of any change in GAAP following such date that would otherwise require such obligations to be recharacterized as Capitalized Leases.

"*Cash Equivalents*" means:

(a) U.S. dollars, Canadian dollars, euros, pounds sterling, any national currency of any participating member state in the European Union or local currencies held from time to time in the ordinary course of business;

(b) securities issued or directly and fully guaranteed or insured by the U.S. government or any country that is a member state of the European Union or any agency or instrumentality thereof having maturities of one year or less from the date of acquisition;

(c) certificates of deposit, time deposits, eurodollar time deposits, overnight bank deposits or bankers' acceptances with maturities of one year or less from the date of acquisition, in each case with any domestic commercial bank having capital and surplus in excess of $500,000,000;

(d) marketable general obligations issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof maturing within one year from the date of acquisition and, at the time of acquisition, having a credit rating of at least "A" or the equivalent thereof by S&P or Moody' s, or carrying an equivalent rating by a nationally recognized Rating Agency, if both of the two named Rating Agencies cease publishing ratings of investments;

(e) repurchase obligations for underlying securities of the types described in clauses (b), (c) and (d) of this definition entered into with any financial institution meeting the qualifications specified in clause (c) of this definition;

(f) commercial paper rated P-1, A-1 or the equivalent thereof by Moody' s or S&P, respectively, and in each case maturing within one year after the date of acquisition;

(g) investments with average maturities of one year or less from the date of acquisition in money market funds rated AAA- (or the equivalent thereof) or better by S&P or Aaa3 (or the equivalent thereof) or better by Moody' s; and

(h) investments in investment companies or money market funds substantially all of the assets of which consist of securities described in the foregoing clauses (a) through

(g) of this definition.

"*Change in Control*" is defined in Section 10.1.

"*CISADA*" is defined in Section 7.14(a).

"*CLO*" means a collateralized loan obligation vehicle or similar debt securitization vehicle or entity.

"*Closing*" is defined in Section 4.

"*Code*" means the Internal Revenue Code of 1986, as amended from time to time, and the rules and regulations promulgated thereunder from time to time.

"*Common Stock*" is defined in Section 1.2.

"*Company*" has the meaning set forth in the introductory paragraph hereto.

"*Confidential Information*" is defined in Section 20.

"*Consolidated Net Worth*" means the total amount of shareholders' equity of the Company and its Subsidiaries, determined on a consolidated basis in accordance with GAAP.

"*Continuing Directors*" shall mean, with respect to any Person, the directors (or equivalent Person) of such Person on the date of the Initial Closing and each other director (or equivalent Person) if such director' s (or equivalent Person' s) nomination for election to the board of directors (or equivalent governing body) of such Person is recommended or approved, or such director was nominated or otherwise approved, by a majority of the then Continuing Directors.

"*Controlled Entity*" means any of the Subsidiaries of the Company and any of their or the Company' s respective Controlled Affiliates. As used in this definition, "*Control*" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"*Convertible Notes*" means $143,750,000 in aggregate principal amount of the Company' s 4.50% convertible senior notes due 2022 issued pursuant to the Convertible Notes Indenture.

"*Convertible Notes Indenture*" means the indenture among the Company, as issuer, and Wells Fargo Bank, National Association, as trustee pursuant to which the Convertible Notes are issued, as such indenture may be amended, modified, amended and restated or supplemented from time to time.

"*Core Earnings*" has the meaning set forth in the management agreement with the Company' s external advisor.

"*Debt*" means, with respect to any Person, without duplication,

(a) its liabilities for borrowed money;

(b) its liabilities for the deferred purchase price of property acquired by such Person (excluding accounts payable arising in the ordinary course of business but including all liabilities created or arising under any conditional sale or other title retention agreement with respect to any such property);

(c) all liabilities appearing on its balance sheet in accordance with GAAP in respect of Capitalized Leases;

(d) all liabilities for borrowed money secured by any Lien with respect to any property owned by such Person (whether or not it has assumed or otherwise become liable for such liabilities);

(e) all non-contingent liabilities in respect of reimbursement agreements or similar agreements in respect of letters of credit or instruments serving a similar function issued or accepted for its account by banks and other financial institutions (whether or not representing obligations for borrowed money);

(f) its obligations in respect of Disqualified Stock; and

(g) any Guarantee of such Person with respect to liabilities of a type described in any of clauses (a) through (f) hereof.

Notwithstanding anything herein to the contrary, any preferred equity (other than Disqualified Stock) shall not constitute Debt.

"*Default*" means an event or condition the occurrence or existence of which would, with the lapse of time or the giving of notice or both, become an Event of Default.

"*Default Rate*" means, with respect to the Notes, that rate of interest that is 2.00% per annum above the rate of interest otherwise applicable to the Notes.

"*Disqualified Stock*" shall mean any Equity Interest that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable, in each case, at the option of the holder of the Equity Interest), or upon the happening of any event, matures or is mandatorily redeemable (other than for Equity Interests that are not Disqualified Stock), pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder of such Equity Interest, in whole or in part, on or prior to the date that is 91 days after the Maturity Date. Notwithstanding the preceding sentence, any Equity Interest will not constitute Disqualified Stock solely because the holders of the Equity Interest have the right to require the Company or a Subsidiary thereof to repurchase such Equity Interest upon the occurrence of a change of control or an asset sale. The amount of Disqualified Stock deemed to be outstanding at any time for purposes of this Agreement will be the maximum amount that the Company and its Subsidiaries may become obligated to pay upon the maturity of, or pursuant to any mandatory redemption provisions of, such Disqualified Stock, exclusive of accrued dividends.

"*Effect* " means any change, effect, development, circumstance, condition, fact, state of facts, event or occurrence.

"*Environmental Laws*" means any and all Federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any materials into the environment, including but not limited to those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

"*ERISA*" means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the rules and regulations promulgated thereunder from time to time in effect.

"*ERISA Affiliate*" means any trade or business that, together with the Company, is treated as a single employer under Section 414(b) or (c) of the Code, or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414(c) of the Code.

"*Equity Interest*" means, with respect to any Person, any share of capital stock of (or other ownership or profit interests in) such Person, any warrant, option or other right for the purchase or other acquisition from such Person of any share of capital stock of (or other ownership or profit interests in) such Person, whether or not certificated, any security convertible into or exchangeable for any share of capital stock of (or other ownership or profit interests in) such Person or warrant, right or option for the purchase or other acquisition from such Person of such shares (or such other interests), and any other ownership or profit interest in such Person (including, without limitation, partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such share, warrant, option, right or other interest is authorized or otherwise existing on any date of determination. For the avoidance of doubt, unless otherwise expressly specified, Equity Interest with respect to any Person shall mean the direct Equity Interest of such Person.

"*Event of Default*" is defined in Section 13.

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

"*Fair Market Value*" means, at any time and with respect to any property, the sale value of such property that would be realized in an arm' s-length sale at such time between an informed and willing buyer and an informed and willing seller (neither being under a compulsion to buy or sell).

"*Filed SEC Documents*" means any report, schedule, form, statement or other document (including exhibits and other information incorporated by reference therein) filed by the Company with, or publicly furnished by the Company to, the SEC after December 31, 2019 and prior to the date hereof.

"*GAAP*" means generally accepted accounting principles as in effect from time to time in the United States of America.

"*Governmental Authority*" means

(a) the government of:

(i) the United States of America, Canada or any State or Province or other political subdivision thereof, or

(ii) any jurisdiction in which the Company or any of its Subsidiaries conducts all or any part of its business, or which has jurisdiction over any properties of the Company or any of its Subsidiaries, or

(b) any entity exercising executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, any such government.

"*Governmental Official*" means any governmental official or employee, employee of any government-owned or government-controlled entity, political party, any official of a political party, candidate for political office, official of any public international organization or anyone else acting in an official capacity.

"*Guarantee*" means, with respect to any Person, any obligation (except the endorsement of negotiable instruments for deposit or collection in the ordinary course of business) of such Person guaranteeing or in effect guaranteeing any Debt of any other Person in any manner, whether directly or indirectly, including, without limitation, obligations incurred through an agreement, contingent or otherwise, by such Person: (a) to purchase such Debt or any property constituting security therefor, (b) to advance or supply funds (i) for the purchase or payment of such Debt or (ii) to maintain any working capital or other balance sheet condition or any income statement condition of any other Person or otherwise to advance or make available funds for the purchase or payment of such Debt, (c) to lease properties or to purchase properties or services primarily for the purpose of assuring the owner of such Debt of the ability of any other Person to make payment of the Debt, or (d) otherwise to assure the owner of the Debt against loss in respect thereof. In any computation of the Debt of the obligor under any Guarantee, the Debt that is the subject of such Guarantee shall be assumed to be direct obligations of such obligor to the extent guaranteed pursuant thereto.

"*Hazardous Material*" means any and all pollutants, toxic or hazardous wastes or any other substances that is listed, defined, designated, regulated or classified as hazardous, toxic, radioactive, dangerous, a pollutant, a contaminant or words of similar meaning or effect under any Environmental Law.

"*holder*" means, with respect to any Note, the Person in whose name such Note is registered in the register maintained by the Company pursuant to Section 15.1.

"*Information*" is defined in Section 22.

"*Investment*" means any transaction pursuant to which any Person makes any direct or indirect advance, loan or other extension of credit (other than to customers, dealers, licensees, franchisees, suppliers, consultants, directors, officers or employees of any Person in the ordinary course of business) or capital contribution (by means of any transfer of cash or other property to others or any payment for property or services for the account or use of others) to, or any purchase or acquisition of capital stock, Debt or other similar instruments issued by, any other Person.

"*Initial Warrants*" is defined in Section 1.2.

"*Law*" means any federal, state, local or foreign law, statute, ordinance, code, rule or regulation or other similar requirement enacted, adopted, promulgated, or applied by any Governmental Authority.

"*Lien*" means any interest in property securing an obligation owed to, or a claim by, a Person other than the owner of the property, whether the interest is based on common law, statute or contract (including any security interest, lien arising from a mortgage, encumbrance, pledge, conditional sale or trust receipt or a lease, consignment or bailment for security purposes) which in each case secures a monetary obligation owed to such Person. The term " Lien" shall not include minor reservations, exceptions, encroachments, easements, rights-of-way, covenants, conditions, restrictions and other minor title exceptions affecting property, provided that they do not constitute security for a monetary obligation. For the purposes of this Agreement, the Company or a Subsidiary of the Company shall be deemed to be the owner of any property which it has acquired or holds subject to a conditional sale agreement, a Capitalized Lease or other arrangement constituting Debt pursuant to which title to the property has been retained by or vested in some other Person for security purposes, and such retention or vesting shall be deemed to be a Lien.

"*Make-Whole Amount*" is defined in Section 10.6.

"*Manager Board Members*" means the Acres Board Members and directors of the Board affiliated with any successor or replacement of Acres Capital Corp. as the external manager of the Company.

"*MassMutual*" means Massachusetts Mutual Life Insurance Company and its Controlled Affiliates.

" *Material*" means material in relation to the business, operations, financial condition, assets or properties of the Company and its Subsidiaries, taken as a whole.

"*Material Adverse Effect*" means any Effect that has a material adverse effect on the business, operations, financial condition, assets or properties of the Company and its Subsidiaries, taken as a whole; *provided*, *however*, that no Effect to the extent resulting or arising from the following shall be deemed to constitute a Material Adverse Effect or shall be taken into account when determining whether a Material Adverse Effect exists or has occurred: (i) the announcement of the transactions contemplated by this Agreement or the satisfaction of the obligations set forth herein, (ii) the general deterioration in the industry in which the Company and its Subsidiaries operate, (iii) the general deterioration in the economy, credit or financial or capital markets in the United States, including changes in interest or exchange rates, (iv) any change or decline in market price or change in trading volume, of the capital stock of the Company, or (v) the outbreak or escalation of hostilities involving the United States, the declaration by the United States of a national emergency or war or the occurrence of any other calamity or crisis, including acts of terrorism, or any epidemic, pandemic or other similar outbreak (including the COVID-19 virus); except, in each case with respect to clauses (ii), (iii) or (v), to the extent that such Effect disproportionately affects the Company and its Subsidiaries, taken as a whole, relative to other similar situated companies in the industry in which the Company and its Subsidiaries operate.

"*Maturity Date*" means July 31, 2027.

"*Multiemployer Plan*" means any Plan that is a "multiemployer plan" (as such term is defined in section 4001(a)(3) of ERISA).

"*Non-Excluded Affiliates*" means all Affiliates of any Purchaser, other than Brookfield Asset Management Inc. together with its managed funds and accounts and affiliated holding companies ("*Brookfield*") and its Affiliates. For the purposes of this definition, Oaktree Capital Group, LLC and its Controlled Affiliates shall not be deemed Affiliates of Brookfield.

"*Notes*" is defined in Section 1.

"*Notes Documents*" means this Agreement, any Note, any other agreement required to be entered into pursuant to the terms of this Agreement or any Note and any other document or instrument designated by the Company and the Purchasers as a "Notes Document."

" *Oaktree*" means Oaktree Capital Management, L.P. and its managed funds and accounts together with special purpose holding vehicles owned by such funds and accounts.

"*Oaktree Designee*" means an individual designated in writing by Oaktree for appointment as a non-voting observer pursuant to Section 11.6.

"*Oaktree Purchaser*" means OCM XAN Holdings PT, LLC.

" *Obligations*" means all unpaid principal of, accrued and unpaid interest (including interest accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding) on the Notes, all Make-Whole Amounts, if any, all accrued and unpaid fees and all expenses, reimbursements, indemnities and all other advances to, debts, liabilities and obligations of the Company to the holders of Notes or any indemnified party arising under this Agreement, the Notes or the Notes Documents in respect of the Notes, whether direct or indirect (including those acquired by assumption), absolute, contingent, due or to become due, now existing or hereafter arising.

"*OFAC*" is defined in Section 7.14(a).

"*OFAC Listed Person*" is defined in Section 7.14(a).

"*OFAC Sanctions Program*" means any economic or trade sanction that OFAC is responsible for administering and enforcing. A list of OFAC Sanctions Programs may be found at http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx.

"*Officer's Certificate*" of any Person means a certificate of a Senior Financial Officer or of any other officer of such Person whose responsibilities extend to the subject matter of such certificate.

"*Organization Documents*" means, (a) for any corporation, the certificate or articles of incorporation, the bylaws, any certificate of determination or instrument relating to the rights of preferred shareholders of such corporation, and any shareholder rights agreement, (b) for any partnership, the partnership agreement and, if applicable, certificate of limited partnership, (c) for any limited liability company, the operating agreement and articles or certificate of formation or (d) any other document setting forth the manner of election or duties of the officers, directors, managers or other similar persons, or the designation, amount or relative rights, limitations and preference of the stock of a Person.

"*PBGC*" means the Pension Benefit Guaranty Corporation referred to and defined in ERISA or any successor thereto.

"*Permitted Acquisition*" means the purchase or acquisition (whether in one or a series of related transactions) by any Person of (a) more than 50% of the equity interests with ordinary voting power of another Person or (b) all or substantially all of the Property of another Person or division or line of business or business unit of another Person, whether or not involving a merger or consolidation with such Person; *provided* that (i) at the time thereof and after giving effect thereto, no Default or Event of Default shall have occurred and be continuing or would result from such acquisition or purchase, (ii) the aggregate amount of the consideration (or, in the case of consideration consisting of assets, the fair market value of the assets) paid by the Company and its Subsidiaries shall not exceed $25,000,000 on a cumulative basis for all such acquisitions or purchases since the date of the Initial Closing, (iii) such acquisition or purchase is consummated on a non-hostile basis, and (iv) such acquisition or purchase will not result in a default of Section 12.5.

"*Permitted Refinancing*" shall mean any Debt (the "*refinancing Indebtedness*") issued in exchange for, or the net proceeds of which are used to refinance, renew, replace, defease, discharge or refund, other Debt (the "*refinanced Indebtedness*"); provided that: (a) the principal amount of such refinancing Indebtedness does not exceed the principal amount of the refinanced Indebtedness (plus all accrued interest thereon and the amount of all out-of-pocket fees, expenses and premiums incurred in connection with such exchange, refinancing, renewal, replacement, defeasance, discharge or refunding); (b) such refinancing Indebtedness has a final maturity date equal to or later than the final maturity date of, and, in the case of non-revolving credit Indebtedness, has a weighted average life to maturity equal to or greater than the weighted average life to maturity of, the refinanced Indebtedness (determined without giving effect to prior payments

that reduced amortization of the refinanced Indebtedness); (c) no Person, other than the obligors of the refinanced Indebtedness, shall be an obligor in respect of such refinancing Indebtedness; (d) if the refinanced Indebtedness is subordinated in right of payment or unsecured, the refinancing Indebtedness shall be subordinated in right of payment or unsecured, as applicable, on terms at least as favorable to the Purchasers as those contained in the documentation governing the refinanced Indebtedness; and (e) if such refinanced Indebtedness is secured, the refinancing Indebtedness with respect thereto may only be secured if and to the extent secured by the same assets (and improvements affixed thereto) that secured such refinanced Indebtedness.

"*Person*" means an individual, partnership, corporation, limited liability company, association, trust, unincorporated organization, or a government or agency or political subdivision thereof.

"*Plan*" means an "employee benefit plan" (as defined in section 3(3) of ERISA) subject to Title IV of ERISA or section 430 of the Code, that is or, within the preceding five years, has been established or maintained, or to which contributions are or, within the preceding five years, have been made or required to be made, by the Company or any ERISA Affiliate or with respect to which the Company or any ERISA Affiliate may have any liability.

"*Purchaser*" means each of the Purchasers of Notes identified in the signature pages to the Agreement.

"*REIT*" means a "real estate investment trust" under Sections 856 through 860 of the Code.

"*Remaining Additional Notes Amount*" means $75,000,000 less the aggregate principal amount of Additional Notes that have been issued under this Agreement at any time.

"*REO Property*" means a real property acquired by the Company or any of its Subsidiaries through foreclosure, acceptance of a deed-in-lieu of foreclosure, short sale, or otherwise in connection with collection efforts with respect to the same.

"*Reportable Event*" shall have the same meaning as in Section 4043(c) of ERISA.

"*Representative*" means the directors, officers, employees, agents (including financial and legal advisors) and other advisors and representatives of a Person.

"*Required Holders*" means, at any time, the holders of at least a majority in aggregate principal amount of the Notes at the time outstanding (exclusive of Notes then owned by the Company or any of its Affiliates).

"*Responsible Officer*" means any Senior Financial Officer of the Company and any other officer of the Company with responsibility for the administration of the relevant portion of this Agreement.

"*Schedule 13 Filer*" means a Person which, as of the Business Day immediately preceding a Transfer of Warrants or Voting Shares, has reported a beneficial ownership of more than 5% of the shares of Common Stock then outstanding on Schedule 13G or Schedule 13D under the Exchange Act (or any comparable or successor report) as of the date of such Person' s most recent such report or amendment thereto, and any Person actually known by the transferor to be an Affiliate of such first Person.

"*SEC*" means the Securities and Exchange Commission.

"*Securities Act*" means the Securities Act of 1933, as amended from time to time.

"*Senior Financial Officer*" means, with respect to any Person, the chief financial officer, the chief executive officer, principal accounting officer, treasurer, assistant treasurer or financial controller of such Person.

"*Significant Subsidiary*" means, at any particular time, any Subsidiary of the Company (or such Subsidiary and its subsidiaries taken together) that would be a "significant subsidiary" of the Company within the meaning of Rule 1-02 under Regulation S-X promulgated by the SEC.

"*Solvent*" means, with respect to any Person, that as of the date of determination, both (i) (a) the sum of such Person' s debt (including contingent liabilities) does not exceed the present fair saleable value of such Person' s present assets; (b) such Person' s capital is not unreasonably small in relation to its business or with respect to any transaction contemplated to be undertaken after the date of determination; and (c) such Person has not incurred and does not intend to incur, or believe (nor should it reasonably believe) that it will incur, debts beyond its ability to pay such debts as they become due (whether at maturity or otherwise); and (ii) such Person is "solvent" within the meaning given that term and similar terms under the Bankruptcy Code and other applicable laws relating to fraudulent transfers and conveyances. For purposes of this definition, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (irrespective of whether such contingent liabilities meet the criteria for accrual under Statement of Financial Accounting Standards No. 5).

"*Standstill Period*" means the period beginning on the date of the Initial Closing and ending on the latest of (i) the second (2nd) anniversary of the date of the Initial Closing, (ii) the first (1st) anniversary of the date of the last to occur Subsequent Closing, and (iii) the date of the Board Observer Fall-Away (or the date Oaktree has otherwise irrevocably waived in a writing delivered to the Company its rights under Section 11.6).

"*Subordinated Debt*" means unsecured Debt of the Company; provided that (a) such Debt does not mature or require any scheduled payments of principal prior to one hundred eighty (180) days after the Maturity Date, (b) such Debt bears no greater than a market interest rate (which shall be payable solely in-kind and not in cash) as of the time of its issuance or incurrence, (c) no indenture or other agreement governing such Debt contains (i) financial maintenance covenants or (ii) covenants or events of default that are more restrictive on the Company or any of its Subsidiaries than those contained in this Agreement, (d) after giving effect to the issuance or incurrence of such Debt on a pro forma basis, the Company shall be in compliance with all covenants set forth in this Agreement, (e) the payment of such Debt is subordinated to the Obligations to the written satisfaction of the Required Holders (as determined in their sole discretion), (f) there is no scheduled amortization with respect to such Debt and (g) such Debt does not benefit from a guarantee from any other Person.

"*Subsequent Closing*" is defined in Section 3.

"*Subsequent Purchase Date*" is defined in Section 2.

"*Subsidiary*" means, as to any Person, any corporation, association or other business entity in which such Person or one or more of its Subsidiaries owns sufficient equity or voting interests to enable it or them (as a group) ordinarily, in the absence of contingencies, to elect a majority of the directors (or Persons performing similar functions) of such entity, and any partnership or joint venture if more than a 50% interest in the profits or capital thereof is owned by such Person or one or more of its Subsidiaries (unless such partnership or joint venture can and does ordinarily take major business actions without the prior approval of such Person or one or more of its Subsidiaries).

"*Transfer*" by any Person means, directly or indirectly, to sell, transfer, assign, pledge, encumber, hypothecate or otherwise dispose of or transfer (by the operation of law or otherwise), either voluntarily or involuntarily, or to enter into any contract, option or other arrangement, agreement or understanding with respect to the sale, transfer, assignment, pledge, encumbrance, hypothecation or other disposition or transfer (by the operation of law or otherwise), of any interest in any securities beneficially owned by such Person; provided that, notwithstanding anything to the contrary in this Agreement, a Transfer shall not include the transfer (other than by a Purchaser or an Affiliate of a Purchaser) of any limited partnership interests or other equity interests in a Purchaser (or any direct or indirect parent entity of such Purchaser) (provided that if any transferor or transferee referred to in this proviso ceases to be controlled (directly or indirectly) by the Person (directly or indirectly) controlling such Person immediately prior to such transfer, such event shall be deemed to constitute a "Transfer"). Notwithstanding the foregoing, a Transfer shall not include the transfer of equity interests of (i) Oaktree Capital Group, LLC or any ultimate parent or Controlled Affiliate thereof that serves as a manager, managing member or general partner of any its managed funds or accounts or special purpose holding vehicles owned by such funds and accounts, (ii) any ultimate parent of MassMutual or (iii) with respect to any subsequent transferees of the Persons described in clauses (i) and (ii) (and any subsequent transferees thereof), any (x) ultimate parent entity thereof or (y) any Controlled Affiliate thereof that serves as a manager, managing member or general partner of any funds or accounts that own any Notes.

"*UCC*" means the Uniform Commercial Code as in effect in the applicable state of jurisdiction.

"*U.S. Economic Sanctions*" is defined in Section 7.14(a).

" *USA PATRIOT Act*" means United States Public Law 107-56, Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, as amended from time to time, and the rules and regulations promulgated thereunder from time to time in effect.

"*Voting Shares*" means shares of Common Stock that were issued upon exercise of any of the Warrants (but, for the avoidance of doubt, no other shares of Common Stock).

"*Warehouse Lines*" means lines of credit, repurchase agreements and Debt secured by commercial real estate mortgage loans and other commercial real estate-related debt investments (including any instrument evidencing the same and any instrument, security or other asset acquired through collection efforts with respect to the same), Equity Interests issued by the borrower or seller party thereto, and all files, documents, agreements, real estate, collections and other related rights and assets.

"*Warrants*" is defined in Section 1.2.

EXHIBIT 1

FORM OF NOTE

EXANTAS CAPITAL CORP.

12.00% Senior Notes due July 31, 2027

No. [_____] [_____]
$[_____]

FOR VALUE RECEIVED, the undersigned, Exantas Capital Corp. (herein called the "*Company*"), a corporation organized and existing under the laws of Maryland, hereby promises to pay to [_____], or registered assigns, the principal sum of [_____] DOLLARS on July 31, 2027 (the "*Maturity Date*"). Interest (computed on the basis of a 365 or 366-day year) shall accrue on the unpaid principal balance hereof at the rate of 12.00% per annum from the date hereof until the principal hereof shall have been paid in full, with such interest payable semi-annually on the last Business Day of each January and July (the "*Interest Payment Date*") in each year, commencing January 29, 2021, and on the Maturity Date. On each Interest Payment Date (other than the Maturity Date), the Company shall pay interest for such interest period on a portion of the unpaid principal balance hereof by (i) capitalizing an amount equal to the *product of* (x) 3.25%, *multiplied by* (y) the quotient obtained by dividing (A) the number days in such interest period by (B) the number of days in such calendar year *multiplied by* (z) the unpaid principal balance hereof (the "*PIK Interest*") on such Interest Payment Date and adding it to (and thereby increasing) the outstanding principal amount of this Note and (ii) paying interest for such interest period on a portion of the unpaid principal balance hereof in cash on such Interest Payment Date in an amount equal to the *product of* (x) a percentage equal to 8.75% *multiplied by* (y) the quotient obtained by dividing (A) the number days in such interest period by (B) the number of days in such calendar year *multiplied by* (z) the unpaid principal balance hereof; provided, however, by written notice to such holder of the Note at least five (5) Business Days in advance of the Interest Payment Date, the Company may elect to (a) (i) pay interest for such interest period on a portion of the unpaid principal balance hereof by capitalizing an amount equal to the *product of* (x) a percentage less than 3.25%, to be identified by the Company in such notice ("*PIK Optional Paid Percentage*") *multiplied by* (y) the quotient obtained by dividing (A) the number days in such interest period by (B) the number of days in such calendar year *multiplied by* (z) the unpaid principal balance hereof (the "*PIK Optional Interest*") on such Interest Payment Date and adding it to (and thereby increasing) the outstanding principal amount of this Note and (ii) pay interest for such interest period on a portion of the unpaid principal balance hereof in cash on such Interest Payment Date in an amount equal to the *product of* (x) a percentage equal to 12.00% minus the PIK Optional Paid Percentage for such Interest Payment Date *multiplied by* (y) the quotient obtained by dividing (A) the number days in such interest period by (B) the number of days in such calendar year *multiplied by* (z) the unpaid principal balance hereof; or (b) pay the full amount of interest for such interest period on the unpaid principal balance hereof in cash to the holder of the Note. Following an increase in the principal amount of this Note as a result of PIK Interest or PIK Optional Interest, this Note shall bear interest on such increased principal amount from and after the date of such increase. On the Maturity Date, all interest on this Note shall be paid solely in cash.

At any time when an Event of Default has occurred and is continuing, all amounts outstanding under the Notes shall bear interest at a rate per annum equal to the Default Rate, with such additional amounts required to be paid in cash on each Interest Payment Date. Interest on any overdue amounts shall be payable on demand.

Payments of principal of, interest on and any Make-Whole Amount owing pursuant to the Note and Warrant Purchase Agreement shall be made in lawful money of the United States of America on the terms set forth in Section 16 of the Note and Warrant Purchase Agreement.

This Note is one of the Notes (herein called the "*Notes*") issued pursuant to the Note and Warrant Purchase Agreement, dated as of July 31, 2020 (as from time to time amended, the "*Note and Warrant Purchase Agreement*"), among the Company and the Purchasers signatory thereto and is entitled to the benefits thereof. Each holder of this Note will be deemed, by its acceptance hereof, to have agreed to the confidentiality provisions set forth in Section 22 of the Note and Warrant Purchase Agreement. Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Note and Warrant Purchase Agreement.

This Note is a registered Note and, as provided in the Note and Warrant Purchase Agreement, upon surrender of this Note for registration of transfer, duly endorsed, or accompanied by a written instrument of transfer duly executed, by the registered holder hereof or such holder' s attorney duly authorized in writing, a new Note for a like principal amount will be issued to, and registered in the name of, the transferee. Prior to due presentment for registration of transfer, the Company may treat the person in whose name this Note is registered as the owner hereof for the purpose of receiving payment and for all other purposes, and the Company will not be affected by any notice to the contrary.

This Note is subject to optional prepayment, in whole or from time to time in part, at the times and on the terms (including with respect to the required payment of any applicable Make-Whole Amount) specified in the Note and Warrant Purchase Agreement, but not otherwise.

If a Change in Control has occurred or an Event of Default occurs and the Obligations are accelerated pursuant to Section 14.1 of the Note and Warrant Purchase Agreement, the principal of this Note shall become due and payable in the manner, at the price (including any applicable Make-Whole Amount) and with the effect provided in the Note and Warrant Purchase Agreement.

This Note shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the law of the State of New York, excluding choice-of-law principles of the law of such state that would require the application of the laws of a jurisdiction other than such State.

Exantas Capital Corp.

By _____
Name:
Title:

EXHIBIT 2

TAX MATTERS

SECTION 1.01. Taxes.

(a) *Defined Terms*. For purposes of this Section, the term "applicable law" includes FATCA.

(b) *Payments Free of Taxes*. Any and all payments by or on account of any obligation of a Note Party under any Notes Document shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law requires the deduction or withholding of any Tax from any such payment by a Note Party, then such Note Party shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by such Note Party shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section) the applicable holder receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(c) *Payment of Other Taxes by Issuer*. The Note Parties shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the applicable holder timely reimburse it for the payment of, any Other Taxes.

(d) *Indemnification by Issuer*. The Note Parties shall jointly and severally indemnify each holder, within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by such holder or required to be withheld or deducted from a payment to such holder and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to a Note Party by a holder, shall be conclusive absent manifest error.

(e) *Evidence of Payments*. As soon as practicable after any payment of Taxes by a Note Party to a Governmental Authority pursuant to this Section, such Note Party shall deliver to the applicable holder the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to such applicable holder.

(f) *Status of Holders*. (i) Any holder that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Notes Document shall deliver to the Issuer, at the time or times reasonably requested by the Issuer, such properly completed and executed documentation reasonably requested by the Issuer as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any holder, if reasonably requested by the Issuer, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Issuer as will enable the Issuer to determine whether or not such holder is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in paragraphs (g)(ii)(A), (ii)(B) and (ii)(D) of this Section) shall not be required if in the holder' s reasonable judgment such completion, execution or submission would subject such holder to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such holder.

(ii) Without limiting the generality of the foregoing,

(A) any holder that is a U.S. Person shall deliver to the Issuer on or about the date on which such holder becomes a holder under this Agreement (and from time to time thereafter upon the reasonable request of the Issuer), executed copies of IRS Form W-9 certifying that such holder is exempt from U.S. federal backup withholding tax;

(B) any foreign holder shall, to the extent it is legally entitled to do so, deliver to the Issuer (in such number of copies as shall be requested by the recipient) on or about the date on which such foreign holder becomes a holder under this Agreement (and from time to time thereafter upon the reasonable request of the Issuer, whichever of the following is applicable:

(1) in the case of a foreign holder claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Notes Document, executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Notes Document, IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) executed copies of IRS Form W-8ECI;

(3) in the case of a foreign holder claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit 2A to the effect that such foreign holder is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of the Issuer within the meaning of Section 871(h)(3)(B) of the Code, or a "controlled foreign corporation" related to the Issuer as described in Section 881(c)(3)(C) of the Code (a "*U.S. Tax Compliance Certificate*") and (y) executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E; or

(4) to the extent a foreign holder is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN, IRS Form W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit 2B or Exhibit 2C, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the foreign holder is a partnership and one or more direct or indirect partners of such foreign holder are claiming the portfolio interest exemption, such foreign holder may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit 2D on behalf of each such direct and indirect partner;

(C) any foreign holder shall, to the extent it is legally entitled to do so, deliver to the Issuer on or about the date on which such foreign holder becomes a holder under this Agreement (and from time to time thereafter upon the reasonable request of the Issuer), executed copies of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Issuer r to determine the withholding or deduction required to be made; and

(D) if a payment made to a holder under any Notes Document would be subject to U.S. federal withholding Tax imposed by FATCA if such holder were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such holder shall deliver to the Issuer at the time or times prescribed by law and at such time or times reasonably requested by the Issuer such documentation prescribed by Applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Issuer as may be necessary for the Issuer to comply with its obligations under FATCA and to determine that such holder has complied with such holder' s obligations under FATCA or to determine the amount, if any, to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Each holder agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Issuer in writing of its legal inability to do so.

(g) *Treatment of Certain Refunds*. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section (including by the payment of additional amounts pursuant to this Section), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (h) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (h), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (h) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(h) *Survival*. Each party' s obligations under this Section shall survive any assignment of rights by, or the replacement of, a holder and the repayment, satisfaction or discharge of all obligations under any Notes Document.

SECTION 1.02. Definitions.

As used in this Exhibit, the following terms have the following meanings:

"*Change in Law*" means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign 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 or issued.

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

"*Excluded Taxes*" means any of the following Taxes imposed on or with respect to a holder or required to be withheld or deducted from a payment to a holder, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such holder 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 (ii) that are Other Connection Taxes, (b) in the case of a holder, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such holder with respect to an applicable interest in a Note pursuant to a law in effect on the date on which (i) such holder acquires such interest in the Note or (ii) such holder changes its lending office, except in each case to the extent that, pursuant to Section 1.01 of this Exhibit, amounts with respect to such Taxes were payable either to such holder' s assignor immediately before such holder became a party hereto or to such holder immediately before it changed its lending office, (c) Taxes attributable to such holder' s failure to comply with Section 1.01(g) of this Exhibit and (d) any withholding Taxes imposed under FATCA.

"*FATCA*" means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

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

"*IRS*" means the United States Internal Revenue Service.

"*Note Party*" means the Company.

"*Other Connection Taxes*" means, with respect to any holder, Taxes imposed as a result of a present or former connection between such holder and the jurisdiction imposing such Tax (other than connections arising from such holder 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 Notes Document, or sold or assigned an interest in any Note or Notes Document).

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

"*Treasury Regulations*" means the Treasury regulations promulgated under the Code.

FORM OF
U.S. TAX COMPLIANCE CERTIFICATE
(For Foreign Holders That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Note and Warrant Purchase Agreement dated as of July 31, 2020 (as amended, supplemented or otherwise modified from time to time, the "*Note and Warrant Purchase Agreement*"), among Exantas Capital Corp., a corporation organized under the laws of Maryland and the Purchasers signatory thereto.

Pursuant to the provisions of Section 1.01 of Exhibit 2 of the Note and Warrant Purchase Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the Notes in respect of which it is providing this certificate, (ii) it is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a "ten percent shareholder" of the Issuer within the meaning of Section 871(h)(3)(B) of the Code and (iv) it is not a "controlled foreign corporation" related to the Issuer as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Issuer with a certificate of its non-U.S. Person status on IRS Form W-8BEN or IRS Form W -8BEN-E. By executing this certificate, the undersigned agrees that (1) if the information provided in this certificate changes, the undersigned shall promptly so inform the Issuer, and (2) the undersigned shall have at all times furnished the Issuer with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments. Unless otherwise defined herein, terms defined in the Note and Warrant Purchase Agreement and used herein shall have the meanings given to them in the Note and Warrant Purchase Agreement.

[NAME OF HOLDER]

By: _____
Name:
Title:

Date: _____ __, 20[ ]

EXHIBIT 2B

FORM OF
U.S. TAX COMPLIANCE CERTIFICATE
(For Foreign Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Note and Warrant Purchase Agreement dated as of July 31, 2020 (as amended, supplemented or otherwise modified from time to time, the "*Note and Warrant Purchase Agreement*"), among Exantas Capital Corp., a corporation organized under the laws of Maryland and the Purchasers signatory thereto.

Pursuant to the provisions of Section 1.01 of Exhibit 2 of the Note and Warrant Purchase Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (ii) it is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a "ten percent shareholder" of the Issuer within the meaning of Section 871(h)(3)(B) of the Code and (iv) it is not a "controlled foreign corporation" related to the Issuer as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating holder with a certificate of its non-U.S. Person status on IRS Form W-8BEN or IRS Form W-8BEN-E. By executing this certificate, the undersigned agrees that (1) if the information provided in this certificate changes, the undersigned shall promptly so inform such holder in writing, and (2) the undersigned shall have at all times furnished such holder with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Note and Warrant Purchase Agreement and used herein shall have the meanings given to them in the Note and Warrant Purchase Agreement.

[NAME OF PARTICIPANT]

By: _____
Name:
Title:

Date: _____ __, 20[ ]

FORM OF
U.S. TAX COMPLIANCE CERTIFICATE
(For Foreign Participants That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Note and Warrant Purchase Agreement dated as of July 31, 2020 (as amended, supplemented or otherwise modified from time to time, the "*Note and Warrant Purchase Agreement*"), among Exantas Capital Corp., a corporation organized under the laws of Maryland and the Purchasers signatory thereto.

Pursuant to the provisions of Section 1.01 of Exhibit 2 of the Note and Warrant Purchase Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the participation in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such participation, (iii) with respect such participation, neither the undersigned nor any of its direct or indirect partners/members is a "bank" extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a "ten percent shareholder" of the Issuer within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a "controlled foreign corporation" related to the Issuer as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating holder with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or IRS Form W-8BEN-E or (ii) an IRS Form W- 8IMY accompanied by an IRS Form W-8BEN or IRS Form W-8BEN-E from each of such partner' s/member' s beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided in this certificate changes, the undersigned shall promptly so inform such holder and (2) the undersigned shall have at all times furnished such holder with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Note and Warrant Purchase Agreement and used herein shall have the meanings given to them in the Note and Warrant Purchase Agreement.

[NAME OF PARTICIPANT]

By: _____
Name:
Title:

Date: _____ __, 20[ ]

FORM OF
U.S. TAX COMPLIANCE CERTIFICATE
(For Foreign Holders That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Note and Warrant Purchase Agreement dated as of July 31, 2020 (as amended, supplemented or otherwise modified from time to time, the "*Note and Warrant Purchase Agreement*"), among Exantas Capital Corp., a corporation organized under the laws of Maryland and the Purchasers signatory thereto.

Pursuant to the provisions of Section 1.01 of Exhibit 2 of the Note and Warrant Purchase Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the Notes in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such Notes, (iii) with respect to the extension of credit pursuant to this Note and Warrant Purchase Agreement or any other Notes Document, neither the undersigned nor any of its direct or indirect partners/members is a "bank" extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a "ten percent shareholder" of the Issuer within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a "controlled foreign corporation" related to the Issuer as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Issuer with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or IRS Form W-8BEN-E or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or IRS Form W-8BEN-E from each of such partner' s/member' s beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided in this certificate changes, the undersigned shall promptly so inform the Issuer, and (2) the undersigned shall have at all times furnished the Issuer with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Note and Warrant Purchase Agreement and used herein shall have the meanings given to them in the Note and Warrant Purchase Agreement.

[NAME OF HOLDER]

By: _____
Name:
Title:

Date: _____ __, 20[ ]

EXHIBIT 3

FORM OF WARRANT

[See attached]

THE SECURITIES EVIDENCED BY THIS WARRANT, AND THE SECURITIES ISSUABLE UPON ITS EXERCISE, HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR APPLICABLE STATE SECURITIES LAWS, AND MAY BE OFFERED, PLEDGED, SOLD, ASSIGNED, TRANSFERRED OR OTHERWISE DISPOSED OF ONLY IF REGISTERED PURSUANT TO THE PROVISIONS OF THE ACT AND SUCH LAWS, OR IF AN EXEMPTION FROM REGISTRATION IS AVAILABLE.

NO. ___

FORM
OF
WARRANT
TO PURCHASE COMMON STOCK OF
EXANTAS CAPITAL CORP.

[●] Shares of Common Stock _____, 202[●]

EXANTAS CAPITAL CORP., a Maryland corporation (the "Company"), for value received, hereby certifies that [●] or registered assigns (the "Warrantholder"), is the owner of the rights (each, a "Warrant," and collectively the "Warrants"), subject to the terms and conditions hereof, to purchase from the Company at any time, and from time to time, commencing on the date any Notes (as defined in the Note and Warrant Purchase Agreement, dated as of July 31, 2020, between the Company and the Purchasers named therein (the "Note and Warrant Purchase Agreement")) were initially issued (the "Exercise Commencement Date") and ending on the seventh anniversary of the Exercise Commencement Date (or, if such date is not a Business Day (as defined below), the first following Business Day) (the "Exercise Period"), [●] shares of common stock, $0.001 par value per share, of the Company (the "Common Shares" and each Common Share issuable upon exercise of a Warrant, a "Warrant Share"). The exercise price per Warrant Share shall be $0.01 per share, adjusted as provided in Article II hereof (the "Exercise Price"), payable in full as to each Warrant Share exercised at the time of purchase. The term "Business Day" as used herein refers to any day of the week other than a Saturday, Sunday or a day which in the City of New York, State of New York, shall be a legal holiday.

The Warrants may be exercised in whole or in part at any time or from time to time during the Exercise Period.

The portion of the Warrants not exercised by 5:30 p.m., Eastern Time on the last day of the Exercise Period shall become void, cease to have value and all rights hereunder and all rights in respect thereof shall cease.

ARTICLE I

EXERCISE OF WARRANTS

Section 1.01 **Exercise of Warrants**.

(a) General Exercise. The Warrants may be exercised during the Exercise Period upon delivery by the Warrantholder of the Exercise Notice, in the form attached hereto as Exhibit A, duly completed and signed, and by (i) paying in full to the Company (A) in cash, or (B) by certified or official bank check or (C) by any combination of the foregoing, in the amount equal to (1) the then-current Exercise Price multiplied by (2) the number of Warrant Shares in respect of such portion of the Warrants that are exercised pursuant to the Exercise Notice, plus any applicable taxes (excluding taxes that the Company is required to pay hereunder) (the "Aggregate Exercise Price") (such exercise, a "Cash Exercise") or (ii) a Cashless Exercise (as defined below).

(b) Cashless Exercise. To the extent permitted by applicable law and subject to the terms and conditions of this Warrant, the Warrantholder may exercise the Warrants, in whole or in part, in lieu of making payment otherwise contemplated to be made to the Company in connection with a Cash Exercise, by electing instead to receive upon such exercise the "Net Number" of Warrant Shares determined in accordance with the following formula (a "Cashless Exercise")

$$\text{Net Number} = \frac{Y\,(A-B)}{A}$$

Where:

Y = The number of gross Common Shares that would be issuable upon such exercise of the Warrants in accordance with the terms of the Warrants if such exercise were by means of a Cash Exercise rather than a Cashless Exercise;

A = The Market Price[1] as of the Exercise Date; and

[1] "Market Price" means, with respect to the Common Shares, on any given day if the Common Shares are traded on the New York Stock Exchange on such date, the last reported sale price, regular way, of the Common Shares on the New York Stock Exchange on such date, or, in case no such sale takes place on such day, the last reported sale price, regular way, of the Common Shares on the New York Stock Exchange on the first Trading Day for which there is a last reported sale price immediately prior to such date on the New York Stock Exchange. If the Common Shares are not traded on the New York Stock Exchange on any date of determination, the Market Price of the Common Shares on such date of determination means the closing sale price as reported in the composite transactions for the principal U.S. national or regional securities exchange on which the Common Shares are so listed or quoted, or, if no closing sale price is reported, the last reported sale price on the principal U.S. national or regional securities exchange on which the Common Shares are so listed or quoted, or if the Common Shares are not so listed or quoted on a U.S. national or regional securities exchange, the last quoted bid price for the Common Shares in the over-the-counter market as reported by the Company, or, if that bid price is not available, the Market Price of the Common Shares on that date shall mean the fair market value per share as determined by the Board (as defined below) in reliance on an opinion of an independent financial expert retained by the Company for this purpose, using one or more valuation methods that the independent financial expert in its professional judgment determines to be most appropriate, assuming such securities are fully distributed and are to be sold in an arm' s-length transaction and there was no compulsion on the part of any party to such sale to buy or sell and taking into account all relevant factors.

B = The Exercise Price.

The Company and the Warrantholder agree, unless otherwise required by a change in law or by the Internal Revenue Service or other governmental authority following an audit or examination, (i) in the event of a Cashless Exercise under this Section 1.01(b), the Warrantholder' s exercise of this Warrant in exchange for the receipt of the Warrant Shares issuable in accordance with this Warrant (or the portion thereof being cancelled) shall be treated as a recapitalization under Section 368(a)(1)(E) of the Internal Revenue Code of 1986, as amended and (ii) not to file any tax return inconsistent with the foregoing.

(c) As soon as practicable after any exercise of any Warrants and payment by the Warrantholder of the full Exercise Price for the Warrant Shares as to which the Warrants are then being exercised and any applicable taxes, the Company shall issue the Warrant Shares by book-entry registration on the books and records of the Company (or the Company' s transfer agent, if any) in the name of the Warrantholder or as the Warrantholder shall direct on the Exercise Notice and evidenced by statements issued by the Company to such Warranholder of the Warrants reflecting such book-entry positon (the "Warrant Statements").

(d) Each person in whose name any such Warrant Statement for Warrant Shares is reflected shall for all purposes be deemed to have become the holder of record of such Warrant Shares on the date on which the Warrant was exercised and payment of the Exercise Price and any applicable taxes was made to the Company, irrespective of the date of reflection of such exercise for Warrant Shares on the Warrant Statement.

(e) Upon issuance, all Warrant Shares will be duly authorized, validly issued, fully paid and nonassessable and free and clear of all liens, other than liens created by or in respect of the Warrantholder. The Company shall pay all documentary stamp taxes attributable to the initial issuance of Warrant Shares. The Company shall not be required, however, to pay any tax imposed in connection with any transfer involved in the issue of the Warrant Shares in a name other than that of the Warrantholder. In such case, the Company shall not be required to register in the Warrant Register (as defined below) any Warrant Shares until the person or persons requesting the same shall have paid to the Company the amount of any such tax or shall have established to the Company' s satisfaction that the tax has been paid or that no tax is due and shall have complied with Section 6.02.

(f) The Company shall keep at its offices a warrant register (the "Warrant Register") in which, subject to such reasonable regulations as it may prescribe, it shall register the Warrants as well as any exchanges and transfers of outstanding Warrants, all in form satisfactory to the Company.

Section 1.02 **No Fractional Shares to be Issued**. The Company shall not be required to issue any fractional Warrant Shares in connection with the exercise of the Warrants, and in any case where the Warrantholder would, except for the provisions of this Section 1.02, be entitled under the terms hereof to receive a fractional Warrant Share upon the exercise of any Warrants, the Company shall, upon the exercise of such Warrants and receipt of the Exercise Price, issue that number of whole shares rounded to the nearest whole share.

Neither the Company nor the Warrantholder shall be entitled to any cash or other adjustment in respect of any such fractional Warrant Share.

Section 1.03 **Restrictions on Exercise**.

(a) Warrants may not be exercised to the extent that the issuance of Warrant Shares upon such exercise would constitute a violation of any applicable federal or state laws or regulations pertaining to securities, real estate investment trusts or otherwise or to the extent that the issuance of Warrant Shares upon such exercise would constitute a breach or violation of the Company' s charter.

(b) Notwithstanding anything in this Agreement to the contrary, the Warrants may not be exercised to the extent that the issuance of the Warrant Shares upon such exercise would result in the Warrantholder holding greater than 9.8% of the Company' s outstanding Common Shares without the prior approval of the majority of the board of directors of the Company (the "Board") (including a majority of the Independent Directors).

Section 1.04 **Tax Treatment**. The Company and the Warrantholder agree, unless otherwise required by a change in law or by the Internal Revenue Service or other governmental authority following an audit or examination, (i) the Warrant shall be treated as equity of the Company for U.S. federal and applicable state and local income tax purposes and (ii) not to file any tax return inconsistent with the foregoing.

ARTICLE II

ADJUSTMENT OF EXERCISE PRICE; MERGER, ACQUISITION, ETC.; RESERVATION OF COMMON SHARES; PAYMENT OF TAXES

Section 2.01 **Stock Splits and Reverse Stock Splits**. If, at any time Warrants are outstanding, the Company (i) issues Common Shares as a dividend or distribution on Common Shares, or (ii) effects a subdivision of outstanding Common Shares into a larger number of Common Shares, or (iii) effects a combination or reverse share split of outstanding Common Shares into a smaller number of Common Shares, then in each case, the Exercise Price shall be adjusted to equal the product obtained by multiplying the Exercise Price by a fraction, the numerator of which shall be the number of Common Shares outstanding immediately prior to such event and the denominator of which shall be the number of Common Shares outstanding immediately giving effect to such event. Such adjustment shall become effective, (a) with respect to the adjustment made pursuant to clause (i) of this Section 2.01, immediately prior to

9:00 a.m., New York City time, on the Business Day following the record date fixed for such dividend or distribution and (b) with respect to the adjustments made pursuant to clauses (ii) and (iii) of this Section 2.01, immediately after the effective date of such subdivision, share split, share combination or reverse share split. Simultaneously with any adjustment of the Exercise Price in accordance with this Section 2.01, the number of Warrant Shares that may be purchased upon exercise of this Warrant shall be increased or decreased proportionally, so that after such adjustment the Aggregate Exercise Price payable hereunder for the adjusted number of Warrants shall be the same as the Aggregate Exercise Price in effect immediately prior to such adjustment. If any dividend or distribution of the type described in clause (i) of this Section 2.01 is declared but not so paid or made, the number of Warrant Shares exercisable shall again be adjusted to the number of Warrant Shares exercisable that would then be in effect if such dividend or distribution had not been declared (and the Exercise Price also correspondingly readjusted).

Section 2.02 **Reorganizations and Asset Sales**. If, at any time Warrants are outstanding, any capital reorganization or reclassification of the Company, or any consolidation or merger of the Company with another corporation, or the sale of all or substantially all of the assets of the Company (a "Fundamental Transaction") shall be effected in such a way that the holders of the Common Shares shall be entitled to receive securities or assets with respect to or in exchange for Common Shares, then the Warrantholder shall have the right to receive, upon exercise of this Warrant in accordance with the terms and conditions specified herein and in lieu of the Warrant Shares otherwise issuable by the Company upon the exercise of such Warrant, such securities or assets as it would have been entitled to receive upon the occurrence of such Fundamental Transaction if it had been, immediately prior to such Fundamental Change, the holder of the number of Warrant Shares then issuable upon exercise of the Warrants (the "Alternative Consideration"). In any such case, appropriate provision shall be made with respect to the rights and interests of such Warrantholder so that the provisions of this Warrant shall be applicable with respect to any Alternative Consideration thereafter deliverable upon exercise of the Warrants. The Company shall not effect any such Fundamental Transaction unless, prior to or simultaneously with the consummation thereof, the survivor or successor corporation resulting from such consolidation or merger or the purchaser of such assets shall assume by written instrument delivered to the Warrantholdder the obligation to deliver to such holder the Alternative Consideration; provided, however, that if the Company is to be liquidated or dissolved following any reorganization, reclassification, consolidation or sale of all or substantially all of its assets and in connection with such liquidation or dissolution, the holders of Common Stock shall be entitled to receive cash, the requirements of this Section 2.02 shall be satisfied if the Company shall provide for the distribution to each Warrantholder of the amount of cash to which such Warrantholder would have been entitled if such Warrantholder had exercised all of such Warrantholder' s outstanding Warrants less the then applicable Aggregate Exercise Price therefor.

Section 2.03 **Covenant to Maintain Par Value**. The Company will not, either directly or indirectly, upon any consolidation, merger, reorganization or reclassification to which the Company is a party change the par value of the Common Shares to an amount more than the Exercise Price, and at all times will take all such action as may be necessary or appropriate in order that the Company will maintain the par value of the Common Shares as contemplated in this Agreement to be not more than the Exercise Price.

Section 2.04 **Covenant to Reserve Shares for Issuance on Exercise**. The Company will cause an appropriate number of Common Shares to be duly and validly authorized and reserved and will keep available out of its authorized Common Shares, solely for the purpose of issue upon exercise of Warrants as herein provided, the full number of Common Shares, if any, then issuable if all outstanding Warrants then exercisable were to be exercised.

Section 2.05 **Certain Notices**. Upon any adjustment of the Exercise Price and whenever the securities issuable or deliverable in exchange for Warrants are changed pursuant to this Article II, then and in each such case the Company shall give prompt written notice thereof, by mailing such notice by United States Postal Service via First Class Mail, addressed to the Warrantholder at the address of the Warrantholder as shown on the books of the Company, which notice shall:

(a) in the case of an adjustment of the Exercise Price, state the Exercise Price resulting from such adjustment, setting forth in reasonable detail the method upon which such calculation is based, and

(b) in the case of a change in the securities issuable or deliverable in exchange for Warrants, describe in reasonable detail the facts requiring the change; specify the effective date of such change; and describe the number or amount of, and terms of, the shares or other securities issuable or deliverable in exchange for, each Warrant as so changed.

Failure to provide such notice, or any defect in such statement or notice, shall not affect the legality or validity of any such adjustment or change.

Section 2.06 **References to Common Shares**. Unless the context otherwise indicates, all references to Common Shares in this Warrant, in the event of a change under this Article II, shall be deemed to refer also to any other securities issuable or deliverable in exchange for Warrants pursuant to such change.

ARTICLE III

REGISTRATION RIGHTS; EXPENSES OF REGISTRATION

Section 3.01 **Registration Rights**. The Company shall file with the Securities and Exchange Commission (the "Commission") no later than 270 days from the date hereof, a registration statement on Form S-11 or such other form under the Securities Act of 1933, as amended (the "Securities Act"), then available to the Company providing for the resale pursuant to Rule 415 from time to time by the Warrantholder of any and all Warrant Shares (such registration statement, including the prospectus, amendments and supplements to such registration statement or prospectus, including pre-and post-effective amendments, all exhibits thereto and all material incorporated by reference or deemed to be incorporated by reference, if any, in such registration statement, the "Shelf Registration Statement"). The Company shall use its commercially reasonable efforts to cause such Shelf Registration Statement to be declared effective by the Commission as promptly as practicable following such filing. Any Shelf

Registration Statement shall provide for the resale from time to time, and pursuant to any method or combination of methods legally available (including, without limitation, firm-commitment underwritten public offerings, block trades, agented transactions, sales directly into the market, purchases or sales by brokers, derivative transactions, short sales, stock loan or stock pledge transactions and sales not involving a public offering) by the Warrantholder of any and all Warrant Shares.

Section 3.02 **Obligations of the Company**. In connection with the obligations of the Company with respect to the Shelf Registration Statement, the Company shall:

(a) prepare the Shelf Registration Statement and file it with the Commission, which Shelf Registration Statement shall comply in all material respects as to form with the requirements of the applicable form and include or incorporate by reference all financial statements required by the Commission to be filed therewith, and use its commercially reasonable efforts to cause such Shelf Registration Statement to become effective as promptly as practicable following such filing and to remain effective until the earlier to occur of (i) the third anniversary of the initial effective date of the Shelf Registration Statement; (ii) the date on which the Warrant Shares have been sold in full under Rule 144 under the Securities Act or an effective registration statement; (iii) the date on which the Warrant Shares are sold to the Company or any of its subsidiaries; or (iv) the date on which, in the opinion of counsel to the Company, the Warrant Shares not held by affiliates of the Company are saleable pursuant to Rule 144 (without compliance with volume or manner of sale restrictions) and if the Warrantholder, together with any other parties with whom its holdings of Common Shares are required to be aggregated under Rule 144, beneficially owns less than 5% of the outstanding Common Shares.

(b) pursuant to Section 3.02 hereof, (i) prepare and file with the Commission such amendments and post-effective amendments to the Shelf Registration Statement as may be necessary to keep the Shelf Registration Statement effective for the period described in Section 3.02(a) hereof and/or to register the resale of additional Common Shares that may be issuable upon conversion of additional warrants that may be issued to the Warrantholder in the future in connection with the Company' s issuance of Additional Notes (as defined in the Note and Warrant Purchase Agreement), (ii) cause each prospectus contained therein to be supplemented by any required prospectus supplement and, as so supplemented, to be filed pursuant to Rule 424 promulgated under the Securities Act, and (iii) comply with the provisions of the Securities Act with respect to the disposition of all securities covered by the Shelf Registration Statement during the applicable period in accordance with the method or methods of distribution set forth in the "Plan of Distribution" section of the Prospectus, provided, however; that prior to filing documents described in clauses (i) and (ii) above, the Company shall provide to the Warrantholder and the Warrantholder' s counsel and each underwriter, if any, with an adequate and appropriate opportunity to review and comment on such documents (and each amendment or supplement thereto).

(c) furnish to the Warrantholder, without charge, as many copies of each Prospectus, including each preliminary prospectus, and any amendment or supplement thereto and such other documents as such Warrantholder may reasonably request, in order to facilitate the public sale or other disposition of the Warrant Shares; the Company consents to the lawful use of such Prospectus, including each preliminary prospectus, by the Warrantholder, in connection with the offering and sale of the Warrant Shares covered by any such prospectus;

(d) use its commercially reasonable efforts to register or qualify, or obtain exemption from registration or qualification for, all Warrant Shares by the time the Shelf Registration Statement is declared effective by the Commission under all applicable state securities or "blue sky" laws of domestic United States jurisdictions, keep each such registration, qualification or exemption effective during the period the Shelf Registration Statement is required to be kept effective pursuant to Section 3.02(a) and do any and all other acts and things that may be reasonably necessary or advisable to enable the Warrantholder to consummate the disposition in each such jurisdiction of such Warrant Shares covered by the Shelf Registration Statement; provided, however, that the Company shall not be required to take any action to comply with this Section 3.02(d) if it would require the Company or any of its subsidiaries to (i) qualify generally to do business in any jurisdiction or to register as a broker or dealer in such jurisdiction where it would not otherwise be required to qualify but for this Section 3.02(d) and except as may be required by the Securities Act, (ii) subject itself to taxation in any such jurisdiction, or (iii) submit to the general service of process in any such jurisdiction;

(e) use its commercially reasonable efforts to cause all Warrant Shares to be registered and approved by such other domestic governmental agencies or authorities, if any, as may be necessary to enable the holders thereof to consummate the disposition of such Warrant Shares; provided, however, that the Company shall not be required to take any action to comply with this Section 3.02(e) if it would require the Company or any of its subsidiaries to (i) qualify generally to do business in any jurisdiction or to register as a broker or dealer in such jurisdiction where it would not otherwise be required to qualify but for this Section 3.02(e) and except as may be required by the Securities Act, (ii) subject itself to taxation in any such jurisdiction, or (iii) submit to the general service of process in any such jurisdiction;

(f) notify the Warrantholder promptly (i) when the Shelf Registration Statement has become effective and when any post-effective amendments thereto become effective or upon the filing of a supplement to any prospectus, (ii) of the issuance by the Commission or any state securities authority of any stop order suspending the effectiveness of such Shelf Registration Statement or the initiation of any proceedings for that purpose, (iii) of any request by the Commission or any other federal or state governmental authority for amendments or supplements to such Shelf Registration Statement or related prospectus or for additional information, and (iv) if, during the period such Shelf Registration Statement is effective, such Shelf Registration Statement or the related prospectus contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading or, in the case of the prospectus or any document incorporated by reference therein contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading (a "Disclosure Deficiency") (which information shall be accompanied by an instruction to suspend the use of the Shelf Registration Statement and the prospectus until the Disclosure Deficiency has been cured in accordance with Section 3.02(i) below);

(g) during the period of time referred to in Section 3.02(a) above, use its commercially reasonable efforts to avoid the issuance of, or if issued, to obtain the withdrawal of, any order enjoining or suspending the use or effectiveness of the Shelf Registration Statement or suspending the qualification (or exemption from qualification) of any of the Warrant Shares for sale in any jurisdiction, as promptly as practicable;

(h) upon request, furnish to the Warrantholder covered by the Shelf Registration Statement, without charge, at least one (1) conformed copy of such Shelf Registration Statement and any post-effective amendment or supplement thereto (without documents incorporated therein by reference or exhibits thereto, unless requested);

(i) upon the occurrence of any Disclosure Deficiency, use its commercially reasonable efforts to promptly prepare a supplement or post-effective amendment to the Shelf Registration Statement or the related prospectus or any document incorporated therein by reference or file any other required document so that, as thereafter delivered to the purchasers of the Warrant Shares, such prospectus will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, and, upon request, promptly furnish to the Warrantholder a reasonable number of copies each such supplement or post-effective amendment;

(j) use its commercially reasonable efforts (including, without limitation, seeking to cure in the Company' s listing or inclusion application any deficiencies cited by the exchange or market) to list or include all Warrant Shares on the New York Stock Exchange or such other securities exchange or inter-dealer automated quotation system on which the Common Shares are then listed or included for trading;

(k) use its commercially reasonable efforts to prepare and file in a timely manner (taking into account any permissible extensions) all documents and reports required by the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and, to the extent the Company' s obligation to file such reports pursuant to Section 15(d) of the Exchange Act expires prior to the expiration of the effectiveness period of the Shelf Registration Statement as required by Section 3.02(a) hereof, to register the Warrant Shares under the Exchange Act and to maintain such registration through the effectiveness period required by Section 3.02(a) hereof;

(l) provide a CUSIP number for all Warrant Shares not later than the effective date of the Shelf Registration Statement;

(m) provide and cause to be maintained a registrar and transfer agent for all Warrant Shares covered by the Shelf Registration Statement from and after a date not later than the effective date of such Shelf Registration Statement; and

(n) use its reasonable best efforts to cooperate in a timely manner with any request of the Warrantholder in respect of any block trade, hedging transaction or other transaction that is registered pursuant to a Shelf Registration that is not a firm commitment underwritten offering (each, an "Alternative Transaction"), including the filing of any supplements to the prospectus, amendments or post-effective amendments to the Shelf

Registration Statement, facilitating due diligence by counterparties to such Alternative Transactions and entering into customary agreements with respect to such Alternative Transactions (and providing customary representations, warranties, covenants, certificates, comfort letters, opinions and indemnities in such agreements) as well as providing other reasonable assistance in respect of such Alternative Transactions of the type applicable to a public offering subject to, to the extent customary for such transactions.

(o) Notwithstanding anything in this Section 3.02 to the contrary, the Company shall be entitled to postpone the filing of a Shelf Registration Statement, and from time to time to require the Warrantholder not to sell under a Shelf Registration Statement or to suspend the effectiveness thereof, if (i) the Company is actively pursuing an underwritten primary offering of securities of the Company, or (ii) the negotiation or consummation of a transaction by the Company or its subsidiaries is pending or an event has occurred, which negotiation, consummation or event would require additional disclosure by the Company in the Shelf Registration Statement of material information which the Company has a bona fide business purpose for keeping confidential and the non-disclosure of which in the Shelf Registration Statement would be expected, in the Company' s reasonable determination, to cause the Shelf Registration Statement to fail to comply with applicable disclosure requirements (each such circumstance a "Suspension Event"); provided, however, that the Company may not delay, suspend or withdraw such Shelf Registration Statement for more than ninety (90) days at any one time, or more than twice in any twelve (12) month period. Upon receipt of any written notice from the Company of the happening of any Suspension Event during the period the Shelf Registration Statement is effective or if as a result of a Suspension Event the Shelf Registration Statement or related prospectus contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made (in the case of the prospectus) not misleading, the Warrantholder agrees that (x) it will immediately discontinue offers and sales of the Warrant Shares under such Shelf Registration Statement until the Warrantholder receives copies of a supplemental or amended prospectus (which the Company agrees to promptly prepare) that corrects the misstatement(s) or omission(s) referred to above and receives notice that any post-effective amendment to the Shelf Registration Statement has become effective or unless otherwise notified by the Company that it may resume such offers and sales, and (y) it will maintain the confidentiality of any information included in the written notice delivered by the Company unless otherwise required by law.

Section 3.03 **Obligations of the Warrantholder**. In connection with the registration of the Warrant Shares, the Warrantholder shall:

(a) furnish to the Company, within 10 days of a written request by the Company, such information regarding itself, the Warrant Shares held by it and the intended method of disposition of the Warrant Shares held by it for inclusion in the Shelf Registration Statement as shall be reasonably required to effect the registration of such Warrant Shares and shall execute such documents in connection with such registration as the Company may reasonably request;

(b) cooperate with the Company as reasonably requested from time to time by the Company in connection with the preparation and filing of the Shelf Registration Statement; and

(c) upon receipt of any notice from the Company of the happening of any event of the kind described in Section 3.02(f)(ii), (iii) or (iv) or any Suspension Event, immediately discontinue disposition of Warrant Shares pursuant to the Shelf Registration Statement until the Warrantholder' s receipt of the copies of the supplemented or amended prospectus contemplated by Section 3.02(e) and, if so directed by the Company, deliver to the Company (at the expense of the Company) or destroy (and deliver to the Company a certificate of destruction) all copies in such Warrantholder' s possession, of the prospectus covering such Warrant Shares current at the time of receipt of such notice.

Section 3.04 **Expenses**. The Company shall pay all expenses incident to the performance of its obligations under Section 3.02 ("Registration Expenses"), including (i) all Commission, securities exchange listing or inclusion fees, and registration and filing fees of the Financial Industry Regulatory Authority ("FINRA") ,(ii) all fees and expenses incurred in connection with compliance with international, federal or state securities or blue sky laws (including, without limitation, any registration, listing and filing fees and reasonable fees and disbursements of counsel in connection with blue sky registration, qualification or exemption of any of the Warrant Shares and the preparation of a blue sky memorandum and compliance with the rules of FINRA), (iii) all expenses incurred in preparing or assisting in preparing, word processing, duplicating, printing, delivering and distributing the Shelf Registration Statement, any prospectus, any amendments or supplements thereto, any underwriting agreements or securities sales agreements insofar as the Company is required to be a party thereto (but only with respect to the negotiation by the Company of the terms relating to it and the performance of its obligations thereunder), certificates and any other documents relating to the performance under and compliance with the terms of these Warrants, (iv) all fees and expenses incurred in connection with the listing or inclusion of any of the Warrant Shares on the New York Stock Exchange or any other securities exchange or inter-dealer automated quotation system as required by Section 3.02(j), (v) the fees and disbursements of counsel for the Company and of the independent public accountants of the Company (including, without limitation, the expenses of any special audit and "cold comfort" letters required by or incident to such performance), and reasonable fees and disbursements of one counsel for the Warrantholder to review the Shelf Registration Statement if so requested by the Warrantholder holding more than 25% of the outstanding Warrants (which fees and disbursements shall be limited to $50,000 without the prior written consent of the Company), and (vi) any fees and disbursements customarily paid by issuers in issues and sales of securities (including the fees and expenses of any experts retained by the Company in connection with the Shelf Registration Statement), provided, however, that Registration Expenses shall exclude brokers' or underwriters' discounts and commissions and transfer taxes or transfer fees, if any, relating to the sale or disposition of Warrant Shares by the Warrantholder, the fees and expenses (including legal fees) in preparing any underwriting or securities sales agreements other than as provided in clause (iii), above, and the fees and disbursements of any counsel to the Warrantholder other than as provided for in clause (v) above.

ARTICLE IV

INDEMNIFICATION AND CONTRIBUTION

Section 4.01 **Indemnification of Warrantholder**. The Company agrees to indemnify and hold harmless (i) the Warrantholder, and (ii) its Affiliates, stockholders, employees, agents, officers, partners, members, and directors, and each Person who controls such Warrantholder (within the meaning of Section 15 of the Securities Act and Section 20 of the Securities Exchange Act) (each person referred to in clause (i) or (ii) are referred to collectively as the "Warrantyholder Indemnified Parties"), from and against any losses, claims, damages or liabilities, joint or several, or any actions in respect thereof (including, but not limited to, any losses, claims, damages, judgments, expenses, liabilities or actions relating to purchases and sales of the Warrant Shares) to which each Warrantholder Indemnified Party may become subject under the Securities Act, the Exchange Act or otherwise, insofar as such losses, claims, damages, judgments, expenses, liabilities or actions arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in the Shelf Registration Statement or the related prospectus including any document incorporated by reference therein, or in any amendment or supplement thereto or in any preliminary prospectus relating to the Shelf Registration Statement, or arise out of, or are based upon, the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, and shall reimburse, as incurred, the Warrantholder Indemnified Parties for any legal or other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, damage, liability or action in respect thereof; provided, however, that (i) the Company shall not be liable in any such case to the extent that such loss, claim, damage or liability arises out of or is based upon any untrue statement or alleged untrue statement or omission or alleged omission made in the Shelf Registration Statement or related prospectus or in any amendment or supplement thereto or in any preliminary prospectus relating to the Shelf Registration Statement in reliance upon and in conformity with written information pertaining to the Warrantholder or furnished to the Company by or on behalf of the Warrantholder specifically for inclusion therein and (ii) with respect to any untrue statement or omission or alleged untrue statement or omission made in any preliminary prospectus relating to the Shelf Registration Statement, the indemnity agreement contained in this subsection (a) shall not inure to the benefit of any person from whom the person asserting any such losses, claims, damages or liabilities purchased the Warrant Shares concerned, to the extent that a prospectus relating to such Warrant Shares was required to be delivered by such person under the Securities Act in connection with such purchase and any such loss, claim, damage or liability results from the fact that there was not sent or given to such person, at or prior to the written confirmation of the sale of such Warrant Shares to such person, a copy of the final prospectus if the Company had previously furnished copies thereof to the Warrantholder; provided, further, however, that this indemnity agreement will be in addition to any liability which the Company may otherwise have to such Warranntholder Indemnified Party.

Section 4.02 **Indemnification of the Company**. In connection with the Shelf Registration Statement, the Warrantholder, severally and not jointly with all other holders of warrants to purchase Common Shares included as selling stockholders in the Shelf Registration statement, will indemnify and hold harmless the Company, its officers, directors, partners, employees, representatives, agents and investment advisers and each person, if any, who controls any of the foregoing within the meaning of the Securities Act or the Exchange Act (the "Company Indemnified Persons") from and against any losses, claims, damages or liabilities or any actions in respect thereof, to which the Company or any such controlling person may become subject under the Securities Act, the Exchange Act or otherwise, insofar as such losses, claims, damages, liabilities or actions arise out of or are based upon any untrue statement of a material fact contained in the Shelf Registration Statement or a related prospectus or in any amendment or supplement thereto or in any preliminary prospectus relating to the Shelf Registration Statement, or arise out of or are based upon the omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, but in each case only to the extent that the untrue statement or omission was made in reliance upon and in conformity with written information pertaining to a Warrantholder or furnished to the Company by a Warrantholder specifically for inclusion therein; and, subject to the limitation set forth immediately preceding this clause, shall reimburse, as incurred, the Company or any Company Indemnified Person for any legal or other expenses reasonably incurred by the Company or such Company Indemnified Person in connection with investigating or defending any loss, claim, damage, liability or action in respect thereof. This indemnity agreement will be in addition to any liability which the Warrantholder may otherwise have to the Company or any Company Indemnified Person.

Section 4.03 **Notice**. If any action or proceeding (including a governmental investigation) shall be instituted involving any party in respect of which indemnity may be sought pursuant to this Article IV, such party (an "Indemnified Party") shall promptly notify the party against who such indemnity may be sought (the "Indemnifying Party") in writing and the Indemnifying Party shall assume the defense thereof, including the employment of counsel reasonably satisfactory to such Indemnified Party, and shall assume the payment of all reasonable fees and expenses; provided, that the failure of any Indemnified Party so to notify the Indemnifying Party shall not relieve the Indemnifying Party of its obligations hereunder except to the extent that the Indemnifying Party is materially prejudiced through the forfeiture of substantive rights and defenses by such failure to notify. In any such proceeding, any Indemnified Party shall have the right to retain its own counsel but the fees and expenses of such counsel shall be at the expense of such Indemnified Party unless (i) the Indemnifying Party and the Indemnified Party shall have mutually agreed to the retention of such counsel or (ii) in the reasonable judgment of such Indemnified Party (A) representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them or (B) there would be rights or defenses that would be available to such Indemnified Party that are inconsistent with or additional to, those of the Indemnifying Party. It is understood that, in connection with any proceeding or related proceedings in the same jurisdiction, the Indemnifying Party shall not be liable for the fees and expenses of more than one separate firm of attorneys (in addition to any local counsel) at any time for all such Indemnified Parties, and that all such fees and expenses shall be reimbursed promptly after receipt of an invoice setting forth such fees and expenses in reasonable detail. In the case of any such separate firm for the Indemnified Parties, such firm shall be designated in writing by the Indemnified Parties. The Indemnifying Party shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent, or if there be a final judgment for the plaintiff, the Indemnifying Party shall

indemnify and hold harmless each Indemnified Party from and against any damages (to the extent obligated herein) by reason of such settlement or judgment. Without the prior written consent of each affected Indemnified Party, no Indemnifying Party shall effect any settlement of any pending or threatened proceeding in respect of which such Indemnified Party is or could have been a party and indemnity could have been sought hereunder by such Indemnified Party, unless such settlement (i) includes an unconditional release of such Indemnified Party from all liability arising out of such proceeding and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of any Indemnified Party .

Section 4.04 **Contribution**. If the indemnification provided for in this Article IV is unavailable or insufficient to hold harmless an indemnified party under Sections 4.01 or 4.02, then each indemnifying party shall contribute to the aggregate amount paid or payable by such indemnified party as a result of the losses, claims, damages, expenses or liabilities (or actions in respect thereof) referred to in Sections 4.01 and 4.02 above in such proportion as is appropriate to reflect the relative fault of the indemnifying party or parties on the one hand and the indemnified party on the other in connection with the statements or omissions that resulted in such losses, claims, damages, expenses or liabilities (or actions in respect thereof) as well as any other relevant equitable considerations. The relative fault of the parties shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company on the one hand or such Warrantholder or such other indemnified party, as the case may be, on the other, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The amount paid by an indemnified party as a result of the losses, claims, damages, expenses or liabilities referred to in the first sentence of this Section 4.04 shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any action or claim which is the subject of this clause. Notwithstanding any other provision of this Section 4.04, the Warrantholder shall not be required to contribute any amount in excess of the amount by which the net proceeds received by the Warrantholder from the sale of the Warrant Shares pursuant to the Shelf Registration Statement exceeds the amount of damages which the Warrantholder has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. For purposes of this clause, each person, if any, who controls such indemnified party within the meaning of the Securities Act or the Exchange Act shall have the same rights to contribution as such indemnified party and each person, if any, who controls the Company within the meaning of the Securities Act or the Exchange Act shall have the same rights to contribution as the Company.

The agreements contained in this Article IV shall survive the sale of the Warrant Shares pursuant to the Shelf Registration Statement and shall remain in full force and effect, regardless of any termination or cancellation of this Agreement or any investigation made by or on behalf of any indemnified party.

ARTICLE V
OTHER PROVISIONS RELATING TO RIGHTS OF THE WARRANTHOLDER

Section 5.01 **Rights as Stockholders**.

(a) The Warrantholder, by reason of the ownership or possession of a Warrant, either at, before or after exercising one or more Warrants, shall have (i) the right to receive any cash dividends, stock dividends, allotments or rights, or other distributions, paid, allotted or distributed or distributable to the stockholders of the Company prior to the exercise of such Warrant and (ii) in the event the Company adopts or implements a shareholder rights agreement or effects an offering of securities to holders of Common Shares pursuant to which any rights ("Rights") are distributed to the holders of Common Shares of the Company, the right to receive such Rights; *provided* that (A) if the Warrantholder is an "Acquiring Person" (or an associate or affiliate thereof) or similar term under such shareholder rights agreement, it shall not have the right to receive such Rights, and (B) only one Right shall be issued with respect to each Warrant and the underlying Warrant Share (and if more than one Right is issued, only one Right shall be effective, and any additional Rights shall be null and void).

(b) Except as otherwise specifically provided herein, the Warrantholder, solely in its capacity as a holder of the Warrant, shall not be entitled to vote at, or to receive notice of, any meeting of stockholders of the Company, nor shall anything contained in this Warrant be construed to confer upon the Warrantholder, solely in its capacity as a holder of the Warrant, any of the rights of a stockholder of the Company, including, without limitation: (i) any right to vote in the election of directors or any other matters, (ii) any right to give or withhold consent to any corporate action (whether any reorganization, issue of stock, reclassification of stock, consolidation, merger, conveyance or otherwise) or (iii) any right to receive notice of meetings of the Company' s stockholders.

Section 5.02 **Liquidation, Merger, etc.; Notice to Warrantholder**.

If:

(a) the Company shall authorize the issuance to all holders of Common Shares of rights or warrants to subscribe for or purchase capital stock of the Company or of any other subscription rights or warrants, or

(b) the Company shall authorize the distribution to all holders of Common Shares of evidences of its indebtedness or assets (other than cash dividends or cash distributions payable out of current earnings, retained earnings, earned surplus or real estate investment trust taxable income, as determined pursuant to the Internal Revenue Code of 1986, as amended, or dividends payable in Common Shares); or

(c) there shall be proposed any consolidation, merger, reorganization or reclassification to which the Company is to be a party and for which approval of the holders of Common Shares is required, or the conveyance or transfer of the properties and assets of the Company substantially as an entirety; or

(d) there shall be proposed the voluntary or involuntary dissolution, liquidation or winding up of the Company; the Company shall give to each Warrantholder prompt written notice, by mailing such notice by United States Postal Service via First Class Mail, addressed to the Warrantholder at the address of the Warrantholder as shown on the books of the Company, which notice shall state: (i) the date as of which the holders of record of Common Shares to be entitled to receive any such rights, warrants or distribution are to be determined or (ii) the date on which any consolidation, merger, conveyance, transfer, reorganization, reclassification, dissolution, liquidation or winding up is expected to become effective, and the date as of which it is expected that holders of record of Common Shares shall be entitled to exchange the shares for securities or other property, if any, deliverable upon the consolidation, merger, conveyance, transfer, reorganization, reclassification, dissolution, liquidation or winding up. Such notice shall be given at least ten Business Days before the date as of which holders of Common Shares entitled to receive any distribution, securities or other property in connection with such transaction are determined.

ARTICLE VI
GENERAL PROVISIONS

Section 6.01 **Transfer of Warrants**. Subject to the legend appearing on the first page hereof to compliance with all other laws, rules or regulations pertaining to the transfer, sale or other disposition of the Warrants, and to the provisions of this Section 6.01, title to the Warrants evidenced by the Warrant Registry may be transferred by endorsement (by the Warrantholder executing the form of assignment attached hereto as Exhibit B including guaranty of signature) and delivery in the same manner as in the case of a negotiable instrument transferable by endorsement and delivery. Absent an effective registration statement under the Securities Act covering the disposition of this Warrant or the Common Shares issued or issuable upon exercise hereof, the Warrantholder will not sell or transfer any or all of such Warrants or Warrant Shares, as the case may be, without first providing the Company, at the Warrantholder' s expense, with an opinion of counsel (which may be counsel for the Company) reasonably satisfactory to the Company to the effect that such sale or transfer will be exempt from the registration requirements of the Securities Act. Each certificate (if any) representing Warrant Shares, unless at the time of exercise such Warrant Shares are registered for resale under the Securities Act, shall bear a legend in substantially the following form on the face thereof:

> THE SECURITIES EVIDENCED BY THIS WARRANT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR APPLICABLE STATE SECURITIES LAWS AND MAY BE OFFERED, PLEDGED, SOLD, ASSIGNED, TRANSFERRED OR OTHERWISE DISPOSED OF ONLY IF REGISTERED PURSUANT TO THE PROVISIONS OF THE ACT AND SUCH LAWS, OR IF AN EXEMPTION FROM REGISTRATION IS AVAILABLE.

Any certificate (if any) issued at any time in exchange or substitution for any certificate bearing such legend (except a certificate issued upon completion of a distribution under a registration statement covering the securities represented) shall also bear such legend unless, in the opinion of counsel to the Company, the securities represented thereby may be transferred as contemplated by such holder without violation of the registration requirements of the Securities Act and any applicable state securities laws.

Section 6.02 **No Impairment**. The Company will not, by amendment of its charter or through reorganization, consolidation, merger, dissolution, sale of assets or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such action as may be necessary or appropriate in order to protect the rights of the Warrantholder against impairment. Without limiting the generality of the foregoing, the Company will not increase the par value of the Warrant Shares above the amount payable therefor upon such exercise, and at all times will take all such action as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and non-assessable stock upon the exercise of the Warrants.

Section 6.03 **Governing Law**. The Warrants shall be deemed a contract made under the laws of the State of New York and for all purposes shall be construed in accordance with the laws of the State of New York without giving effect to the principles of conflicts of law thereof.

Section 6.04 **Successors and Assigns**. All the covenants and provisions hereof shall bind and inure to the benefit of the Company, the Warrantholder and their respective successors and assigns hereunder.

Section 6.05 **Notices**. Any notice or demand authorized hereunder to be given or made by the Warrantholder to or on the Company shall be sufficiently given or made if sent by United States Postal Service via First Class Mail addressed (until the Warrantholder is notified of another address in the manner set forth herein as follows:

Exantas Capital Corp.
1845 Walnut St.
17th Floor
Philadelphia, PA 19103
Attention: Chief Financial Officer

With a copy (which shall not constitute notice) to:

Morrison & Foerster LLP
250 West 55th Street
New York, New York 10019
Attention: Tracy A. Bacigalupo
E-mail: tbacigalupo@mofo.com

Any notice or demand authorized to be given or made to the Warrantholder hereunder shall be sufficiently given or made if sent by United States Postal Service via First Class Mail addressed (until the Company is notified of another address in the manner set forth as follows:

[●]
[●]
[●]

Attention: [●]
E-mail: [●]

With a copy (which shall not constitute notice) to:

[●]
[●]
[●]
Attention: [●]
E-mail: [●]

Section 6.06 **Headings**. The Article and Section headings herein are for convenience only and are not a part of this Warrant and shall not affect the interpretation thereof.

IN WITNESS WHEREOF, the Company has caused this Warrant to be duly executed under its corporate seal.

Dated: _____
(Corporate Seal)

EXANTAS CAPITAL CORP.
By:

EXHIBIT A
EXERCISE NOTICE
(To be executed upon exercise of Warrant)
TO EXANTAS CAPITAL CORP.:

The undersigned hereby irrevocably elects to purchase [●] Warrant Shares pursuant to the attached Warrant. Capitalized terms used herein and not otherwise defined shall have the respective meanings set forth in the Warrant.

(1) The undersigned intends that payment of the Exercise Price shall be made as (check one)

"Cash Exercise" pursuant to Section 1.01(a) of the Warrant

"Cashless Exercise" pursuant to Section 1.01(b) of the Warrant

(2) If the undersigned has elected a Cash Exercise, the undersigned tenders herewith payment of the Aggregate Exercise Price in full in the form of cash or a certified or official bank check (or combination thereof) in the amount of $[●].

(3) Pursuant to this Exercise Notice, the Company shall issue to the undersigned [●] Warrant Shares by book-entry registration on the books and records of the Company (or the Company' s transfer agent, if any) to the undersigned.

Name: [●]

Address: [●]
EIN: [●]

By: _____
Name:
Title:

Dated: [●], 20[●]

EXHIBIT B
FORM OF ASSIGNMENT

(To be executed only upon assignment of Warrant)

For value received, _____ hereby sells, assigns and transfers unto _____, the attached Warrant and the Warrants evidenced hereby, together with all right, title and interest therein, and does hereby irrevocably constitute and appoint _____ attorney, to transfer said Warrant and the Warrants evidenced hereby, on the books of Exantas Capital Corp., with full power of substitution in the premises.

Dated: _____

_____
Note: The above signature should correspond exactly with the name on the face of this Warrant

Exhibit 10.5

PROMISSORY NOTE

$12,000,000.00

New York, New York
July 31, 2020

FOR VALUE RECEIVED, **ACRES CAPITAL CORP.**, a Delaware corporation, having its principal place of business at 865 Merrick Avenue, Suite 200S, Westbury, New York 11590 (together with its successors and permitted assigns, "**Borrower**"), hereby promises to pay to the order of **RCC REAL ESTATE, INC.**, a Delaware corporation, as payee, having an address at c/o ACRES Capital, LLC, 865 Merrick Avenue, Suite 200S, Westbury, New York 11590 (together with its successors and assigns, "**Lender**"), or at such other place as the holder hereof may from time to time designate in writing, the principal sum of Twelve Million and No/100 Dollars ($12,000,000.00) (the "**Loan**"), in lawful money of the United States of America with interest thereon to be computed from the date of this Promissory Note (this "**Note**") at the Interest Rate (or the Default Rate if applicable), and to be paid in accordance with the terms of this Note. Capitalized terms not defined below shall be defined as set forth on Exhibit A attached hereto.

ARTICLE 1: PAYMENT TERMS

Section 1.1 Interest Rate.

(a) Interest Rate. Interest on the outstanding principal balance of the Loan shall accrue at the Interest Rate or as otherwise set forth in this Note from (and including) the Closing Date to but excluding the date the Loan is paid in full, whether at maturity, upon acceleration, by prepayment or otherwise.

(b) Interest Calculation. Interest on the outstanding principal balance of the Loan shall be calculated by multiplying (a) the actual number of days elapsed in the relevant Accrual Period by (b) a daily rate based on the Interest Rate (or the Default Rate if applicable) and a three hundred sixty (360) day year by (c) the outstanding principal balance of the Loan.

(c) Default Rate. In the event that, and for so long as, any Event of Default shall have occurred and be continuing, the outstanding principal balance of the Loan and, to the extent permitted by law, all accrued and unpaid interest in respect of the Loan and any other amounts due pursuant to this Note, shall accrue interest at the Default Rate, calculated from the date such payment was due without regard to any grace or cure periods contained herein.

Section 1.2 Loan Payment.

(a) Monthly Debt Service Payments. Borrower shall pay to Lender (a) on September 1, 2020 and (b) on each Payment Date thereafter, the Monthly Debt Service Payment Amount; provided that Borrower shall pay to Lender any interest that accrues at the Default Rate on demand.

(b) Payments Generally. For purposes of making payments hereunder, but not for purposes of calculating Accrual Periods, if the day on which such payment is due is not a Business Day, then amounts due on such date shall be due on the immediately succeeding Business Day and with respect to payments of principal due on the Maturity Date, interest shall be payable at the Interest Rate or the Default Rate, as the case may be, through and including the day immediately succeeding such Maturity Date. All amounts due under this Note shall be payable without setoff, counterclaim, defense or any other deduction whatsoever, except as set forth in Article 5 hereof.

(c) Payment on Maturity Date. Borrower shall pay to Lender on the Maturity Date the outstanding principal balance of the Loan, all accrued and unpaid interest and all other amounts due under this Note.

(d) Method and Place of Payment. Except as otherwise specifically provided herein, all payments and prepayments under this Note shall be made to Lender not later than 3:00 P.M., New York City time, on the date when due and shall be made in lawful money of the United States of America in immediately available funds at Lender' s office or as otherwise directed by Lender, and any funds received by Lender after such time shall, for all purposes hereof, be deemed to have been paid on the next succeeding Business Day.

(e) Voluntary Prepayments. On any Business Day through the Maturity Date, Borrower may, at its option, prepay the Debt in full or in part, provided that Borrower pays to Lender (A) all interest accrued and unpaid on the principal balance of this Note to be prepaid to and including the date of prepayment and (B) all other sums due at the time of such prepayment under this Note.

(f) Extension of Maturity Date. Borrower shall have the option to extend the scheduled Maturity Date of the Loan for two (2) successive terms of one (1) year each (each such option, an "**Extension Option**"). In order to exercise each such Extension Option, Borrower shall deliver to Lender written notice of such extension on or before the date that is ten (10) days prior to the then applicable Maturity Date. The Maturity Date shall be extended pursuant to Borrower' s notice as aforesaid, provided that (a) no Event of Default shall be in existence on the then applicable Maturity Date and (b) Borrower shall pay to Lender on or before the then applicable Maturity Date an extension fee equal to one half of one percent (0.5%) of the outstanding principal balance of the Loan as of such date.

ARTICLE 2: DEFAULT AND ACCELERATION

Section 2.1 Event of Default. (a) Each of the following events shall constitute an event of default hereunder (an "**Event of Default**"):

(i) if any portion of the Debt shall not be paid within five (5) Business Days after the due date thereof; provided, however, that, for the avoidance of doubt, if Lender exercises its offset rights set forth in Section 5.2 hereof with respect to any portion of the Debt, such offset shall be deemed to cure any Default or Event of Default that would otherwise exist with respect to such portion of the Debt;

(ii) if any representation or warranty made by Borrower herein, or in any report, certificate, financial statement or other instrument, agreement or document furnished to Lender shall have been false or misleading in any material respect (or, in the case of any representation or warranty already qualified by materiality, in any respect), as of the date the representation or warranty was made; provided, however, if the materially false or misleading aspect of such representation or warranty was not intentionally made by Borrower and the materially false or misleading aspect of such representation and warranty remains capable of being cured or corrected and has not had, and would not reasonably be expected to have, a material adverse effect on Borrower' s ability to perform its obligations under this Note, Borrower shall have thirty (30) days to cause a cure or correction thereof following a senior officer of Borrower obtaining knowledge thereof;

(iii) if Borrower shall make an assignment for the benefit of creditors;

(iv) if a receiver, liquidator, trustee or similar official shall be appointed for Borrower or a substantial part of its assets, or if Borrower shall be adjudicated bankrupt or insolvent, or if any petition for bankruptcy, reorganization, arrangement or other similar relief pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, Borrower, or if any proceeding for the dissolution or liquidation of Borrower shall be instituted; provided, however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Borrower upon the same not being discharged, stayed or dismissed within ninety

(90) days;

(v) if Borrower shall attempt to assign its rights under this Note or any interest herein in contravention of this Note;

(vi) if (A) Borrower assigns or otherwise transfers the Management Agreement (as defined below) in violation of the Management Agreement without the consent of the Lender or Exantas REIT or (B) the Management Agreement is terminated pursuant to Section 13 or Section 15 of the Management Agreement;

(vii) if Borrower shall continue to be in default under any of the other terms, covenants or conditions of this Note not specified in clauses (i) to (vi) above, for ten (10) days after a senior officer of Borrower obtains knowledge thereof, in the case of any such default which can be cured by the payment of a sum of money, or, in the case of any other default, for thirty (30) days after a senior officer of Borrower obtains knowledge thereof; provided, however, that if such non-monetary default is susceptible of cure but cannot reasonably be cured within such thirty (30) day period and provided further that Borrower shall have commenced to cure such default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for such time as is reasonably necessary for Borrower in the exercise of due diligence to cure such default, such additional period not to exceed sixty (60) days; or

(viii) if (x) Borrower shall fail to observe or perform any agreement or condition relating to (A) any indebtedness for borrowed money or for the deferred purchase price of property or services (other than accounts payable incurred in the ordinary course of business and payable in accordance with customary trade practices) or (B) that is evidenced by a note, bond, debenture or similar instrument, in the case of each of clauses (A) and (B) having an aggregate principal amount of more than $5,000,000 ("**Indebtedness**") or contained in any instrument or agreement evidencing, securing or relating thereto ("**Debt Documents**"), or any other default occurs, the effect of which default is to cause, or to permit the holder or holders or beneficiary or beneficiaries of such Indebtedness (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) ("**Holders**") to cause, with the giving of notice if required, such Indebtedness to become due prior to its stated maturity and (y) any such Holder accelerates such Indebtedness prior to its stated maturity (or such Indebtedness is automatically accelerated pursuant to the terms of the related Debt Documents) or exercises any other remedy available to such Holder under the related Debt Documents to collect on such Indebtedness.

(b) Upon the occurrence of an Event of Default (other than an Event of Default described in clauses (iii) or (iv) above) and at any time thereafter, in addition to any other rights or remedies available to it pursuant to this Note or at law or in equity, Lender may take such action, without notice or demand, that Lender deems advisable to protect and enforce its rights against Borrower, including, without limitation, declaring the Debt to be immediately due and payable, and Lender may enforce or avail itself of any or all rights or remedies available at law or in equity; and upon any Event of Default described in clauses (iii) or (iv) above, the Debt and other obligations of Borrower hereunder shall immediately and automatically become due and payable, without notice or demand, and Borrower hereby expressly waives any such notice or demand, anything contained herein to the contrary notwithstanding, and, to the extent permitted by applicable law, Lender may take any such actions, without notice or demand (except to the extent otherwise expressly required hereunder), that Lender deems advisable to protect and enforce its rights against Borrower, and Lender may enforce or avail itself of any or all rights or remedies available at law or in equity.

Section 2.2 Remedies. Upon the occurrence of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available to Lender against Borrower under this Note executed and delivered by, or applicable to, Borrower or at law or in equity may be exercised by Lender at any time and from time to time, whether or not all or any of the Debt shall be declared due and payable, and whether or not Lender shall have commenced any action for the enforcement of its rights and remedies hereunder. Any such actions taken by Lender shall be cumulative and concurrent and may be pursued independently, singularly, successively, together or otherwise, at such time and in such order as Lender may determine in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of Lender permitted by law, equity or contract or as set forth herein. Without limiting the generality of the foregoing, Borrower agrees that if an Event of Default is continuing (i) Lender is not subject to any "one action" or "election of remedies" law or rule, and (ii) all liens and other rights, remedies or privileges provided to Lender shall remain in full force and effect until the Debt has been paid in full.

Section 2.3 Remedies Cumulative; Waivers. The rights, powers and remedies of Lender under this Note shall be cumulative and not exclusive of any other right, power or remedy which Lender may have against Borrower pursuant to this Note, or existing at law or in equity or otherwise. Lender' s rights, powers and remedies may be pursued singularly, concurrently or otherwise, at such time and in such order as Lender may determine in Lender' s sole discretion. No delay or omission to exercise any remedy, right or power accruing upon an Event of Default shall impair any such remedy, right or power or shall be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Default or Event of Default with respect to Borrower shall not be construed to be a waiver of any subsequent Default or Event of Default by Borrower or to impair any remedy, right or power consequent thereon.

ARTICLE 3: REPRESENTATIONS AND WARRANTIES

Section 3.1 Borrower Representations. Borrower represents and warrants as of the date hereof that:

(a) Organization. Borrower is validly existing and in good standing with requisite power and authority to own its assets and to transact the businesses in which it is now engaged. Borrower is duly qualified to do business and is in good standing in each jurisdiction where it is required to be so qualified in connection with its businesses and operations. Borrower possesses all rights, licenses, permits and authorizations, governmental or otherwise, necessary to entitle it to own its assets and to transact the businesses in which it is now engaged.

(b) Proceedings. Borrower has the power and authority, and the legal right, to execute and deliver this Note and to perform its obligations hereunder. Borrower has taken all necessary action to authorize the execution, delivery and performance of this Note. This Note has been duly executed and delivered by or on behalf of Borrower and constitutes the legal, valid and binding obligations of Borrower enforceable against Borrower in accordance with their respective terms, subject only to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

(c) No Conflicts. The execution, delivery and performance of this Note by Borrower will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance upon any of the property or assets of Borrower pursuant to the terms of any indenture, mortgage, deed of trust, loan agreement, bylaws, certificate of incorporation or other organizational documents, partnership agreement, management agreement or other agreement or instrument to which Borrower is a party or by which any of Borrower' s assets is subject, nor will such action result in any violation of the provisions of any statute or any order, rule or regulation of any Governmental Authority having jurisdiction over Borrower or any of Borrower' s properties or assets, and any consent, approval, authorization, order, registration or qualification of or with any court or any such Governmental Authority required for the execution, delivery and performance by Borrower of this Note has been obtained and is in full force and effect.

(d) Litigation. There are no actions, suits or proceedings at law or in equity by or before any Governmental Authority or other agency now pending or threatened against or affecting Borrower, which actions, suits or proceedings, if determined against Borrower would reasonably be expected to materially and adversely affect the ability of Borrower to perform its obligations under this Note.

(e) Solvency. Borrower has (a) not entered into this transaction or executed this Note with the actual intent to hinder, delay or defraud any creditor and (b) received reasonably equivalent value in exchange for its obligations hereunder. No petition in bankruptcy has been filed against Borrower in the last seven (7) years, and in the last seven (7) years, Borrower has not made an assignment for the benefit of creditors or taken advantage of any insolvency act for the benefit of debtors. Borrower is not contemplating the filing of a petition by it under any state or federal bankruptcy or insolvency laws or the liquidation of all or a major portion of Borrower' s assets or property, and Borrower has no knowledge of any Person contemplating the filing of any such petition against it or such constituent Persons.

(f) Enforceability. This note is enforceable by Lender (or any subsequent holder thereof) in accordance with its respective terms, subject to principles of equity and bankruptcy, insolvency and other laws generally applicable to creditors' rights and the enforcement of debtors' obligations. Except as set forth in Article 5 hereof, this Note is not subject to any right of rescission, set off, counterclaim or defense by Borrower, including the defense of usury, nor would the operation of any of the terms of this Note or the exercise of any right hereunder, render this Note unenforceable (subject to principles of equity and bankruptcy, insolvency and other laws generally affecting creditors' rights and the enforcement of debtors' obligations), and Borrower has not asserted any right of rescission, set off, counterclaim or defense with respect thereto.

(g) Sanctioned Person. (a) None of the funds or other assets of Borrower constitute property of, or are beneficially owned, directly or indirectly, by any Sanctioned Person, with the result that the Loan is in violation of law; (b) no Sanctioned Person has any interest of any nature whatsoever in Borrower, with the result that the Loan is in violation of law; and (c) none of the funds of Borrower have been derived from any unlawful activity with the result that the Loan is in violation of law. Borrower is not, and no director or officer of Borrower, or any agent of Borrower that will act in any capacity in connection with or benefit from the Loan, is a Sanctioned Person or is currently the subject or target of any Sanctions with the result that the Loan is in violation of law. The Loan and the use of proceeds of the Loan will not violate any Anti-Corruption Law or applicable Sanctions.

ARTICLE 4: BORROWER COVENANTS

Section 4.1 Existence; Compliance with Legal Requirements. Borrower shall do or cause to be done all things necessary to preserve, renew and keep in full force and effect its existence, and any rights, licenses, permits and franchises, which the failure to preserve would reasonably be expected to materially and adversely affect Borrower' s ability to perform its obligations under this Note. There shall never be committed by Borrower any act or omission affording any Governmental Authority the right of forfeiture against any monies paid in performance of Borrower' s obligations under this Note. Borrower hereby covenants not to commit, permit or suffer to exist any act or omission affording such right of forfeiture.

Section 4.2 Compliance with Law. Borrower shall comply with all statutes, orders, rules and regulations of any Governmental Authority having jurisdiction over Borrower or any of Borrower' s properties or assets, with which the failure to comply would reasonably be expected to materially and adversely affect Borrower' s ability to perform its obligations under this Note.

Section 4.3 Sanctioned Person. Borrower has performed and shall perform reasonable due diligence to insure that at all times throughout the term of the Loan, (a) none of the funds or other assets of Borrower constitute property of, or are beneficially owned, directly or indirectly, by any Sanctioned Person, with the result that the Loan is in violation of law; (b) no Sanctioned Person has any interest of any nature whatsoever in Borrower, with the result that the Loan is in violation of law; and (c) none of the funds of Borrower have been derived from, or are the proceeds of, any unlawful activity, including money laundering, terrorism or terrorism activities, with the result that the Loan is in violation of law.

Section 4.4 Notice of Default. Borrower shall, promptly after a senior officer of Borrower becomes aware that a Default or an Event of Default has occurred, notify Lender in writing of the nature and extent of such Default or Event of Default and the action, if any, it has taken or proposes to take with respect to such Default or Event of Default.

Section 4.5 Restricted Payments. During the continuance of an Event of Default, Borrower shall not declare or make, directly or indirectly, any Restricted Payment, or incur any new obligation (contingent or otherwise) to do so.

ARTICLE 5: RIGHTS OF OFFSET

Section 5.1 Borrower Offset Right. Lender and Exantas REIT each hereby expressly agrees that, notwithstanding anything herein to the contrary, (x) Borrower shall have the right to offset any amounts due and payable to Lender hereunder against any amounts due and payable to the Manager (as defined below) under that certain Fourth Amended and Restated Management Agreement, dated as of the date hereof, by and among Exantas REIT, ACRES Capital, LLC, a New York limited liability company (together with its permitted assignees, the "**Manager**"), and Borrower (as amended, modified, amended and restated and supplemented, the "**Management Agreement**") and (y) Borrower may withhold payment of any amounts due and payable under this Note and apply such amounts against any fees and expense reimbursements otherwise owed to Manager by Exantas REIT under the Management Agreement.

Section 5.2 Lender Offset Right. Each of Borrower and Manager hereby expressly agrees that, notwithstanding anything in the Management Agreement to the contrary, during the continuance of an Event of Default hereunder, (x) Lender shall have the right to offset any amounts due and payable by Exantas REIT under the Management Agreement against any amounts due and payable to Lender hereunder and (y) Exantas REIT may withhold payment of any fees and expense reimbursements otherwise owed under the Management Agreement and apply such fees and expenses against any amounts due and payable by the Borrower pursuant to this Note, including any outstanding principal and any accrued and unpaid interest hereunder.

ARTICLE 6: SAVINGS CLAUSE

Notwithstanding anything to the contrary, (a) all agreements and communications between Borrower and Lender are hereby and shall automatically be limited so that, after taking into account all amounts deemed interest, the interest contracted for, charged or received by Lender shall never exceed the Maximum Legal Rate, (b) in calculating whether any interest exceeds the Maximum Legal Rate, all such interest shall be amortized, prorated, allocated and spread over the full amount and term of all principal indebtedness of Borrower to Lender and (c) if through any contingency or event Lender receives or is deemed to receive interest in excess of the Maximum Legal Rate, any such excess shall be deemed to have been applied toward payment of the principal of any and all then outstanding indebtedness of Borrower to Lender.

ARTICLE 7: NO ORAL CHANGE

This Note may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

ARTICLE 8: WAIVERS

Borrower and all others who may become liable for the payment of all or any part of the Debt do hereby severally waive presentment and demand for payment, notice of dishonor, notice of intention to accelerate, notice of acceleration, protest and notice of protest and non-payment and all other notices of any kind, except to the extent expressly required hereunder. No release of any security or guaranty for the Debt or extension of time for payment of this Note or any installment hereof, and no alteration, amendment or waiver of any provision of this Note made by agreement between Lender or any other Person shall release, modify, amend, waive, extend, change, discharge, terminate or affect the liability of Borrower (except to the extent expressly set forth in a written instrument executed by both Borrower and Lender), and any other Person who may become liable for the payment of all or any part of the Debt, under this Note. No notice to or demand on Borrower shall be deemed to be a waiver of the obligation of Borrower or of the right of Lender to take further action without further notice or demand as provided for in this Note. If Borrower is a partnership, the agreements herein contained shall remain in force and be applicable, notwithstanding any changes in the individuals or entities comprising the partnership, and the term "**Borrower**," as used herein, shall include any alternate or successor partnership, but any predecessor partnership and their partners shall not thereby be released from any liability. If Borrower is a corporation, the agreements contained herein shall remain in full force and be applicable notwithstanding any changes in the shareholders comprising, or the officers and directors relating to, the corporation, and the term "**Borrower**" as used herein, shall include any alternative or successor corporation, but any predecessor corporation shall not be relieved of liability hereunder. If Borrower is a limited liability company, the agreements herein contained shall remain in force and be applicable, notwithstanding any changes in the members comprising the limited liability company, and the term "**Borrower**" as used herein, shall include any alternate or successor limited liability company, but any predecessor limited liability company shall not thereby be released from any liability.

ARTICLE 9: TRANSFER

Without the prior written consent of Borrower, Lender may not assign, sell, convey, encumber, pledge, hypothecate, grant an option with respect to, or otherwise transfer or dispose of a legal or beneficial interest, whether direct or indirect, in all or any portion of this Note or the Debt evidenced hereby, except to a direct or indirect wholly owned subsidiary of Exantas REIT, or any successor to Exantas REIT by merger, conversion, consolidation or purchase of all or substantially all of Exantas REITs assets.

Notwithstanding the foregoing, any Person into which Lender may be merged or converted, or any Person with which Lender may be consolidated, or any Person resulting from any merger, conversion or consolidation to which Lender shall be a party, or any Person, including Persons affiliated with Lender, to which Lender shall sell or otherwise transfer all or substantially all of its assets shall, on the date when the merger, conversion, consolidation or transfer becomes effective and to the extent permitted by any applicable laws, become the successor Lender under this Note without the execution or filing of any document or any further act on the part of the parties to this Note; provided that Lender shall at all times remain a direct or indirect wholly owned subsidiary of Exantas REIT, or any successor to Exantas REIT by merger, conversion, consolidation or purchase of all or substantially all of Exantas REITs assets. After the effective date of any such merger, conversion, consolidation or transfer, all references in this Note to Lender shall be deemed to be references to such successor Person.

Without the prior written consent of Lender, Borrower may not assign its rights and obligations under this Note.

ARTICLE 10: GOVERNING LAW

(A) THIS NOTE WAS NEGOTIATED IN THE STATE OF NEW YORK, AND MADE BY BORROWER AND ACCEPTED BY LENDER IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THIS NOTE WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS NOTE AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO PRINCIPLES OF CONFLICT LAWS). TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER, MANAGER, EXANTAS REIT AND LENDER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVE ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS NOTE AND THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

(B) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER, MANAGER, EXANTAS REIT OR BORROWER ARISING OUT OF OR RELATING TO THIS NOTE MAY AT LENDER' S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5 1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW, AND BORROWER, MANAGER, EXANTAS REIT AND LENDER EACH WAIVE ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND BORROWER, MANAGER, EXANTAS REIT AND LENDER EACH HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING.

ARTICLE 11: NOTICES

Section 11.1 Notices. All notices, consents, approvals and requests required or permitted hereunder shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested or (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, and by telecopier or e-mail (with answer back acknowledged), addressed as follows (or at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a written notice to the other parties hereto in the manner provided for in this Section):

If to Lender: RCC Real Estate, Inc.
c/o Exantas Capital Corp.
P. Sherrill Neff
Quaker Bio Partners
Cira Center
2929 Arch Street
Philadelphia, PA 19104
E-mail: sherrill.neff@gmail.com

With a copy to: Morrison & Foerster LLP
250 W 55th Street
New York, New York 10019
Attention: Tracy A. Bacigalupo, Esq.
E-mail: tbacigalupo@mofo.com

If to Borrower: ACRES Capital Corp.
865 Merrick Avenue, Suite 200S
Westbury, New York 11590
Attention: Jaclyn A. Jesberger, Esq.
E-mail: jjesberger@acrescap.com

With a copy to: Cadwalader, Wickersham & Taft, LLP
One World Financial Center
New York, New York 10281
Attention: Melissa C. Hinkle, Esq.
Facsimile No.: (212) 504-6666
E-mail: Melissa.Hinkle@cwt.com

A notice shall be deemed to have been given: in the case of hand delivery, at the time of delivery; in the case of registered or certified mail, when delivered or the first attempted delivery on a Business Day; or in the case of expedited prepaid delivery and telecopy, upon the first attempted delivery on a Business Day; or in the case of telecopy, upon sender' s receipt of a machine-generated confirmation of successful transmission after advice by telephone to recipient that a telecopy notice is forthcoming; or in the case of e-mail, 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).

ARTICLE 12: MISCELLANEOUS

This Note and all covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the making by Lender of the Loan and the execution and delivery to Lender of this Note, and shall continue in full force and effect so long as all or any of the Debt is outstanding and unpaid. Whenever in this Note any of the parties hereto is referred to, such reference shall be deemed to include the legal representatives, successors and assigns of such party. All covenants, promises and agreements in this Note, by or on behalf of Borrower or Manager, shall inure to the benefit of the legal representatives, successors and permitted assigns of Lender. All covenants, promises and agreements in this Note, by or on behalf of Lender or Exantas REIT, shall inure to the benefit of the legal representatives, successors and permitted assigns of Borrower.

Notwithstanding any provision herein to the contrary (and this provision shall in all cases supersede all contradictory provisions and agreements contained herein) no trustee, board member, officer, director, manager, member, employee or agent of Borrower (or any direct or indirect member, partner, limited partner, general partner, shareholder, or other equity holder, or affiliate or subsidiary of Borrower) (collectively, the "**Exculpated Parties**") shall be personally liable for any of the obligations of Borrower under this Note, and Lender, for itself and its successors and assigns, irrevocably waives any and all rights to sue for, seek, or demand any such damages, money judgment, deficiency judgment or personal judgment against any of the Exculpated Parties under, by reason of, or in connection with, this Note.

ARTICLE 13: JOINT AND SEVERAL

If more than one Person has executed this Note as "Borrower," the obligations of all such Persons hereunder shall be joint and several.

ARTICLE 14: EXPENSES

Upon ten (10) Business Days prior written notice and delivery of reasonable back-up documentation evidencing same, Borrower shall reimburse Lender for all out-of-pocket costs, expenses, and fees (including expenses and fees of its outside legal counsel) actually incurred by Lender in connection with the enforcement of Lender' s rights hereunder.

ARTICLE 15: SUBORDINATION

Section 15.1 Subordination of Liabilities. Borrower, for itself, its successors and assigns, agrees, and Lender by its acceptance hereof agrees, that the payment of the principal of, interest on, and all other amounts owing in respect of, this Note is hereby expressly subordinated, to the extent and in the manner hereinafter set forth, to the prior payment in full in cash of all Senior Indebtedness pursuant to the terms and conditions of this Article 15. The provisions of this Article 15 shall constitute a continuing offer to all Oaktree Persons and Hamilton Lane Persons that, in reliance upon such provisions, become holders of, or continue to hold, Senior Indebtedness, and such provisions are made for the benefit of the Oaktree Persons and Hamilton Lane Persons that are holders of Senior Indebtedness, and such Oaktree Persons and Hamilton Lane Persons that are holders are hereby made obligees hereunder, and they and/or each of them may proceed to enforce such provisions in accordance with the terms of the applicable Senior Indebtedness.

Section 15.2 Borrower Not to Make Payments with Respect to the Debt in Certain Circumstances. Until all obligations in respect of Senior Indebtedness have been paid in full in cash or other payment satisfactory to the holders of such Senior Indebtedness and all commitments to extend additional Senior Indebtedness thereunder have been terminated, Borrower shall not make any payment on account of the Debt; provided that Borrower shall be entitled to pay to Lender the Monthly Debt Service Payment Amount in accordance with the terms hereof if, at the time of such payment, no (i) principal payment default in respect of any Senior Indebtedness has occurred and is continuing or (ii) other default of any material term of the credit agreement, loan agreement or similar instrument governing any Senior Indebtedness has occurred and is continuing that permits holders of such Senior Indebtedness to accelerate its maturity. Payments not made as a result of the proviso to the previous sentence shall be resumed, and Borrower shall promptly pay Lender all amounts not paid as a result of the previous sentence, on the date on which such default is cured or waived and, if applicable, any such acceleration is rescinded or on the date on which the Senior Indebtedness under which a default existed is discharged or paid in full in cash or other payment satisfactory to the holders of such Senior Indebtedness and all commitments to extend additional Senior Indebtedness thereunder is terminated. In the event that Borrower shall make or Lender shall receive any payment on account of the Debt at a time when payment is not permitted by this Section 15.2, such payment shall be held by Lender and held in trust for the benefit of the holders of Senior Indebtedness and shall be paid promptly over to such holders of Senior Indebtedness until such time as Borrower is permitted to pay Lender pursuant to the terms of the previous sentence.

Section 15.3 Subordination to Prior Payment of all Senior Indebtedness on Dissolution, Liquidation or Reorganization of Borrower. Upon any distribution of assets of Borrower upon any total or partial dissolution, winding up, liquidation or reorganization of Borrower, the holders of all Senior Indebtedness shall first be entitled to receive payment in full in cash or other payment satisfactory to the holders of such Senior Indebtedness of all Senior Indebtedness before Lender is entitled to receive any payment on account of the Debt. In the event that Borrower shall make or Lender shall receive any payment or distribution of assets of Borrower on account of the Debt contrary to this Section 15.3, such payment or distribution shall be received by Lender and held in trust for the benefit of the holders of Senior Indebtedness, for application to the payment of such Senior Indebtedness (any portion of the Senior Indebtedness that is repaid by the application of any such a payment or distribution, shall hereinafter be referred to as the "**Subrogated Indebtedness**") until all such Senior Indebtedness shall have been paid in full in cash or the holders of such Senior Indebtedness shall have received other payment satisfactory to the holders of such Senior Indebtedness.

Section 15.4 Subordination Rights Not Impaired by Acts or Omissions of Borrower or Holders of Senior Indebtedness.

(a) No right of any present or future holders of any Senior Indebtedness to enforce subordination as herein provided shall be prejudiced or impaired by any act or failure to act on the part of Borrower or by any act or failure to act by any such holder, or by any noncompliance by Borrower with the terms and provisions of this Note, regardless of any knowledge thereof which any such holder may have. The holders of the Senior Indebtedness may, without in any way affecting the obligations of Lender with respect hereto, in their absolute discretion, change the manner, place or terms of payment of, change or extend the time of payment of, or renew or alter, any Senior Indebtedness or amend, modify or supplement any agreement or instrument governing or evidencing such Senior Indebtedness or any other document referred to therein, or exercise or refrain from exercising any other of their rights under the Senior Indebtedness, all without notice to or assent from Lender.

(b) This Article 15 defines the relative rights of Lender and holders of Senior Indebtedness. Nothing herein shall (i) impair, as between Borrower and Lender, the obligation of Borrower, which is absolute and unconditional, to pay the Debt in accordance with the terms hereof; (ii) affect the relative rights of Lender and creditors of Borrower other than their rights in relation to holders of Senior Indebtedness as expressly provided in this Article 15; (iii) affect that such non-payment shall be a Default or Event of Default in accordance with the terms hereof; or
(iv) prevent Lender or any affiliate from exercising its available remedies hereunder or under any other agreement, subject to the rights of holders of Senior Indebtedness to receive payments and distributions as expressly provided by Section 15.2 and Section 15.3 hereof.

Section 15.5 Subrogation. After all applicable Senior Indebtedness is paid in full in cash or other payment satisfactory to the holders of such Senior Indebtedness, Lender shall be subrogated to the rights of holders of Senior Indebtedness to receive payments or distributions with respect to the Subrogated Indebtedness. A payment or distribution made under this Article 15 to holders of any Senior Indebtedness that otherwise would have been made to Lender is not, as between Borrower and Lender, a payment by Borrower on the Senior Indebtedness.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, Borrower has duly executed this Note as of the day and year first above written.

BORROWER:

ACRES CAPITAL CORP.,
a Delaware corporation

By: /s/ Mark Fogel
Name: Mark Fogel
Title: President & CEO

LENDER:

RCC REAL ESTATE, INC.,
a Delaware corporation

By: /s/ Shelle Weisbaum
Name: Shelle Weisbaum
Title: Secretary

[Signature Page to Promissory Note]

Solely for the purposes of Articles 5, 10 and 12 hereof.

ACRES CAPITAL, LLC,
Delaware limited liability company

By: /s/ Mark Fogel
Name: Mark Fogel
Title: President & CEO

EXANTAS CAPITAL CORP.,
a Maryland corporation

By: /s/ Shelle Weisbaum
Name: Shelle Weisbaum
Title: Secretary

EXHIBIT A

DEFINED TERMS

"**Accrual Period**" shall mean the period commencing on and including the first (1st) day of each calendar month during the term of the Loan and ending on and including the final calendar date of such calendar month; provided, however, the initial Accrual Period shall commence on and include the Closing Date and shall end on and include August 31, 2020.

"**Anti-Corruption Laws**" means all laws, rules, and regulations of any jurisdiction applicable to Borrower from time to time concerning or relating to bribery or corruption, including, if applicable, the United States Foreign Corrupt Practices Act of 1977 and the U.K. Bribery Act 2010, in each case, as amended, and the rules and regulations promulgated thereunder.

"**Business Day**" shall mean any day other than a Saturday, Sunday or any other day on which national banks in New York, New York are not open for business.

"**Control**" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise. "**Controlled**" and "**Controlling**" shall have correlative meanings.

"**Closing Date**" shall mean the date of the funding of the Loan.

"**Debt**" shall mean the outstanding principal amount set forth in, and evidenced by, this Note together with all interest accrued and unpaid thereon and all other sums due to Lender under this Note.

"**Default**" shall mean the occurrence of any event hereunder which, absent the giving of notice or passage of time, or both, would be an Event of Default.

"**Default Rate**" shall mean, with respect to the Loan, a rate per annum equal to the lesser of (a) the Maximum Legal Rate or (b) three percent (3%) above the Interest Rate.

"**Exantas REIT**" shall mean Exantas Capital Corp., a Maryland corporation.

"**GAAP**" shall mean generally accepted accounting principles in the United States of America as of the date of the applicable financial report.

"**Governmental Authority**" shall mean any court, board, agency, commission, office or other authority of any nature whatsoever for any governmental unit (foreign, federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence.

"**Hamilton Lane Person**" means Hamilton Lane Advisors, L.L.C. (or any successor manager thereto) or any of its managed funds and accounts or special purpose holding vehicles owned by such funds and accounts.

"**Interest Rate**" shall mean a fixed rate of interest equal to three percent (3%) per annum.

"**Maturity Date**" shall mean July 31, 2026, as such date may be extended pursuant to the terms and provisions of Section 1.2(f) hereof, or such other date on which the final payment of principal of this Note becomes due and payable as herein provided, whether at such stated maturity date, by declaration of acceleration, or otherwise.

"**Maximum Legal Rate**" shall mean the maximum nonusurious interest rate, if any, that at any time or from time to time may be contracted for, taken, reserved, charged or received on the indebtedness evidenced by this Note, under the laws of such state or states whose laws are held by any court of competent jurisdiction to govern the interest rate provisions of the Loan.

"**Monthly Debt Service Payment Amount**" shall mean an amount equal to the sum of (a) the accrued and payable interest only on the outstanding principal balance of the Loan and (b) $25,000.00.

"**Oaktree Person**" means Oaktree Capital Management, L.P. (or any successor manager thereto) or any of its managed funds and accounts or special purpose holding vehicles owned by such funds and accounts.

"**Payment Date**" shall mean the first (1st) day of each calendar month during the term of the Loan.

"**Person**" shall mean any individual, corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated association, any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

"**Restricted Payment**" means any dividend or other distribution (whether in cash, securities or other property) with respect to any equity interest of any entity, or any payment on account of (whether in cash, securities or other property) the purchase, redemption, retirement, acquisition, cancellation or termination of any such equity interest (including any sinking fund or similar deposit), or on account of any return of capital to such entity' s shareholders, partners or members (or the equivalent entity thereof).

"**Sanctioned Country**" means, at any time, a country or territory which is itself the subject or target of any comprehensive or country-wide Sanctions.

"**Sanctioned Person**" means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by a Sanctions Authority; (b) any Person operating, organized or resident in a Sanctioned Country or (c) any Person owned 50% or more, or otherwise controlled by, any such Person or Persons described in the foregoing clauses (a) or (b).

"**Sanctions**" mean economic or financial sanctions or trade embargoes imposed, restrictive measures enacted, administered or enforced from time to time by a Sanctions Authority.

"**Sanctions Authority**" means OFAC, the U.S. Department of State, the United Nations Security Council, the European Union, Her Majesty' s Treasury of the United Kingdom, or other relevant sanctions authority.

"**Senior Indebtedness**" means, as applicable, all obligations of Borrower under or in respect of certain credit facilities with Oaktree Persons to which Borrower is a party on the date hereof, as such facilities shall be amended, restated or amended and restated from time to time; provided that such indebtedness in excess of the aggregate principal amount of $190,000,000 (the outstanding balance of such indebtedness as of the date hereof) shall not be Senior Indebtedness hereunder.

Exhibit 99.1

Exantas Capital Corp. Announces Acquisition of Management Contract from C-III Capital Partners by ACRES Capital Corp. and $375 Million Financing from MassMutual and Oaktree Capital Management

NEW YORK, August 3, 2020 /PRNewswire/ – **Exantas Capital Corp. (NYSE: XAN)** (the "**Company**" or "**Exantas**") announced today that ACRES Capital Corp. through its subsidiary, ACRES Capital, LLC (collectively, "**ACRES**"), has acquired the Company' s Management Agreement from an affiliate of C-III Capital Partners ("**C-III**"). In addition, the Company has entered into separate definitive agreements with Massachusetts Mutual Life Insurance Company ("**MassMutual**") and a fund managed by Oaktree Capital Management, L.P. ("**Oaktree**") for new capital commitments aggregating up to $375 million. The Company expects the new financing to provide ample liquidity to meet current financing requirements, and for new investments. As a result of the transaction, Exantas' s new manager, ACRES, has assumed management responsibility effective immediately and will begin to implement the Company' s business plan to preserve and grow book value and earnings.

"Exantas has assembled a high quality portfolio and strong market position that we intend to continue to grow into a market leader in commercial real estate lending," said Andrew Fentress, Co-Founder of ACRES and newly appointed Chairman of the Board of Exantas. "The financings provided by MassMutual and Oaktree are a testament to the strength and quality of Exantas' s business and portfolio and we expect the financings will allow us to navigate the evolving market and execute on our objective to deliver long-term value to shareholders. We look forward to discussing our plans on the second quarter earnings call."

ACRES is a dedicated middle market commercial real estate lender led by a management team with extensive public company and mortgage REIT operating experience. ACRES has a robust asset management and origination platform along with a proven ability to source and maintain sponsor relationships, which will benefit Exantas as it restarts its origination efforts.

The new financing agreements materially increase the liquidity profile of Exantas and are structured with flexible terms that create optionality, allowing the Company to take a proactive approach to asset management to drive value from the existing portfolio as well as opportunistically enhance its balance sheet.

Transaction Details

Management Transition

In connection with the transactions, ACRES and the Company entered into an Amended and Restated Management Agreement. Andrew Fentress and Mark Fogel, Co-Founders of ACRES, will serve as Chairman of the Board, and as President, CEO and Board member, of Exantas, respectively. Andrew Farkas and Jeffrey P. Cohen have resigned from the Board of Directors with immediate effect. ACRES has added 18 professionals from the former C-III team to its staff, including David Bryant, current Chief Financial Officer of Exantas, who will remain with the Company in his current role to maintain operational continuity.

Senior Secured Financing Facility

The Company entered into a $250 million seven-year senior secured financing facility with MassMutual that can be utilized to fully repay Exantas' s warehouse and repurchase facilities, thereby reducing the potential for any future margin calls under such facilities. The facility has an advance rate of 55% and an interest rate of 5.75%. Flexible operating terms include a two-year revolving period followed by a five-year term, with no prepayment penalty after year one.

Unsecured Notes

The Company entered into agreements with Oaktree and MassMutual to provide a commitment of up to $125 million in the form of seven-year unsecured notes. The unsecured notes have a cash interest rate of 8.75% and a PIK interest rate of 3.25%, totaling an annual interest rate of 12.00%. The Company issued $50 million of unsecured notes to Oaktree and MassMutual at closing and may draw up to an additional $75 million over the next 18 months at Exantas' s option. The unsecured notes provide balance sheet flexibility and enhance Exantas' s liquidity position. In connection with the $50 million unsecured notes issued at closing, Exantas also issued to Oaktree and MassMutual warrants to purchase an aggregate of 1.4 million shares of common stock at an exercise price of $0.01 per share. In connection with the issuance of the remaining $75 million of additional unsecured notes, the Company will issue Oaktree and MassMutual additional warrants to purchase an aggregate of 2.1 million additional shares ratably as commitments are funded.

JMP Securities served as Exantas' s financial adviser and Morrison & Foerster LLP served as Exantas' s legal advisor. Ledgewood, P.C. served as special counsel to Exantas. Raymond James served as ACRES' financial adviser and Hunton Andrews Kurth LLP and Cadwalader, Wickersham & Taft LLP, served as ACRES' legal advisors. Clifford Chance LLP served as C-III Capital Partners' legal advisor.

About Exantas Capital Corp.

Exantas Capital Corp. is a real estate investment trust that is primarily focused on originating, holding and managing commercial real estate mortgage loans and other commercial real estate-related debt investments. The Company is externally managed by ACRES Capital, LLC, a subsidiary of ACRES Capital Corp. For more information, please visit the Company' s website at www.exantas.com or contact investor relations at IR@exantas.com or ocouture@acrescap.com.

About ACRES

ACRES is a private commercial real estate lender exclusively dedicated to nationwide middle market CRE lending with a focus on multifamily, student housing, hospitality, office and independent senior living in top US markets. As of June 30, 2020, ACRES manages and services $1.1 billion of loans on behalf of over 80 institutional investors from around the world.

About MassMutual

MassMutual is a leading mutual life insurance company that is run for the benefit of its members and participating policyowners. MassMutual offers a wide range of financial products and services, including life insurance, disability income insurance, long term care insurance, annuities, retirement plans and other employee benefits. For more information, visit www.massmutual.com.

About Oaktree

Oaktree is a leader among global investment managers specializing in alternative investments, with $113 billion in assets under management as of March 31, 2020. The firm emphasizes an opportunistic, value-oriented and risk-controlled approach to investments in credit, private equity, real assets and listed equities. The firm has over 950 employees and offices in 19 cities worldwide. For additional information, please visit Oaktree' s website at http://www.oaktreecapital.com/.

Forward-Looking Statements

This press release contains certain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Such forward-looking statements can generally be identified by our use of forward-looking terminology such as "may," "trend," "will," "continue," "expect," "intend," "anticipate," "estimate," "believe," "look forward" or other similar words or terms. Because such statements include risks, uncertainties and contingencies, actual results may differ materially from the expectations, intentions, beliefs, plans or predictions of the future expressed or implied by such forward-looking statements. Factors that can affect future results are discussed in the documents filed by the Company from time to time with the Securities and Exchange Commission. The Company undertakes no obligation to update or revise any forward-looking statement to reflect new or changing information or events after the date hereof or to reflect the occurrence of unanticipated events, except as may be required by law.

SOURCE Exantas Capital Corp.

Exhibit 99.2

EXANTAS

FORWARD LOOKING STATEMENTS AND OTHER DISCLOSURES

EXANTAS

This presentation contains forward-looking statements within the meaning of federal securities laws. These forward-looking statements are not historical facts but rather are based on our current beliefs, assumptions and expectations. These beliefs, assumptions and expectations can change as a result of many possible events or factors, not all of which are known to us or are within our control. If a change occurs, our business, financial condition, liquidity and results of operations may vary materially from those expressed in our forward-looking statements. You should not place undue reliance on these forward-looking statements, which reflect our view only as of the date of this presentation. We use words such as "anticipate," "expect," "intend," "plan," "believe," "seek," "estimate," "target," and variations of these words and similar expressions to identify forward-looking statements. Forward-looking statements are subject to various risks and uncertainties that could cause actual results to vary from our forward-looking statements, including, but not limited to:

- changes in our industry, interest rates, the debt securities markets, real estate markets or the general economy;
- increased rates of default and/or decreased recovery rates on our investments;
- the performance and financial condition of our borrowers;
- the cost and availability of our financings, which depend in part on our asset quality, the nature of our relationships with our lenders and other capital providers, our business prospects and outlook and general market conditions;
- the availability and attractiveness of terms of additional debt repurchases;
- availability, terms and deployment of short-term and long-term capital;
- availability of, and ability to retain, qualified personnel;
- changes in our business strategy;
- availability of investment opportunities in commercial real estate-related and commercial finance assets;
- the degree and nature of our competition;
- the resolution of our non-performing and sub-performing assets;
- our ability to comply with financial covenants in our debt instruments;
- the adequacy of our cash reserves and working capital;
- The outbreak of widespread contagious disease, such as the novel coronavirus, COVID-19;
- the timing of cash flows, if any, from our investments;
- unanticipated increases in financial and other costs, including a rise in interest rates;
- our ability to maintain compliance with over-collateralization and interest coverage tests in our CDOs and/or CLOs;
- our dependence on ACRES Capital, LLC, our "Manager", and ability to find a suitable replacement in a timely manner, or at all, if we or our Manager were to terminate the management agreement;
- environmental and/or safety requirements;
- our ability to satisfy complex rules in order for us to qualify as a REIT, for federal income tax purposes and qualify for our exemption under the Investment Company Act of 1940, as amended, and our ability and the ability of our subsidiaries to operate effectively within the limitations imposed by these rules;
- legislative and regulatory changes (including changes to laws governing the taxation of REITs or the exemptions from registration as an investment company); and
- other factors discussed under Item IA. Risk Factors in our Annual Report on Form 10-K for the year ended December 31, 2019 and under Item IA. Risk Factors in our Quarterly Report on Form 10-Q for the quarter ended March 31, 2020, and those factors that may be contained in any subsequent filing we make with the Securities and Exchange Commission

We undertake no obligation, and specifically disclaim any obligation, to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise, except as required by law. In light of these risks and uncertainties, the forward-looking events and circumstances discussed in this presentation might not occur and actual results, performance or achievement could differ materially from those anticipated or implied in the forward-looking statements.

FORWARD LOOKING STATEMENTS AND OTHER DISCLOSURES (CONTINUED)

Past performance is not indicative of future results. There is no guarantee that any investment strategy referenced herein will work under any market conditions. Prior to making any investment decision, you should evaluate your ability to invest for the long-term, especially during periods of downturns in the market. You alone assume the responsibility of evaluating the merits and risks associated with any potential investment or investment strategy referenced herein.

This presentation contains information regarding financial results that is calculated and presented on the basis of methodologies other than in accordance with accounting principles generally accepted in the United States ("GAAP"), which management believes is relevant to assessing Exantas Capital Corp.'s ("Exantas's," "XAN's" or the "Company's") financial performance.

Unless otherwise indicated, information included in this presentation is as of or for the period ended June 30, 2020.

No Offer or Sale of Securities

This presentation is for informational purposes only and does not constitute an offer to sell or the solicitation of any offer to buy any securities of XAN or any other entity. Any offering of securities would be made pursuant to separate documentation and any such securities would not be offered or sold in the United States absent registration or an applicable exemption from registration requirements.

TRANSACTION OVERVIEW

EXANTAS

- ACRES Capital, LLC, a subsidiary of ACRES Capital Corp. (collectively, "ACRES"), is pleased to announce its purchase of the Management Agreement of Exantas Capital Corp. ("Exantas," "XAN", or the "Company") from an affiliate of C-III Capital Partners ("C-III"), and the appointments of Andrew Fentress as Chairman and Mark Fogel as President, CEO & Board member of Exantas
- ACRES is a private commercial real estate lender exclusively dedicated to nationwide middle market CRE lending with a focus on multifamily, student housing, hospitality, office and independent senior living in top US markets
- In addition, Massachusetts Mutual Life Insurance Company ("MassMutual") and a fund managed by Oaktree Capital Management ("Oaktree") have executed strategic financing agreements (the "Financing") to provide Exantas with up to $375 million of capital
  - $250 million 7-year senior secured financing facility provided by MassMutual; flexible terms include a two-year revolving period and no prepayment penalty after year one
  - $125 million 7-year unsecured notes provided by Oaktree and MassMutual, with $50 million drawn at closing and up to $75 million to be drawn from time to time at Exantas's option
- The Financing benefits Exantas as follows:
  - Exantas will have the ability to fully repay its repurchase and warehouse facilities, which eliminates all margin call risk under those facilities
  - Exantas will have approximately $165 million of liquidity, from the combination of Oaktree and MassMutual's additional $75 million commitment and $90 million of unrestricted cash(1), to begin to implement the Company's business plan to preserve and grow book value and earnings

(1) As of July 31, 2020.

ACRES CAPITAL OVERVIEW

EXANTAS

- ACRES is a private commercial real estate lender exclusively dedicated to nationwide middle market CRE lending with a focus on multifamily, student housing, hospitality, office and independent senior living in top US markets
- As of June 2020, ACRES manages and services $1.1 billion[(1)] in assets
- ACRES current strategy is complimentary, providing transitional and construction financing to leading sponsors
- Extensive public company and mortgage REIT operating experience from ACRES senior team members
- ACRES has a dedicated team of 26 professionals and is adding 18 members of the former C-III team, including Dave Bryant in his current role as CFO of Exantas
- Since inception, ACRES has invested in 77 transactions, representing over $1.6 billion in total volume
- Over 65% of ACRES loans have been to the housing segment since inception
- Firm is closely held, with 85% owned by management and founders
- ACRES Capital, LLC is an SEC-registered investment adviser

ACRES Platform – Since Inception

$1.6 Billion
Total Invested Capital

24 Months
Average Loan Term

77 Loans / 37 Realized
Number of Investments

61%
Average Stabilized LTV

$21 Million
Average Position Size

100% First Mortgage
Security

Transaction Map

(1) *As of June 30, 2020, ACRES manages and services $1.1 billion of gross loan commitments and REO properties, which is not calculated using the same definition or calculation of Regulatory Assets Under Management for purposes of the Firm's Form ADV filed with the Securities & Exchange Commission as it includes ACRES' proprietary balance sheet capital.*

ACRES MANAGEMENT TEAM

EXANTAS

Andrew Fentress – Chairman, Exantas(1)

- Managing Partner and Head of Capital Markets at ACRES
- Previously co-founded Medley, a private lender in the US corporate market
- Served as a Managing Director at Napier Park in the Special Situations Group
- Received a BS from Boston College and an MBA from the University of North Carolina's Kenan Flagler School of Business

Mark Fogel – President & CEO, Exantas(1)

- Founded ACRES in 2012 and serves as President and CEO
- Previously served as Head of Asset Management for Arbor Realty Trust, a NYSE publicly traded mortgage REIT
- Received a BS from the University of Delaware and an MS in Real Estate Investment and Development from NYU

Martin Reasoner – Origination, ACRES

- Managing Partner and Head of Origination
- Prior experience as a Partner in Creekside Investments (a real estate investment partnership)
- Played for 15 years with the National Hockey League
- Received a BS from Boston College as a First-Team All American

Jaclyn Jesberger – General Counsel, ACRES

- Chief Compliance Officer & General Counsel
- Previously served as Associate General Counsel at Arbor Realty Trust and as internal counsel at Credit Suisse
- Received a BA from Adelphi University and a JD from Fordham University School of Law

Greg Hayes – Asset Management, ACRES

- Managing Director, Asset Management
- Senior Vice President to UC Funds, where he oversaw the asset management team and managed a highly structured, $1 billion loan portfolio
- Suffolk Construction, Inc., where he worked as a project manager and was responsible for the successful management and completion of $475 million worm of commercial construction projects

Kyle Brengel – Chief Operating Officer, ACRES

- COO and Managing Director, Capital Markets
- Previously worked at Napier Park in the Special Situations Group
- Prior experience on Direct Lending Team at Ares Management
- Received a BS from Fordham University

(1) Denotes Exantas Board Member.

SENIOR SECURED FINANCING OVERVIEW

EXANTAS

Key Terms[1]	
Lender	Massachusetts Mutual Life Insurance Company ("MassMutual")
Commitment Amount	$250 Million
Interest Rate	5.75%
Advance Rate	55%
Term	7 Years (2 Years Revolving; 5 Year Term Thereafter)
Prepayment Penalty	Non-call provision for 6 months; 1% of Par during Year 1; None thereafter

Strategic Rationale

- Exantas can draw on the MassMutual facility to fully repay its repurchase and warehouse facilities, eliminating the potential for any future margin calls under those facilities
- Able to finance assets in challenged sectors (i.e. hospitality, retail) as well as junior participations and REO assets
- Flexible operating terms include a two-year revolving period and no prepayment penalty after year one
  - Ability to move assets into a CLO execution

MassMutual AC ACRES CAPITAL

(1) *Additional detail is available in XAN's form 8-K filed on August 3, 2020.*

UNSECURED NOTES OVERVIEW

EXANTAS

Key Terms[1]	
Investors	Fund managed by Oaktree Capital Management, L.P. ("Oaktree"); Massachusetts Mutual Life Insurance Company ("MassMutual")
Commitment Amount	Tranche I: $50 Million Tranche II: $75 Million Total: $125 Million
Interest Rate	Cash: 8.75% PIK: 3.25% Total: 12.00%
Term	7 Years
Issuance Period	Tranche I funded immediately at closing; Additional tranches available in minimum $10MM draws (and $1MM increments in excess of $10MM) for 18 months following closing
Amortization	Interest Only
Prepayment Provisions	During Years 1-2: 2-Year make-whole discounted at T+50, plus 5% of Par; during Years 3-4: 3% of Par; during Year 5: 2% of Par; during Year 6: 1% of Par; 0% thereafter
Warrants	Tranche I: 1.4 Million Tranche II: Up to 2.1 Million Total: Up to 3.5 Million
Warrant Strike Price	$0.01
Warrant Term	7 Years

(1) *Additional detail is available in XAN's form 8-K filed on August 3, 2020.*

Strategic Rationale

- Initial investment of $50 million at close with additional $75 million available over 18 months at Exantas's option, providing balance sheet flexibility and liquidity reserve
- Provides capital to address key strategic initiatives
  - Portfolio management: protect CLO interests and equity by managing through challenged credits
  - Opportunistic balance sheet management
  - Originate new loans
  - General corporate liquidity

OAKTREE

MassMutual

ACRES CAPITAL

TRANSACTION STRATEGIC BENEFITS

EXANTAS

- ACRES is a dedicated middle market real estate lender with a robust origination platform and a proven ability to source and maintain sponsor relationships that will benefit Exantas as it restarts its originations business
- Proactive approach to asset management is intended to drive incremental value from existing loan portfolio
- Financing Agreements materially increase liquidity profile of the Company and are structured with flexible terms that create optionality
  - While the majority of Exantas's portfolio is dedicated to multifamily loans made to high quality sponsors, new capital will allow Exantas to manage loans facing unique distress related to COVID and protect shareholder equity
  - Opportunity to accretively deleverage the balance sheet via debt and preferred repurchases
  - Ability to repurchase common shares at significant discounts to book value
- ACRES is committed to delivering long-term value for Exantas shareholders
  - Focus on protecting and growing book value per share
  - Originate new loans in this less competitive environment
  - Grow earnings and evaluate dividend payments at competitive and sustainable levels as soon as practicable

Document and Entity Information	Aug. 03, 2020
Document And Entity Information [Line Items]	
Amendment Flag	false
Entity Central Index Key	0001332551
Document Type	8-K
Document Period End Date	Aug. 03, 2020
Entity Registrant Name	Exantas Capital Corp.
Entity Incorporation State Country Code	MD
Entity File Number	1-32733
Entity Tax Identification Number	20-2287134
Entity Address, Address Line One	865 Merrick Avenue
Entity Address, Address Line Two	Suite 200S
Entity Address, City or Town	Westbury
Entity Address, State or Province	NY
Entity Address, Postal Zip Code	11590
City Area Code	516
Local Phone Number	535-0015
Written Communications	false
Soliciting Material	false
Pre Commencement Tender Offer	false
Pre Commencement Issuer Tender Offer	false
Entity Emerging Growth Company	false
Common Stock [Member]	
Document And Entity Information [Line Items]	
Security 12b Title	Common Stock, $0.001 par value
Trading Symbol	XAN
Security Exchange Name	NYSE
Eight Point Six Two Five Percentage Series C Cumulative Redeemable Preferred Stocks [Member]	
Document And Entity Information [Line Items]	
Security 12b Title	8.625% Fixed-to-Floating Series C Cumulative Redeemable Preferred Stock
Trading Symbol	XANPrC
Security Exchange Name	NYSE

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