UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-K

☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For fiscal year ended December 31, 2022

OR

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

COMMISSION FILE NO. 001-06622

ELME COMMUNITIES

(Exact name of registrant as specified in its charter)

Maryland	**53-0261100**
(State of incorporation)	**(IRS Employer Identification Number)**

1775 EYE STREET, NW, SUITE 1000, WASHINGTON, DC 20006

(Address of principal executive office) (Zip code)

Registrant's telephone number, including area code: (202) 774-3200

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Shares of Beneficial Interest	ELME	NYSE

Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☒ No ☐

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

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

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

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

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

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for

complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report. ☒

If securities are registered pursuant to Section 12(b) of the Act, indicate by check mark whether the financial statements of the registrant included in the filing reflect the correction of an error to previously issued financial statements. ☐

Indicate by check mark whether any of those error corrections are restatements that required a recovery analysis of incentive-based compensation received by any of the registrant's executive officers during the relevant recovery period pursuant to §240.10D-1(b). ☐

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

As of June 30, 2022, the aggregate market value of such shares held by non-affiliates of the registrant was $1,843,764,478 (based on the closing price of the shares on June 30, 2022).

As of February 14, 2023, 87,699,948 common shares were outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of our definitive Proxy Statement relating to the 2023 Annual Meeting of Shareholders, to be filed with the Securities and Exchange Commission, are incorporated by reference in Part III, Items 10-14 of this Annual Report on Form 10-K as indicated herein.

ELME COMMUNITIES

2022 FORM 10-K ANNUAL REPORT

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PART I

ITEM 1: BUSINESS

Elme Communities Overview

Elme Communities, a Maryland real estate investment trust (the "Company"), is a self-administered equity real estate investment trust ("REIT") and successor to a trust organized in 1960. Our business primarily consists of the ownership of apartment communities in the greater Washington, DC metro and Sunbelt regions. In October 2022, the Company changed its name from Washington Real Estate Investment Trust to Elme Communities to reflect the Company's transition into a focused multifamily company, and subsequent geographic expansion into Sunbelt markets. On October 20, 2022, the Company's ticker symbol on the New York Stock Exchange changed from "WRE" to "ELME."

Business and Investment Strategy

Our mission is to elevate the value living experience and create a place our residents are proud to call home by continuously focusing on service, efficiency, and innovation. We are focused on creating shareholder value by providing quality, affordably priced housing to a deep, solid, and growing base of mid-market demand. Our research indicates that affordability is a pressing rental issue at multiple price points across the mid-market rent spectrum. We believe that rents can be consistently grown if a portfolio's price point does not compete directly with new product price points and wages for mid-market renters are growing. Furthermore, as the cost of homeownership continues to rise above affordable levels for median income earners, we expect to benefit from sustained demand for quality, affordably priced rental housing.

We acquire, develop, and renovate apartment communities that align with our research-led investment strategy, which is focused on the following:

- targeting markets that have economies with diverse, innovative industries that drive outsized job creation, wage growth and in-migration, which we believe will benefit from these trends in the years to come;
- targeting middle-income renters who make up the largest share of apartment demand in each of our current and target markets but for whom new apartment supply and the cost of owning a home is unaffordable;
- executing value-add renovations that are tailored to each submarket, target renter group and individual community to provide an improved yet affordable living experience while enhancing shareholder value; and
- targeting investment opportunities that have operating upside through community management strategies.

Our research-focused approach enables us to craft optimal strategies to provide the best combination of value, quality, and resident experience in our apartment communities. We categorize our apartment communities among broader asset classes, as determined by a variety of factors, including the age of our buildings, rent growth drivers and rent relative to the market:

Class A

– Class A communities are recently developed and command rental rates above market median rents.
– Class A- communities have been developed within the past twenty years and feature operational improvements and unit upgrades and command rents at or above median market rents.

Class B

– Class B Value-Add communities feature operational improvements and strong potential for unit renovations. These communities, which are generally over twenty years old, command average rental rates below median market rents for units that have not been renovated.
– Class B communities feature operational improvements and command average rental rates below median market rents. Near-term rent growth is driven by operational improvements and market rent growth without unit renovations. These communities are over twenty years old and can become Class B Value-Add depending on future market rents and renovation opportunities.

Regional Real Estate Markets [1]

While we have historically focused our investments in the greater Washington, DC metro region, we began expanding into the Sunbelt region in 2021. Currently, approximately 20% of our residential homes are located in the Sunbelt region. We target markets that have economies with diverse, innovative industries that drive outsized job creation, wage growth and in-migration. Our current targeted expansion markets include Atlanta, Georgia, Dallas-Fort Worth, Texas, Raleigh/Durham, North Carolina, and Charlotte, North Carolina. As of December 31, 2022, we have acquired five apartment communities in the Atlanta metro region and expect to continue to invest in the Sunbelt region in the coming years.

Our multifamily transformation and subsequent geographic expansion were designed to provide greater opportunities for growth as opposed to the headwinds facing the commercial office and retail sectors. As expected, our portfolio experienced very strong rental rate growth during 2022. Our in-place rent growth accelerated during the second half of the year. Looking forward, we believe we are positioned with historically high embedded growth, which we expect will drive outsized revenue and net operating income growth in 2023.

Our portfolio's allocation in the Atlanta and Washington markets, and our focus on value-oriented price points, help enable our future growth, while also providing relative insulation during economic downturns. Over the past five and 10-year periods, Class B rent growth has outperformed Class A in both of our operating markets. Additionally, our mid-market price points have not directly competed with new supply, as our average monthly rent is generally several hundred dollars below the asking rent for new deliveries. Moreover, the national cost of owning a home compared to renting a single-family starter home is the highest it's been in over 20 years. As housing remains undersupplied and the cost of homeownership remains unaffordable for many median-income households, we expect to benefit from sustained demand for quality, affordable rental options.

Washington, DC metro region (22 apartment communities)

The apartment market in the Washington, DC metro region performed well in 2022, with moderation in fundamentals during the second half of the year. In the fourth quarter of 2022, annual demand was flat, and the softening in demand the past three quarters caused overall market occupancy to decline by 190 basis points year-over-year to 95.1%.

Atlanta metro region (5 apartment communities)

The apartment market in the Atlanta metro region performed well in 2021 and 2022 due to the economic recovery, higher household formation and higher in-migration. In the second half of 2022, the Atlanta apartment market experienced a cooling in demand relative to 2021, mirroring most national markets. As a result, overall market occupancy in the fourth quarter of 2022 decreased by 320 basis points year-over-year to 93.8%.

Raleigh/Durham and Charlotte metro regions (targeted markets)

The apartment markets in the Raleigh/Durham and Charlotte metro regions were also strong in 2022, though apartment demand in both markets began to pull back in the second quarter of 2022, with continued tapering for the remainder of the year. Overall market occupancy remained strong in the Raleigh/Durham and Charlotte markets, decreasing by 280 basis points to 94.4% and by 290 basis points to 94.2%, respectively, at the end of the fourth quarter of 2022, compared to the prior year. In the fourth quarter of 2022, asking rent growth was 7.1% and 8.1% in the Raleigh/Durham and Charlotte markets, respectively.

Dallas-Fort Worth metro region (targeted market)

While annual demand cooled in the fourth quarter of 2022, the apartment market in the Dallas-Fort Worth metro region continued to lead the nation for new supply in absolute numbers. As a percentage of existing inventory, the region's inventory growth is in line with other Sunbelt markets and is lower than many mid-sized markets. Overall market occupancy was approximately 94.1%, down 300 basis points from a year ago. In the fourth quarter of 2022, asking rent growth remained strong at 8.6% year-over-year.

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(1) The source of all numerical data in this section is RealPage Market Analytics

Our Portfolio

As of December 31, 2022, we owned approximately 8,900 residential apartment homes in the Washington, DC metro and Sunbelt regions. We also owned approximately 300,000 square feet of commercial space in the Washington, DC metro region. The percentage of total real estate rental revenue from continuing operations by property type for the three years ended December 31, 2022, and the average occupancy for the year ended December 31, 2022, were as follows:

Average Occupancy, year ended December 31, 2022		% of Total Real Estate Rental Revenue		
		2022	2021	2020
95%	Residential	91 %	89 %	82 %
92%	Other	9 %	11 %	18 %
		100 %	100 %	100 %

Total real estate rental revenue from continuing operations for each of the three years ended December 31, 2022, was $209.4 million, $169.2 million and $176.0 million, respectively. During the three years ended December 31, 2022, we acquired five residential properties and placed one residential development project into service. During that same period, we sold fifteen office properties and eight retail properties. See note 14 to the consolidated financial statements for further discussion of our operating results by segment.

No single tenant accounted for more than 5% of real estate rental revenue from continuing operations in any of the three years ended December 31, 2022.

We enter into arrangements from time to time by which various service providers conduct day-to-day community management and/or leasing activities at our properties. As of December 31, 2022, Bozzuto Management Company ("Bozzuto") and Greystar Real Estate Partners ("Greystar") provide community management and leasing services at the majority of our residential communities and Stream Realty Partners ("Stream") provides property management and leasing services at our sole office property, Watergate 600. Bozzuto and Greystar provide such services under individual community management agreements for each residential community, each of which is separately terminable by us or Bozzuto/Greystar, as applicable. Although they vary by community, on average, the fees charged by Bozzuto/Greystar under each agreement are approximately 3% of revenues at each residential community. We are currently implementing a plan to perform day-to-day community management and leasing activities at our residential communities internally rather than outsource those activities. This process began in October of 2022 and is scheduled to be completed in 2023. As of December 31, 2022, 3 of our 27 residential communities were managed internally.

We make capital improvements to our properties on an ongoing basis for the purpose of maintaining and increasing their value and income. Major improvements and/or renovations to the properties during the three years ended December 31, 2022 are discussed in Item 7, Management's Discussion and Analysis of Financial Condition and Results of Operations, under the heading "Capital Improvements and Development Costs."

Further description of the properties is contained in Item 2, Properties, and note 14 to the consolidated financial statements, Segment Information, and in Schedule III. Reference is also made to Item 7, Management's Discussion and Analysis of Financial Condition and Results of Operations.

Environmental, Social and Governance

At Elme Communities, our Environmental, Social and Governance ("ESG") strategy is to operate and grow in a sustainable, responsible manner that contributes to positive economic, social, and environmental outcomes for shareholders, employees, and the communities in which we serve. We intend to continue providing an annual ESG report that includes disclosures aligned with Global Reporting Initiative Standards 2016, the United Nations Sustainable Development Goals, the Sustainability

Accounting Standards Board and the Task Force on Climate-Related Financial Disclosures. This report can be found online at https://www.elmecommunities.com/esg/. The reference to our website address does not constitute incorporation by reference of the information contained in the website and such information should not be considered part of this document.

Environmental

In 2021, we announced our commitment to net zero carbon operation in alignment with the Urban Land Institute's Greenprint Net Zero by 2050 Goal. Meeting this goal will require that we fully integrate a focus on carbon reductions into our strategic approach and at all levels of our organization throughout our portfolio transformation. As a first step toward this goal, we are reevaluating the appropriate interim energy and greenhouse gas emissions targets in support of this long-term objective.

We implement sustainable policies and practices at all of our properties, for purposes of ensuring occupants and residents work and live in efficient, healthy spaces. We track annual asset-level performance of energy use, greenhouse gas emissions, and water consumption, utilizing ENERGY STAR Portfolio Manager as well as Measurabl ESG software. Over the past several years we have demonstrated continual progress in achieving reductions. We apply industry standard rating systems such as the Leadership in Energy and Environmental Design ("LEED") and Building Research Establishment Environmental Assessment Method ("BREEAM") to establish sustainable practices for building design, construction, operations, and maintenance. During unit renovations, we replace end-of-life appliances with ENERGY STAR rated equipment; heating, ventilation, and air conditioning systems with more efficient models; as well as update water fixtures to low-flow options. Additionally, we continue to expand our electric vehicle charging stations across our portfolio to support the transition of our residents to electric transportation.

Social

Among our social initiatives is a commitment to financial inclusion, which aims to increase the availability and equality of financial service opportunities, remove barriers to the financial sector, and enable individuals to improve their financial wellbeing. Beyond credit history, life-altering events can interrupt a resident's ability to pay rent, including job loss, medical emergencies, domestic violence, and other hardships. This can lead to delinquencies, increased interest rate debt, potential eviction, and situational unhousing.

In 2022, we announced a partnership with a financial technology company to dismantle barriers to housing for working families. Through this partnership, on-time rent payments will be reported monthly to all three credit bureaus, providing an opportunity for residents to build their credit. This no-cost amenity is available to 100% of our community residents. This initiative follows a "do no harm" mindset. Therefore, only on-time payments—not delinquencies—will be reported.

In addition to credit reporting, our technology partner's platform offers housing stability loans for residents experiencing financial hardship. These interest-free loans provide up to three months of rent relief, enabling residents to remain housed during difficult times. Residents can then work with our technology partner to set up a 12-month repayment plan for the loan.

These programs support the short- and long-term financial well-being of our residents.

We are committed to robust corporate governance and high ethical standards. Our Board of Trustees (the "Board") is responsible for corporate policy and management oversight to enhance long-term shareholder value. In 2020, our Board formalized the oversight, implementation, and improvement of ESG initiatives, recognizing that environmental and social matters—together with strong corporate governance—play a critical role in the execution of our ESG strategy.

We are made up of growth-oriented, hardworking individuals dedicated to transforming creative ideas into decisive action. Our flat organizational structure facilitates frequent, meaningful interactions with Company executives, and our commitment to teamwork and entrepreneurial spirit enables employees at every level to conceptualize ideas and make them happen. We create an environment designed to encourage people to do what they do best, all while learning, growing, and contributing in meaningful ways to build a better company. We trust, encourage, and support one another, driving our pursuit of excellence.

Human Capital

Employees, Training and Development

On February 14, 2023, we had 102 employees, including 43 persons engaged in community management functions who were hired in connection with the internalization of our community management functions, and 59 persons engaged in corporate, financial, asset management and other functions. We expect the number of employees engaged in community management functions to increase throughout 2023 as we continue the internalization of community management services at our apartment communities. All of our officers and substantially all of our corporate-level employees live and work in or near the greater Washington, DC metro region, and our community management employees live and work in or near their respective communities.

Our human capital resources objectives include identifying, recruiting, retaining, incentivizing and integrating our new and existing employees. At Elme Communities, we place great value on employee growth through goals, feedback and professional and leadership development offerings. Our human resources team provides ongoing training and development opportunities to all employees. We financially support employees pursuing industry-specific training and certification programs and we encourage employees to join professional organizations that offer technical, soft skill and leadership development workshops.

Additionally, our equity and cash incentive plans are designed to attract, retain and reward our workforce through the granting of share-based and cash-based compensation awards, with the goal of motivating employees to perform to the best of their abilities and achieve our objectives, including increasing shareholder value.

Health, Safety and Well-being

We support our employees with a robust and competitive employee benefits program, including a flexible vacation policy, parental leave, 401(k) matching, tuition reimbursement, an Employee Assistance Program, and other programs.

Additionally, we have a wellness program that provides fun, engaging challenges to encourage employees to continuously improve their physical, mental, and financial well-being. Some of the programs we offer throughout the year include biometric screenings, personal finance check-ups, and healthy lunch challenges. In our corporate office, we offer two wellness rooms for employees to take a break to decompress.

Our technological capabilities allow our corporate-level employees the flexibility to work from anywhere at any time. This allows us to easily meet our residents' needs as well as those of our employees.

Diversity, Equity, Inclusion and Accessibility

Our Diversity, Equity, Inclusion, and Accessibility Initiative ("DEIA") is a long-term commitment to promoting an environment where each individual feels comfortable being their most authentic selves. We believe diversity of backgrounds, experiences, cultures, ethnicities, and interests leads to new ways of thinking and drives engagement and organizational success. Our diverse DEIA Council is overseen by our senior leadership team and board of trustees. The DEIA Council tracks and monitors our diversity metrics and facilitates learning and training opportunities, including a diversity speaker series, targeted recruitment and relationship development with diverse industry groups for internships and employment opportunities and partnering with community-based non-profits for volunteer activities.

Community Engagement

As a real estate investment trust, investing is at the core of what we do, but the most valuable investments we make are not in our buildings but in our people and our community. We are passionate about making a difference in the regions we call home.

We are committed to improving the lives of those in need, and our employees participate in a wide variety of philanthropic activities throughout the year. Whether volunteering at a food bank, running a toy drive, walking for a cause, or participating in our company-wide community service day, we are proud to foster a culture of giving back.

Regulation

REIT Tax Status

We believe that we qualify as a REIT under Sections 856-860 of the Internal Revenue Code of 1986, as amended (the "Code"), and intend to continue to qualify as such. To maintain our status as a REIT, we are, among other things required to distribute 90% of our REIT taxable income (determined before the deduction for dividends paid and excluding net capital gains), to our shareholders on an annual basis. When selling a property, we generally have the option of (a) reinvesting the sales proceeds of property sold, in a way that allows us to defer recognition of some or all of the taxable gain realized on the sale, (b) distributing gains to the shareholders with no tax to us or (c) treating net long-term capital gains as having been distributed to our shareholders, paying the tax on the gain deemed distributed and allocating the tax paid as a credit to our shareholders.

Generally, and subject to our ongoing qualification as a REIT, no provisions for income taxes are necessary except for taxes on undistributed taxable income and taxes on the income generated by our taxable REIT subsidiary. Our taxable REIT subsidiary is subject to corporate U.S. federal, state and local income tax on its taxable income at regular statutory rates (see note 1 to the consolidated financial statements for further disclosure).

Americans with Disabilities Act ("ADA")

The properties in our portfolio must comply with Title III of the ADA, to the extent that such properties are "public accommodations" as defined by the ADA. The ADA may require removal of structural barriers to access by persons with disabilities in certain public areas of our properties where such removal is readily achievable. We believe that our properties are in substantial compliance with the ADA and that we will not be required to make substantial capital expenditures to address the requirements of the ADA. However, noncompliance with the ADA could result in imposition of fines or an award of damages to private litigants. The obligation to make readily accessible accommodations is an ongoing one, and we will continue to assess our properties and make alterations as appropriate in this respect.

Fair Housing Act ("FHA")

The FHA, its state law counterparts and the regulations promulgated by the U.S. Department of Housing and Urban Development and various state agencies, prohibit discrimination in housing on the basis of race or color, national origin, religion, sex, familial status (including children under the age of 18 living with parents or legal custodians, pregnant women and people securing custody of children under 18) or handicap (disability) and, in some states, financial capability or other bases. A failure to comply with these laws in our operations could result in litigation, fines, penalties or other adverse claims, or could result in limitations or restrictions on our ability to operate, any of which could materially and adversely affect us. We believe that we operate our properties in substantial compliance with the FHA.

Environmental Matters

We are subject to numerous federal, state and local environmental, health, safety and zoning laws and regulations that govern our operations, including with respect to air emissions, wastewater, and the use, storage and disposal of hazardous and toxic substances and petroleum products. If we fail to comply with such laws, including if we fail to obtain any required permits or licenses, we could face substantial fines or possible revocation of our authority to conduct some of our operations.

In addition, under various federal, state and local laws and regulations relating to the environment, as a current or former owner or operator of real property, we may be liable for costs and damages resulting from the presence or discharge of hazardous or toxic substances, waste or petroleum products at, on, in, under, or migrating from such property, including costs to investigate and clean up such contamination and liability for natural resources damage. In addition, we also may be liable for the costs of remediating contamination at off-site waste disposal facilities to which we have arranged for the disposal or treatment of hazardous substances, without regard to whether we complied with environmental laws in doing so. Such laws often impose liability without regard to whether the owner or operator knew of, or was responsible for, the presence of such contamination, and the liability may be joint and several. These liabilities could be substantial and the cost of any required remediation, removal, fines, or other costs could exceed the value of the property and/or our aggregate assets. In addition, the presence of contamination or the failure to remediate contamination at our properties may expose us to third-party liability for costs of remediation and/or bodily injury or property damage or materially adversely affect our ability to sell, lease or develop our properties or to borrow using the properties as collateral. In addition, environmental laws may create liens on contaminated sites in favor of the government for damages and costs it incurs to address such contamination. Moreover, if contamination is discovered on our properties, environmental laws may impose restrictions on the manner in which property may be used or businesses may be operated, and these restrictions may require substantial expenditures.

Availability of Reports

Copies of this Annual Report on Form 10-K, as well as our Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and any amendments to such reports are available, free of charge, on our website www.elmecommunities.com. All required reports are made available on the website as soon as reasonably practicable after they are electronically filed with or furnished to the Securities and Exchange Commission. The reference to our website address does not constitute incorporation by reference of the information contained in the website and such information should not be considered part of this document.

The Securities and Exchange Commission maintains a website (*http://www.sec.gov*) that contains reports, proxy statements, information statements, and other information regarding issuers that file electronically with Securities and Exchange Commission.

ITEM 1A: RISK FACTORS

Set forth below are the risks that we believe are material to our shareholders. We refer to the shares of beneficial interest in Elme Communities as our "common shares," and the investors who own shares as our "shareholders." This section includes or refers to certain forward-looking statements. You should refer to the explanation of the qualifications and limitations on such forward-looking statements beginning on page *38**.*

Risks Related to our Business and Operations

We may be unable to successfully expand our operations into new markets and submarkets, which could have a material adverse effect on us, the trading price of our shares and our ability to make distributions to our shareholders.

In connection with our strategic transformation, which began in 2021, we intend to further expand our residential platform through acquisitions in Sunbelt markets. Our current targeted expansion markets include Atlanta, Georgia, Raleigh/Durham, North Carolina, Charlotte, North Carolina and Dallas-Fort Worth, Texas. During 2021 and 2022, we acquired five apartment communities in the Atlanta metro region and plan to continue to invest in the Sunbelt region in 2023 and beyond. However, our historic operations have been concentrated in the Washington DC, metro region, where we have expertise in acquiring and operating assets. The risks applicable to our ability to acquire, integrate and operate apartment communities in the Washington DC, metro region are also applicable to our ability to acquire, integrate and operate apartment communities in new markets. In addition to these risks, we will not possess the same level of familiarity with the dynamics and market conditions of any new markets that we have entered in connection with our strategic transformation or that we may enter, which could adversely affect our ability to expand and success in expanding into those markets. Furthermore, we may be unable to build a significant market share or achieve a desired return on our investments in new markets. The occurrence of any of the foregoing risks could have a material adverse effect on us, the trading price of our shares and our ability to make distributions to our shareholders.

Our performance and value are subject to risks associated with our apartment communities and with the real estate industry, which could adversely affect our cash flow and ability to make distributions to our shareholders. Furthermore, substantially all of our investments are concentrated in the multifamily asset class.

Our financial performance and the value of our apartment communities are subject to the risk that they do not generate revenues sufficient to meet our operating expenses, debt service and capital expenditures, which could cause our cash flow and ability to make distributions to our shareholders to be adversely affected. Any of the following factors, among others, may adversely affect the cash flow generated by our apartment communities and ability to make distributions to our shareholders:

- a decrease in demand for rental properties over home ownership resulting from, among other reasons, resident preferences, decreases in housing prices and mortgage interest rates, and government programs to promote home ownership or subsidize rental housing, slow or negative employment growth and household formation;
- competition with other housing alternatives, including owner occupied single and residential apartment homes;
- a return of the availability of low-interest mortgages or the availability of mortgages requiring little or no down payment for single family home buyers;
- declines in the financial condition of our residents;
- significant job losses in the regions in which we operate;
- economic and market conditions including: migration to areas outside of major metropolitan areas where our portfolio is concentrated, new construction and excess inventory of residential and owned housing/condominiums, increasing portions of owned housing/condominium stock being converted to rental use;
- our ability to integrate new technological innovations into our properties to attract residents; and
- political conditions, civil disturbances, earthquakes and other natural disasters, terrorist acts or acts of war and actual or anticipated geopolitical instability.

Additionally, as of December 31, 2022, substantially all of our investments are concentrated in the multifamily industry, and we are subject to risks inherent in investments in a single type of property. A downturn or slowdown in the demand for multifamily housing may have more pronounced effects on our results of operations or on the value of our assets than when we had investments in more than one asset class.

The multifamily industry is also highly competitive. We compete with many other entities engaged in real estate investment activities, including individuals, corporations, bank and insurance company investment accounts, other REITs, real estate limited partnerships, and other entities engaged in real estate investment activities. Many of these entities have significant

financial and other resources, including operating experience, allowing them to compete effectively with us.Competitors with substantially greater financial resources than us may be able to accept more risk than we can effectively manage. In addition, those competitors that are not REITs may be at an advantage to the extent they can use working capital to finance projects, while we (and our competitors that are REITs) may have to forgo and/or liquidate otherwise attractive investments as we must comply with REIT requirements. These actions could have the effect of reducing our income and amount available for distribution to shareholders. Thus, compliance with REIT requirements may hinder our ability to make, or, in certain cases, maintain ownership of, certain attractive investments.

Competition may also result in overbuilding of multifamily properties, causing an increase in the number of multifamily units available which could potentially decrease occupancy and multifamily rental rates at our properties. We may also be required to expend substantial sums to attract new residents.These factors may cause resale value of the property to be diminished because the market value of a particular property will depend principally upon the net revenues generated by the property. Further, costs associated with real estate investment generally are not reduced when circumstances, such as the ongoing pandemic, cause a reduction in income from the investment.

Each of these factors could possibly limit our ability to retain our current residents, attract new ones or increase or maintain rents, which could lower the value of our properties and adversely affect our results of operations and our financial condition.

Macroeconomic trends, including inflation and rising interest rates, may adversely affect our financial condition and results of operations.

Macroeconomic trends, including increases in inflation and rising interest rates, may adversely impact our business, financial condition and results of operations. Recently, inflation in the United States has risen to levels not experienced in recent decades, including rising energy prices, prices for consumer goods, interest rates and wages. These increases and any interventions, fiscal or otherwise, by the U.S. government in reaction to such events could negatively impact our business by increasing our operating costs and borrowing costs as well as decreasing the cash available to our residents and tenants and prospective residents and tenants who wish to rent in our communities. Although we expect to be able to increase rent to combat the effects of inflation, the cost to operate and maintain communities could increase faster or at a rate greater than our ability to increase rents that residents and tenants would be willing to pay, which could adversely affect our results of operations. Additionally, a decline in the market value of real estate in the regions in which we operate may result in the carrying value of certain real estate assets exceeding their fair value, which may require us to recognize an impairment to those assets.

We are currently dependent upon the economic and regulatory climate of the Washington, DC metro region, which may impact our profitability and may limit our ability to meet our financial obligations when due and/or make distributions to our shareholders.

As of December 31, 2022, 80% of our residential apartment homes were located in the Washington, DC metro region and 20% of our residential apartment homes were located in the Atlanta, Georgia metro region. While we are implementing a strategy of continued expansion into the Sunbelt region, our current concentration in just two geographic markets may expose us to a greater amount of market dependent risk than if we were more geographically diverse. Our performance could be adversely affected by the economic conditions in, and other factors relating to, these two geographic areas, including zoning and other regulatory conditions, competition for residents and supply and demand for apartment in these regions, as well as unemployment and job growth. Additionally, in the Washington, DC metro region, general economic conditions and local real estate conditions are dependent upon various industries that are predominant in the area (such as government and professional/business services). A downturn in one or more of these industries may have a particularly strong effect on the economic climate of the region. Additionally, we are susceptible to adverse developments in the Washington, D.C. regulatory environment, such as increases in real estate and other taxes, the costs of complying with governmental regulations or increased regulations and actual or threatened reductions in federal government spending and/or changes to the timing of government spending, as has occurred during federal government shutdowns. To the extent that these markets become less desirable to operate in, our results of operations could be more negatively impacted than if we were more diversified within our markets. In the event of negative economic and/or regulatory changes in the regions in which we operate, we may experience a negative impact to our profitability and may be limited in our ability to meet our financial obligations when due and/or make distributions to our shareholders.

Short-term leases expose us to the effects of declining market rents sooner than long-term leases, which could adversely affect our cash flow, results of operations and financial condition.

Substantially all of our apartment leases are for a term of one year or less. Because these leases generally permit the residents to leave at the end of the lease term without penalty, our rental revenues are impacted by declines in market rents sooner than if our apartment leases were for longer terms. Additionally, if the terms of a renewal or reletting are less favorable than current terms, then our results of operations and financial condition could be negatively affected. For each the three years ended December 31, 2022, the same store residential resident retention rate was 63%, 60%, and 57%, respectively.

The risks related to our commercial operations could adversely impact our results of operations and financial condition.

Although we are primarily in the residential rental business, we also own ancillary commercial space, primarily within our apartment communities, and own one office building that we lease to third parties. Gross rental revenue provided by leased commercial space in our portfolio represented 9% of our real estate rental revenue from continuing operations in 2022. The long term nature of our commercial leases and characteristics of many of our tenants (generally small, local businesses) may subject us to certain risks, such as difficulties or delays in reletting this commercial space and in achieving desired rental rates, the cost of allowances and concessions to tenants, which may be less favorable than current terms, a failure rate of small, local business that may be higher than average and competition with other commercial spaces, which may affect our ability to lease space and the level of rents we can obtain. Additionally, if our commercial tenants experience financial distress or bankruptcy, they may fail to comply with their contractual obligations, seek concessions in order to continue operations or cease their operations. Each of these factors could adversely impact our results of operations and financial condition.

Real estate investments are illiquid, and we may not be able to sell our properties on a timely basis when we determine it is appropriate to do so, which could negatively impact our profitability.

Real estate investments can be difficult to sell and convert to cash quickly, especially if market conditions are not favorable. Such illiquidity could limit our ability to quickly change our portfolio of properties in response to changes in economic or other conditions. Moreover, the REIT tax laws require that we hold our properties for investment, rather than primarily for sale in the ordinary course of business, which may cause us to forego or defer property sales that otherwise would be in our best interest. Due to these factors, we may be unable to sell a property at an advantageous time or on the terms anticipated which could negatively impact our profitability.

Rent control or rent stabilization legislation and other regulatory restrictions may limit our ability to increase rents and pass through new or increased operating costs to our residents.

Jurisdictions in which we own property have adopted, or may in the future adopt, laws and regulations imposing restrictions on the timing or amount of rent increases or have imposed regulations relating to low- and moderate-income housing. Such laws and regulations limit our ability to charge market rents, increase rents or evict residents at our apartment communities and could make it more difficult for us to dispose of properties in certain circumstances. Similarly, compliance procedures associated with rent control statutes and low- and moderate-income housing regulations could have a negative impact on our operating costs, and any failure to comply with low- and moderate-income housing regulations could result in the loss of certain tax benefits and the forfeiture of rent payments. In addition, such low- and moderate-income housing regulations often require us to rent a certain number of homes at below-market rents, which has a negative impact on our ability to increase cash flows from our residential properties subject to such regulations. Furthermore, such regulations may negatively impact our ability to attract higher-paying residents to such properties. As of December 31, 2022, four of our residential properties, each located within the Washington, DC metro region, were subject to such regulations.

Our business and reputation depend on our ability to continue to provide high quality housing and consistent operation of our communities, the failure of which could adversely affect our business, financial condition and results of operations.

Our business and reputation depend on providing our residents with quality housing including a wide variety of amenities such as covered parking, swimming pools, fitness facilities and similar features, highly reliable services, including water and electric power and the consistent operation of our communities. The delayed delivery or any material reduction or prolonged interruption of these services may cause residents to terminate their leases or may result in a reduction of rents and/or increase in our costs or other issues. In addition, we may fail to provide quality housing and continuous access to amenities, including government mandated closures due to health concerns, mechanical failure, power outage, human error, vandalism, physical or electronic security breaches, war, terrorism and similar events. Such service interruptions, closures, mechanical failures or other events may also expose us to additional liability claims and damage our reputation and brand and could cause current residents to terminate or not renew their leases, and prospective residents to seek housing elsewhere. Any such failures could impair our ability to continue providing quality housing and consistent operation of our communities, which could adversely affect our business, financial condition and results of operations.

We face risks associated with property development/redevelopment, which could have an adverse effect on our financial condition, results of operations or ability to satisfy our debt service obligations.

We may, from time to time, engage in development and redevelopment activities, some of which may be significant. Developing or redeveloping properties presents a number of risks for us, including risks relating to necessary permitting, risks relating to development and construction costs and/or permanent financing, environmental remediation, timeline disruptions and demand for the completed property.

Properties developed or acquired for development may generate little or no cash flow from the date of acquisition through the date of completion of development and commencement of leasing activity. In addition, new development activities, regardless of whether or not they are ultimately successful, may require a substantial portion of management's time and attention.

These risks could result in substantial unanticipated delays or expenses and, under certain circumstances, could prevent completion of development activities once undertaken. Some of these development/redevelopment risks may be heightened given current uncertain and potentially volatile market conditions. If market volatility causes economic conditions to remain unpredictable or to trend downwards, we may not achieve our expected returns on properties under development and we could lose some or all of our investments in those properties. In addition, the lead time required to develop, construct, and lease-up a development property may increase, which could adversely impact our projected returns or result in a termination of the development project. The materialization of any of the foregoing risks could have an adverse effect on our financial condition, results of operations or ability to satisfy our debt service obligations.

Corporate social responsibility, specifically related to Environmental, Social and Governance, may constrain our business operations, impose additional costs and expose us to new risks that could adversely impact our results of operations and financial condition and the price of our securities.

Environmental, social and governance matters have become increasingly important to investors and other stakeholders. Certain organizations that provide corporate risk and corporate governance advisory services to investors have developed scores and ratings to evaluate companies based upon ESG metrics. Many investors focus on ESG-related business practices and scores when choosing where to allocate their investments and may consider a company's score as a factor in making an investment decision. The focus and activism related to ESG and related matters may constrain our business operations or increase expenses. Additionally, if our corporate responsibility procedures or standards do not meet the standards set by various constituencies, we may face reputational damage. There can be no assurance of how we will score on the ESG metrics used by such advisory organizations in the future, particularly since the criteria by which companies are rated for their ESG efforts may change. A low ESG score could result in a negative perception of the Company, exclusion of our securities from consideration by certain investors and/or cause investors to reallocate their capital away from the Company, each of which could have an adverse impact on the price of our securities.

We face risks associated with property acquisitions.

We may acquire properties and expand into new markets which would increase our size and geographic diversity and could alter our capital structure. In addition, our acquisition activities and results may be exposed to the following risks:

- we may have difficulty finding properties that are consistent with our strategies and meet our standards;
- we may be unable to finance acquisitions on favorable terms or at all;
- the occupancy levels, lease-up timing and rental rates of acquired properties may not meet our expectations;
- even if we enter into an acquisition agreement for a property, we may be unable to complete that acquisition after making a non-refundable deposit and incurring certain other acquisition-related costs;
- we may be unable to acquire a desired property at all or at the desired purchase price because of competition from other real estate investors, including publicly traded real estate investment trusts, institutional investment funds and private investors;
- the timing of property acquisitions may lag the timing of property dispositions, leading to periods of time where projects' proceeds are not invested as profitably as we desire;
- we may be unable to quickly and efficiently integrate new acquisitions, particularly acquisitions of portfolios of properties, into our existing operations;
- we may assume liabilities for undisclosed environmental contamination;
- our estimates of capital expenditures required for an acquired property, including the costs of repositioning or redeveloping, may be inaccurate and the acquired properties may fail to perform as we expected in analyzing our investments; and
- we could experience a decline in value of the acquired assets after acquisition.

We may also acquire properties subject to liabilities and without recourse, or with limited recourse with respect to unknown liabilities. As a result, if liability were asserted against us based upon the acquisition of a property, we may have to pay substantial sums to settle it, which could adversely affect our cash flow.

We face risks associated with third-party service providers, which could negatively impact our profitability.

We enter into arrangements from time to time with various service providers which conduct day-to-day community management and/or leasing activities at many of our apartment communities. As of December 31, 2022, our office property and 95% of our apartment homes are managed by third-party service providers. Failure of such service providers to adequately perform their contracted services could negatively impact our ability to retain residents or lease vacant space. As a result, any such failure could negatively impact our profitability.

Our strategic transformation could place a significant strain on our management team and personnel and requires us to increase the size of our workforce. Furthermore, we depend on our key personnel, and we can provide no assurances that we will be successful in attracting and retaining such personnel.

We expect the total number of our employees to increase as we internalize our community management operations, which could place significant strain on our management, personnel, operations, systems, technical performance, financial resources, and internal financial control and reporting functions. Properly managing this internalization will also require us to increase the size of our workforce as we hire, train, and manage qualified employees and staff. If our new hires perform poorly, if we are unsuccessful in hiring, training, managing, and integrating new employees and staff, or if we are not successful in retaining our existing employees and staff, our business may be harmed. Additionally, if any of our key personnel were to terminate their employment with us, our operating results could suffer, and since competition for such personnel is intense, we cannot assure you that we will be successful in attracting and retaining such personnel or that we will not need to incur additional expense to attract and retain such personnel.

Moreover, if we must implement any reductions in workforce or restructurings, we may be subject to unintended consequences and costs, such as attrition beyond the intended reduction in workforce, the distraction of employees, or reduced employee morale which could adversely affect our reputation as an employer, make it more difficult for us to hire new employees in the future or increase the risk that we may not achieve the anticipated benefits from the reduction in workforce. A failure to properly manage the size of our workforce could have an adverse effect on our financial condition and results of operations.

We may suffer economic harm as a result of the actions of our partners in real estate joint ventures and other investments which may adversely affect our financial condition, results of operations, cash flows and ability to make distributions to our shareholders.

While we currently have no interests in joint ventures, we may from time to time invest in joint ventures in which we are not the exclusive investor or the only decision maker. Investments in such entities may involve risks not present when a third party is not involved, including the possibility that the other parties to these investments might become bankrupt or fail to fund their share of required capital contributions, and we may be forced to make contributions to maintain the value of the property. Our partners in these entities may have economic, tax or other business interests or goals that are inconsistent with our business interests or goals and may be in a position to take actions contrary to our policies or objectives. Such investments may also lead to impasses, for example, as to whether to sell a property, because neither we nor the other parties to these investments may have full control over the entity. In addition, we may in certain circumstances be liable for the actions of the other parties to these investments. Each of these factors could have an adverse effect on our financial condition, results of operations, cash flows and ability to make distributions to our shareholders. In some instances, joint venture partners may have competing interests that could create conflicts of interest. These conflicts may include compliance with the REIT requirements, and our REIT status could be jeopardized if any of our joint ventures do not operate in compliance with the REIT requirements. To the extent our joint venture partners do not meet their obligations to us or they act inconsistent with our interests in the joint venture, we may be adversely affected.

Climate change and regulation regarding climate change in the regions in which we operate may adversely affect our financial condition, results of operations, cash flows, per share market price of our common shares and our ability to satisfy our principal and interest obligations and to make distributions to our shareholders.

Climate change (including rising sea levels, flooding, extreme weather, and changes in precipitation and temperature), may result in physical damage to, a decrease in demand for and/or a decrease in rent from and value of our properties located in the areas affected by these conditions (particularly in areas closer to coasts). Additionally, our insurance premiums may increase as a result of the threat of climate change or the effects of climate change may not be covered by our insurance policies.

Changes in U.S. federal and state legislation and regulations on climate change could result in utility expenses and/or capital expenditures to improve the energy efficiency of our existing properties or other related aspects of our properties in order to comply with such regulations or otherwise adapt to climate change. The U.S. government and various state agencies have introduced or are contemplating regulatory changes in response to the potential impact of climate change, including legislation regarding green-house gas emissions and renewable energy targets. Any such regulation regarding climate change may require unplanned capital improvements and increased engagement by our employees. Any adopted future climate change regulations could negatively impact our ability to compete with companies not subject to such regulations. From a medium and long-term perspective, as a result of these regulatory initiatives, we may see an increase in costs relating to any owned or future properties and failure to meet certain performance standards could result in fines for non-compliance, a decrease in demand and a decline in the value of our properties. As a result of these and other regulations, our financial condition, results of operations, cash flows, per share market price of our common shares and our ability to satisfy our principal and interest obligations and to make distributions to our shareholders could be adversely affected.

Actual or threatened acts of violence, including terrorist attacks, may adversely affect our ability to generate revenues and the value of our properties.

Actual or threatened acts of violence, including terrorist attacks, could occur in the localities in which we conduct business. As a result, some residents in our markets may choose to relocate to other markets. This could result in an overall decrease in the demand for such markets generally, which could increase vacancies or impact rental rates in our properties. In addition, future acts of violence or terrorist attacks could directly or indirectly damage our properties, both physically and financially, or cause losses that materially exceed our insurance coverage. As a result of the foregoing, our ability to generate revenues and the value of our properties could decline materially which would negatively affect our results of operations.

Some potential losses are not covered by insurance, which could adversely affect our financial condition or cash flow.

The property insurance that we maintain for our properties has historically been on an “all risk” basis, which is in full force and effect until renewal in March 2023 or August 2023, depending on the property. There are other types of losses, such as from wars or catastrophic events, for which we cannot obtain insurance at all or at a reasonable cost.

Our insurance does not cover terrorist related activities except certain non-certified nuclear, chemical and biological acts of terrorism. Our financial condition and results of operations are subject to the risks associated with acts of terrorism and the potential for uninsured losses as the result of any such acts.

Property ownership also involves potential liability to third parties for such matters as personal injuries occurring on the property. Such losses may not be fully insured. In addition to uninsured losses, various government authorities may condemn all or parts of operating properties. Such condemnations could adversely affect the viability of such projects. Any such uninsured loss could adversely affect our financial condition or cash flow.

In the event of an uninsured loss or a loss in excess of our insurance limits, we could lose both the revenues generated from the affected property and the capital we have invested in the affected property. Depending on the specific circumstances of the affected property, it is possible that we could be liable for any mortgage indebtedness or other obligations related to the property. Any such loss could adversely affect our business and financial condition and results of operations. Additionally, any material increase in insurance rates or decrease in available coverage in the future could adversely affect our results of operations and financial condition.

Certain federal, state and local laws and regulations may cause us to incur substantial costs or subject us to potential liabilities.

We are subject to certain compliance costs and potential liabilities under various U.S. federal, state and local environmental, health, safety and zoning laws and regulations. These laws and regulations govern our and our tenants’ operations including with respect to air emissions, wastewater disposal, and the use, storage and disposal of hazardous and toxic substances and petroleum products, including in storage tanks that power emergency generators. If we fail to comply with such laws, including if we fail to obtain any required permits or licenses, we could face substantial fines or possible revocation of our authority to conduct some of our operations.

In addition, various environmental laws impose liability on a current or former owner or operator of real property for investigation, removal or remediation of hazardous or toxic substances or petroleum products at our currently or formerly owned or leased real property, regardless of whether or not we knew of, or caused, the presence or release of such substances. Liability under these laws may be joint and several, meaning that we could be required to bear 100% of the liability even if other parties are also liable. From time to time, we may be required to remediate such substances or remove, abate or manage asbestos, mold, radon gas, lead or other hazardous conditions at our properties. The presence or release of such toxic or

hazardous substances or petroleum products at our currently owned or leased properties could result in limitations on or interruptions to our operations, and releases at our currently or formerly owned or leased properties could result in in third-party claims for bodily injury, property or natural resource damages, or other losses, including liens in favor of the government for costs the government incurs in cleaning up contamination. In addition, we may be liable for the costs of investigating or remediating contamination at off-site waste disposal facilities to which we have arranged for the disposal, or treatment of hazardous substances without regard to whether we complied with environmental laws in doing so. It is our policy to retain independent environmental consultants to conduct Phase I environmental site assessments and asbestos surveys prior to our acquisition of properties. However, there is a risk that these assessments will not identify all potential environmental issues at a given property. Moreover, environmental, health and safety requirements have become increasingly stringent, and our costs may increase as a result. New or revised laws and regulations or new interpretations of existing laws and regulations, such as those related to climate change, could affect the operation of our properties or result in significant additional expense and operating restrictions on our properties or adversely affect our ability to sell properties or to use properties as collateral.

We may also incur significant costs complying with other regulations. In addition, failure of our properties to comply with the Americans with Disabilities Act ("ADA") could result in injunctive relief, fines, an award of damages to private litigants or mandated capital expenditures to remedy such noncompliance. Any imposition of injunctive relief, fines, damage awards or capital expenditures could adversely impact our business or results of operations. Our properties are subject to various other federal, state and local regulatory requirements, such as state and local fair housing, rent control and fire and life safety requirements. If we fail to comply with the requirements of the ADA or other federal, state and local regulations, we could be subject to fines, penalties, injunctive action, reputational harm and other business effects which could materially and negatively affect our performance and results of operations.

We face cybersecurity risks which have the potential to disrupt our operations, cause material harm to our financial condition, result in misappropriation of assets, compromise confidential information and/or damage our business relationships and can provide no assurance that the steps we and our service providers take in response to these risks will be effective.

Despite system redundancy, the implementation of security measures, required employee awareness training and the existence of a disaster recovery plan, we face cybersecurity risks, such as cyber-attacks, ransomware and other malware, social engineering, phishing schemes or bad actors inside our organization. The risk of a security breach, disruption, or cyber-attack, including by computer hackers, nation-state affiliated actors and cyber terrorists, has generally increased as the number, intensity and sophistication of attempted attacks around the world have increased. Any such incident may result in disruption of our operations, material harm to our financial condition, cash flows and the market price of our common shares, misappropriation of assets, compromise or corruption of confidential information collected in the course of conducting our business, liability for stolen information or assets, increased cybersecurity protection and insurance costs, regulatory enforcement, litigation and damage to our stakeholder relationships. These risks require increasing resources from us to analyze and mitigate, and there is no assurance that our efforts will be effective. Additionally, as a result of the internalization of community management services for our properties, which began in late 2022, we collect and retain greater amounts of personal information, both from employees and current and potential residents, which increases the risks and potential effects of such an incident. We also rely on third-party service providers in our conduct of our business, and we can provide no assurance that the security measures of those providers will be effective.

In the normal course of business, we and our service providers collect and retain certain personal information provided by our residents, employees and vendors. Although we make efforts to maintain the security and integrity of our information, we can provide no assurance that our data security measures will be able to prevent unauthorized access to this personal information. In addition to the risks discussed above related to a breach of confidential information, a breach of personal information may result in regulatory fines and orders, obligations to notify individuals or litigation risks.

A pandemic, including the outbreak of COVID-19, and measures intended to prevent its spread, could have a material adverse effect on our business, results of operations, cash flows and financial condition.

A pandemic and emergence of new variants could (as the current outbreak of COVID-19 has) negatively impact the global economy, disrupt financial markets and international trade, and result in varying unemployment levels, all of which could negatively impact the multifamily industry and our business. Pandemic outbreaks could lead (and the current outbreak of COVID-19 has led) governments and other authorities around the world, including federal, state and local authorities in the United States, to impose measures intended to mitigate its spread, including restrictions on freedom of movement and business operations such as issuing guidelines, travel bans, border closings, business closures, quarantine orders, and orders not allowing the collection of rents, rent increases, or eviction of non-paying residents and tenants.

The impact of an ongoing pandemic and measures to prevent its spreadcould (and the current outbreak of COVID-19 has)

negatively impact and could continue to negatively impact our businesses in a number of ways, including shifts in consumer housing demand, our residents' ability or willingness to pay rents and the demand for multifamily communities within the markets we operate. In the event of a decline in business activity and demand for real estate transactions, our ability or desire to grow or diversify our residential portfolio could (and has been) be affected. Additionally, local and national authorities could continue to expand and extend certain measures imposing restrictions on our ability to enforce contractual rental obligations upon our residents and tenants. Unanticipated costs and operating expenses and decreased anticipated and actual revenue related to compliance with regulations, could negatively impact our future compliance with financial covenants of debt agreements and our ability to satisfy certain REIT-related requirements.

The full extent of the impact of a pandemic on our business is largely uncertain and dependent on a number of factors beyond our control, and we are not able to estimate with any degree of certainty the effect a pandemic or measures intended to curb its spread could have on our business, results of operations, financial condition, and cash flows. Moreover, many of the other risk factors described herein could be more likely to impact us as a result of a pandemic or measures intended to curb its spread.

Risks Related to Financing

We face risks associated with the use of debt, including refinancing risk.

We rely on borrowings under our credit facility, mortgage notes, and debt securities to finance acquisitions and development activities and for general corporate purposes. In the past, the commercial real estate debt markets have experienced significant volatility due to a number of factors, including the tightening of underwriting standards by lenders and credit rating agencies and the reported significant inventory of unsold mortgage-backed securities in the market. This volatility resulted in investors decreasing the availability of debt financing as well as increasing the cost of debt financing. These conditions, which increase the cost and reduce availability of debt, may continue to worsen in the future. Circumstances could again arise in which we may not be able to obtain debt financing in the future on favorable terms, or at all. If we were unable to borrow under our credit facility or to refinance existing debt financing, our financial condition and results of operations would likely be adversely affected. Similarly, global equity markets have experienced significant price volatility and liquidity disruptions in recent years, and similar circumstances could significantly and negatively impact liquidity in the financial market in the future. Any disruption could negatively impact our ability to access additional financing at reasonable terms or at all.

We anticipate that only a small portion of the principal of our currently outstanding debt will be repaid prior to maturity. Therefore, we are likely to need to refinance a significant portion of our outstanding debt as it matures. There is a risk that we may not be able to refinance existing debt or that the terms of any refinancing will not be as favorable as the terms of the existing debt. If principal payments due at maturity cannot be refinanced, extended or repaid with proceeds from other sources, such as new equity capital, our cash flow may not be sufficient to repay all maturing debt in years when significant "balloon" payments come due. In addition, we may rely on debt to fund a portion of our new investments such as our acquisition and development activity. There is a risk that we may be unable to finance these activities on favorable terms or at all. The materialization of any of the foregoing risks would adversely affect our financial condition and results of operations.

Our degree of leverage could limit our ability to obtain additional financing, affect the market price of our common shares or debt securities or otherwise adversely affect our financial condition.

On February 14, 2023, our total consolidated debt was approximately $0.6 billion. Using the closing share price of $19.04 per share of our common shares on February 14, 2023, multiplied by the number of our common shares, our consolidated debt to total consolidated market capitalization ratio was approximately 25% as of February 14, 2023.

Our degree of leverage could affect our ability to obtain additional financing for working capital, capital expenditures, acquisitions, development or other general corporate purposes. Our senior unsecured debt is currently rated investment grade by two major rating agencies. However, there can be no assurance that we will be able to maintain this rating, and in the event our senior debt is downgraded from its current rating, we would likely incur higher borrowing costs and/or difficulty in obtaining additional financing. Our degree of leverage could also make us more vulnerable to a downturn in business or the economy generally. There is a risk that changes in our debt to market capitalization ratio, which is in part a function of our share price, or our ratio of indebtedness to other measures of asset value used by financial analysts, may have an adverse effect on the market price of our equity or debt securities.

Additionally, payments of principal and interest on borrowings may leave us with insufficient cash resources to operate our properties, fully implement our capital expenditure, acquisition and redevelopment activities, or meet the REIT distribution requirements imposed by the Code.

Failure to effectively hedge against interest rate changes may adversely affect our financial condition, results of operations, cash flow, per share market price of our common shares and ability to make distributions to our shareholders and agreements we enter into to protect us from rising interest rates expose us to counterparty risk.

We have entered into, and may in the future enter into, hedging transactions to protect ourselves from the effects of interest rate fluctuations on variable rate debt. Our hedging transactions have included, and may in the future include, entering into agreements such as interest rate swaps, caps, floors and other interest rate exchange contracts. These agreements involve risks, such as the risk that such arrangements would not be effective in reducing our exposure to interest rate changes or that a court could rule that such an agreement is not legally enforceable. In addition, interest rate hedging can be expensive, particularly during periods of rising and volatile interest rates. Failure to hedge effectively against interest rate changes could materially adversely affect our financial condition, results of operations, cash flow, per share trading price of our common shares and ability to make distributions to our shareholders. While such agreements are intended to lessen the impact of rising interest rates on us, they could also expose us to the risk that the other parties to the agreements would not perform, and that the hedging arrangements may not be effective in reducing our exposure to interest rate changes. In addition, the REIT provisions of the Code may limit use of certain hedging techniques that might otherwise be advantageous or push us to implement those hedges through a taxable REIT subsidiary, which would increase the cost of our hedging activities. Moreover, there can be no assurance that our hedging arrangements will qualify as highly effective cash flow hedges under Financial Accounting Standards Board ("FASB"), Accounting Standards Codification ("ASC") Topic 815, *Derivatives and Hedging*, or that our hedging activities will have the desired beneficial impact on our results of operations. Should we desire to terminate a hedging agreement, there could be significant costs and cash requirements involved to fulfill our obligation under the hedging agreement.

Loans under our credit facility may bear interest based on SOFR, but experience with SOFR based loans is limited.

Our credit facility requires the applicable interest rate or payment amount by reference to SOFR ("Secured Overnight Financing Rate"). The use of SOFR based rates may result in interest rates and/or payments that are higher or lower than the rates and payments that we previously experienced under USD-LIBOR. In addition, confusion related to the transition from USD-LIBOR to SOFR could have an uncertain economic effect on these instruments, hinder our ability to establish effective hedges and result in a different economic value over time for these instruments than they otherwise would have had under USD-LIBOR. Furthermore, the use of SOFR based rates is relatively new, and there could be unanticipated difficulties or disruptions with the calculation and publication of SOFR based rates. In particular, if the agent under our credit facility determines that SOFR based rates cannot be determined or the agent or the lenders determine that SOFR based rates do not adequately reflect the cost of funding, outstanding SOFR based loans may be converted into base rate loans, which could result in increased borrowing costs.

Covenants in our debt agreements could adversely affect our financial condition.

Our credit facility and other debt instruments contain customary restrictions, requirements and other limitations on our ability to incur indebtedness. We must maintain certain ratios, including a maximum of total indebtedness to total asset value, a maximum of secured indebtedness to total asset value, a minimum of quarterly adjusted EBITDA to fixed charges and a maximum of unsecured indebtedness to unencumbered pool value. Our ability to borrow under our credit facility is subject to compliance with our financial and other covenants.

Failure to comply with any of the covenants under our unsecured credit facility or other debt instruments (including our indenture and our notes purchase agreement) could result in a default under one or more of our debt instruments. If we fail to comply with the covenants in our unsecured credit facility or other debt instruments, other sources of capital may not be available to us or be available only on unattractive terms. In addition, if we breach covenants in our debt agreements, the lenders can declare a default and, if the debt is secured, take possession of the property securing the defaulted loan.

Any default or cross-default events could cause our lenders to accelerate the timing of payments and/or prohibit future borrowings, either of which would have a material adverse effect on our business, operations, financial condition and liquidity.

<u>Risks Related to Our Organizational Structure</u>

Our charter and Maryland law contain provisions that may delay, defer or prevent a change in control of Elme Communities, even if such a change in control may be in the best interest of our shareholders, and as a result may depress the market price of our common shares.

Provisions of the Maryland General Corporation Law ("MGCL") may limit a change in control which could prevent holders of our common shares from profiting as a result of such change in control. These provisions include:

- a provision where a corporation is not permitted to engage in any business combination with any “interested stockholder,” defined as any holder or affiliate of any holder of 10% or more of the corporation’s stock, for a period of five years after that holder becomes an “interested stockholder,” and
- a provision where the voting rights of “control shares” acquired in a “control share acquisition,” as defined in the MGCL, may be restricted, such that the “control shares” have no voting rights, except to the extent approved by a vote of holders of two-thirds of the common shares entitled to vote on the matter.

Our bylaws currently provide that the foregoing provision regarding "control share acquisitions" will not apply to any acquisition by any person of shares of beneficial interest of Elme Communities. There can be no assurance that this provision will not be amended or eliminated at any time in the future by our board of trustees and may be amended or eliminated with retroactive effect.

Additionally, Title 8, Subtitle 3 of the MGCL permits our board of trustees, without shareholder approval and regardless of what is currently provided in our declaration of trust or bylaws, to implement certain takeover defenses. These provisions may have the effect of inhibiting a third party from making an acquisition proposal for us or of delaying, deferring or preventing a change in control of us under the circumstances that otherwise could provide our common shareholders with the opportunity to realize a premium over the then current market price.

The share ownership limits imposed by the Code for REITs and imposed by our charter may restrict our business combination opportunities that might involve a premium price for our common shares or otherwise be in the best interest of our shareholders.

The ownership of our shares must be restricted in several ways in order for us to maintain our qualification as a REIT under the Code. Our charter provides that no person (other than an excepted holder, as defined in our charter) may actually or constructively own more than 9.8% of the aggregate of our outstanding common shares by value or by number of shares, whichever is more restrictive, or 9.8% of the aggregate of the equity shares by value.

Our board of trustees has the authority under our charter to reduce these share ownership limits. Our board of trustees may, in its sole discretion, grant exemptions to the share ownership limits, subject to such conditions and the receipt by our board of trustees of certain representations and undertakings to ensure that our REIT qualification is not adversely affected. In addition to 9.8% (or any lower future percentage) share ownership limits, our charter also prohibits any person from (a) beneficially or constructively owning, as determined by applying certain attribution rules of the Code, our equity shares that would result in us being “closely held” under Section 856(h) of the Code (regardless of whether the interest is held during the last half of a taxable year) or that would otherwise cause us to fail to qualify as a REIT, or (b) transferring equity shares if such transfer would result in our equity shares being owned by fewer than 100 persons.

The share ownership limits contained in our charter are based on the ownership at any time by any “person,” which term includes entities and certain groups. The share ownership limitations in our charter are common in REIT charters and are intended to provide added assurance of compliance with the tax law requirements. However, the share ownership limits on our shares and our enforcement of them might delay, defer, prevent, or otherwise inhibit a transaction or a change in control of Elme Communities, including a transaction that might involve a premium price for our common shares or that might otherwise be in the best interest of our shareholders.

Our rights and the rights of our shareholders to take action against our trustees and officers are limited, which could limit your recourse in the event of actions that you do not believe are in your best interests.

Maryland law provides that a trustee has no liability in that capacity if he or she satisfies his or her duties to us and our shareholders. Under current Maryland law, our trustees and officers will not have any liability to us or our shareholders for money damages, except for liability resulting from:

- actual receipt of an improper benefit or profit in money, property or services; or
- a final judgment based upon a finding of active and deliberate dishonesty by the trustee or officer that was material to the cause of action adjudicated.

In addition, our charter authorizes and our bylaws require us to indemnify our trustees for actions taken by them in those capacities to the maximum extent permitted by Maryland law. Our bylaws also require us to indemnify our officers for actions taken by them in those capacities to the maximum extent permitted by Maryland law. As a result, we and our shareholders may have more limited rights against our trustees and officers than might otherwise exist. Accordingly, in the event that actions taken in good faith by any of our trustees or officers impede the performance of Elme Communities, your ability to recover

damages from such trustees or officers will be limited with respect to trustees and may be limited with respect to officers. In addition, we will be obligated to advance the defense costs incurred by our trustees and our executive officers, and may, in the discretion of our board of trustees, advance the defense costs incurred by our officers, our employees and other agents, in connection with legal proceedings.

Risks Related to Our Common Shares

We cannot assure you we will continue to pay dividends at current rates and the failure to do so could have an adverse effect on the market price of our common shares.

Cash flows from operations are an important factor in our ability to sustain our dividend at its current rate. If our cash flows from operations were to decline significantly, we may have to borrow on our lines of credit to sustain the dividend rate or reduce our dividend. Our ability to continue to pay dividends on our common shares at their current rate or to increase our common share dividend rate will depend on a number of factors, including, among others, our future financial condition and results of operations and the terms of our debt covenants.

Our board of trustees considers, among other factors, trends in our levels of funds from operations, together with associated recurring capital improvements, tenant improvements, leasing commissions and incentives, and adjustments to straight-line rents to reflect cash rents received to achieve a targeted payout ratio. If some or all of these factors were to trend downward for a sustained period of time, our board of trustees could determine to reduce our dividend rate. If we do not maintain or increase the dividend rate on our common shares in the future, it could have an adverse effect on the market price of our common shares.

Additionally, the market value of our securities can be adversely affected by many factors, including certain factors related to our REIT status.

The market value of our securities can be adversely affected by many factors.

As with any public company, a number of factors may adversely influence the public market price of our common shares. These factors include:

- level of institutional interest in us;
- perceived attractiveness of investment in us, in comparison to other REITs;
- perceived attractiveness of the Washington, DC metro and Sunbelt regions;
- attractiveness of securities of REITs in comparison to other asset classes taking into account, among other things, that a substantial portion of REITs’ dividends may be taxed as ordinary income;
- our financial condition and performance;
- the market’s perception of our growth potential and potential future cash dividends;
- investor confidence in the stock and bond markets generally;
- national economic conditions and general stock and bond market conditions;
- government uncertainty, action or regulation;
- increases in market interest rates, which may lead investors to expect a higher annual yield from our distributions in relation to the price of our shares;
- uncertainty around and changes in U.S. federal tax laws;
- changes in our credit ratings; and
- any negative change in the level of our dividend or the partial payment thereof in common shares.

Risks Related to Taxes and our Status as a REIT

The loss of our tax status as a REIT would have significant adverse consequences to us and the value of our common shares.

We believe that we qualify as a REIT, and we intend to continue to operate in a manner that will allow us to continue to qualify as a REIT. However, our charter provides that our board of trustees may revoke or otherwise terminate our REIT election, without the approval of our shareholders, if it determines that it is no longer in our best interest to continue to qualify as a REIT. Furthermore, we cannot assure you that we are qualified as a REIT, or that we will remain qualified as a REIT in the future. This is because qualification as a REIT involves the application of highly technical and complex provisions of the Code which include maintaining ownership of specified minimum levels of real estate-related assets, generating specified minimum levels of real estate-related income, maintaining certain diversity of ownership requirements with respect to our shares and distributing at least 90% of our "REIT taxable income" (determined before the deduction for dividends paid and excluding net capital gains) on an annual basis. Moreover, the complexity of these provisions and of applicable treasury regulations is greater in the case of a REIT that, like us, holds some of its assets through entities treated as partnerships for U.S. federal income tax purposes.

Only limited judicial and administrative interpretations of the REIT rules exist. In addition, qualification as a REIT involves the determination of various factual matters and circumstances not entirely within our control.

If we fail to qualify as a REIT, we could face serious tax consequences that could substantially reduce our funds available for payment of dividends for each of the years involved because:

(i) we would be subject to U.S. federal income tax at the regular corporate rate, without any deduction for dividends paid to shareholders in computing our taxable income, and possibly increased state and local taxes; and

(ii) unless we are entitled to relief under statutory provisions, we would be disqualified from taxation as a REIT for the four taxable years following the year during which qualification was lost.

This treatment would reduce net earnings available for investment or distribution to shareholders because of the additional tax liability for the year (or years) involved. To the extent that distributions to shareholders had been made based on the assumption of our qualification as a REIT, we might be required to borrow funds or to liquidate certain of our investments to pay the applicable tax. As a result of these factors, our failure to qualify as a REIT could have a material adverse impact on our results of operations, financial condition and liquidity. If we fail to qualify as a REIT but are eligible for certain relief provisions, then we may retain our status as a REIT but may be required to pay a penalty tax, which could be substantial.

Dividends payable by REITs do not qualify for the reduced tax rates available for some dividends.

The maximum tax rate applicable to income from "qualified dividends" payable by non-REIT C corporations to U.S. shareholders that are individuals, trusts or estates generally is 20% (excluding the 3.8% net investment income tax). Dividends payable by REITs, however, generally are not eligible for the maximum 20% reduced rate and are taxed at applicable ordinary income tax rates, except to the extent that certain holding requirements have been met and a REIT's dividends are attributable to dividends received by a REIT from taxable corporations (such as a taxable REIT subsidiary), to income that was subject to tax at the REIT/corporate level, or to dividends properly designated by the REIT as “capital gain dividends.” For taxable years beginning before January 1, 2026, U.S. shareholders that are individuals, trusts or estates may deduct 20% of their dividends from REITs (excluding qualified dividend income and capital gains dividends). For those U.S. shareholders in the top marginal tax bracket of 37%, the deduction for REIT dividends yields an effective income tax rate of 29.6% (excluding the net investment income tax) on REIT dividends, which is higher than the 20% tax rate on qualified dividend income paid by non-REIT C corporations (although the maximum effective rate applicable to such dividends, after taking into account the 21% U.S. federal income tax rate applicable to non-REIT C corporations is 36.8% (excluding the 3.8% net investment income tax)). Although the reduced rates applicable to dividend income from non-REIT C corporations do not adversely affect the taxation of REITs or dividends payable by REITs, these reduced rates could cause investors who are non-corporate taxpayers to perceive investments in REITs to be relatively less attractive than investments in the shares of non-REIT C corporations that pay dividends, which could adversely affect the value of the stock of REITs, including our common shares.

The REIT distribution requirements could require us to borrow funds during unfavorable market conditions or subject us to tax, which would reduce the cash available for distribution to our shareholders.

In order to qualify as a REIT, we generally must distribute to our shareholders, on an annual basis, at least 90% of our "REIT taxable income," determined without regard to the deduction for dividends paid and excluding net capital gains. In addition, we will be subject to U.S. federal income tax at the regular corporate rate (currently 21%) to the extent that we distribute less than 100% of our net taxable income (including net capital gains) and will be subject to a 4% nondeductible excise tax on the

amount by which our distributions in any calendar year are less than a minimum amount specified under U.S. federal income tax laws. We intend to continue to distribute our net income to our shareholders in a manner intended to satisfy the REIT 90% distribution requirement and to avoid U.S. federal income tax and the 4% nondeductible excise tax.

In addition, from time to time our taxable income may exceed our net income as determined by GAAP. This may occur, for instance, because realized capital losses are deducted in determining our GAAP net income but may not be deductible in computing our taxable income. In addition, we may incur nondeductible capital expenditures or be required to make debt or amortization payments. As a result of the foregoing, we may generate less cash flow than taxable income in a particular year and we may incur U.S. federal income tax and the 4% nondeductible excise tax on that income if we do not distribute such income to shareholders in that year. In that event, we may be required to (i) use cash reserves, (ii) incur debt at rates or times that we regard as unfavorable, (iii) sell assets in adverse market conditions, (iv) distribute amounts that would otherwise be invested in future acquisitions, capital expenditures or repayment of debt, or (v) make a taxable distribution of our shares as part of a distribution in which shareholders may elect to receive our shares or (subject to a limit measured as a percentage of the total distribution) cash in order to satisfy the REIT 90% distribution requirement and to avoid U.S. federal income tax and the 4% nondeductible excise tax in that year. These alternatives could increase our costs or reduce our equity. Thus, compliance with the REIT requirements may hinder our ability to grow, which could adversely affect our business, financial condition and results of operations.

Even if we qualify as a REIT, we may face other tax liabilities that reduce our cash flow.

Even if we qualify for taxation as a REIT, we may be subject to certain U.S. federal, state and local taxes on our income, property or net worth, including taxes on any undistributed income, tax on income from some activities conducted as a result of a foreclosure, and state or local income, property and transfer taxes. Moreover, if we have net income from "prohibited transactions," that income will be subject to a 100% tax. The need to avoid prohibited transactions could cause us to forego or defer sales of properties that might otherwise be in our best interest to sell. In addition, we could, in certain circumstances, be required to pay an excise or penalty tax (which could be significant in amount) in order to utilize one or more relief provisions under the Code to maintain our qualification as a REIT. Any of these taxes would decrease cash available for the payment of our debt obligations and distributions to shareholders. Our taxable REIT subsidiary (and any taxable REIT subsidiary formed in the future) generally will be subject to U.S. federal, state and local corporate income tax on their taxable income. Moreover, while we will attempt to ensure that our dealings with our taxable REIT subsidiary (and any taxable REIT subsidiary formed in the future) do not adversely affect our REIT qualification, we cannot provide assurances that we will successfully achieve that result.

Partnership tax audit rules could have a material adverse effect on us.

Under current federal partnership tax audit rules, subject to certain exceptions, any audit adjustment to items of income, gain, loss, deduction, or credit of a partnership (and a partner’s allocable share thereof) is determined, and taxes, interest, and penalties attributable thereto are assessed and collected, at the partnership level. With respect to any partnership in which we invest, unless such partnership makes an election or takes certain steps to require the partners to pay their tax on their allocable shares of the adjustment, it is possible that such partnership would be required to pay additional taxes, interest, and penalties as a result of an audit adjustment. We could be required to bear the economic burden of those taxes, interest, and penalties even though we, as a REIT, may not otherwise have been required to pay additional corporate-level taxes had we owned the assets of the partnership directly.

There is a risk of changes in the tax laws which may adversely affect our taxation as a REIT and taxation of our shareholders.

The IRS, the United States Treasury Department and Congress frequently review U.S. federal income tax legislation, regulations and other guidance. Most recently, numerous legislative, judicial and administrative changes have been made to the U.S. federal income tax laws in connection with the passage of the Tax Cuts and Jobs Act of 2017, the Coronavirus Aid, Relief and Economic Security Act and the Inflation Reduction Act of 2022. We cannot predict whether, when or to what extent new U.S. federal tax laws, regulations, interpretations or rulings will be adopted. Further, from time to time, changes in state and local tax laws or regulations are enacted, which may result in an increase in our tax liability. Any legislative action may prospectively or retroactively modify our tax treatment and, therefore, may adversely affect our taxation or taxation of our shareholders. We urge you to consult with your tax advisor with respect to the status of legislative, regulatory or administrative developments and proposals and their potential effect on an investment in our common shares.

ITEM 1B: UNRESOLVED STAFF COMMENTS

None.

ITEM 2: PROPERTIES

The schedule on the following pages lists our real estate investment portfolio as of December 31, 2022, which consisted of 27 residential communities, one office building and land held for development. Cost information is included in Schedule III to our financial statements included in this Annual Report on Form 10-K.

Schedule of Properties

Properties	Location	Year Acquired	Year Constructed/Renovated	# of Homes	Average Occupancy, year ended December 31, 2022	Ending Occupancy, as of December 31, 2022
Residential Communities						
Assembly Alexandria	Alexandria, VA	2019	1990	532	95.2 %	95.3 %
Cascade at Landmark	Alexandria, VA	2019	1988	277	95.2 %	92.8 %
Clayborne	Alexandria, VA	N/A	2008	74	95.9 %	94.6 %
Riverside Apartments	Alexandria, VA	2016	1971	1,222	95.0 %	96.1 %
Bennett Park	Arlington, VA	N/A	2007	224	96.4 %	94.6 %
Park Adams	Arlington, VA	1969	1959	200	96.2 %	96.5 %
The Maxwell	Arlington, VA	N/A	2014	163	95.9 %	96.3 %
The Paramount	Arlington, VA	2013	1984	135	95.4 %	96.3 %
The Wellington	Arlington, VA	2015	1960	711	95.4 %	94.9 %
Trove	Arlington, VA	N/A	2020	401	95.0 %	96.8 %
Roosevelt Towers	Falls Church, VA	1965	1964	191	94.9 %	91.6 %
Assembly Dulles	Herndon, VA	2019	2000	328	95.1 %	96.3 %
Assembly Herndon	Herndon, VA	2019	1991	283	96.0 %	95.4 %
Assembly Leesburg	Leesburg, VA	2019	1986	134	96.4 %	97.0 %
Assembly Manassas	Manassas, VA	2019	1986	408	95.5 %	95.1 %
The Ashby at McLean	McLean, VA	1996	1982	256	95.5 %	94.9 %
3801 Connecticut Avenue	Washington, D.C.	1963	1951	307	96.2 %	94.5 %
Kenmore Apartments	Washington, D.C.	2008	1948	374	96.0 %	94.1 %
Yale West	Washington, D.C.	2014	2011	216	95.9 %	95.4 %
Bethesda Hill Apartments	Bethesda, MD	1997	1986	195	95.3 %	93.8 %
Assembly Germantown	Germantown, MD	2019	1990	218	96.6 %	95.9 %
Assembly Watkins Mill	Gaithersburg, MD	2019	1975	210	96.3 %	96.2 %
The Oxford	Conyers, GA	2021	1999	240	94.9 %	94.6 %
Marietta Crossing	Marietta, GA	2022	1975	420	93.4 %	95.5 %
Carlyle of Sandy Springs	Sandy Springs, GA	2022	1972	389	94.6 %	95.1 %
Alder Park	Smyrna, GA	2022	1982	270	93.9 %	93.7 %
Assembly Eagles Landing	Stockbridge, GA	2021	2000	490	94.6 %	94.3 %
Subtotal Residential Communities				8,868	95.3 %	95.2 %

Property	Location	Year Acquired	Year Constructed/Renovated	Net Rentable Square Feet	Percent Leased, as of December 31, 2022 [1]	Ending Occupancy, as of December 31, 2022 [1]
Office Building						
Watergate 600	Washington, D.C.	2017	1972/1997	300,000	92.6 %	92.6 %

(1) Percent leased and ending occupancy calculations are based on square feet and includes temporary lease agreements for Watergate 600. Percent leased is the percentage of net rentable area for which fully executed leases exist and may include signed leases for space not yet occupied by the tenant.

ITEM 3: LEGAL PROCEEDINGS

None.

ITEM 4: MINE SAFETY DISCLOSURES

None.

PART II

ITEM 5: MARKET FOR THE REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

Market and Shareholder Information: Our shares trade on the New York Stock Exchange under the symbol ELME. As of February 14, 2023, there were 2,843 shareholders of record.

Issuer Repurchases; Unregistered Sales of Securities: A summary of our repurchases of our common shares of beneficial interest for the three months ended December 31, 2022 was as follows:

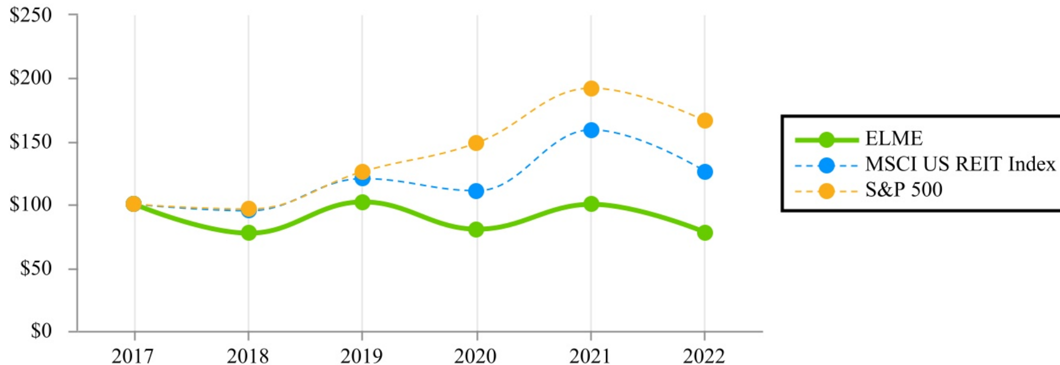
Issuer Purchases of Equity Securities

Period	Total Number of Shares Purchased [1]	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Maximum Number (or Approximate Dollar Value) of Shares that May Yet be Purchased
October 1 - October 31, 2022	—	$ —	N/A	N/A
November 1 - November 30, 2022	—	—	N/A	N/A
December 1 - December 31, 2022	40,328	18.33	N/A	N/A
Total	40,328	18.33	N/A	N/A

[1] Represents restricted shares surrendered by employees to Elme Communities to satisfy such employees' applicable statutory minimum tax withholding obligations in connection with the vesting of restricted shares.

Performance Graph:

The following line graph sets forth, for the period from December 31, 2017, through December 31, 2022, a comparison of the percentage change in the cumulative total shareholder return on our common shares compared to the cumulative total return of the Standard & Poor's 500 Stock Index and the MSCI US REIT Index. The graph assumes that $100 was invested on December 31, 2017, in shares of our common shares and each of the aforementioned indices and that all dividends were reinvested without the payment of any commissions. There can be no assurance that the performance of our shares will continue in line with the same or similar trends depicted in the graph below.



This performance graph shall not be deemed "filed" for the purposes of Section 18 of the Securities Exchange Act of 1934 or incorporated by reference into any filing by us under the Securities Act of 1933, except as shall be expressly set forth by specific reference in such filing.

ITEM 6: RESERVED

ITEM 7: MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

We provide Management’s Discussion and Analysis of Financial Condition and Results of Operations (“MD&A”) in addition to the accompanying consolidated financial statements and notes to assist readers in understanding our results of operations and financial condition. We organize the MD&A as follows:

- *Overview.* Discussion of our business outlook, operating results, investment activity, financing activity and capital requirements to provide context for the remainder of MD&A.
- *Results of Operations.* Discussion of our financial results comparing 2022 to 2021.
- *Liquidity and Capital Resources.* Discussion of our financial condition and analysis of changes in our capital structure and cash flows.
- *Funds From Operations*. Calculation of NAREIT Funds From Operations (“NAREIT FFO”), a non-GAAP supplemental measure to net income.
- *Critical Accounting Estimates.* Descriptions of accounting policies that reflect significant judgments and estimates used in the preparation of our consolidated financial statements.

When evaluating our financial condition and operating performance, we focus on the following financial and non-financial indicators:

- *Net operating income (“NOI”)*, calculated as set forth below under the caption "Results of Operations - Net Operating Income." NOI is a non-GAAP supplemental measure to net income.
- *Funds From Operations (“NAREIT FFO”)*, calculated as set forth below under the caption “Funds from Operations.” NAREIT FFO is a non-GAAP supplemental measure to net income.
- *Average occupancy*, calculated as average daily occupied apartment homes as a percentage of total apartment homes.

For purposes of evaluating comparative operating performance, we categorize our properties as “same-store” or “non-same-store”. Same-store portfolio properties include properties that were owned for the entirety of the years being compared and exclude properties under redevelopment or development and properties acquired, sold or classified as held for sale during the years being compared. We define development properties as those for which we have planned or ongoing major construction activities on existing or acquired land pursuant to an authorized development plan. Development properties are categorized as same-store when they have reached stabilized occupancy (90%) before the start of the prior year. We define redevelopment properties as those for which we have planned or ongoing significant development and construction activities on existing or acquired buildings pursuant to an authorized plan, which has an impact on current operating results, occupancy and the ability to lease space with the intended result of a higher economic return on the property. We categorize a redevelopment property as same-store when redevelopment activities have been complete for the majority of each year being compared.

Overview

During the third quarter of 2021, we sold twelve office properties (the “Office Portfolio”) and eight retail properties (the “Retail Portfolio”) (see note 3 to the consolidated financial statements) for contract sale prices of $766.0 million and $168.3 million, respectively. Both the Office Portfolio and Retail Portfolio meet the criteria for classification as discontinued operations in our consolidated financial statements. Our remaining office property, Watergate 600, does not meet the qualitative or quantitative criteria for a reportable segment (see note 14 to the consolidated financial statements).

The dispositions of our office and retail properties are part of a strategic shift away from the commercial sector to the residential sector, which simplifies our portfolio to one reportable segment (residential) (the “strategic transformation”). We used the net proceeds from the sales to fund the expansion of our residential platform through acquisitions in Sunbelt markets and to reduce our leverage by repaying outstanding debt. During the third and fourth quarters of 2021, we completed the acquisitions of two apartment communities in Georgia with a combined total of 730 apartment homes for a total contract purchase prices of $154.0 million. During 2022, we completed acquisitions of three apartment communities in Georgia with a combined total of 1,079 apartment homes for a total contract purchase price of $283.2 million. We believe the successful execution of this research-driven strategic shift will lead to greater, more sustainable growth.

In connection with this strategic transformation, we are redesigning our operating model for purposes of more efficiently and effectively supporting residential operations. This operating model redesign includes the internalization of community management

services currently performed by third-party management companies. Costs related to the strategic transformation, including the allocation of internal costs, consulting, advisory and termination benefits, are included in Transformation costs on our consolidated statements of operations. We recognized $9.7 million and $6.6 million of transformation costs, net of amounts capitalized, on the consolidated statements of operations during 2022 and 2021, respectively, and anticipate incurring approximately $3.0 - $4.0 million of additional transformation costs during 2023. Community onboarding commenced in October 2022 and is expected to be completed in phases in 2023. We expect to realize significant operational benefits from this operating model redesign and complete its implementation in 2023.

In October 2022, the Company changed its name from Washington Real Estate Investment Trust to Elme Communities reflecting the Company's continued transition into a focused multifamily company, and subsequent geographic expansion into Sunbelt markets. On October 20, 2022, the Company's ticker symbol on the New York Stock Exchange changed from "WRE" to "ELME."

Operating Results

The discussion that follows is based on our Operating Results. The ability to compare one period to another is significantly affected
by the strategic transformation in 2021 and other acquisitions completed and dispositions made during 2021 and 2022 (see note 3 to the consolidated financial statements).

Net (loss) income, NOI and NAREIT FFO for the years ended December 31, 2022 and 2021 were as follows (in thousands, except percentage amounts):

	Year Ended December 31,			
	2022	**2021**	**Change**	**% Change**
Net (loss) income	$ (30,868)	$ 16,384	$ (47,252)	(288.4)%
NOI [1]	$ 135,379	$ 108,369	$ 27,010	24.9 %
NAREIT FFO [2]	$ 60,854	$ 65,503	$ (4,649)	(7.1)%

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[1] See page 29 of the MD&A for reconciliations of NOI to net (loss) income.

[2] See page 39 of the MD&A for reconciliations of NAREIT FFO to net (loss) income.

The increase in net loss is primarily due to gains on sale of real estate ($46.4 million) in 2021 and lower income from discontinued operations in 2022 ($23.1 million) due to the sales of the Office Portfolio and Retail Portfolio during 2021, higher depreciation and amortization expenses ($19.1 million), lower other income ($3.4 million), higher transformation costs, net of amounts capitalized, ($3.1 million), higher property management expenses ($1.3 million) and higher general and administrative expenses ($0.7 million). These were partially offset by higher NOI ($27.0 million), lower interest expense ($9.1 million), lower loss on extinguishment of debt ($7.8 million) and lower loss on interest rate derivatives ($5.9 million).

The higher NOI is primarily due to the acquisitions of Assembly Eagles Landing ($4.2 million) and The Oxford ($1.1 million) in 2021 and Carlyle of Sandy Spring ($4.0 million), Marietta Crossing ($3.2 million) and Alder Park ($2.2 million) in 2022, higher NOI from same-store properties ($7.9 million), higher NOI from Trove ($3.7 million), which achieved stabilization in the fourth quarter of 2021, and higher NOI at Watergate 600 ($0.7 million). The higher same-store NOI was primarily due to higher rental rates. Residential same-store average occupancy for our portfolio increased to 95.6% as of December 31, 2022 from 95.3% as of December 31, 2021.

The lower NAREIT FFO is primarily due to lower income from discontinued operations, net of depreciation and amortization ($46.0 million), lower other income ($3.4 million), higher transformation costs, net of amounts capitalized, ($3.1 million), higher property management expenses ($1.3 million) and higher general and administrative expenses ($0.7 million). These were partially offset by higher NOI ($27.0 million), lower interest expense ($9.1 million), lower loss on extinguishment of debt ($7.8 million) and lower loss on interest rate derivatives ($5.9 million).

Investment Activity

Significant investment transactions during 2022 included the following:

- Acquisition of Carlyle of Sandy Springs, a 389-unit apartment community in Sandy Springs, Georgia for a contract purchase price of $105.6 million during the first quarter of 2022.
- Acquisition of Marietta Crossing, a 420-unit apartment community in Marietta, Georgia for a contract purchase price of $107.9 million during the second quarter of 2022. We assumed a $42.8 million mortgage with this acquisition.

- Acquisition of Alder Park, a 270-unit apartment community in Smyrna, Georgia for a contract purchase price of $69.8 million during the second quarter of 2022. We assumed a $33.7 million mortgage with this acquisition.

Financing Activity

Significant financing transactions during 2022 included the following:

- We issued 1.0 million common shares at a weighted average price per share of $26.27 for net proceeds of $26.8 million through our at-the-market program.
- In September 2022, we extinguished the aggregate $76.5 million of mortgages secured by Marietta Crossing and Alder Park through defeasance arrangements, recognizing an aggregate loss on extinguishment of debt of $4.9 million. We partially funded the defeasances with a $65.0 million draw on our unsecured revolving credit facility.

Subsequent to the end of 2022, we entered into a $125.0 million unsecured term loan ("2023 Term Loan") with an interest rate of SOFR (subject to a credit spread adjustment of 10 basis points) plus a margin of 95 basis points. The 2023 Term Loan has a two-year term ending in January 2025, with two one-year extension options. We used the proceeds to prepay the $100.0 million 2018 Term Loan in full and a portion of our borrowings under our unsecured credit facility.

As of December 31, 2022, the interest rate on the $700.0 million unsecured revolving credit facility was one month LIBOR plus 0.85% and the facility fee was 0.20%. The LIBOR was 4.39% as of that date. Subsequent to the end of 2022, we executed an amendment to our revolving credit facility to convert the benchmark interest rate from LIBOR to an adjusted SOFR, with no change in the applicable interest rate margins. As of February 14, 2023, our Revolving Credit Facility has a borrowing capacity of $657.0 million.

Capital Requirements

We do not currently have any debt maturities scheduled for 2023. We expect to have additional capital requirements as set forth on page37 (Liquidity and Capital Resources - Capital Requirements).

Results of Operations

The discussion that follows is based on our consolidated results of operations for the two years ended December 31, 2022. The ability to compare one period to another is significantly affected by the strategic transformation in 2021, including the resulting classification of certain assets as discontinued operations, and other acquisitions completed and dispositions made during those years (see note 3 to the consolidated financial statements).

Net Operating Income

NOI, defined as real estate rental revenue less direct real estate operating expenses, is a non-GAAP measure. NOI is calculated as net income, less non-real estate revenue and the results of discontinued operations (including the gain or loss on sale, if any), plus interest expense, depreciation and amortization, lease origination expenses, general and administrative expenses, acquisition costs, real estate impairment, casualty gain and losses and gain or loss on extinguishment of debt. NOI does not include management expenses, which consist of corporate property management costs and property management fees paid to third parties. NOI is the primary performance measure we use to assess the results of our operations at the property level. We believe that NOI is a useful performance measure because, when compared across periods, it reflects the impact on operations of trends in occupancy rates, rental rates and operating costs on an unleveraged basis, providing perspective not immediately apparent from net income. NOI excludes certain components from net income in order to provide results more closely related to a property's results of operations. For example, interest expense is not necessarily linked to the operating performance of a real estate asset. In addition, depreciation and amortization, because of historical cost accounting and useful life estimates, may distort operating performance at the property level. As a result of the foregoing, we provide NOI as a supplement to net income, calculated in accordance with GAAP. NOI does not represent net income or income from continuing operations calculated in accordance with GAAP. As such, NOI should not be considered an alternative to these measures as an indication of our operating performance. A reconciliation of NOI to net income follows.

2022 Compared to 2021

The following tables reconcile net income to NOI and provide the basis for our discussion of our consolidated results of operations and NOI in 2022 compared to 2021. All amounts are in thousands except percentage amounts.

	Year Ended December 31,			
	2022	2021	$ Change	% Change
Net (loss) income	$ (30,868)	$ 16,384	$ (47,252)	(288.4) %
Adjustments:				
Property management expense	7,436	6,133	1,303	21.2 %
General and administrative expense	28,258	27,538	720	2.6 %
Transformation costs	9,686	6,635	3,051	46.0 %
Real estate depreciation and amortization	91,722	72,656	19,066	26.2 %
Interest expense	24,940	34,063	(9,123)	(26.8) %
Loss on interest rate derivatives	—	5,866	(5,866)	(100.0) %
Loss on extinguishment of debt, net	4,917	12,727	(7,810)	(61.4) %
Other income	(712)	(4,109)	3,397	(82.7) %
Discontinued operations:				
Income from operations of properties sold or held for sale	—	(23,083)	23,083	(100.0) %
Gain on sale of real estate, net	—	(46,441)	46,441	(100.0) %
Total net operating income (NOI)	$ 135,379	$ 108,369	$ 27,010	24.9 %
Residential revenue:				
Same-store portfolio	$ 151,547	$ 141,301	$ 10,246	7.3 %
Acquisitions [1]	27,370	2,262	25,108	1,110.0 %
Development [2]	10,510	6,375	4,135	64.9 %
Non-residential [3]	1,073	1,027	46	4.5 %
Total	190,500	150,965	39,535	26.2 %
Residential expenses:				
Same-store portfolio	53,449	51,112	2,337	4.6 %
Acquisitions	11,308	865	10,443	1,207.3 %
Development	3,697	3,258	439	13.5 %
Non-residential	281	292	(11)	(3.8) %
Total	68,735	55,527	13,208	23.8 %
Residential NOI:				
Same-store portfolio	98,098	90,189	7,909	8.8 %
Acquisitions	16,062	1,397	14,665	1,049.7 %
Development	6,813	3,117	3,696	118.6 %
Non-residential	792	735	57	7.8 %
Total	121,765	95,438	26,327	27.6 %
Other NOI [4]	13,614	12,931	683	5.3 %
Total NOI	$ 135,379	$ 108,369	$ 27,010	24.9 %

(1) Acquisitions:
2021: The Oxford and Assembly Eagles Landing
2022: Carlyle of Sandy Springs, Alder Park, Marietta Crossing

(2) Development/redevelopment: Trove, Riverside Development (multifamily development adjacent to Riverside Apartments)

(3) Non-residential: Includes revenues and expenses from retail operations at residential properties.

(4) Other (classified as continuing operations): Watergate 600

(5) Discontinued operations:
2021 Office - 1901 Pennsylvania Avenue, 515 King Street, 1220 19th Street, 1600 Wilson Boulevard, Silverline Center, Courthouse Square, 2000 M Street, 1140 Connecticut Avenue, Army Navy Club, 1775 Eye Street, Fairgate at Ballston and Arlington Tower
2021 Retail - Takoma Park, Westminster, Concord Centre, Chevy Chase Metro Plaza, 800 S. Washington Street, Randolph Shopping Center, Montrose Shopping Center and Spring Valley Village

Real Estate Rental Revenue

Real estate rental revenue from our apartment communities is comprised of (a) rent from operating leases of residential apartments with terms of approximately one year or less, recognized on a straight-line basis, (b) revenue from the recovery of operating expenses from our residents, (c) credit losses on lease related receivables, (d) revenue from leases of retail space at our apartment communities and (e) parking and other tenant charges.

Real estate rental revenue from same-store residential properties increased $10.2 million, or 7.3%, to $151.5 million for 2022, compared to $141.3 million for 2021, primarily due to higher rental income ($8.2 million), lower rent abatements ($1.6 million) and higher fee income ($0.4 million).

Real estate rental revenue from acquisitions increased $25.1 million due to the acquisition of Carlyle of Sandy Springs ($6.6 million) during the first quarter of 2022, Marietta Crossing ($4.9 million) and Alder Park ($3.4 million) during the second quarter of 2022, Assembly Eagles Landing ($7.6 million) during the fourth quarter of 2021 and The Oxford ($2.6 million) during the third quarter of 2021.

Real estate rental revenue from development properties increased due to the continued lease-up of the Trove development ($4.1 million). We placed the remainder of the Trove development costs into service during the first quarter of 2021 and achieved stabilization during the fourth quarter of 2021.

Average occupancy for residential properties for 2022 and 2021 was as follows:

December 31, 2022			**December 31, 2021**			**Increase**		
Same-Store	**Non-Same-Store**	**Total**	**Same-Store**	**Non-Same-Store**	**Total**	**Same-Store**	**Non-Same-Store**	**Total**
95.6 %	94.5 %	95.3 %	95.3 %	71.0 %	93.4 %	0.3 %	23.5 %	1.9 %

The increase in same-store average occupancy was primarily due to higher average occupancy at The Kenmore, 3801 Connecticut Avenue, Assembly Germantown and Assembly Herndon, partially offset by lower average occupancy at Roosevelt Towers and Clayborne Apartments.

Real Estate Expenses

Residential real estate expenses as a percentage of residential revenue for 2022 and 2021 were 36.1% and 36.8%, respectively.

Real estate expenses from same-store residential properties increased $2.3 million, or 4.6%, to $53.4 million for 2022, compared to $51.1 million for 2021, primarily due to higher administrative ($0.7 million), real estate tax ($0.6 million), utilities ($0.5 million), insurance ($0.3 million) and contract maintenance and supplies ($0.2 million) expenses.

Real estate expenses from acquisitions increased $10.4 million due to the acquisitions of Carlyle of Sandy Springs ($2.6 million) during the first quarter of 2022, Marietta Crossing ($1.7 million) and Alder Park ($1.2 million) during the second quarter of 2022, Assembly Eagles Landing ($3.4 million) during the fourth quarter of 2021, and The Oxford ($1.5 million) during the third quarter of 2021.

Other NOI

Other NOI classified as continuing operations increased due to higher NOI at Watergate 600 ($0.7 million).

Other Income and Expenses

Property management expenses: Increase of $1.3 million primarily due to the acquisitions of The Oxford and Assembly Eagles Landing during the third and fourth quarters of 2021, the acquisitions of Carlyle of Sandy Springs, Marietta Crossing and Alder Park in 2022 and Trove reaching stabilization during the fourth quarter of 2021.

General and administrative expenses: Increase of $0.7 million primarily due to corporate overhead no longer being allocated to

office management due to the sales of the Office and Retail Portfolios in 2021 ($1.9 million), higher legal fees ($0.9 million), higher office rent ($0.6 million) from the commencement of the corporate office lease during the third quarter of 2021 and higher shareholder expenses ($0.3 million) in 2022. These increases were partially offset by lower short-term incentive compensation expense ($1.8 million), lower leasing expenses ($0.7 million) and lower deferred tax expense ($0.5 million) in 2022.

Transformation costs: Increase of $3.1 million primarily due to higher employee time allocations ($1.5 million) related to the strategic transformation, higher consulting costs ($1.1 million), higher software depreciation ($0.9 million) and higher software costs ($0.8 million), partially offset by lower severance expenses ($1.6 million).

Depreciation and amortization: Increase of $19.1 million primarily due to the acquisitions of Assembly Eagles Landing ($5.3 million), Carlyle of Sandy Springs ($5.8 million), Marietta Crossing ($5.2 million), Alder Park ($3.1 million) and The Oxford ($0.3 million) and higher depreciation and amortization at Watergate 600 ($0.9 million). These increases were partially offset by lower depreciation and amortization at same-store residential properties ($1.4 million) and Trove ($0.1 million).

Interest Expense: Interest expense by debt type for the year ended December 31, 2022 and 2021 was as follows (in thousands):

	Year Ended December 31,			
Debt Type	**2022**	**2021**	**$ Change**	**% Change**
Notes payable	$ 20,458	$ 31,652	$ (11,194)	(35.4)%
Mortgage notes payable	1,014	—	1,014	100.0 %
Line of credit	3,751	3,161	590	18.7 %
Capitalized interest	(283)	(750)	467	62.3 %
Total	$ 24,940	$ 34,063	$ (9,123)	(26.8)%

- *Notes payable*: Decrease primarily due to the prepayment of $300.0 million of unsecured notes during the third quarter of 2021 that had been scheduled to mature in October 2022 and the prepayment of a $150.0 million portion of the 2018 Term Loan during the third quarter of 2021.
- *Mortgage notes payable*: Increase due to the mortgages of $42.8 million and $33.7 million assumed in the acquisitions of Marietta Crossing and Alder Park, respectively, in the second quarter of 2022. In September 2022, we extinguished the liabilities associated with these mortgages though defeasance arrangements.
- *Line of credit*: Increase primarily due to a weighted average interest rate of 4.2% and weighted average borrowings of $21.6 million in 2022, as compared to a weighted average interest rate of 1.1% and weighted average borrowings of $34.8 million in 2021.
- *Capitalized interest*: Decrease primarily due to ceasing capitalization of interest on spending related to the multifamily development adjacent to Riverside Apartments due to a pause in development activities.

Loss on interest rate derivatives: We terminated five interest rate swap arrangements with an aggregate notional value of $150.0 million and recognized a $5.8 million loss on interest rate derivatives during 2021 (see note 8 to the consolidated financial statements).

Loss on extinguishment of debt: During 2022, we extinguished the liabilities associated with mortgage notes payable for Marietta Crossing and Alder Park through defeasance arrangements, recognizing aggregate losses on extinguishment of debt of $4.9 million. During the third quarter of 2021 we recognized a $12.3 million loss on extinguishment of debt related to the prepayment of the $300.0 million of unsecured notes that were originally scheduled to mature in October 2022, a $0.2 million loss on extinguishment of debt related to the prepayment of a $150.0 million portion of the $250.0 million 2018 Term Loan and a $0.2 million loss on extinguishment of debt related to the renewal of our Revolving Credit Facility, all of which were repaid in connection with our strategic transformation, using the proceeds from the sales of the Office Portfolio and Retail Portfolio.

Other income: Income during 2022 relates to real estate tax refunds ($0.7 million) received on previously sold commercial properties. Other income in 2021 primarily consists of a legal settlement ($1.3 million), a real estate tax refund for an office property sold in 2018 ($1.3 million), a gain on life insurance ($1.0 million) and a construction easement at a retail property ($0.4 million).

Discontinued operations

Income from properties sold or held for sale: Decrease due to the sale of the Office Portfolio and the Retail Portfolio during 2021.

Gain on sale of real estate, net: The net gain during 2021 is due to the gain on sale of the Retail Portfolio ($57.7 million), partially offset by the loss on sale of the Office Portfolio ($11.2 million).

Liquidity and Capital Resources

We believe we will have adequate liquidity over the next twelve months to operate our business and to meet our cash requirements, which include meeting our debt obligations, capital commitments and contractual obligations, as well as the payment of dividends, and funding possible growth opportunities. Through our Office Portfolio and Retail Portfolio sales, which had a combined sale price of approximately $934.3 million, we executed strategic transactions that allowed us to expand into the Sunbelt regions. In connection with our strategic transformation, we are redesigning our operating model for purposes of more efficiently and effectively supporting residential operations. We recognized $9.7 million and $6.6 million of transformation costs, net of amounts capitalized, on the consolidated statements of operations during 2022 and 2021, respectively. Upon completion of the implementation in 2023, we expect to realize significant operational benefits from this operating model redesign.We also believe we have adequate liquidity beyond 2023, with only $155.0 million of scheduled debt maturities prior to 2027.

We will continue to assess the payment of our dividends on a quarterly basis. Future determinations regarding the declaration and payment of dividends, if any, will be at the discretion of our board of trustees which considers, among other factors, trends in our levels of funds from operations and ongoing capital requirements to achieve a targeted payout ratio.

Capital Structure

We manage our capital structure to reflect a long-term investment approach, generally seeking to match the cash flow of our assets with a mix of equity and various debt instruments. We expect that our capital structure will allow us to obtain additional capital from diverse sources that could include additional equity offerings of common shares, public and private secured and unsecured debt financings, asset dispositions, operating units and joint venture equity. Our ability to raise funds through the incurrence of debt and issuance of equity securities is dependent on, among other things, general economic conditions including general market conditions for REITs, our operating performance, our debt rating, the current trading price of our common shares and other capital market conditions. We analyze which source of capital we believe to be most advantageous to us at any particular point in time.

As of February 14, 2023, we had cash and cash equivalents of approximately $15.8 million and availability under our Revolving Credit Facility of $657.0 million.We currently expect that our potential sources of liquidity for acquisitions, development, redevelopment, expansion and renovation of properties, and operating and administrative expenses, may include:

- Cash flow from operations;
- Borrowings under our Revolving Credit Facility or other new short-term facilities;
- Issuances of our equity securities and/or common units in operating partnerships;
- Issuances of preferred shares;
- Proceeds from long-term secured or unsecured debt financings, including construction loans and term loans, or the issuance of debt securities;
- Investment from joint venture partners; and
- Net proceeds from the sale of assets.

During 2023, we expect that we will have significant capital requirements, including the following:

- Funding dividends and distributions to our shareholders (which we intend to continue to pay at or about current levels);
- Approximately $15.0 - $20.0 million to invest in our existing portfolio of operating assets;
- Less than $1.0 million to invest in our development and redevelopment projects; and
- Funding for potential property acquisitions throughout 2023, offset by proceeds from potential property dispositions.

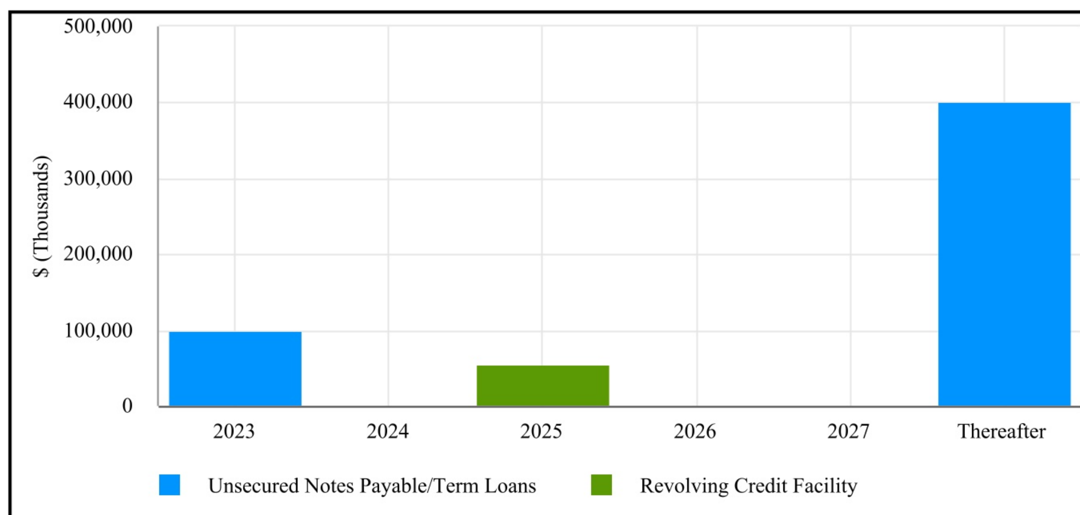
There can be no assurance that our capital requirements will not be materially higher or lower than the above expectations. We currently believe that we will have enough cash on hand and/or will generate sufficient cash flow from operations and potential property sales and have access to the capital resources necessary to fund our requirements in 2023. However, as a result of general market conditions in the greater Washington, DC metro and Sunbelt regions, economic conditions affecting the ability to attract and retain residents and tenants or achieve anticipated rental rates, declines in our share price, unfavorable changes in the supply of competing properties, or our properties not performing as expected, we may not generate sufficient cash flow from operations and property sales or otherwise have access to capital on favorable terms, or at all. If we are unable to obtain capital from other sources, we may need to alter capital spending to be materially different than what is stated in the prior paragraph. If capital were not available, we may be unable to satisfy the distribution requirement applicable to REITs, make required principal and interest payments, make strategic acquisitions or make necessary and/or routine capital improvements or

undertake improvement/redevelopment opportunities with respect to our existing portfolio of operating assets.

Debt Financing

We generally use unsecured or secured, corporate-level debt, including unsecured notes, our Revolving Credit Facility, bank term loans and mortgages, to meet our borrowing needs. Long-term, we generally use fixed rate debt instruments in order to match the returns from our real estate assets. If we issue unsecured debt in the future, we will seek to ladder the maturities of our debt to mitigate exposure to interest rate risk in any particular future year. We also utilize variable rate debt for short-term financing purposes. At times, our mix of variable and fixed rate debt may not suit our needs. At those times, we may use derivative financial instruments including interest rate swaps and caps, forward interest rate options or interest rate options in order to assist us in managing our debt mix. We may either hedge our variable rate debt to give it an effective fixed interest rate or hedge fixed rate debt to give it an effective variable interest rate.

As of December 31, 2022, our future debt principal payments are scheduled as follows (in thousands):



Year	Unsecured Notes Payable/Term Loans	Revolving Credit Facility	Total Debt	Average Interest Rate
2023	$ 100,000 [(1)]	$ —	$ 100,000	2.3 %
2024	—	—	—	— %
2025	—	55,000	55,000	5.2 %
2026	—	—	—	— %
2027	—	—	—	— %
Thereafter	400,000	—	400,000	4.5 %
Scheduled principal payments	500,000	55,000	555,000	4.2 %
Premiums and discounts, net	(116)	—	(116)	
Debt issuance costs, net	(2,525)	—	(2,525)	
Total	$ 497,359	$ 55,000	$ 552,359	4.2 %

(1) Elme Communities entered into an interest rate swap to effectively fix a LIBOR plus 110 basis points floating interest rate to a 2.31% all-in fixed rate for the remaining $100.0 million portion of the 2018 Term Loan. The interest rates were fixed through the term loan maturity of July 2023. Subsequent to the end of 2022, we prepaid the 2018 Term Loan with proceeds from a $125.0 million unsecured term loan which matures in 2025 ("2023 Term Loan"). The 2023 Term Loan has an interest rate of SOFR (subject to a credit spread adjustment of 10 basis points) plus a margin of 95 basis points. The interest rate swap effectively fixes a $100.0 million potion of the 2023 Term Loan at 2.16% through the interest rate swap's expiration date of July 21, 2023.

The weighted average maturity for our debt was 5.9 years as of December 31, 2022. If principal amounts due at maturity cannot

be refinanced, extended or paid with proceeds of other capital transactions, such as new equity capital, our cash flow may be insufficient to repay all maturing debt. Prevailing interest rates or other factors at the time of a refinancing, such as possible reluctance of lenders to make commercial real estate loans, may result in higher interest rates and increased interest expense or inhibit our ability to finance our obligations.

From time to time, we may seek to repurchase and cancel our outstanding unsecured notes and term loans through open market purchases, privately negotiated transactions or otherwise. Such repurchases, if any, will depend on prevailing market conditions, our liquidity requirements, contractual restrictions and other factors. The amounts involved may be material.

Debt Covenants

Pursuant to the terms of our Revolving Credit Facility, our term loans and unsecured notes, we are subject to customary operating covenants and maintenance of various financial ratios.

Failure to comply with any of the covenants under our Revolving Credit Facility, our term loans, unsecured notes or other debt instruments could result in a default under one or more of our debt instruments. This could cause our lenders to accelerate the timing of payments and could therefore have a material adverse effect on our business, operations, financial condition and liquidity. In addition, our ability to draw on our Revolving Credit Facility or incur other unsecured debt in the future could be restricted by the debt covenants.
As of December 31, 2022, we were in compliance with the covenants related to our Revolving Credit Facility, 2018 Term Loan and unsecured notes.

Common Equity

We have authorized for issuance 150.0 million common shares, of which approximately 87.5 million shares were outstanding at December 31, 2022.

On February 17, 2021, we entered into separate amendments to each of our existing equity distribution agreements (“Original Equity Distribution Agreements”) with each of Wells Fargo Securities, LLC, BNY Mellon Capital Markets, LLC, Capital One Securities, Inc., Citigroup Global Markets Inc., Goldman Sachs & Co. LLC, J.P. Morgan Securities LLC, KeyBanc Capital Markets Inc. and Truist Securities, Inc. (f/k/a SunTrust Robinson Humphrey, Inc.), each dated May 4, 2018 (collectively, as amended, the “Equity Distribution Agreements”) for our at-the-market program. Also on February 17, 2021, we entered into a separate equity distribution agreement with BTIG, LLC on the same terms as the Amended Equity Distribution Agreements (the “BTIG Equity Distribution Agreement”). On September 22, 2021, BTIG, LLC notified us that it was terminating the BTIG Equity Distribution Agreement, effective as of September 27, 2021. Pursuant to the Equity Distribution Agreements, we may sell, from time to time, up to an aggregate price of $550.0 million of our common shares of beneficial interest, $0.01 par value per share. Issuances of our common shares are made at market prices prevailing at the time of issuance. We may use net proceeds from the issuance of common shares under this program for general business purposes, including, without limitation, working capital, the acquisition, renovation, expansion, improvement, development or redevelopment of income producing properties or the repayment of debt.

Our issuances and net proceeds on the Equity Distribution Agreements in 2022 and 2021 and the Original Equity Distribution Agreements in 2020, respectively, were as follows (in thousands, except per share data):

	Year Ended December 31,		
	2022	2021	2020
Issuance of common shares	1,032	1,636	2,046
Weighted average price per share	$ 26.27	$ 25.44	$ 23.86
Net proceeds	$ 26,849	40,462	$ 48,355

We have a dividend reinvestment program, whereby shareholders may use their dividends and optional cash payments to purchase common shares. The common shares sold under this program may either be common shares issued by us or common shares purchased in the open market.

Our issuances and net proceeds on the dividend reinvestment program for the three years ended December 31, 2022 were as follows (in thousands; except per share data):

	Year Ended December 31,		
	2022	2021	2020
Issuance of common shares	47	75	90
Weighted average price per share	$ 22.40	$ 23.37	$ 24.12
Net proceeds	$ 1,030	$ 1,744	$ 2,121

Preferred Equity

Our board of trustees can, at its discretion, authorize the issuance of up to 10.0 million preferred shares. The ability to issue preferred equity provides Elme Communities an additional financing tool that may be used to raise capital for future acquisitions or other business purposes. As of December 31, 2022, no preferred shares are issued and outstanding.

Capital Commitments

We will require capital for development and redevelopment projects currently underway and in the future. We are currently engaged in predevelopment activities for the ground-up development of a residential property on land adjacent to Riverside Apartments. As of December 31, 2022, we had no outstanding contractual commitments related to our development and redevelopment projects and expect to fund less than $1.0 million of total development and redevelopment spending during 2023.

In addition to our development and redevelopment projects, we anticipate funding approximately $30.0 - $35.0 million on several major renovation projects at our residential communities during 2023.

These projects include unit renovations, property technology initiatives, common area and mechanical upgrades, pool deck renovations, facade and retaining wall restorations and fire system and roof replacements. Not all of the anticipated spending had been committed via executed construction contracts at December 31, 2022. We expect to fund these projects using cash generated by our real estate operations, through borrowings on our Revolving Credit Facility, or raising additional debt or equity capital in the public market.

Contractual Obligations

As of December 31, 2022, certain contractual obligations will require significant capital as follows (in thousands):

	Payments due by Period				
	Total	Less than 1 year	1-3 years	4-5 years	After 5 years
Long-term debt[(1)]	$ 694,269	$ 120,740	$ 111,318	$ 84,150	$ 378,061

(1) See notes 6 and 7 of the consolidated financial statements. Amounts include principal, interest and facility fees.

In addition to our long-term debt, we have committed building capital expenditures of $4.9 million in 2023 based on contracts in place as of December 31, 2022, along with other various standing or renewable contracts with vendors. The majority of these contracts can be canceled with immaterial or no cancellation penalties, with the exception of our elevator maintenance agreements and our electricity and gas purchase agreements. Contract terms on leases that can be canceled are generally one year or less.

Historical Cash Flows

Cash flows from operations are an important factor in our ability to sustain our dividend at its current rate. If our cash flows from operations were to decline significantly, we may have to reduce our dividend. Consolidated cash flows for the three years ended December 31, 2022 were as follows (in thousands):

	Year ended December 31,			Variance	
	2022	2021	2020	2022 vs. 2021	2021 vs. 2020
Cash provided by operating activities	$ 73,211	$ 89,156	$ 112,978	$ (15,945)	$ (23,822)
Cash (used in) provided by investing activities	(241,163)	702,170	65,760	(943,333)	636,410
Cash used in financing activities	(56,416)	(565,396)	(185,199)	508,980	(380,197)

Net cash provided by operating activities decreased in 2022 as compared to 2021 and in 2021 as compared to 2020 primarily due to the sales of the Office Portfolio and the Retail Portfolio during 2021 (see note 3 to the consolidated financial statements) and costs associated with our strategic transformation.

Net cash (used in) provided by investing activities decreased in 2022 as compared to 2021 and increased in 2021 as compared to 2020 primarily due to the sales of the Office Portfolio and the Retail Portfolio during 2021. These were partially offset by the acquisitions of The Oxford and Assembly Eagles Landing during 2021 and acquisitions of Marietta Crossing, Alder Park and Carlyle of Sandy Springs during 2022.

Net cash used in financing activities decreased in 2022 as compared to 2021 primarily due to a higher volume of debt repayments during 2021 and higher net proceeds from equity issuances and lower dividends paid in 2022. Net cash used in financing activities increased in 2021 as compared to 2020 primarily due to the repayment of $300.0 million of unsecured notes and higher net repayments on the Revolving Credit Facility during 2021.

Capital Improvements and Development Costs

Our capital improvement, development and redevelopment costs for the three years ended December 31, 2022 were as follows (in thousands):

	Year Ended December 31,		
	2022	2021	2020
Accretive capital improvements and development costs:			
Acquisition related improvements	$ 5,236	$ 7,218	$ 10,487
Expansions and major renovations	21,476	17,096	16,561
Development/redevelopment	698	8,406	28,812
Tenant improvements (including first generation leases)	1,337	2,427	21,785
Total accretive capital improvements [1]	28,747	35,147	77,645
Other capital improvements:	8,464	5,669	9,262
Total	$ 37,211	$ 40,816	$ 86,907

[1] We consider these capital improvements to be accretive to revenue and not necessarily to net income.

Included in the capital improvement and development costs listed above are capitalized interest in the amount of $0.3 million, $0.8 million and $2.2 million for the three years ended December 31, 2022, respectively, and capitalized employee compensation in the amount of $1.1 million, $1.6 million and $2.0 million for the three years ended December 31, 2022, respectively.

Accretive Capital Improvements

Acquisition Related Improvements: Acquisition related improvements are capital improvements to properties acquired during the preceding three years which were anticipated at the time we acquired the properties. These types of improvements were made in 2022 to the Carlyle of Sandy Springs, Assembly Eagles Landing and The Oxford.

Expansions and Major Renovations: Expansion projects increase the rentable area of a property, while major renovation projects are improvements sufficient to increase the income otherwise achievable at a property. Expansions and major renovations during 2022 included unit, hallway, retaining walls renovations and SmartRent and wifi installations at Assembly Alexandria; retail space conversion into additional units and plaza restoration at The Ashby; unit renovations, roof and heating system replacement at Assembly Dulles; unit and facade renovations and fire alarm system replacement at Riverside Apartments; unit renovations and SmartRent installations at Assembly Manassas and unit renovations, roof awnings and

heating system replacement at The Wellington.

Development/Redevelopment: Development costs represent expenditures for ground up development of new operating properties. Redevelopment costs represent expenditures for improvements intended to reposition properties in their markets and generate more income than would be otherwise achievable. Development/redevelopment costs in 2022 include predevelopment costs for a future residential development adjacent to Riverside Apartments.

Other Capital Improvements

Other capital improvements, also referred to as recurring capital improvements, are those not included in the above categories. Over time these costs will be recurring in nature to maintain a property's income and value. This category includes improvements made as needed upon vacancy of an apartment. Such improvements totaled $6.7 million in 2022, averaging approximately $1,860 per unit for the 41% of units which turned over relative to our total portfolio of apartment homes. Aside from improvements related to apartment turnover, these improvements include facade repairs, installation of new heating and air conditioning equipment, asphalt replacement, permanent landscaping, new lighting and new finishes. In addition, we incurred repair and maintenance expense of $5.0 million during 2022 to maintain the quality of our buildings.

Off Balance Sheet Arrangements

We have no off-balance sheet arrangements as of December 31, 2022 that are reasonably likely to have a current or future material effect on our financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources.

Forward-Looking Statements

Some of the statements contained in this Form 10-K constitute forward-looking statements within the meaning of federal securities laws. Forward-looking statements relate to expectations, beliefs, projections, future plans and strategies, anticipated events or trends and similar expressions concerning matters that are not historical facts. In some cases, you can identify forward-looking statements by the use of forward-looking terminology such as “may,” “will,” “should,” “expects,” “intends,” “plans,” “anticipates,” “believes,” “estimates,” “predicts,” or “potential” or the negative of these words and phrases or similar words or phrases which are predictions of or indicate future events or trends and which do not relate solely to historical matters. Such statements involve known and unknown risks, uncertainties, and other factors which may cause the actual results, performance, or achievements of Elme Communities to be materially different from future results, performance or achievements expressed or implied by such forward-looking statements. Additional factors which may cause the actual results, performance or achievements of Elme Communities to be materially different from future results, performance or achievements expressed or implied by such forward-looking statements include, but are not limited to:

(a) the risks associated with ownership of real estate in general and our real estate assets in particular;
(b) the economic health of the areas in which our properties are located, particularly with respect to greater Washington, DC metro and Sunbelt region;
(c) risks associated with our ability to execute on our strategies, including new strategies with respect to our operations and our portfolio, including our ability to realize any anticipated operational benefits from our internalization of community management functions;
(d) the risk of failure to enter into and/or complete contemplated acquisitions and dispositions, or at all, within the price ranges anticipated and on the terms and timing anticipated;
(e) changes in the composition of our portfolio, including the acquisition of apartment homes in the Sunbelt markets;
(f) risks related to changes in interest rates, including the future of the reference rate used in our existing floating rate debt instruments;
(g) reductions in or actual or threatened changes to the timing of federal government spending;
(h) the risks related to use of third-party providers;
(i) the economic health of our residents;
(j) the ultimate duration of the COVID-19 global pandemic, including any mutations thereof,the actions taken to contain the pandemic or mitigate its impact, and the direct and indirect economic effects of the pandemic and containment measures, the effectiveness and willingness of people to take COVID-19 vaccines, and the duration of associated immunity and efficacy of the vaccines against emerging variants of COVID-19;
(k) the impact from macroeconomic factors (including inflation, increases in interest rates, potential economic slowdown or a recession and geopolitical conflicts);
(l) compliance with applicable laws and corporate social responsibility goals, including those concerning the environment

and access by persons with disabilities;
(m) the risks related to not having adequate insurance to cover potential losses;
(n) changes in the market value of securities;
(o) terrorist attacks or actions and/or cyber-attacks;
(p) whether we will succeed in the day-to-day property management and leasing activities that we have previously outsourced;
(q) the availability and terms of financing and capital and the general volatility of securities markets;
(r) the risks related to our organizational structure and limitations of share ownership;
(s) failure to qualify and maintain our qualification as a REIT and the risks of changes in laws affecting REITs; and
(t) other factors discussed under the caption "Risk Factors."

While forward-looking statements reflect our good faith beliefs, they are not guarantees of future performance. For a further discussion of these and other factors that could cause our future results to differ materially from any forward-looking statements, see the section entitled "Risk Factors." We undertake no obligation to update our forward-looking statements or risk factors to reflect new information, future events, or otherwise.

Funds From Operations

NAREIT FFO is a widely used measure of operating performance for real estate companies. In its 2018 NAREIT FFO White Paper Restatement, the National Association of Real Estate Investment Trusts, Inc. ("NAREIT") defines NAREIT FFO as net income (computed in accordance with GAAP) excluding gains (or losses) associated with sales of properties; impairments of depreciable real estate, and real estate depreciation and amortization. We consider NAREIT FFO to be a standard supplemental measure for REITs, and believe it is a useful metric because it facilitates an understanding of the operating performance of our properties without giving effect to real estate depreciation and amortization, which historically assumes that the value of real estate assets diminishes predictably over time. Since real estate values have instead historically risen or fallen with market conditions, we believe that NAREIT FFO more accurately provides investors an indication of our ability to incur and service debt, make capital expenditures and fund other needs. Our NAREIT FFO may not be comparable to FFO reported by other REITs. These other REITs may not define the term in accordance with the current NAREIT definition or may interpret the current NAREIT definition differently.

The following table provides the calculation of our NAREIT FFO and a reconciliation of NAREIT FFO to net income for the three years ended December 31, 2022 (in thousands):

	Year Ended December 31,		
	2022	**2021**	**2020**
Net (loss) income	$ (30,868)	$ 16,384	$ (15,680)
Adjustments:			
Depreciation and amortization	91,722	72,656	70,336
Loss on sale of depreciable real estate, net	—	—	15,009
Discontinued operations:			
Depreciation and amortization	—	22,904	49,694
Gain on sale of depreciable real estate, net	—	(46,441)	—
NAREIT FFO	$ 60,854	$ 65,503	$ 119,359

Critical Accounting Estimates

We base the discussion and analysis of our financial condition and results of operations upon our consolidated financial statements, which have been prepared in accordance with GAAP. The preparation of these financial statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses. We evaluate these estimates on an on-going basis, including those related to estimated useful lives of real estate assets, estimated fair value of acquired leases, cost reimbursement income, bad debts, contingencies and litigation. We base the estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. We cannot assure you that actual results will not differ from those estimates.

We believe the following accounting estimates are the most critical to aid in fully understanding our reported financial results,

and they require our most difficult, subjective or complex judgments, resulting from the need to make estimates about the effect of matters that are inherently uncertain.

Accounting for Asset Acquisitions

We allocate the purchase price, including transaction costs, of acquired assets, including physical assets and in-place leases, and assumed liabilities, based on their fair values. We determine the estimated fair values of the assets and liabilities in accordance with current GAAP fair value provisions. We determine the fair values of acquired buildings on an “as-if-vacant” basis considering a variety of factors, including the replacement cost of the property, estimated rental and absorption rates, estimated future cash flows and valuation assumptions consistent with current market conditions. We determine the fair value of land acquired based on comparisons to similar properties that have been recently marketed for sale or sold.

The fair value of in-place leases is based upon our evaluation of the specific characteristics of the leases. Factors considered in the fair value analysis include the estimated cost to replace the leases, including foregone rents and expense reimbursements during hypothetical expected lease-up periods (referred to as “absorption cost”), consideration of current market conditions and costs to execute similar leases. We classify absorption costs as other assets and amortize absorption costs as amortization expense on a straight-line basis over the remaining life of the underlying leases.

Real Estate Impairment

We recognize impairment losses on long-lived assets used in operations, development assets or land held for future development, if indicators of impairment are present and the net undiscounted cash flows estimated to be generated by those assets are less than the assets' carrying amount. Estimates of undiscounted cash flows are based on forward-looking assumptions, including annual and residual cash flows and our estimated holding period for each property. Such assumptions involve a high degree of judgment and could be affected by future economic and market conditions. When determining if a property has indicators of impairment, we evaluate the property's occupancy, our expected holding period for the property, strategic decisions regarding the property's future operations or development and other market factors. If such carrying amount is in excess of the estimated undiscounted cash flows from the operation and disposal of the property, we would recognize an impairment loss equivalent to an amount required to adjust the carrying amount to its estimated fair value, calculated in accordance with current GAAP fair value provisions. Assets held for sale are recorded at the lower of cost or fair value less costs to sell.

ITEM 7A: QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

The principal material financial market risk to which we are exposed is interest rate risk. Our exposure to interest rate risk relates primarily to refinancing long-term fixed rate obligations, the opportunity cost of fixed rate obligations in a falling interest rate environment and our variable rate line of credit. We primarily enter into debt obligations to support general corporate purposes, including acquisition of real estate properties, capital improvements and working capital needs. We use interest rate swap arrangements to reduce our exposure to the variability in future cash flows attributable to changes in interest rates.

The table below presents principal, interest and related weighted average interest rates by year of maturity, with respect to debt outstanding on December 31, 2022 (dollars in thousands).

	2023	2024	2025	2026	2027	Thereafter	Total	Fair Value
Unsecured fixed rate debt [(1)]								
Principal [(2)]	$ 100,000	$ —	$ —	$ —	$ —	$ 400,000	$ 500,000	$ 454,564
Interest payments	$ 19,340	$ 17,995	$ 17,995	$ 17,995	$ 17,995	$ 44,216	$ 135,536	
Interest rate on debt maturities	2.3 %	— %	— %	— %	— %	4.5 %	4.2 %	
Unsecured variable rate debt								
Principal	$ —	$ —	$ 55,000	$ —	—	$ —	$ 55,000	$ 55,000
Variable interest rate on debt maturities			5.2 %				5.2 %	

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(1) Includes a $100.0 million term loan with a floating interest rate. The interest rate on the $100.0 million term loan is effectively fixed by interest rate swap arrangements at 2.31%. Subsequent to the end of 2022, we prepaid the 2018 Term Loan with proceeds from the $125.0 million 2023 Term Loan which matures in 2025.

(2) Subsequent to the end of 2022, we executed an amendment to our revolving credit facility to convert the benchmark interest rate from LIBOR to an adjusted SOFR, with no change in the applicable interest rate margins.

We entered into the interest rate swap arrangements designated and qualifying as cash flow hedges to reduce our exposure to the variability in future cash flows attributable to changes in interest rates. Derivative instruments expose us to credit risk in the event of non-performance by the counterparty under the terms of the interest rate hedge agreement. We believe that we minimize our credit risk on these transactions by dealing with major, creditworthy financial institutions. As part of our ongoing control procedures, we monitor the credit ratings of counterparties and our exposure to any single entity, thus minimizing our credit risk concentration.

The following table sets forth information pertaining to interest rate swap contract in place as of December 31, 2022 and 2021 and its respective fair value (dollars in thousands):

				Termination/	Fair Value as of:	
Notional Amount	Fixed Rate	Floating Index Rate	Effective Date	Expiration Date	December 31, 2022	December 31, 2021
$ 100,000	1.205%	One Month USD-LIBOR	3/31/2017	7/21/2023	$ 1,998	$ (821)

We enter into debt obligations primarily to support general corporate purposes including acquisition of real estate properties, capital improvements and working capital needs.

ITEM 8: FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

The financial statements and supplementary data appearing on pages 80 to 114 are incorporated herein by reference.

ITEM 9: CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

None.

ITEM 9A: CONTROLS AND PROCEDURES

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in our Securities Exchange Act reports is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer, Chief Financial Officer and Chief Accounting Officer, as appropriate, to allow timely decisions regarding required disclosure. In designing and evaluating the disclosure controls and procedures, management recognized that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives, and management necessarily was required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

We carried out an evaluation, under the supervision and with the participation of our management, including our Chief Executive Officer, Chief Financial Officer and Chief Accounting Officer, of the effectiveness of the design and operation of our disclosure controls and procedures as of December 31, 2022. Based on the foregoing, our Chief Executive Officer, Chief Financial Officer and Chief Accounting Officer concluded that our disclosure controls and procedures were effective at a reasonable assurance level.

Internal Control over Financial Reporting

See the Report of Management in Item 8 of this Form 10-K.

See the Reports of Independent Registered Public Accounting Firm in Item 8 of this Form 10-K.

During the three months ended December 31, 2022, there was no change in our internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

ITEM 9B: OTHER INFORMATION

Retirement of Chief Financial Officer

As previously reported, on November 8, 2022, Stephen E. Riffee, the Company's Executive Vice President and Chief Financial Officer, provided notice to Elme of his intention to retire at the end of February 2023. Mr. Riffee's retirement will be effective as of February 28, 2023. In recognition of Mr. Riffee's service to the Company, the Company has agreed to subsidize Mr. Riffee's COBRA premium for seven months, subject to Mr. Riffee's execution of a general release of claims against Elme (the "Release Agreement"), which was executed on February 15, 2023. The Release Agreement also contains confidentiality and other customary provisions. Additionally, pursuant to the Release Agreement, Mr. Riffee has agreed to reasonably cooperate with and provide information to Elme upon request, and he will receive reasonable and necessary expenses in connection therewith.

The foregoing description is qualified in its entirety by reference to the full text of the Release Agreement, which is filed as Exhibit 10.27 hereto and is incorporated by reference.

Appointment of Chief Financial Officer

On February 14, 2023, further to the Company's previously announced transition arrangement, as disclosed on its Current Report on Form 8-K filed on November 9, 2022, the Board appointed Steven M. Freishtat as Executive Vice President and Chief Financial Officer of the Company effective as of March 1, 2023 (following Mr. Riffee's retirement). In connection with such appointment, Mr. Freishtat will participate in Elme Communities' executive compensation program, including the Officer STIP (with threshold, target and high award opportunities of 41%, 75% and 133%, respectively, of his base salary) and Officer

LTIP (with threshold, target and high award opportunities of 95%, 125% and 196%, respectively, of his base salary), effective as of the performance period beginning January 1, 2023. Additionally, Mr. Freishtat's base annual salary will be $325,000, effective March 1, 2023. Mr. Frieshtat is also eligible to participate in the Company's Supplemental Executive Retirement Plan and has executed a change in control agreement, substantively in the form as the Form of Change in Control Agreement (as defined below), providing for among other benefits, a lump sum payment equal to two times his base salary in effect at the time termination, a lump sum payment equal to two times his average bonus for the three years preceding the termination and up to 18 months of continued health care coverage.

A description of the material terms of the executive compensation program can be found in the sections entitled"Short-Term Incentive Plan (STIP)," "Long-Term Incentive Plan (LTIP)," and "Other Executive Compensation Components" in the Company's definitive proxy statement, dated April 15, 2022, which was filed on April 15, 2022, which descriptions are incorporated herein by reference, and in "Amendment to Executive Officer Short-Term Incentive Plan and Long-Term Incentive Plan" below.

In connection Mr. Freishtat's appointment, the Company entered into an indemnification agreement with Mr. Freishtat, effective as of March 1, 2023. Subject to certain terms and conditions, the indemnification agreement generally requires the Company to indemnify Mr. Freishtat against any and all judgments, penalties, fines, settlements and reasonable expenses actually incurred by or on behalf of Mr. Freishtat in connection with any threatened, pending or completed legal proceeding arising by reason of his status as an officer of Elme. The description is not complete and is subject to and qualified in its entirety by reference to the Form of Indemnification Agreement filed as Exhibit 10(nn) to Washington REIT's Current Report on Form 8-K filed on July 27, 2009 and is incorporated herein by reference.

Amendment to Executive Officer Short-Term Incentive Plan and Long-Term Incentive Plan

On February 14, 2023, the Board approved amendments to both the Amended and Restated Executive Officer Short-Term Incentive Plan (the "Officer STIP") and the Amended and Restated Executive Officer Long-Term Incentive Plan (the "Officer LTIP"). Upon adoption by the Board, both amendments became effective for performance periods beginning on or after January 1, 2023. The amendment to the Officer STIP, revises the Officer STIP to, among other things, reflect the Company's name change, remove the hardwired award percentages, and add a provision for calculating an award if a participant's employment is terminated under certain circumstances prior to the establishment of such participant's award percentages for the then-current performance period. The amendment to the Officer LTIP, among other things, makes corresponding changes as described above for the Officer STIP, establishes that, upon a qualifying termination, achievement of any strategic goal equity grant shall be determined based on actual levels of achievement on the date of such termination, and that upon a change in control, any strategic goal equity grant will vest at the greater of target level and actual level of attainment of the strategic goals as of the change of control.

A description of the material terms of the executive compensation program prior to these amendments can be found in the sections entitled"Short-Term Incentive Plan (STIP)" and "Long-Term Incentive Plan (LTIP)" in the Company's definitive proxy statement, dated April 15, 2022, which was filed on April 15, 2022, which descriptions are incorporated herein by reference.

The foregoing descriptions are qualified in their entirety by reference to the full text of Amendment Number One to the Amended and Restated Executive Officer Short-Term Incentive Plan and Amendment Number One to the Amended and Restated Executive Officer Long-Term Incentive Plan, which are filed as Exhibits 10.30 and 10.29 hereto, respectively, and are incorporated by reference.

Updates to Form of Change in Control Agreement

The Company previously adopted a form of change in control agreement (the "CIC Form Agreement") for certain key officers. On February 14, 2023, the Board approved several updates to the form as reflected in a new form of CIC Form Agreement (the "Form of Change in Control Agreement") to, among other changes, reflect the Company's name change, provide for payment of certain termination benefits in a lump sum, require execution of a release in connection with receipt of payment of termination benefits, and eliminate the partial reduction of the termination benefit in circumstances when such employee continues to be employed by the Company for some period of time following a change in control. The Form of Change in Control Agreement is expected to be used for new key officers, including the new Chief Financial Officer, as described above.

In connection with the approval of the Form of Change in Control Agreement, the Board entered into amendments to the existing change in control agreement (each, a "CIC Agreement") of Paul T. McDermott and Susan L. Gerock (each, an "Executive"). As amended, each CIC Agreement will require the Executive to execute a release in connection with receipt of payment of termination benefits and will eliminate the partial reduction of the termination benefit in circumstances when the Executive continues to be employed by the Company for some period of time following a change in control.

The foregoing descriptions are qualified in their entirety by reference to the full text of the Form of Change in Control

Agreement, Amendment No. 1 To Change in Control Agreement with Paul T. McDermott and Amendment No. 1 To the Change in Control Agreement with Susan L. Gerock, which are filed as Exhibits 10.28, 10.18 and 10.23 hereto, respectively, and are incorporated by reference.

A description of the material terms of the Mr. McDermott and Ms. Gerock's change in control agreements prior to these amendments can be found in the section entitled "Potential Payments Upon Termination or Change in Control" in the Company's definitive proxy statement, dated April 15, 2022, which was filed on April 15, 2022, which description is incorporated herein by reference.

Material U.S. Federal Income Tax Considerations

The following is a summary of certain material U.S. federal income tax considerations relating to our qualification and taxation as a real estate investment trust, a "REIT," and the acquisition, holding, and disposition of (i) our common shares, preferred shares and depositary shares (together with common shares and preferred shares, the "shares") as well as our warrants and rights, and (ii) certain debt securities that we may offer (together with the shares, the "securities"). For purposes of this discussion, references to "our Company," "we" and "us" mean only Elme Communities and not its subsidiaries or affiliates. This summary is based upon the Internal Revenue Code of 1986, as amended, (the "Code"), the Treasury Regulations, rulings and other administrative interpretations and practices of the Internal Revenue Service ("IRS") (including administrative interpretations and practices expressed in private letter rulings, which are binding on the IRS only with respect to the particular taxpayers who requested and received those rulings), and judicial decisions, all as currently in effect, and all of which are subject to differing interpretations or to change, possibly with retroactive effect. No assurance can be given that the IRS would not assert, or that a court would not sustain, a position contrary to any of the tax consequences described below. We have not sought and will not seek an advance ruling from the IRS regarding any matter discussed in this section. The summary is also based upon the assumption that we will operate the Company and its subsidiaries and affiliated entities in accordance with their applicable organizational documents. This summary is for general information only, and does not purport to discuss all aspects of U.S. federal income taxation that may be important to a particular investor in light of its investment or tax circumstances, or to investors subject to special tax rules, including:

- tax-exempt organizations, except to the extent discussed below in "—Taxation of U.S. Shareholders—Taxation of Tax-Exempt Shareholders" and "Taxation of Holders of Debt Securities-Tax-Exempt Holders of Debt Securities,"
- broker-dealers,
- non-U.S. corporations, non-U.S. partnerships, non-U.S. trusts, non-U.S. estates, or individuals who are not taxed as citizens or residents of the United States, all of which may be referred to collectively as "non-U.S. persons," except to the extent discussed below in "—Taxation of Non-U.S. Shareholders" and "—Taxation of Holders of Debt Securities—Non-U.S. Holders of Debt Securities,"
- trusts and estates,
- regulated investment companies ("RICs")
- REITs, financial institutions,
- insurance companies,
- subchapter S corporations,
- foreign (non-U.S.) governments,
- persons subject to the alternative minimum tax provisions of the Code,
- persons holding the shares as part of a "hedge," "straddle," "conversion," "synthetic security" or other integrated investment,
- persons holding the shares through a partnership or similar pass-through entity,
- persons with a "functional currency" other than the U.S. dollar,
- persons holding 10% or more (by vote or value) of the beneficial interest in us, except to the extent discussed below,

- persons who do not hold the shares as a “capital asset,” within the meaning of Section 1221 of the Code,
- corporations subject to the provisions of Section 7874 of the Code,
- U.S. expatriates
- persons required for U.S. federal income tax purposes to accelerate the recognition of any item of gross income as a result of such income being recognized on an applicable financial statement, or
- persons otherwise subject to special tax treatment under the Code.

This summary does not address state, local or non-U.S. tax considerations. This summary also does not consider tax considerations that may be relevant with respect to securities we may issue, or selling security holders may sell, other than our shares and certain debt instruments described below. Each time we or selling security holders sell securities, we will provide a prospectus supplement that will contain specific information about the terms of that sale and may add to, modify or update the discussion below, as appropriate.

Each prospective investor is advised to consult his or her tax advisor to determine the impact of his or her personal tax situation on the anticipated tax consequences of the acquisition, ownership and sale of our shares, warrants, rights and/or debt securities. This includes the U.S. federal, state, local, foreign and other tax considerations of the ownership and sale of our shares, warrants, rights and/or debt securities, and the potential changes in applicable tax laws.

Taxation of the Company as a REIT

We elected to be taxed as a REIT, commencing with our first taxable year ended December 31, 1960. A REIT generally is not subject to U.S. federal income tax on the “REIT taxable income” (generally, taxable income of the REIT subject to specified adjustments, including a deduction for dividends paid and excluding net capital gain) that it distributes to shareholders, provided that the REIT meets the annual REIT distribution requirement and the other requirements for qualification as a REIT under the Code. We believe that we are organized and have operated, and we intend to continue to operate, in a manner so as to qualify for taxation as a REIT under the Code. However, qualification and taxation as a REIT depend upon our ability to meet the various qualification tests imposed under the Code, including (through our actual annual (or in some cases quarterly) operating results) requirements relating to income, asset ownership, distribution levels and diversity of share ownership. Given the complex nature of the REIT qualification requirements, the ongoing importance of factual determinations and the possibility of future changes in our circumstances, we cannot provide any assurances that we will be organized or operated in a manner so as to satisfy the requirements for qualification and taxation as a REIT under the Code, or that we will meet such requirements in the future. See “—Failure to Qualify as a REIT.”

The sections of the Code that relate to our qualification and taxation as a REIT are highly technical and complex. This discussion sets forth the material aspects of the Code sections that govern the U.S. federal income tax treatment of a REIT and its shareholders. This summary is qualified in its entirety by the applicable Code provisions, relevant rules and Treasury Regulations, and related administrative and judicial interpretations.

Taxation of REITs in General

For each taxable year in which we qualify for taxation as a REIT, we generally will not be subject to U.S. federal corporate income tax on our “REIT taxable income” (generally, taxable income subject to specified adjustments, including a deduction for dividends paid and excluding our net capital gain) that is distributed currently to our shareholders. This treatment substantially eliminates the “double taxation” at the corporate and shareholder levels that generally results from an investment in a non-REIT C corporation. A non-REIT C corporation is a corporation that generally is required to pay tax at the corporate level. Double taxation means taxation once at the corporate level when income is earned and once again at the shareholder level when the income is distributed. In general, the income that we generate is taxed only at the shareholder level upon a distribution of dividends to our shareholders.

U.S. shareholders generally will be subject to taxation on dividends distributed by us (other than designated capital gain dividends and “qualified dividend income”) at rates applicable to ordinary income, instead of at lower capital gain rates. For taxable years beginning before January 1, 2026, generally, U.S. shareholders that are individuals, trusts or estates may deduct 20% of the aggregate amount of ordinary dividends distributed by us, subject to certain limitations. Capital gain dividends and qualified dividend income will continue to be subject to a maximum 20% rate (excluding the 3.8% tax on “net investment

income”).

Any net operating losses, foreign tax credits and other tax attributes of a REIT generally do not pass through to our shareholders, subject to special rules for certain items such as the net capital gain that we recognize.

Even if we qualify for taxation as a REIT, we will be subject to U.S. federal income tax in the following circumstances:

1. We will be taxed at regular corporate rates on any undistributed “REIT taxable income,” including any undistributed net capital gain. REIT taxable income is the taxable income of the REIT subject to specified adjustments, including a deduction for dividends paid.

2. If we have (1) net income from the sale or other disposition of “foreclosure property” that is held primarily for sale to customers in the ordinary course of business, or (2) other non-qualifying income from foreclosure property, such income will be subject to tax at the highest corporate rate.

3. Our net income from “prohibited transactions” will be subject to a 100% penalty tax. In general, prohibited transactions are sales or other dispositions of property held primarily for sale to customers in the ordinary course of business, other than foreclosure property.

4. If we fail to satisfy either the 75% gross income test or the 95% gross income test, as discussed below, but our failure is due to reasonable cause and not due to willful neglect and we nonetheless maintain our qualification as a REIT because we satisfy specified cure provisions, we will be subject to a 100% tax on an amount equal to (a) the greater of (1) the amount by which we fail the 75% gross income test or (2) the amount by which we fail the 95% gross income test, as the case may be, multiplied by (b) a fraction intended to reflect our profitability.

5. We will be subject to a 4% nondeductible excise tax on the excess of the required calendar year distribution over the sum of the amounts actually distributed, excess distributions from the preceding tax year and amounts retained for which U.S. federal income tax was paid. The required distribution for each calendar year is equal to the sum of:

    - 85% of our REIT ordinary income for the year;
    - 95% of our REIT capital gain net income for the year, other than capital gains we elect to retain and pay tax on as described below; and
    - any undistributed taxable income from prior taxable years.

6. We will be subject to a 100% penalty tax on certain rental income we receive when a taxable REIT subsidiary provides services to our tenants, on certain expenses deducted by a taxable REIT subsidiary on payments made to us and on income for services rendered to us by a taxable REIT subsidiary, if the arrangements among us, our tenants, and our taxable REIT subsidiary do not reflect arm’s-length terms.

7. If we acquire any assets from a non-REIT C corporation in a carry-over basis transaction, we would be liable for corporate income tax, at the highest applicable corporate rate, on the “built-in gain” inherent in those assets if we disposed of those assets within five years after they were acquired. To the extent that assets are transferred to us in a carry-over basis transaction by a partnership in which a non-REIT C corporation owns an interest, we will be subject to this tax in proportion to the non-REIT C corporation’s interest in the partnership. Built-in gain is the amount by which an asset’s fair market value exceeds its adjusted tax basis at the time we acquire the asset. The results described in this paragraph assume that the non-REIT C corporation or partnership transferor will not elect, in lieu of this treatment, to be subject to an immediate tax when the asset is acquired by us.

8. We may elect to retain and pay U.S. federal income tax on our net long-term capital gain. In that case, a U.S. shareholder would include its proportionate share of our undistributed long-term capital gain (to the extent that we make a timely designation of such gain to the shareholder) in its income, would be deemed to have paid the tax we paid on such gain, and would be allowed a credit for its proportionate share of the tax deemed to have been paid, and an adjustment would be made to increase the basis of the U.S. shareholder in our common shares.

9. If we violate an asset test (other than certain de minimis violations) or other requirements applicable to REITs, as described below, but our failure is due to reasonable cause and not due to willful neglect and we nevertheless maintain our REIT qualification because we satisfy specified cure provisions, we will be subject to a tax equal to the greater of $50,000 or the amount determined by multiplying the net income generated by such non-qualifying assets by the highest rate of tax applicable to non-REIT C corporations during periods when owning such assets would have caused

us to fail the relevant asset test.

10. If we fail to satisfy a requirement under the Code and the failure would result in the loss of our REIT qualification, other than a failure to satisfy a gross income test or an asset test, as described above, but nonetheless maintain our qualification as a REIT because the requirements of certain relief provisions are satisfied, we will be subject to a penalty of $50,000 for each such failure.

11. If we fail to comply with the requirement to send annual letters to our shareholders requesting information regarding the actual ownership of our shares and the failure was not due to reasonable cause or was due to willful neglect, we will be subject to a $25,000 penalty or, if the failure is intentional, a $50,000 penalty.

12. The earnings of any subsidiaries that are non-REIT C corporations, including any taxable REIT subsidiaries, are subject to U.S. federal corporate income tax.

Notwithstanding our qualification as a REIT, we and our subsidiaries may be subject to a variety of taxes, including payroll taxes and state, local, and foreign income, property and other taxes on our assets, operations and/or net worth. We could also be subject to tax in situations and on transactions not presently contemplated.

Requirements for Qualification as a REIT

The Code defines a "REIT" as a corporation, trust or association:

(1) that is managed by one or more trustees or directors;

(2) that issues transferable shares or transferable certificates to evidence its beneficial ownership;

(3) that would be taxable as a domestic corporation, but for Sections 856 through 859 of the Code;

(4) that is neither a financial institution nor an insurance company within the meaning of certain provisions of the Code;

(5) that is beneficially owned by 100 or more persons;

(6) not more than 50% in value of the outstanding shares or other beneficial interest of which is owned, actually or constructively, by five or fewer individuals (as defined in the Code to include certain entities and as determined by applying certain attribution rules) during the last half of each taxable year;

(7) that makes an election to be a REIT for the current taxable year, or has made such an election for a previous taxable year that has not been revoked or terminated, and that satisfies all relevant filing and other administrative requirements established by the IRS that must be met to elect and maintain REIT status;

(8) that uses a calendar year for U.S. federal income tax purposes;

(9) that meets other applicable tests, described below, regarding the nature of its income and assets and the amount of its distributions; and

(10) that has no earnings and profits from any non-REIT taxable year at the close of any taxable year.

The Code provides that conditions (1), (2), (3) and (4) above must be met during the entire taxable year and condition (5) above must be met during at least 335 days of a taxable year of 12 months, or during a proportionate part of a taxable year of less than 12 months. Conditions (5) and (6) do not apply until after the first taxable year for which an election is made to be taxed as a REIT. Condition (6) must be met during the last half of each taxable year. For purposes of determining share ownership under condition (6) above, a supplemental unemployment compensation benefits plan, a private foundation or a portion of a trust permanently set aside or used exclusively for charitable purposes generally is considered an individual. However, a trust that is a qualified trust under Code Section 401(a) generally is not considered an individual, and beneficiaries of a qualified trust are treated as holding shares of a REIT in proportion to their actuarial interests in the trust for purposes of condition (6) above.

We believe that we have been organized, have operated and have issued sufficient shares of beneficial interest with sufficient diversity of ownership to allow us to satisfy the above conditions. In addition, our declaration of trust contains restrictions regarding the transfer of shares of beneficial interest that are intended to assist us in continuing to satisfy the share ownership

requirements described in conditions (5) and (6) above. If we fail to satisfy these share ownership requirements, we will fail to qualify as a REIT unless we qualify for certain relief provisions described below under "—Requirements for Qualification as a REIT-Relief from Violations; Reasonable Cause."

To monitor our compliance with condition (6) above, we are generally required to maintain records regarding the actual ownership of our shares. To do so, we must demand written statements each year from the record holders of specified percentages of our shares pursuant to which the record holders must disclose the actual owners of the shares (i.e., the persons required to include in gross income the dividends paid by us). We must maintain a list of those persons failing or refusing to comply with this demand as part of our records. We could be subject to monetary penalties if we fail to comply with these record-keeping requirements. A shareholder that fails or refuses to comply with the demand is required by Treasury Regulations to submit a statement with its tax return disclosing the actual ownership of our shares and other information. If we comply with the record-keeping requirement and we do not know or, exercising reasonable diligence, would not have known of our failure to meet condition (6) above, then we will be treated as having met condition (6) above.

To qualify as a REIT, we cannot have at the end of any taxable year any undistributed earnings and profits that are attributable to a non-REIT taxable year. We elected to be taxed as a REIT beginning with our first taxable year in 1960 and we have not succeeded to any earnings and profits of a regular corporation. Therefore, we do not believe we have had any undistributed non-REIT earnings and profits.

Relief from Violations; Reasonable Cause

The Code provides relief from violations of the REIT gross income requirements, as described below under "—Requirements for Qualification as a REIT—Gross Income Tests," in cases where a violation is due to reasonable cause and not to willful neglect, and other requirements are met, including the payment of a penalty tax that is based upon the magnitude of the violation. In addition, certain provisions of the Code extend similar relief in the case of certain violations of the REIT asset requirements (see "—Requirements for Qualification as a REIT—Asset Tests" below) and other REIT requirements, again provided that the violation is due to reasonable cause and not willful neglect, and other conditions are met, including the payment of a penalty tax. If we did not have reasonable cause for a failure, we would fail to qualify as a REIT. Whether we would have reasonable cause for any such failure cannot be known with certainty, because the determination of whether reasonable cause exists depends on the facts and circumstances at the time and we cannot provide any assurance that we in fact would have reasonable cause for a particular failure or that the IRS would not successfully challenge our view that a failure was due to reasonable cause. Moreover, we may be unable to actually rectify a failure and restore asset test compliance within the required timeframe due to the inability to transfer or otherwise dispose of assets, including as a result of restrictions on transfer imposed by our lenders or undertakings with our co-investors and/or the inability to acquire additional qualifying assets due to transaction risks, access to additional capital or other considerations. If we fail to satisfy any of the various REIT requirements, there can be no assurance that these relief provisions would be available to enable us to maintain our qualification as a REIT, and, if such relief provisions are available, the amount of any resultant penalty tax could be substantial.

Effect of Subsidiary Entities

Ownership of Partnership Interests. In the case of a REIT that is a partner in an entity that is treated as a partnership for U.S. federal income tax purposes, Treasury Regulations provide that the REIT is deemed to own its proportionate share of the partnership's assets, and to earn its proportionate share of the partnership's income, for purposes of the asset and gross income tests applicable to REITs, as described below. A REIT's proportionate share of a partnership's assets and income is based on the REIT's pro rata share of the capital interests in the partnership. The Company's capital interest in a partnership is calculated based on either the Company's percentage ownership of the capital of the partnership or based on the allocations provided in the applicable partnership or limited liability company operating agreement, using the more conservative calculation. However, solely for purposes of the 10% value test, described below, the determination of a REIT's interest in the partnership's assets is based on the REIT's proportionate interest in the equity and certain debt securities issued by the partnership. In addition, the assets and gross income of the partnership are deemed to retain the same character in the hands of the REIT. Thus, our proportionate share of the assets and items of income of any of our subsidiary partnerships, which include the assets, liabilities, and items of income of any partnership in which our subsidiary partnership holds an interest, are treated as our assets and items of income for purposes of applying the REIT requirements.

Any investment in partnerships involves special tax considerations, including the possibility of a challenge by the IRS of the status of any subsidiary partnership as a partnership, as opposed to an association taxable as a corporation, for U.S. federal income tax purposes. If any of these entities were treated as an association for U.S. federal income tax purposes, it would be taxable as a corporation and therefore could be subject to an entity-level tax on its income. In such a situation, the character of our assets and items of gross income would change and could preclude us from satisfying the REIT asset tests or the gross

income tests as discussed in "—Requirements for Qualification as a REIT—Asset Tests" and "—Requirements for Qualification as a REIT—Gross Income Tests," and in turn could prevent us from qualifying as a REIT, unless we are eligible for relief from the violation pursuant to relief provisions. See "—Requirements for Qualification as a REIT—Relief from Violations; Reasonable Cause" above, and "—Requirements for Qualification as a REIT—Gross Income Tests," "—Requirements for Qualification as a REIT—Asset Tests" and "—Requirements for Qualification as a REIT— Failure to Qualify as a REIT," below, for discussion of the effect of failure to satisfy the REIT tests for a taxable year, and of the relief provisions. In addition, any change in the status of any subsidiary partnership for tax purposes might be treated as a taxable event, in which case we could have taxable income that is subject to the REIT distribution requirements without receiving any cash.

Under the Bipartisan Budget Act of 2015, liability is imposed on the partnership (rather than its partners) for adjustments to reported partnership taxable income resulting from audits or other tax proceedings. The liability can include an imputed underpayment of tax, calculated by using the highest marginal U.S. federal income tax rate, as well as interest and penalties on such imputed underpayment of tax. Using certain rules, partnerships may be able to transfer these liabilities to their partners. In the event any adjustments are imposed by the IRS on the taxable income reported by any subsidiary partnerships, we intend to utilize certain rules to the extent possible to allow us to transfer any liability with respect to such adjustments to the partners of the subsidiary partnerships who should properly bear such liability. However, there is no assurance that we will qualify under those rules or that we will have the authority to use those rules under the operating agreements for certain of our subsidiary partnerships.

We may from time to time be a limited partner or non-managing member in some of our partnerships and limited liability companies. If a partnership or limited liability company in which we own an interest takes or expects to take actions that could jeopardize our status as a REIT or requires us to pay tax, we may be forced to dispose of our interest in such entity. In addition, it is possible that a partnership or limited liability company could take an action which could cause us to fail a gross income or asset test, and that we would not become aware of such action in time to dispose of our interest in the partnership or limited liability company or take other corrective action on a timely basis. In that case, we could fail to qualify as a REIT unless we were entitled to relief, as described below.

Ownership of Disregarded Subsidiaries. If a REIT owns a corporate subsidiary that is a "qualified REIT subsidiary," or QRS, that subsidiary is generally disregarded for U.S. federal income tax purposes, and all assets, liabilities and items of income, deduction and credit of the subsidiary are treated as assets, liabilities and items of income, deduction and credit of the REIT itself, including for purposes of the gross income and asset tests applicable to REITs, as described below. A QRS is any corporation, other than a taxable REIT subsidiary, that is directly or indirectly wholly owned by a REIT. Other entities that are wholly owned by us, including single member limited liability companies that have not elected to be taxed as corporations for U.S. federal income tax purposes, are also generally disregarded as separate entities for U.S. federal income tax purposes, including for purposes of the REIT income and asset tests. Disregarded subsidiaries, along with any partnerships in which we hold an equity interest, are sometimes referred to herein as "pass-through subsidiaries."

In the event that a disregarded subsidiary ceases to be wholly owned by us (for example, if any equity interest in the subsidiary is acquired by a person other than us or another disregarded subsidiary of ours) the subsidiary's separate existence would no longer be disregarded for U.S. federal income tax purposes. Instead, the subsidiary would have multiple owners and would be treated as either a partnership or a taxable corporation. Such an event could, depending on the circumstances, adversely affect our ability to satisfy the various asset and gross income requirements applicable to REITs, including the requirement that REITs generally may not own, directly or indirectly, more than 10% of the securities of another corporation unless it is a taxable REIT subsidiary or a QRS. See "—Requirements for Qualification as a REIT—Gross Income Tests" and "—Requirements for Qualification as a REIT—Asset Tests."

Ownership of Interests in Taxable REIT Subsidiaries. Our taxable REIT subsidiary (and any taxable REIT subsidiary we may form in the future) is a corporation other than a REIT in which we directly or indirectly hold stock, and that has made a joint election with us to be treated as a taxable REIT subsidiary under Section 856(l) of the Code. A taxable REIT subsidiary also includes any corporation other than a REIT in which a taxable REIT subsidiary of ours owns, directly or indirectly, securities (other than certain "straight debt" securities), which represent more than 35% of the total voting power or value of the outstanding securities of such corporation. Other than some activities relating to lodging and health care facilities, a taxable REIT subsidiary may generally engage in any business, including the provision of customary or non-customary services to our tenants without causing us to receive impermissible tenant service income under the REIT gross income tests. A taxable REIT subsidiary is required to pay regular U.S. federal income tax, and state and local income tax where applicable, as a regular corporation. In addition, a taxable REIT subsidiary may be prevented from deducting interest on debt, including debt funded directly or indirectly by us, if certain tests are not satisfied. If dividends are paid to us by our taxable REIT subsidiary, then a portion of the dividends we distribute to shareholders who are taxed at individual rates will generally be eligible for taxation at lower capital gains rates, rather than at ordinary income rates. See "—Taxation of U.S. Shareholders—Taxation of Taxable U.S.

Shareholders-Qualified Dividend Income."

Generally, a taxable REIT subsidiary can perform impermissible tenant services without causing us to receive impermissible tenant services income under the REIT income tests. However, several provisions applicable to the arrangements between us and our taxable REIT subsidiary ensure that such taxable REIT subsidiary will be subject to an appropriate level of U.S. federal income taxation. For example, taxable REIT subsidiaries are limited in their ability to deduct interest payments in excess of a certain amount, including interest payments made directly or indirectly to us, as described below in "—Annual Distribution Requirements." In addition, we will be obligated to pay a 100% penalty tax on some payments we receive or on certain expenses deducted by our taxable REIT subsidiary, and on income earned by our taxable REIT subsidiary for services provided to, or on behalf of, us, if the economic arrangements between us, our tenants and such taxable REIT subsidiary are not comparable to similar arrangements among unrelated parties. Our taxable REIT subsidiary, and any future taxable REIT subsidiaries acquired by us, may make interest and other payments to us and to third parties in connection with activities related to our properties. There can be no assurance that our taxable REIT subsidiary will not be limited in its ability to deduct interest payments made to us. In addition, there can be no assurance that the IRS might not seek to impose the 100% excise tax on a portion of payments received by us from, or expenses deducted by, or service income imputed to, our taxable REIT subsidiary.

We own one subsidiary that has elected to be treated as taxable REIT subsidiaries for U.S. federal income tax purposes. Our taxable REIT subsidiary is taxable as a regular corporation and has elected, together with us, to be treated as our taxable REIT subsidiary. We may elect, together with other corporations in which we may own directly or indirectly stock, for those corporations to be treated as our taxable REIT subsidiaries.

Gross Income Tests

To qualify as a REIT, we must satisfy two gross income tests that are applied on an annual basis. First, in each taxable year, at least 75% of our gross income (excluding gross income from prohibited transactions, certain hedging transactions, as described below, and certain foreign currency transactions) must be derived from investments relating to real property or mortgages on real property, generally including:

- "rents from real property";
- dividends or other distributions on, and gain from the sale of, shares in other REITs;
- gain from the sale of real property or mortgages on real property, in either case, not held for sale to customers;
- interest income derived from mortgage loans secured by real property; and
- income attributable to temporary investments of new capital in stocks and debt instruments during the one-year period following our receipt of new capital that we raise through equity offerings or issuance of debt obligations with at least a five-year term.

Second, at least 95% of our gross income in each taxable year (excluding gross income from prohibited transactions, certain hedging transactions, as described below, and certain foreign currency transactions) must be derived from some combination of income that qualifies under the 75% gross income test described above, as well as other income sources generally including (a) other dividends, (b) interest (including interest income from debt instruments issued by publicly offered REITs), and (c) gain from the sale or disposition of stock or securities (including gain from the sale or other disposition of debt instruments issued by publicly offered REITs), in either case, not held for sale to customers.

Gross income from certain hedging transactions is excluded from gross income for purposes of the 95% gross income requirement. Similarly, gross income from certain hedging transactions is excluded from gross income for purposes of the 75% gross income test. Income from, and gain from the termination of, certain hedging transactions, where the property or indebtedness that was the subject of the prior hedging transaction was extinguished or disposed of, also will be excluded from gross income for purposes of either the 75% gross income test or the 95% gross income test. See "—Requirements for Qualification as a REIT—Gross Income Tests—Income from Hedging Transactions."

Rents from Real Property. Rents we receive will qualify as "rents from real property" for the purpose of satisfying the gross income requirements for a REIT described above only if several conditions are met. These conditions relate to the identity of the tenant, the computation of the rent payable, and the nature of the property lease.

- First, the amount of rent must not be based in whole or in part on the income or profits of any person. However, an

amount we receive or accrue generally will not be excluded from the term "rents from real property" solely by reason of being based on a fixed percentage or percentages of receipts or sales;

- Second, we, or an actual or constructive owner of 10% or more of our shares, must not actually or constructively own 10% or more of the interests in the tenant, or, if the tenant is a corporation, 10% or more of the voting power or value of all classes of stock of the tenant. Rents received from such tenant that is a taxable REIT subsidiary, however, will not be excluded from the definition of "rents from real property" as a result of this condition if either (i) at least 90% of the space at the property to which the rents relate is leased to third parties, and the rents paid by the taxable REIT subsidiary are comparable to rents paid by our other tenants for comparable space or (ii) the property is a qualified lodging facility or a qualified health care property and such property is operated on behalf of the taxable REIT subsidiary by a person who is an "eligible independent contractor" (as described below) and certain other requirements are met;

- Third, rent attributable to personal property, leased in connection with a lease of real property, must not be greater than 15% of the total rent received under the lease. If this requirement is not met, then the portion of rent attributable to personal property will not qualify as "rents from real property"; and

- Fourth, for rents to qualify as rents from real property for the purpose of satisfying the gross income tests, we generally must not operate or manage the property or furnish or render services to the tenants of such property, other than through an "independent contractor" who is adequately compensated and from whom we derive no revenue or through a taxable REIT subsidiary. To the extent that impermissible services are provided by an independent contractor, the cost of the services generally must be borne by the independent contractor. We anticipate that any services we provide directly to tenants will be "usually or customarily rendered" in connection with the rental of space for occupancy only and not otherwise considered to be provided for the tenants' convenience. We may provide a minimal amount of "non-customary" services to tenants of our properties, other than through an independent contractor or a taxable REIT subsidiary, but we intend that our income from these services will not exceed 1% of our total gross income from the property. If the impermissible tenant services income exceeds 1% of our total income from a property, then all of the income from that property will fail to qualify as rents from real property. If the total amount of impermissible tenant services income does not exceed 1% of our total income from the property, the services will not "taint" the other income from the property (that is, it will not cause the rent paid by tenants of that property to fail to qualify as rents from real property), but the impermissible tenant services income will not qualify as rents from real property. We will be deemed to have received income from the provision of impermissible services in an amount equal to at least 150% of our direct cost of providing the service.

We monitor (and intend to continue to monitor) the activities provided at, and the non-qualifying income arising from, our properties and believe that we have not provided services at levels that will cause us to fail to meet the income tests. We provide services and may provide access to third-party service providers at some or all of our properties. Based upon our experience in the markets where the properties are located, we believe that all access to service providers and services provided to tenants by us (other than through a qualified independent contractor or a taxable REIT subsidiary) either are usually or customarily rendered in connection with the rental of real property and not otherwise considered rendered to the occupant, or, if considered impermissible services, will not result in an amount of impermissible tenant service income that will cause us to fail to meet the income test requirements. However, we cannot provide any assurance that the IRS will agree with these positions.

Income we receive that is attributable to the rental of parking spaces at the properties will constitute rents from real property for purposes of the REIT gross income tests if the services provided with respect to the parking facilities are performed by independent contractors from whom we derive no income, either directly or indirectly, or by a taxable REIT subsidiary. We believe that the income we receive that is attributable to parking facilities will meet these tests and, accordingly, will constitute rents from real property for purposes of the REIT gross income tests.

Interest Income. "Interest" generally will be non-qualifying income for purposes of the 75% or 95% gross income tests if it depends in whole or in part on the income or profits of any person. However, interest based on a fixed percentage or percentages of receipts or sales may still qualify under the gross income tests. We do not expect to derive significant amounts of interest that will not qualify under the 75% and 95% gross income tests.

Dividend Income. Our share of any dividends received from any taxable REIT subsidiaries will qualify for purposes of the 95% gross income test but not for purposes of the 75% gross income test. We do not anticipate that we will receive sufficient dividends from any taxable REIT subsidiaries to cause us to exceed the limit on non-qualifying income under the 75% gross income test. Dividends that we receive from other qualifying REITs will qualify for purposes of both REIT income tests.

Income from Hedging Transactions. From time to time we may enter into hedging transactions with respect to one or more of our assets or liabilities. Any such hedging transactions could take a variety of forms, including the use of derivative instruments such as interest rate swap or cap agreements, option agreements, and futures or forward contracts. Income of a REIT, including income from a pass-through subsidiary, arising from "clearly identified" hedging transactions that are entered into to manage the risk of interest rate or price changes with respect to borrowings, including gain from the disposition of such hedging transactions, to the extent the hedging transactions hedge indebtedness incurred, or to be incurred, by the REIT to acquire or carry real estate assets (each such hedge, a "Borrowings Hedge"), will not be treated as gross income for purposes of either the 95% gross income test or the 75% gross income test. Income of a REIT arising from hedging transactions that are entered into to manage the risk of currency fluctuations with respect to our investments (each such hedge, a "Currency Hedge") will not be treated as gross income for purposes of either the 95% gross income test or the 75% gross income test provided that the transaction is "clearly identified." This exclusion from the 95% and 75% gross income tests also will apply if we previously entered into a Borrowings Hedge or a Currency Hedge, a portion of the hedged indebtedness or property is disposed of, and in connection with such extinguishment or disposition we enter into a new "clearly identified" hedging transaction to offset the prior hedging position. In general, for a hedging transaction to be "clearly identified," (1) it must be identified as a hedging transaction before the end of the day on which it is acquired, originated, or entered into; and (2) the items of risks being hedged must be identified "substantially contemporaneously" with entering into the hedging transaction (generally not more than 35 days after entering into the hedging transaction). To the extent that we hedge with other types of financial instruments or in other situations, the resultant income will be treated as income that does not qualify under the 95% or 75% gross income tests unless the hedge meets certain requirements, and we elect to integrate it with a specified asset and to treat the integrated position as a synthetic debt instrument. We intend to structure any hedging transactions in a manner that does not jeopardize our qualification as a REIT, but there can be no assurance we will be successful in this regard.

Income from Prohibited Transactions. Any gain that we realize on the sale of any property held as inventory or otherwise held primarily for sale to customers in the ordinary course of business, either directly or through pass-through subsidiaries, will be treated as income from a prohibited transaction that is subject to a 100% penalty tax. Under existing law, whether property is held as inventory or primarily for sale to customers in the ordinary course of a trade or business is a question of fact that depends on all the facts and circumstances surrounding the particular transaction. However, we will not be treated as a dealer in real property for purposes of the 100% tax with respect to a real estate asset that we sell if (i) we have held the property for at least two years for the production of rental income prior to the sale, (ii) capitalized expenditures on the property in the two years preceding the sale are less than 30% of the net selling price of the property, and (iii) we either (a) have seven or fewer sales of property (excluding certain property obtained through foreclosure) for the year of sale; or (b) the aggregate adjusted basis of property sold during the year is 10% or less of the aggregate adjusted basis of all of our assets as of the beginning of the taxable year; or (c) the fair market value of property sold during the year is 10% or less of the aggregate fair market value of all of our assets as of the beginning of the taxable year; or (d) the aggregate adjusted basis of property sold during the year is 20% or less of the aggregate adjusted basis of all of our assets as of the beginning of the taxable year and the aggregate adjusted basis of property sold during the 3-year period ending with the year of sale is 10% or less of the aggregate tax basis of all of our assets as of the beginning of each of the 3 taxable years ending with the year of sale; or (e) the fair market value of property sold during the year is 20% or less of the aggregate fair market value of all of our assets as of the beginning of the taxable year and the fair market value of property sold during the 3-year period ending with the year of sale is 10% or less of the aggregate fair market value of all of our assets as of the beginning of each of the 3 taxable years ending with the year of sale. If we rely on clauses (b), (c), (d), or (e) in the preceding sentence, substantially all of the marketing and development expenditures with respect to the property sold must be made through an independent contractor from whom we derive no income or, one of our taxable REIT subsidiaries. The sale of more than one property to one buyer as part of one transaction constitutes one sale for purposes of this "safe harbor." We intend to hold our properties for investment with a view to long-term appreciation, to engage in the business of acquiring, developing and owning our properties and to make occasional sales of the properties as are consistent with our investment objectives. However, the IRS may successfully contend that some or all of the sales made by us or subsidiary partnerships or limited liability companies are prohibited transactions. In that case, we would be required to pay the 100% penalty tax on our allocable share of the gains resulting from any such sales.

Income from Foreclosure Property. We generally will be subject to tax at the maximum corporate rate (currently 21%) on any net income from foreclosure property, including any gain from the disposition of the foreclosure property, other than income that constitutes qualifying income for purposes of the 75% gross income test. Foreclosure property is real property and any personal property incident to such real property (1) that we acquire as the result of having bid on the property at foreclosure, or having otherwise reduced the property to ownership or possession by agreement or process of law, after a default (or upon imminent default) on a lease of the property or a mortgage loan held by us and secured by the property, (2) for which we acquired the related loan or lease at a time when default was not imminent or anticipated, and (3) with respect to which we made a proper election to treat the property as foreclosure property. Any gain from the sale of property for which a foreclosure property election has been made and remains in place generally will not be subject to the 100% tax on gains from prohibited transactions described above, even if the property would otherwise constitute inventory or dealer property. To the extent that we

receive any income from foreclosure property that does not qualify for purposes of the 75% gross income test, we intend to make an election to treat the related property as foreclosure property if the election is available (which may not be the case with respect to any acquired "distressed loans").

Failure to Satisfy the Gross Income Tests. If we fail to satisfy one or both of the 75% or 95% gross income tests for any taxable year, we may nevertheless qualify as a REIT for that year if we are entitled to relief under the Code. These relief provisions will be generally available if (1) our failure to meet these tests was due to reasonable cause and not due to willful neglect and (2) following our identification of the failure to meet the 75% and/or 95% gross income tests for any taxable year, we file a schedule with the IRS setting forth a description of each item of our gross income that satisfies the gross income tests for purposes of the 75% or 95% gross income test for such taxable year in accordance with Treasury Regulations. It is not possible, however, to state whether in all circumstances we would be entitled to the benefit of these relief provisions. If these relief provisions are inapplicable to a particular set of circumstances, we will fail to qualify as a REIT. As discussed above, under "—Taxation of the Company as a REIT—General," even if these relief provisions apply, a tax would be imposed based on the amount of non-qualifying income. We intend to take advantage of any and all relief provisions that are available to us to cure any violation of the income tests applicable to REITs.

Any redetermined rents, redetermined deductions, excess interest, or redetermined taxable REIT subsidiary service income we generate will be subject to a 100% penalty tax. In general, redetermined rents are rents from real property that are overstated as a result of services furnished by one of our taxable REIT subsidiaries to any of our tenants, redetermined deductions and excess interest represent amounts that are deducted by a taxable REIT subsidiary for amounts paid to us that are in excess of the amounts that would have been deducted based on arm's-length negotiations, and redetermined taxable REIT subsidiary service income is gross income (less deductions allocable thereto) of a taxable REIT subsidiary attributable to services provided to, or on behalf of, us that is less than the amounts that would have been paid by us to the taxable REIT subsidiary if based on arm's-length negotiations. Rents we receive will not constitute redetermined rents if they qualify for the safe harbor provisions contained in the Code. Safe harbor provisions are provided where:

- amounts are excluded from the definition of impermissible tenant service income as a result of satisfying the 1% de minimis exception;
- a taxable REIT subsidiary renders a significant amount of similar services to unrelated parties and the charges for such services are substantially comparable;
- rents paid to us by tenants leasing at least 25% of the net leasable space of the REIT's property who are not receiving services from the taxable REIT subsidiary are substantially comparable to the rents paid by the REIT's tenants leasing comparable space who are receiving such services from the taxable REIT subsidiary and the charge for the service is separately stated; or
- the taxable REIT subsidiary's gross income from the service is not less than 150% of the taxable REIT subsidiary's direct cost of furnishing the service.

While we anticipate that any fees paid to a taxable REIT subsidiary for tenant services will reflect arm's-length rates, a taxable REIT subsidiary may under certain circumstances provide tenant services which do not satisfy any of the safe-harbor provisions described above. Nevertheless, these determinations are inherently factual, and the IRS has broad discretion to assert that amounts paid between related parties should be reallocated to clearly reflect their respective incomes. If the IRS successfully made such an assertion, we would be required to pay a 100% penalty tax on the redetermined rent, redetermined deductions or excess interest, as applicable.

Asset Tests

At the close of each calendar quarter, we must satisfy the following tests relating to the nature and diversification of our assets. For purposes of the asset tests, a REIT is not treated as owning the stock of a qualified REIT subsidiary or an equity interest in any entity treated as a partnership otherwise disregarded for U.S. federal income tax purposes. Instead, a REIT is treated as owning its proportionate share of the assets held by such entity.

- At least 75% of the value of our total assets must be represented by some combination of "real estate assets," cash, cash items, and U.S. government securities. For purposes of this test, real estate assets include interests in real property, such as land and buildings, leasehold interests in real property, stock of other corporations that qualify as REITs and debt instruments issued by publicly offered REITs, some types of mortgage-backed securities, mortgage loans, personal property leased in connection with real property to the extent that rents attributable to such personal

property are treated as “rents from real property”, and stock or debt instruments held for less than one year purchased with an offering of our shares or long term debt. Assets that do not qualify for purposes of the 75% asset test are subject to the additional asset tests described below.

- Not more than 25% of our total assets may be represented by securities other than those described in the first bullet above.

- Except for securities described in the first bullet above and the last bullet below and securities in qualified REIT subsidiaries and taxable REIT subsidiaries, the value of any one issuer’s securities owned by us may not exceed 5% of the value of our total assets.

- Except for securities described in the first bullet above and the last bullet below and securities in qualified REIT subsidiaries and taxable REIT subsidiaries, we may not own more than 10% of any one issuer’s outstanding voting securities.

- Except for securities described in the first bullet above and the last bullet below and securities in qualified REIT subsidiaries and taxable REIT subsidiaries, and certain types of indebtedness that are not treated as securities for purposes of this test, as discussed below, we may not own more than 10% of the total value of the outstanding securities of any one issuer.

- Not more than 20% of the value of our total assets may be represented by the securities of one or more taxable REIT subsidiaries.

- Not more than 25% of our total assets may be represented by debt instruments issued by publicly offered REITs that are “nonqualified” debt instruments (e.g., not secured by real property or interests in real property).

The 10% value test does not apply to certain “straight debt” and other excluded securities, as described in the Code, including (1) loans to individuals or estates; (2) obligations to pay rent from real property; (3) rental agreements described in Section 467 of the Code; (4) any security issued by other REITs; (5) certain securities issued by a state, the District of Columbia, a foreign government, or a political subdivision of any of the foregoing, or the Commonwealth of Puerto Rico; and (6) any other arrangement as determined by the IRS. In addition, (1) a REIT’s interest as a partner in a partnership is not considered a security for purposes of the 10% value test; (2) any debt instrument issued by a partnership (other than straight debt or other excluded security) will not be considered a security issued by the partnership if at least 75% of the partnership’s gross income is derived from sources that would qualify for the 75% REIT gross income test; and (3) any debt instrument issued by a partnership (other than straight debt or other excluded security) will not be considered a security issued by a partnership to the extent of the REIT’s interest as a partner in the partnership.

For purposes of the 10% value test, debt will meet the “straight debt” safe harbor if (1) neither us, nor any of our controlled taxable REIT subsidiaries (i.e., taxable REIT subsidiaries more than 50% of the vote or value of the outstanding stock of which is directly or indirectly owned by us), own any securities not described in the preceding paragraph that have an aggregate value greater than 1% of the issuer’s outstanding securities, as calculated under the Code, (2) the debt is a written unconditional promise to pay on demand or on a specified date a sum certain in money, (3) the debt is not convertible, directly or indirectly, into stock, and (4) the interest rate and the interest payment dates of the debt are not contingent on the profits, the borrower’s discretion or similar factors. However, contingencies regarding time of payment and interest are permissible for purposes of qualifying as a straight debt security if either (1) such contingency does not have the effect of changing the effective yield of maturity, as determined under the Code, other than a change in the annual yield to maturity that does not exceed the greater of (i) 5% of the annual yield to maturity or (ii) 0.25%, or (2) neither the aggregate issue price nor the aggregate face amount of the issuer’s debt instruments held by the REIT exceeds $1,000,000 and not more than 12 months of unaccrued interest can be required to be prepaid thereunder. In addition, debt will not be disqualified from being treated as “straight debt” solely because the time or amount of payment is subject to a contingency upon a default or the exercise of a prepayment right by the issuer of the debt, provided that such contingency is consistent with customary commercial practice.

We own one subsidiary that has elected to be treated as a taxable REIT subsidiary for U.S. federal income tax purposes. Our taxable REIT subsidiary is taxable as a non-REIT C corporation and has elected, together with us, to be treated as our taxable REIT subsidiary. So long as our taxable REIT subsidiary qualifies as such, we will not be subject to the 5% asset test, 10% voting securities limitation or 10% value limitation with respect to our ownership interest in the taxable REIT subsidiary. We may acquire securities in other taxable REIT subsidiaries in the future. We believe that the aggregate value of our interests in our taxable REIT subsidiary does not exceed, and believe that in the future it will not exceed, 20% of the aggregate value of our gross assets. To the extent that we own an interest in an issuer that does not qualify as a REIT, a qualified REIT subsidiary, or a

taxable REIT subsidiary, we believe that our pro rata share of the value of the securities, including debt, of any such issuer does not exceed 5% of the total value of our assets. Moreover, with respect to each issuer in which we own an interest that does not qualify as a qualified REIT subsidiary or a taxable REIT subsidiary, we believe that our ownership of the securities of any such issuer complies with the 10% voting securities limitation and 10% value limitation.

No independent appraisals have been obtained to support these conclusions. In this regard, however, we cannot provide any assurance that the IRS will agree with our determinations.

Failure to Satisfy the Asset Tests. The asset tests must be satisfied not only on the last day of the calendar quarter in which we, directly or through pass-through subsidiaries, acquire securities in the applicable issuer, but also on the last day of the calendar quarter in which we increase our ownership of securities of such issuer, including as a result of increasing our interest in pass-through subsidiaries. After initially meeting the asset tests at the close of any quarter, we will not lose our status as a REIT for failure to satisfy the asset tests at the end of a later quarter solely by reason of changes in the relative values of our assets (including a discrepancy caused solely by the change in the foreign currency exchange rate used to value a foreign asset). If failure to satisfy the asset tests results from an acquisition of securities or other property during a quarter, we can cure this failure by disposing of sufficient non-qualifying assets within 30 days after the close of that quarter. We intend to continue to maintain adequate records of the value of our assets to ensure compliance with the asset tests and to take any available action within 30 days after the close of any quarter as may be required to cure any noncompliance with the asset tests. Although we plan to take steps to ensure that we satisfy such tests for any quarter with respect to which testing is to occur, there can be no assurance that such steps will always be successful. If we fail to timely cure any noncompliance with the asset tests, we will cease to qualify as a REIT, unless we satisfy certain relief provisions.

The failure to satisfy the 5% asset test, or the 10% vote or value asset tests can be remedied even after the 30-day cure period under certain circumstances. Specifically, if we fail these asset tests at the end of any quarter and such failure is not cured within 30 days thereafter, we may dispose of sufficient assets (generally within six months after the last day of the quarter in which our identification of the failure to satisfy these asset tests occurred) to cure such a violation that does not exceed the lesser of 1% of our assets at the end of the relevant quarter or $10,000,000. If we fail any of the other asset tests or our failure of the 5% and 10% asset tests is in excess of the de minimis amount described above, as long as such failure was due to reasonable cause and not willful neglect, we are permitted to avoid disqualification as a REIT, after the 30-day cure period, by taking steps including the disposing of sufficient assets to meet the asset test (generally within six months after the last day of the quarter in which our identification of the failure to satisfy the REIT asset test occurred), paying a tax equal to the greater of $50,000 or the highest corporate income tax rate of the net income generated by the non-qualifying assets during the period in which we failed to satisfy the asset test, and filing in accordance with applicable Treasury Regulations a schedule with the IRS that describes the assets that caused us to fail to satisfy the asset test(s). We intend to take advantage of any and all relief provisions that are available to us to cure any violation of the asset tests applicable to REITs. In certain circumstances, utilization of such provisions could result in us being required to pay an excise or penalty tax, which could be significant in amount.

Annual Distribution Requirements

To qualify as a REIT, we are required to distribute dividends, other than capital gain dividends, to our shareholders each year in an amount at least equal to:

- the sum of: (1) 90% of our “REIT taxable income,” computed without regard to the dividends paid deduction and our net capital gain; and (2) 90% of our after tax net income, if any, from foreclosure property; minus

- the excess of the sum of specified items of non-cash income over 5% of our REIT taxable income, computed without regard to our net capital gain and the deduction for dividends paid.

For purposes of this test, non-cash income means income attributable to leveled stepped rents, original issue discount included in our taxable income without the receipt of a corresponding payment, cancellation of indebtedness or income attributable to a like-kind exchange that is later determined to be taxable.

We generally must make dividend distributions in the taxable year to which they relate. Dividend distributions may be made in the following year in two circumstances. First, if we declare a dividend in October, November, or December of any year with a record date in one of these months and pay the dividend on or before January 31 of the following year. Such distributions are treated as both paid by us and received by each shareholder on December 31 of the year in which they are declared. Second, distributions may be made in the following year if they are declared before we timely file our tax return for the year and if made with or before the first regular dividend payment after such declaration. These distributions are taxable to our shareholders in the year in which paid, even though the distributions relate to our prior taxable year for purposes of the 90% distribution

requirement.

To the extent that we do not distribute all of our net capital gain or distribute at least 90%, but less than 100%, of our "REIT taxable income," as adjusted, we will be required to pay tax on that amount at regular corporate tax rates. We intend to make timely distributions sufficient to satisfy these annual distribution requirements. In certain circumstances we may elect to retain, rather than distribute, our net long-term capital gains and pay tax on such gains. In this case, we could elect for our shareholders to include their proportionate share of such undistributed long-term capital gains in income, and to receive a corresponding credit for their share of the tax that we paid. Our shareholders would then increase their adjusted basis of their stock by the difference between (1) the amounts of capital gain dividends that we designated and that they included in their taxable income, minus (2) the tax that we paid on their behalf with respect to that income.

To the extent that in the future we may have available net operating losses carried forward from prior tax years, such losses may reduce the amount of distributions that we must make in order to comply with the REIT distribution requirements. Our deduction for any net operating loss carryforwards arising from losses we sustain in taxable years beginning after December 31, 2017 is limited to 80% of our REIT taxable income (determined without regard to the deduction for dividends paid), and any unused portion of such losses may be carried forward indefinitely.

If we fail to distribute during each calendar year at least the sum of (a) 85% of our REIT ordinary income for such year, (b) 95% of our REIT capital gain net income for such year, and (c) any undistributed taxable income from prior periods, we would be subject to a non-deductible 4% excise tax on the excess of such required distribution over the sum of (x) the amounts actually distributed, and (y) the amounts of income we retained and on which we paid corporate income tax.

We expect that our REIT taxable income (determined before our deduction for dividends paid) will be less than our cash flow because of depreciation and other non-cash charges included in computing REIT taxable income. Accordingly, we anticipate that we will generally have sufficient cash or liquid assets to enable us to satisfy the distribution requirements described above. However, from time to time, we may not have sufficient cash or other liquid assets to meet these distribution requirements due to timing differences between the actual receipt of income and actual payment of deductible expenses, and the inclusion of income and deduction of expenses in arriving at our taxable income.

The Code limits the deductibility of net interest expense paid or accrued on debt properly allocable to a trade or business to 30% of "adjusted taxable income," subject to certain exceptions. Any deduction in excess of the limitation is carried forward and may be used in a subsequent year, subject to the 30% limitation. Adjusted taxable income is determined without regard to certain deductions, including those for net interest expense and net operating loss. However, for the 2021 taxable year, we made a timely election (which is irrevocable), such that the 30% limitation does not apply. This election is available for a trade or business involving real property development, redevelopment, construction, reconstruction, rental, operation, acquisition, conversion, disposition, management, leasing or brokerage, within the meaning of Section 469(c)(7)(C) of the Code. As a result of this election, depreciable real property (including certain improvements) held by the relevant trade or business must be depreciated under the alternative depreciation system under the Code, which is generally less favorable than the generally applicable system of depreciation under the Code. If it was subsequently determined that this election was not in fact available with respect to all or certain of our business activities, this interest deduction limitation could result in us having more REIT taxable income and thus increase the amount of distributions we must make to comply with the REIT requirements and avoid incurring corporate level tax. Similarly, the limitation could cause our taxable REIT subsidiary (or any taxable REIT subsidiary we have in the future) to have greater taxable income and thus potentially greater corporate tax liability.

Furthermore, under amendments to Section 451 of the Code made by 2017 legislation informally called the Tax Cuts and Jobs Act (the "TCJA"), subject to certain exceptions, we must accrue income for U.S. federal income tax purposes no later than when such income is taken into account as revenue in our financial statements, which could create additional differences between REIT taxable income and the receipt of cash attributable to such income. In addition, Section 162(m) of the Code places a per-employee limit of $1 million on the amount of compensation that a publicly held corporation may deduct in any one year with respect to its chief executive officer and certain other highly compensated executive officers. Changes to Section 162(m) made by the TCJA eliminated an exception that formerly permitted certain performance-based compensation to be deducted even if in excess of $1 million, which may have the effect of increasing our REIT taxable income. If these timing differences occur, we may need to arrange for short-term, or possibly long-term, borrowings or need to pay dividends in the form of taxable stock dividends in order to meet the distribution requirements.

We may be able to rectify a failure to meet the distribution requirement for a year by paying "deficiency dividends" to our shareholders in a later year, which may be included in our deduction for dividends paid for the earlier year. Thus, we may be able to avoid being taxed on amounts distributed as deficiency dividends. However, we will be required to pay interest to the IRS based upon the amount of any deduction claimed for deficiency dividends.

Record-Keeping Requirements

We are required to comply with applicable record-keeping requirements. Failure to comply could result in monetary fines.

Failure to Qualify as a REIT

If we fail to satisfy one or more requirements for REIT qualification other than gross income and asset tests that have the specific savings clauses, we can avoid termination of our REIT qualification by paying a penalty of $50,000 for each such failure, provided that our noncompliance was due to reasonable cause and not willful neglect.

If we fail to qualify for taxation as a REIT in any taxable year and the relief provisions do not apply, we will be subject to tax on our taxable income at regular corporate rates. If we fail to qualify for taxation as a REIT, we will not be required to make any distributions to shareholders, and any distributions that are made to shareholders will not be deductible by us. As a result, our failure to qualify for taxation as a REIT would significantly reduce the cash available for distributions by us to our shareholders. In addition, if we fail to qualify for taxation as a REIT, all distributions to shareholders, to the extent of our current and accumulated earnings and profits, will be taxable as regular corporate dividends. For taxable years before January 1, 2026, generally, U.S. shareholders that are individuals, trusts or estates may deduct 20% of the aggregate amount of ordinary dividends distributed by us, subject to certain limitations. Alternatively, such dividends paid to U.S. shareholders that are individuals, trusts and estates may be taxable at the preferential income tax rates (i.e., the 20% maximum U.S. federal rate (excluding the 3.8% tax on “net investment income”)) for qualified dividends. In addition, subject to the limitations of the Code, corporate distributees may be eligible for the dividends-received deduction,

Unless entitled to relief under specific statutory provisions, we also will be disqualified from taxation as a REIT for the four taxable years following the year during which qualification was lost. In addition, if we merge with another REIT and we are the “successor” to the other REIT, the other REIT’s disqualification from taxation as a REIT would prevent us from being taxed as a REIT for the four taxable years following the year during which the other REIT’s qualification was lost. There can be no assurance that we would be entitled to any statutory relief. We intend to take advantage of any and all relief provisions that are available to us to cure any violation of the requirements applicable to REITs.

Taxation of U.S. Shareholders

Taxation of Taxable U.S. Shareholders

This section summarizes the taxation of U.S. shareholders that are not tax-exempt organizations. For these purposes, the term “U.S. shareholder” is a beneficial owner of our shares that is, for U.S. federal income tax purposes:

a. a citizen or resident of the United States;

a. a corporation (including an entity treated as a corporation for U.S. federal income tax purposes) created or organized in or under the laws of the United States or of a political subdivision thereof (including the District of Columbia);

a. an estate the income of which is subject to U.S. federal income taxation regardless of its source; or

a. any trust if a U.S. court is able to exercise primary supervision over the administration of such trust and one or more U.S. persons have the authority to control all substantial decisions of the trust.

If an entity or arrangement treated as a partnership for U.S. federal income tax purposes holds our shares, the U.S. federal income tax treatment of a partner generally will depend upon the status of the partner and the activities of the partnership. A partner of a partnership holding our shares should consult its own tax advisor regarding the U.S. federal income tax consequences to the partner of the acquisition, ownership and disposition of our shares by the partnership.

Distributions Generally. So long as we qualify as a REIT, distributions out of our current or accumulated earnings and profits that are not designated as capital gains dividends or “qualified dividend income” will be taxable to our taxable U.S. shareholders as ordinary income and will not be eligible for the dividends-received deduction in the case of U.S. shareholders that are corporations. However, for tax years prior to 2026, generally U.S. shareholders that are individuals, trusts or estates may deduct 20% of the aggregate amount of ordinary dividends distributed by us, subject to certain limitations. For purposes of determining whether distributions to holders of shares are out of current or accumulated earnings and profits, our earnings and profits will be allocated first to any outstanding preferred shares and then to our outstanding common shares. Dividends

received from REITs are generally not eligible to be taxed at the preferential qualified dividend income rates currently available to individual U.S. shareholders who receive dividends from taxable subchapter “C” corporations.

Capital Gain Dividends. We may elect to designate distributions of our net capital gain as “capital gain dividends.” Distributions that we properly designate as “capital gain dividends” will be taxable to our taxable U.S. shareholders as long-term capital gains without regard to the period for which the U.S. shareholder that receives such distribution has held its shares. Designations made by us will only be effective to the extent that they comply with Revenue Ruling 89-81, which requires that distributions made to different classes of shares be composed proportionately of dividends of a particular type. If we designate any portion of a dividend as a capital gain dividend, a U.S. shareholder will receive an IRS Form 1099-DIV indicating the amount that will be taxable to the shareholder as capital gain. Corporate shareholders, however, may be required to treat up to 20% of some capital gain dividends as ordinary income. Recipients of capital gain dividends from us that are taxed at corporate income tax rates will be taxed at the normal corporate income tax rates on these dividends.

We may elect to retain and pay taxes on some or all of our net long-term capital gains, in which case U.S. shareholders will be treated as having received, solely for U.S. federal income tax purposes, our undistributed capital gains as well as a corresponding credit or refund, as the case may be, for taxes that we paid on such undistributed capital gains. A U.S. shareholder will increase the basis in its shares by the difference between the amount of capital gain included in its income and the amount of tax it is deemed to have paid. A U.S. shareholder that is a corporation will appropriately adjust its earnings and profits for the retained capital gain in accordance with Treasury Regulations to be prescribed by the IRS. Our earnings and profits will be adjusted appropriately.

We will classify portions of any designated capital gain dividend or undistributed capital gain as either:

- a long-term capital gain distribution, which would be taxable to non-corporate U.S. shareholders at a maximum rate of 20% (excluding the 3.8% tax on “net investment income”), and taxable to U.S. shareholders that are corporations at a maximum rate of 21%; or

- an “unrecaptured Section 1250 gain” distribution, which would be taxable to non-corporate U.S. shareholders at a maximum rate of 25%, to the extent of previously claimed depreciation deductions.

Distributions from us in excess of our current and accumulated earnings and profits will not be taxable to a U.S. shareholder to the extent that they do not exceed the adjusted basis of the U.S. shareholder’s shares in respect of which the distributions were made. Rather, the distribution will reduce the adjusted basis of these shares. To the extent that such distributions exceed the adjusted basis of a U.S. shareholder’s shares of our shares, the U.S. shareholder generally must include such distributions in income as long-term capital gain, or short-term capital gain if the shares have been held for one year or less. In addition, any dividend that we declare in October, November or December of any year and that is payable to a shareholder of record on a specified date in any such month will be treated as both paid by us and received by the shareholder on December 31 of such year, provided that we actually pay the dividend before the end of January of the following calendar year.

To the extent that we have available net operating losses and capital losses carried forward from prior tax years, such losses may reduce the amount of distributions that we must make in order to comply with the REIT distribution requirements. See “—Taxation of the Company as a REIT” and “—Requirements for Qualification as a REIT—Annual Distribution Requirements.” Such losses, however, are not passed through to U.S. shareholders and do not offset income of U.S. shareholders from other sources, nor would such losses affect the character of any distributions that we make, which are generally subject to tax in the hands of U.S. shareholders to the extent that we have current or accumulated earnings and profits.

The maximum amount of dividends that we may designate as capital gain and as “qualified dividend income” (discussed below) with respect to any taxable year may not exceed the dividends actually paid by us with respect to such year, including dividends paid by us in the succeeding tax year that relate back to the prior tax year for purposes of determining our dividends paid deduction.

Qualified Dividend Income. We may elect to designate a portion of our distributions paid to shareholders as “qualified dividend income.” A portion of a distribution that is properly designated as qualified dividend income is taxable to non-corporate U.S. shareholders as capital gain, provided that the shareholder has held the shares with respect to which the distribution is made for more than 60 days during the 121-day period beginning on the date that is 60 days before the date on which such shares become ex-dividend with respect to the relevant distribution. The maximum amount of our distributions eligible to be designated as qualified dividend income for a taxable year is equal to the sum of:

- the qualified dividend income received by us during such taxable year from non-REIT corporations (including our

taxable REIT subsidiaries);

- the excess of any “undistributed” REIT taxable income recognized during the immediately preceding year over the U.S. federal income tax paid by us with respect to such undistributed REIT taxable income; and

- the excess of (i) any income recognized during the immediately preceding year attributable to the sale of a built-in-gain asset that was acquired in a carry-over basis transaction from a “C” corporation with respect to which the Company is required to pay U.S. federal income tax, over (ii) the U.S. federal income tax paid by us with respect to such built-in gain.

Generally, dividends that we receive will be treated as qualified dividend income for purposes of the first bullet above if (A) the dividends are received from (i) a U.S. corporation (other than a REIT or a RIC), (ii) any of our taxable REIT subsidiaries, or (iii) a “qualifying foreign corporation,” and (B) specified holding period requirements and other requirements are met. A foreign corporation (other than a “foreign personal holding company,” a “foreign investment company,” or “passive foreign investment company”) will be a qualifying foreign corporation if it is incorporated in a possession of the United States, the corporation is eligible for benefits of an income tax treaty with the United States that the Secretary of Treasury determines is satisfactory, or the stock of the foreign corporation on which the dividend is paid is readily tradable on an established securities market in the United States. We generally expect that an insignificant portion, if any, of our distributions from us will consist of qualified dividend income. If we designate any portion of a dividend as qualified dividend income, a U.S. shareholder will receive an IRS Form 1099-DIV indicating the amount that will be taxable to the shareholder as qualified dividend income.

Passive Activity Losses and Investment Interest Limitations. Distributions we make and gain arising from the sale or exchange by a U.S. shareholder of our shares will not be treated as passive activity income. As a result, U.S. shareholders generally will not be able to apply any “passive losses” against this income or gain. Distributions we make, to the extent they do not constitute a return of capital, generally will be treated as investment income for purposes of computing the investment interest limitation. A U.S. shareholder may elect, depending on its particular situation, to treat capital gain dividends, capital gains from the disposition of shares and income designated as qualified dividend income as investment income for purposes of the investment interest limitation, in which case the applicable capital gains will be taxed at ordinary income rates. We will notify shareholders regarding the portions of our distributions for each year that constitute ordinary income, return of capital and qualified dividend income.

Distributions to Holders of Depositary Shares. Owners of depositary shares will be treated for U.S. federal income tax purposes as if they were owners of the underlying preferred shares represented by such depositary shares. Accordingly, such owners will be entitled to take into account, for U.S. federal income tax purposes, income and deductions to which they would be entitled if they were direct holders of underlying preferred shares. In addition, (i) no gain or loss will be recognized for U.S. federal income tax purposes upon the withdrawal of certificates evidencing the underlying preferred shares in exchange for depositary receipts, (ii) the tax basis of each share of the underlying preferred shares to an exchanging owner of depositary shares will, upon such exchange, be the same as the aggregate tax basis of the depositary shares exchanged therefor, and (iii) the holding period for the underlying preferred shares in the hands of an exchanging owner of depositary shares will include the period during which such person owned such depositary shares.

Dispositions of Our Shares. If a U.S. shareholder sells, redeems or otherwise disposes of its shares in a taxable transaction, it will recognize gain or loss for U.S. federal income tax purposes in an amount equal to the difference between the amount of cash and the fair market value of any property received on the sale or other disposition and the holder’s adjusted basis in the shares for tax purposes. In general, a U.S. shareholder’s adjusted basis will equal the U.S. shareholder’s acquisition cost, increased by the excess for net capital gains deemed distributed to the U.S. shareholder (discussed above) less tax deemed paid on it and reduced by returns on capital.

In general, capital gains recognized by individuals and other non-corporate U.S. shareholders upon the sale or disposition of our shares will be subject to a maximum U.S. federal income tax rate of 20% (excluding the 3.8% tax on “net investment income”), if our shares are held for more than one year and will be taxed at ordinary income rates of up to 37% if the stock is held for one year or less. Gains recognized by U.S. shareholders that are corporations are subject to U.S. federal income tax at a maximum rate of 21%, whether or not such gains are classified as long-term capital gains. The IRS has the authority to prescribe, but has not yet prescribed, Treasury Regulations that would apply a capital gain tax rate of 25% (which is higher than the long-term capital gain tax rates for non-corporate U.S. shareholders) to a portion of capital gain realized by a non-corporate U.S. shareholder on the sale of the Company’s shares that would correspond to the REIT’s “unrecaptured Section 1250 gain.” U.S. shareholders should consult with their own tax advisors with respect to their capital gain tax liability.

Capital losses recognized by a U.S. shareholder upon the disposition of our shares that were held for more than one year at the

time of disposition will be considered long-term capital losses and are generally available only to offset capital gain income of the shareholder but not ordinary income (except in the case of individuals, who may offset up to $3,000 of ordinary income each year). In addition, any loss upon a sale or exchange of our shares by a U.S. shareholder who has held the shares for six months or less, after applying holding period rules, will be treated as a long-term capital loss to the extent of distributions that we make that are required to be treated by the U.S. shareholder as long-term capital gain.

If a shareholder recognizes a loss upon a subsequent disposition of our shares in an amount that exceeds a prescribed threshold, it is possible that the provisions of Treasury Regulations involving "reportable transactions" could apply, with a resulting requirement to separately disclose the loss-generating transaction to the IRS. These regulations, though directed towards "tax shelters," are broadly written, and apply to transactions that would not typically be considered tax shelters. The Code imposes significant penalties for failure to comply with these requirements. U.S. shareholders should consult their tax advisors concerning any possible disclosure obligation with respect to the receipt or disposition of our shares, or transactions that we might undertake directly or indirectly.

Redemption of Preferred Shares and Depositary Shares. Whenever we redeem any preferred shares held by the depositary, the depositary will redeem as of the same redemption date the number of depositary shares representing the preferred shares so redeemed. The treatment accorded to any redemption by us for cash (as distinguished from a sale, exchange or other disposition) of our preferred shares to a holder of such preferred shares can only be determined on the basis of the particular facts as to each holder at the time of redemption. In general, a holder of our preferred shares will recognize capital gain or loss measured by the difference between the amount received by the holder of such shares upon the redemption and such holder's adjusted tax basis in the preferred shares redeemed (provided the preferred shares are held as a capital asset) if such redemption (i) is ''not essentially equivalent to a dividend" with respect to the holder of the preferred shares under Section 302(b)(1) of the Code, (ii) is a "substantially disproportionate" redemption with respect to the shareholder under Section 302(b)(2) of the Code, or (iii) results in a ''complete termination" of the holder's interest in all classes of our shares under Section 302(b)(3) of the Code. In applying these tests, there must be taken into account not only any series or class of the preferred shares being redeemed, but also such holder's ownership of other classes of our shares and any options (including stock purchase rights) to acquire any of the foregoing. The holder of our preferred shares also must take into account any such securities (including options) which are considered to be owned by such holder by reason of the constructive ownership rules set forth in Sections 318 and 302(c) of the Code.

If the holder of preferred shares owns (actually or constructively) none of our voting shares, or owns an insubstantial amount of our voting shares, based upon current law, it is probable that the redemption of preferred shares from such a holder would be considered to be ''not essentially equivalent to a dividend.'' However, whether a distribution is ''not essentially equivalent to a dividend'' depends on all of the facts and circumstances, and a holder of our preferred shares intending to rely on any of these tests at the time of redemption should consult its tax advisor to determine their application to its particular situation.

Satisfaction of the "substantially disproportionate" and "complete termination" exceptions is dependent upon compliance with the respective objective tests set forth in Section 302(b)(2) and Section 302(b)(3) of the Code. A distribution to a holder of preferred shares will be "substantially disproportionate" if the percentage of our outstanding voting shares actually and constructively owned by the shareholder immediately following the redemption of preferred shares (treating preferred shares redeemed as not outstanding) is less than 80% of the percentage of our outstanding voting shares actually and constructively owned by the shareholder immediately before the redemption, and immediately following the redemption the shareholder actually and constructively owns less than 50% of the total combined voting power of the Company. Because the Company's preferred shares are nonvoting shares, a shareholder would have to reduce such holder's holdings (if any) in our classes of voting shares to satisfy this test.

If the redemption does not meet any of the tests under Section 302 of the Code, then the redemption proceeds received from our preferred shares will be treated as a distribution on our shares as described under ''—Taxation of U.S. Shareholders—Taxation of Taxable U.S. Shareholders-Distributions Generally,'' and ''—Taxation of Non-U.S. Shareholders-Distributions Generally.'' If the redemption of a holder's preferred shares is taxed as a dividend, the adjusted basis of such holder's redeemed preferred shares will be transferred to any other shares held by the holder. If the holder owns no other shares, under certain circumstances, such basis may be transferred to a related person, or it may be lost entirely.

With respect to a redemption of our preferred shares that is treated as a distribution with respect to our shares, which is not otherwise taxable as a dividend, the IRS has proposed Treasury Regulations that would require any basis reduction associated with such a redemption to be applied on a share-by-share basis which could result in taxable gain with respect to some shares, even though the holder's aggregate basis for the shares would be sufficient to absorb the entire amount of the redemption distribution (in excess of any amount of such distribution treated as a dividend). Additionally, these proposed Treasury Regulations would not permit the transfer of basis in the redeemed shares of the preferred shares to the remaining shares held

(directly or indirectly) by the redeemed holder. Instead, the unrecovered basis in our preferred shares would be treated as a deferred loss to be recognized when certain conditions are satisfied. These proposed Treasury Regulations would be effective for transactions that occur after the date the regulations are published as final Treasury Regulations. There can, however, be no assurance as to whether, when, and in what particular form such proposed Treasury Regulations will ultimately be finalized.

Net Investment Income Tax. In certain circumstances, certain U.S. shareholders that are individuals, estates or trusts are subject to a 3.8% tax on "net investment income," which includes, among other things, dividends on and gains from the sale or other disposition of REIT shares. U.S. shareholders should consult their own tax advisors regarding this legislation.

Expansion of Medicare Tax. The temporary 20% deduction allowed by Section 199A of the Code, as added by the TCJA, with respect to ordinary REIT dividends received by non-corporate taxpayers is allowed only for purposes of Chapter 1 of the Code and thus is apparently not allowed as a deduction allocable to such dividends for purposes of determining the amount of net investment income, described above, subject to the 3.8% Medicare tax, which is imposed under Chapter 2A of the Code. Prospective investors should consult their own tax advisors regarding this legislation.

Taxation of Tax-Exempt Shareholders

U.S. tax-exempt entities, including qualified employee pension and profit sharing trusts and individual retirement accounts, generally are exempt from U.S. federal income taxation. Such entities, however, may be subject to taxation on their unrelated business taxable income, or UBTI. While some investments in real estate may generate UBTI, the IRS has ruled that dividend distributions from a REIT to a tax-exempt entity generally do not constitute UBTI. Based on that ruling, and provided that (1) a tax-exempt shareholder has not held our shares as "debt financed property" within the meaning of the Code (i.e., where the acquisition or holding of our shares is financed through a borrowing by the U.S. tax-exempt shareholder), (2) our shares are not otherwise used in an unrelated trade or business of a U.S. tax-exempt shareholder, and (3) we do not hold an asset that gives rise to "excess inclusion income," distributions that we make and income from the sale of our shares generally should not give rise to UBTI to a U.S. tax-exempt shareholder.

Tax-exempt shareholders that are social clubs, voluntary employee benefit associations, supplemental unemployment benefit trusts, or qualified group legal services plans exempt from U.S. federal income taxation under Sections 501(c)(7), (c)(9) or (c)(17) of the Code, respectively, or single parent title-holding corporations exempt under Section 501(c)(2) and whose income is payable to any of the aforementioned tax-exempt organizations, are subject to different UBTI rules, which generally require such shareholders to characterize distributions from us as UBTI unless the organization is able to properly claim a deduction for amounts set aside or placed in reserve for certain purposes so as to offset the income generated by its investment in our shares. These shareholders should consult with their tax advisors concerning these set aside and reserve requirements.

In certain circumstances, a pension trust (1) that is described in Section 401(a) of the Code, (2) is tax exempt under Section 501(a) of the Code, and (3) that owns more than 10% of the value of our shares could be required to treat a percentage of the dividends as UBTI, if we are a "pension-held REIT." We will not be a pension-held REIT unless:

- either (1) one pension trust owns more than 25% of the value of our stock, or (2) one or more pension trusts, each individually holding more than 10% of the value of our shares, collectively own more than 50% of the value of our shares; and

- we would not have qualified as a REIT but for the fact that Section 856(h)(3) of the Code provides that shares owned by such trusts shall be treated, for purposes of the requirement that not more than 50% of the value of the outstanding shares of a REIT is owned, directly or indirectly, by five or fewer "individuals" (as defined in the Code to include certain entities), as owned by the beneficiaries of such trusts.

The percentage of any REIT dividend from a "pension-held REIT" that is treated as UBTI is equal to the ratio of the UBTI earned by the REIT, treating the REIT as if it were a pension trust and therefore subject to tax on UBTI, to the total gross income of the REIT. An exception applies where the percentage is less than 5% for any year, in which case none of the dividends would be treated as UBTI. The provisions requiring pension trusts to treat a portion of REIT distributions as UBTI will not apply if the REIT is able to satisfy the "not closely held requirement" without relying upon the "look-through" exception with respect to pension trusts. As a result of certain limitations on the transfer and ownership of our common and preferred shares contained in our declaration of trust, we do not expect to be classified as a "pension-held REIT," and accordingly, the tax treatment described above with respect to pension-held REITs should be inapplicable to our tax-exempt shareholders.

Taxation of Non-U.S. Shareholders

The following discussion addresses the rules governing U.S. federal income taxation of non-U.S. shareholders. For purposes of this summary, "non-U.S. shareholder" is a beneficial owner of our shares that is not a U.S. shareholder (as defined above under "—Taxation of U.S. Shareholders—Taxation of Taxable U.S. Shareholders") or an entity that is treated as a partnership for U.S. federal income tax purposes. These rules are complex, and no attempt is made herein to provide more than a brief summary of such rules. Accordingly, the discussion does not address all aspects of U.S. federal income taxation and does not address state local or foreign tax consequences that may be relevant to a non-U.S. shareholder in light of its particular circumstances. Prospective non-U.S. shareholders are urged to consult their tax advisors to determine the impact of U.S. federal, state, local and foreign income tax laws on their ownership of our common shares or preferred shares, including any reporting requirements.

Distributions Generally. As described in the discussion below, distributions paid by us with respect to our common shares, our preferred shares and depositary shares will be treated for U.S. federal income tax purposes as either:

- ordinary income dividends;
- long-term capital gain; or
- return of capital distributions.

This discussion assumes that our shares will continue to be considered regularly traded on an established securities market for purposes of the Foreign Investment in Real Property Tax Act of 1980, or FIRPTA, provisions described below. If our shares are no longer regularly traded on an established securities market, the tax considerations described below would materially differ.

Ordinary Income Dividends. A distribution paid by us to a non-U.S. shareholder will be treated as an ordinary income dividend if the distribution is payable out of our earnings and profits and:

- not attributable to our net capital gain; or
- the distribution is attributable to our net capital gain from the sale of U.S. Real Property Interests ("USRPIs"), and the non-U.S. shareholder owns 10% or less of the value of our common shares at all times during the one-year period ending on the date of the distribution.

In general, non-U.S. shareholders will not be considered to be engaged in a U.S. trade or business solely as a result of their ownership of our shares. In cases where the dividend income from a non-U.S. shareholder's investment in our shares is, or is treated as, effectively connected with the non-U.S. shareholder's conduct of a U.S. trade or business, the non-U.S. shareholder generally will be subject to U.S. federal income tax at graduated rates, in the same manner as U.S. shareholders are taxed with respect to such dividends. Such income must generally be reported on a U.S. income tax return filed by or on behalf of the non-U.S. shareholder. The income may also be subject to the 30% branch profits tax in the case of a non-U.S. shareholder that is a corporation.

Generally, we will withhold and remit to the IRS 30% (or lower applicable treaty rate) of dividend distributions (including distributions that may later be determined to have been made in excess of current and accumulated earnings and profits) that could not be treated as capital gain distributions with respect to the non-U.S. shareholder (and that are not deemed to be capital gain dividends for purposes of the FIRPTA withholding rules described below) unless:

- a lower treaty rate applies and the non-U.S. shareholder files an IRS Form W-8BEN or Form W-8BEN-E, as applicable, evidencing eligibility for that reduced treaty rate with us; or
- the non-U.S. shareholder files an IRS Form W-8ECI with us claiming that the distribution is income effectively connected with the non-U.S. shareholder's trade or business; or
- the non-U.S. shareholder is a foreign sovereign or controlled entity of a foreign sovereign and also provides an IRS Form W-8EXP claiming an exemption from withholding under section 892 of the Code.

Return of Capital Distributions. Unless (A) our shares constitute a USRPI, as described in "—Dispositions of Our Shares" below, or (B) either (1) the non-U.S. shareholder's investment in our shares is effectively connected with a U.S. trade or business conducted by such non-U.S. shareholder (in which case the non-U.S. shareholder will be subject to the same treatment as U.S. shareholders with respect to such gain) or (2) the non-U.S. shareholder is a nonresident alien individual who was

present in the United States for 183 days or more during the taxable year and has a “tax home” in the United States (in which case the non-U.S. shareholder will be subject to a 30% tax on the individual’s net capital gain for the year), distributions that we make which are not dividends out of our earnings and profits will not be subject to U.S. federal income tax. If we cannot determine at the time a distribution is made whether or not the distribution will exceed current and accumulated earnings and profits, the distribution will be subject to withholding at the rate applicable to dividends. The non-U.S. shareholder may seek a refund from the IRS of any amounts withheld if it subsequently is determined that the distribution was, in fact, in excess of our current and accumulated earnings and profits. If our shares constitute a USRPI, as described below, distributions that we make in excess of the sum of (1) the non-U.S. shareholder’s proportionate share of our earnings and profits, and (2) the non-U.S. shareholder’s basis in its shares, will be taxed under FIRPTA at the rate of tax, including any applicable capital gains rates, that would apply to a U.S. shareholder of the same type (e.g., an individual or a corporation, as the case may be), and the collection of the tax will be enforced by a refundable withholding tax at a rate of 15% of the amount by which the distribution exceeds the non-U.S. shareholder’s share of our earnings and profits.

Capital Gain Dividends. A distribution paid by us to a non-U.S. shareholder will be treated as long-term capital gain if the distribution is paid out of our current or accumulated earnings and profits and:

- the distribution is attributable to our net capital gain (other than from the sale of USRPIs) and we timely designate the distribution as a capital gain dividend; or

- the distribution is attributable to our net capital gain from the sale of USRPIs and the non-U.S. common shareholder owns more than 10% of the value of common shares at any point during the one-year period ending on the date on which the distribution is paid.

Long-term capital gain that a non-U.S. shareholder is deemed to receive from a capital gain dividend that is not attributable to the sale of USRPIs generally will not be subject to U.S. federal income tax in the hands of the non-U.S. shareholder unless:

- the non-U.S. shareholder’s investment in our shares is effectively connected with a U.S. trade or business of the non-U.S. shareholder, in which case the non-U.S. shareholder will be subject to the same treatment as U.S. shareholders with respect to any gain, except that a non-U.S. shareholder that is a corporation also may be subject to the 30% (or lower applicable treaty rate) branch profits tax; or

- the non-U.S. shareholder is a nonresident alien individual who is present in the United States for 183 days or more during the taxable year and has a “tax home” in the United States in which case the nonresident alien individual will be subject to a 30% tax on his capital gains.

Under FIRPTA, distributions that are attributable to net capital gain from the sale by us of USRPIs and paid to a non-U.S. shareholder that owns more than 10% of the value of our shares at any time during the one-year period ending on the date on which the distribution is paid will be subject to U.S. tax as income effectively connected with a U.S. trade or business. The FIRPTA tax will apply to these distributions whether or not the distribution is designated as a capital gain dividend, and, in the case of a non-U.S. shareholder that is a corporation, such distributions also may be subject to the 30% (or lower applicable treaty rate) branch profits tax.

Any distribution paid by us that is treated as a capital gain dividend or that could be treated as a capital gain dividend with respect to a particular non-U.S. shareholder will be subject to special withholding rules under FIRPTA. We will withhold and remit to the IRS 21% (or, to the extent provided in Treasury Regulations, 20%) of any distribution that could be treated as a capital gain dividend with respect to the non-U.S. shareholder, whether or not the distribution is attributable to the sale by us of USRPIs. The amount withheld is creditable against the non-U.S. shareholder’s U.S. federal income tax liability or refundable when the non-U.S. shareholder properly and timely files a tax return with the IRS.

Certain non-U.S. pension funds that are “qualified foreign pension funds” as defined by Section 897(l) of the Code and certain non-U.S. publicly traded entities that are “qualified shareholders” as defined by Section 897(k) of the Code may be entitled to exceptions to the FIRPTA tax with respect to distributions we pay. Non-U.S. shareholders should consult with their tax advisors regarding the application of these exceptions.

Undistributed Capital Gain. Although the law is not entirely clear on the matter, it appears that amounts designated by us as undistributed capital gains in respect of our shares held by non-U.S. shareholders generally should be treated in the same manner as actual distributions by us of capital gain dividends. Under this approach, the non-U.S. shareholder would be able to offset as a credit against their U.S. federal income tax liability resulting therefrom their proportionate share of the tax paid by us on the undistributed capital gains treated as long-term capital gains to the non-U.S. shareholder, and generally receive from the

IRS a refund to the extent their proportionate share of the tax paid by us were to exceed the non-U.S. shareholder's actual U.S. federal income tax liability on such long-term capital gain. If we were to designate any portion of our net capital gain as undistributed capital gain, a non-U.S. shareholder should consult its tax advisors regarding taxation of such undistributed capital gain.

Dispositions of Our Shares. Unless our shares constitute a USRPI, a sale of our shares by a non-U.S. shareholder generally will not be subject to U.S. federal income taxation under FIRPTA. Generally, subject to the discussion below regarding dispositions by "qualified shareholders" and "qualified foreign pension funds," with respect to any particular shareholder, our shares will constitute a USRPI only if each of the following three statements is true:

- 50% or more of our assets on any of certain testing dates during a prescribed testing period consist of interests in real property located within the United States, excluding for this purpose, interests in real property solely in a capacity as creditor;

- We are not a "domestically-controlled qualified investment entity." A domestically-controlled qualified investment entity includes a REIT, less than 50% of value of which is held directly or indirectly by non-U.S. shareholders at all times during a specified testing period. Although we believe that we are and will remain a domestically-controlled REIT, because our shares are publicly traded, we cannot guarantee that we are or will remain a domestically-controlled qualified investment entity; and

- Either (a) our shares are not "regularly traded," as defined by applicable Treasury Regulations, on an established securities market; or (b) our shares are "regularly traded" on an established securities market and the selling non-U.S. shareholder has held over 10% of our outstanding common shares any time during the five-year period ending on the date of the sale.

Certain non-U.S. pension funds that are "qualified foreign pension funds" as defined by Section 897(l) of the Code and certain non-U.S. publicly traded entities that are "qualified shareholders" as defined by Section 897(k) of the Code may be entitled to exceptions to the FIRPTA tax with respect to the sale of our shares. Non-U.S. shareholders should consult with their tax advisors regarding the application of these exceptions.

Specific wash sales rules applicable to sales of shares in a domestically-controlled qualified investment entity could result in gain recognition, taxable under FIRPTA, upon the sale of our shares even if we are a domestically-controlled qualified investment entity. These rules would apply if a non-U.S. shareholder (1) disposes of our shares within a 30-day period preceding the ex-dividend date of a distribution, any portion of which, but for the disposition, would have been taxable to such non-U.S. shareholder as gain from the sale or exchange of a USRPI, (2) acquires, or enters into a contract or option to acquire, other shares of our shares during the 61-day period that begins 30 days prior to such ex-dividend date, and (3) if our shares are "regularly traded" on an established securities market in the United States, such non-US stockholder has owned more than 10% of our outstanding shares at any time during the one-year period ending on the date of such distribution.

If gain on the sale of our shares were subject to taxation under FIRPTA, the non-U.S. shareholder would be required to file a U.S. federal income tax return and would be subject to the same treatment as a U.S. shareholder with respect to such gain, subject to the applicable alternative minimum tax and a special alternative minimum tax in the case of non-resident alien individuals, and, if our common shares were not "regularly traded" on an established securities market, the purchaser of the shares generally would be required to withhold 15% of the purchase price and remit such amount to the IRS.

Gain from the sale of our shares that would not otherwise be subject to FIRPTA will nonetheless be taxable in the United States to a non-U.S. shareholder as follows: (1) if the non-U.S. shareholder's investment in our shares is effectively connected with a U.S. trade or business conducted by such non-U.S. shareholder, the non-U.S. shareholder will be subject to the same treatment as a U.S. shareholder with respect to such gain, or (2) if the non-U.S. shareholder is a nonresident alien individual who was present in the U.S. for 183 days or more during the taxable year and has a "tax home" in the United States, the nonresident alien individual will be subject to a 30% tax on the individual's capital gain.

Taxation of Holders of Our Warrants and Rights

Warrants. Holders of our warrants will not generally recognize gain or loss upon the exercise of a warrant. A holder's basis in the preferred shares, depositary shares representing preferred shares or common shares, as the case may be, received upon the exercise of the warrant will be equal to the sum of the holder's adjusted tax basis in the warrant and the exercise price paid. A holder's holding period in the preferred shares, depositary shares representing preferred shares or common shares, as the case may be, received upon the exercise of the warrant will not include the period during which the warrant was held by the holder.

Upon the expiration of a warrant, the holder will recognize a capital loss in an amount equal to the holder's adjusted tax basis in the warrant. Upon the sale or exchange of a warrant to a person other than us, a holder will recognize gain or loss in an amount equal to the difference between the amount realized on the sale or exchange and the holder's adjusted tax basis in the warrant. Such gain or loss will be capital gain or loss and will be long-term capital gain or loss if the warrant was held for more than one year. Upon the sale of the warrant to us, the IRS may argue that the holder should recognize ordinary income on the sale. Prospective holders of our warrants should consult their own tax advisors as to the consequences of a sale of a warrant to us.

Rights. In the event of a rights offering, the tax consequences of the receipt, expiration, and exercise of the rights we issue will be addressed in detail in a prospectus supplement. Prospective holders of our rights should review the applicable prospectus supplement in connection with the ownership of any rights and consult their own tax advisors as to the consequences of investing in the rights.

Dividend Reinvestment and Share Purchase Plan

General

We offer shareholders and prospective shareholders the opportunity to participate in our Dividend Reinvestment and Share Purchase Plan, which is referred to herein as the "DRIP."

Although we do not currently offer any discount in connection with the DRIP, nor do we plan to offer such a discount at present, we reserve the right to offer in the future a discount on shares purchased, not to exceed 5%, with reinvested dividends or cash distributions and shares purchased through the optional cash investment feature. This discussion assumes that we do not offer a discount in connection with the DRIP. If we were to offer a discount in connection with the DRIP, the tax considerations described below would materially differ. In the event that we offer a discount in connection with the DRIP, shareholders are urged to consult with their tax advisors regarding the tax treatment to them of receiving a discount.

Amounts Treated as a Distribution

Generally, a DRIP participant will be treated as having received a distribution with respect to our shares for U.S. federal income tax purposes in an amount determined as described below.

- A shareholder who participates in the dividend reinvestment feature of the DRIP and whose dividends are reinvested in our shares purchased from us will be treated for U.S. federal income tax purposes as having received a distribution from us with respect to our shares equal to the fair market value of our shares credited to the shareholder's DRIP account on the date the dividends are reinvested. The amount of the distribution deemed received will be reported on the Form 1099-DIV received by the shareholder.

- A shareholder who participates in the dividend reinvestment feature of the DRIP and whose dividends are reinvested in our shares purchased in the open market, will be treated for U.S. federal income tax purposes as having received (and will receive a Form 1099-DIV reporting) a distribution from us with respect to its shares equal to the fair market value of our shares credited to the shareholder's DRIP account (plus any brokerage fees and any other expenses deducted from the amount of the distribution reinvested) on the date the dividends are reinvested.

- A shareholder who participates in the optional cash purchase through the DRIP (or a newly enrolled participant not currently our shareholder making their initial investment in our common shares through the DRIP's optional cash purchase feature) will not be treated as receiving a distribution from us.

We will pay the annual maintenance cost for each shareholder's DRIP account. Consistent with the conclusion reached by the IRS in a private letter ruling issued to another REIT, we intend to take the position that the administrative costs do not constitute a distribution which is either taxable to a shareholder or which would reduce the shareholder's basis in their common shares. However, because the private letter ruling was not issued to us, we have no legal right to rely on its conclusions. Thus, it is possible that the IRS might view the shareholder's share of the administrative costs as constituting a taxable distribution to them and/or a distribution which reduces the basis in their shares. For this and other reasons, we may in the future take a different position with respect to these costs.

In the situations described above, a shareholder will be treated as receiving a distribution from us even though no cash distribution is actually received. These distributions will be taxable in the same manner as all other distributions paid by us, as described above under "—Taxation of U.S. Shareholders—Taxation of Taxable U.S. Shareholders," "—Taxation of U.S. Shareholders—Taxation of Tax-Exempt Shareholders," or "—Taxation of Non-U.S. Shareholders," as applicable.

Basis and Holding Period in Shares Acquired Pursuant to the DRIP. The tax basis for our shares acquired by reinvesting cash distributions through the DRIP generally will equal the fair market value of our shares on the date of distribution (plus the amount of any brokerage fees paid by the shareholder). The holding period for our shares acquired by reinvesting cash distributions will begin on the day following the date of distribution.

The tax basis in our shares acquired through an optional cash investment generally will equal the cost paid by the participant in acquiring our shares, including any brokerage fees paid by the shareholder. The holding period for our shares purchased through the optional cash investment feature of the DRIP generally will begin on the day our shares are purchased for the participant's account.

Withdrawal of Shares from the DRIP. When a participant withdraws stock from the DRIP and receives whole shares, the participant will not realize any taxable income. However, if the participant receives cash for a fractional share, the participant will be required to recognize gain or loss with respect to that fractional share.

Effect of Withholding Requirements. Withholding requirements generally applicable to distributions from us will apply to all amounts treated as distributions pursuant to the DRIP. See "—Information Reporting and Backup Withholding Tax Applicable to Shareholders—U.S. Shareholders-Generally" and "—Information Reporting and Backup Withholding Tax Applicable to Shareholders—Non-U.S. Shareholders—Generally" for discussion of the withholding requirements that apply to other distributions that we pay. All withholding amounts will be withheld from distributions before the distributions are reinvested under the DRIP. Therefore, if a U.S. shareholder is subject to withholding, distributions which would otherwise be available for reinvestment under the DRIP will be reduced by the withholding amount.

Information Reporting and Backup Withholding Tax Applicable to Shareholders

U.S. Shareholders—Generally

In general, information-reporting requirements will apply to payments of distributions on our shares and payments of the proceeds of the sale of our shares to some U.S. shareholders, unless an exception applies. Further, the payer will be required to withhold backup withholding tax on such payments if:

(1) the payee fails to furnish a taxpayer identification number ("TIN") to the payer or to establish an exemption from backup withholding;

(2) the IRS notifies the payer that the TIN furnished by the payee is incorrect;

(3) there has been a notified payee under-reporting with respect to interest, dividends or original issue discount described in Section 3406(c) of the Code; or

(4) there has been a failure of the payee to certify under the penalty of perjury that the payee is not subject to backup withholding under the Code.

Some shareholders may be exempt from backup withholding. Any amounts withheld under the backup withholding rules from a payment to a shareholder will be allowed as a credit against the shareholder's U.S. federal income tax liability and may entitle the shareholder to a refund, provided that the required information is furnished to the IRS.

U.S. Shareholders—Withholding on Payments in Respect of Certain Foreign Accounts.

As described below, certain future payments made to "foreign financial institutions" and "non-financial foreign entities" may be subject to withholding at a rate of 30%. U.S. shareholders should consult their tax advisors regarding the effect, if any, of this withholding provision on their ownership and disposition of our common stock. See "—Non-U.S. Shareholders—Withholding on Payments to Certain Foreign Entities" below.

Non-U.S. Shareholders—Generally

Generally, information reporting will apply to payments or distributions on our shares, and backup withholding described above for a U.S. shareholder will apply, unless the payee certifies that it is not a U.S. person or otherwise establishes an exemption. The payment of the proceeds from the disposition of our shares to or through the U.S. office of a U.S. or foreign broker will be subject to information reporting and, possibly, backup withholding as described above for U.S. shareholders, or the withholding

tax for non-U.S. shareholders, as applicable, unless the non-U.S. shareholder certifies as to its non-U.S. status or otherwise establishes an exemption, provided that the broker does not have actual knowledge that the shareholder is a U.S. person or that the conditions of any other exemption are not, in fact, satisfied. The proceeds of the disposition by a non-U.S. shareholder of our shares to or through a foreign office of a broker generally will not be subject to information reporting or backup withholding. However, if the broker is a U.S. person, a controlled foreign corporation for U.S. federal income tax purposes, or a foreign person 50% or more of whose gross income from all sources for specified periods is from activities that are effectively connected with a U.S. trade or business, a foreign partnership 50% or more of whose interests are held by partners who are U.S. persons, or a foreign partnership that is engaged in the conduct of a trade or business in the United States, then information reporting generally will apply as though the payment was made through a U.S. office of a U.S. or foreign broker unless the broker has documentary evidence as to the non-U.S. shareholder's foreign status and has no actual knowledge to the contrary.

Applicable Treasury Regulations provide presumptions regarding the status of shareholders when payments to the shareholders cannot be reliably associated with appropriate documentation provided to the payor. If a non-U.S. shareholder fails to comply with the information reporting requirement, payments to such person may be subject to the full withholding tax even if such person might have been eligible for a reduced rate of withholding or no withholding under an applicable income tax treaty. Because the application of these Treasury Regulations varies depending on the non-U.S. shareholder's particular circumstances, non-U.S. shareholders are urged to consult their tax advisor regarding the information reporting requirements applicable to them.

Backup withholding is not an additional tax. Any amounts that we withhold under the backup withholding rules will be refunded or credited against the non-U.S. shareholder's U.S. federal income tax liability if certain required information is furnished to the IRS. Non-U.S. shareholders should consult their own tax advisors regarding application of backup withholding in their particular circumstances and the availability of and procedure for obtaining an exemption from backup withholding under current Treasury Regulations.

Non-U.S. Shareholders—Withholding on Payments to Certain Foreign Entities

The Foreign Account Tax Compliance Act ("FATCA") imposes a 30% withholding tax on certain types of payments made to "foreign financial institutions" and certain other non-U.S. entities unless certain due diligence, reporting, withholding, and certification obligations requirements are satisfied.

As a general matter, FATCA imposes a 30% withholding tax on dividends in respect of our shares if paid to a foreign entity unless either (i) the foreign entity is a "foreign financial institution" that undertakes certain due diligence, reporting, withholding, and certification obligations, or in the case of a foreign financial institution that is a resident in a jurisdiction that has entered into an intergovernmental agreement to implement FATCA, the entity complies with the diligence and reporting requirements of such agreement, (ii) the foreign entity is not a "foreign financial institution" and identifies certain of its U.S. investors, or (iii) the foreign entity otherwise is exempted under FATCA. While withholding under FATCA would have applied to payments of gross proceeds from the sale or other disposition of our shares received after December 31, 2018, proposed Treasury Regulations eliminate FATCA withholding on payments of gross proceeds entirely. Taxpayers may generally rely on these proposed Treasury Regulations until final Treasury Regulations are issued.

If withholding is required under FATCA on a payment related to our shares, investors that otherwise would not be subject to withholding (or that otherwise would be entitled to a reduced rate of withholding) generally will be required to seek a refund or credit from the IRS to obtain the benefit of such exemption or reduction (provided that such benefit is available). Prospective investors should consult their tax advisors regarding the effect of FATCA in their particular circumstances.

Taxation of Holders of Debt Securities

The following discussion summarizes certain U.S. federal income tax considerations relating to the purchase, ownership and disposition of certain debt securities that we may offer. This summary assumes the debt securities will be issued with no more than a de minimis amount of original issue discount for U.S. federal income tax purposes. This summary only applies to investors that will hold their debt securities as "capital assets" (within the meaning of Section 1221 of the Code) and purchase their debt securities in the initial offering at their issue price. If such debt securities are purchased at a price other than the offering price, the amortizable bond premium or market discount rules may apply which are not described herein. Prospective holders should consult their own tax advisors regarding these possibilities. This section also does not apply to any debt securities treated as "equity," rather than debt, for U.S. federal income tax purposes.

The tax consequences of owning any notes issued with more than de minimis original issue discount, floating rate debt securities, convertible or exchangeable notes, indexed notes or other debt securities not covered by this discussion that we offer

will be discussed in the applicable prospectus supplement.

U.S. Holders of Debt Securities

This section summarizes the taxation of U.S. Holders of debt securities that are not tax-exempt organizations. For these purposes, the term “U.S. Holder” is a beneficial owner of our debt securities that is, for U.S. federal income tax purposes:

- a citizen or resident of the United States;
- a corporation (including an entity treated as a corporation for U.S. federal income tax purposes) created or organized in or under the laws of the United States or of a political subdivision thereof (including the District of Columbia);
- an estate the income of which is subject to U.S. federal income taxation regardless of its source; or
- any trust if a U.S. court is able to exercise primary supervision over the administration of such trust and one or more U.S. persons have the authority to control all substantial decisions of the trust.

If an entity or arrangement treated as a partnership for U.S. federal income tax purposes holds our debt securities, the U.S. federal income tax treatment of a partner generally will depend upon the status of the partner and the activities of the partnership. A partner of a partnership holding our debt securities should consult its own tax advisor regarding the U.S. federal income tax consequences to the partner of the acquisition, ownership and disposition of our debt securities by the partnership.

Payments of Interest. Interest on a note will generally be taxable to a U.S. Holder as ordinary interest income at the time it is received or accrued, in accordance with the U.S. Holder’s regular method of tax accounting for U.S. federal income tax purposes.

Sale, Exchange, Retirement, Redemption or Other Taxable Disposition of the Debt Securities. Upon a sale, exchange, retirement, redemption or other taxable disposition of debt securities, a U.S. Holder generally will recognize taxable gain or loss in an amount equal to the difference, if any, between the “amount realized” on the disposition and the U.S. Holder’s adjusted tax basis in such debt securities. The amount realized will include the amount of any cash and the fair market value of any property received for the debt securities (other than any amount attributable to accrued but unpaid interest, which will be taxable as ordinary income (as described above under “—Taxation of Holders of Debt Securities—U.S. Holders of Debt Securities—Payments of Interest”) to the extent not previously included in income). A U.S. Holder’s adjusted tax basis in a note generally will be equal to the cost of the note to such U.S. Holder decreased by any payments received on the note other than stated interest. Any such gain or loss generally will be capital gain or loss and will be long-term capital gain or loss if the U.S. Holder’s holding period for the note is more than one year at the time of disposition. For non-corporate U.S. Holders, long-term capital gain generally will be subject to reduced rates of taxation. The deductibility of capital losses against ordinary income is subject to certain limitations.

Information Reporting and Backup Withholding. Payments of interest on, or the proceeds of the sale, exchange or other taxable disposition (including a retirement or redemption) of, a note are generally subject to information reporting unless the U.S. Holder is an exempt recipient (such as a corporation). Such payments may also be subject to U.S. federal backup withholding unless (1) the U.S. Holder is an exempt recipient (such as a corporation), or (2) prior to payment, the U.S. Holder provides a taxpayer identification number and certifies as required on a duly completed and executed IRS Form W-9 (or permitted substitute or successor form), and otherwise complies with the requirements of the backup withholding rules. Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules will be allowed as a refund or credit against that U.S. Holder’s U.S. federal income tax liability provided the required information is timely furnished to the IRS.

Net Investment Income. In certain circumstances, certain U.S. Holders that are individuals, estates, or trusts are subject to a 3.8% tax on “net investment income,” which includes, among other things, interest income and net gains from the sale, exchange or other taxable disposition (including a retirement or redemption) of the debt securities, unless such interest payments or net gains are derived in the ordinary course of the conduct of a trade or business (other than a trade or business that consists of certain passive activities or securities or commodities trading activities). Investors in debt securities should consult their own tax advisors regarding the applicability of this tax to their income and gain in respect of their investment in the debt securities.

Tax-Exempt Holders of Debt Securities

In general, a tax-exempt organization is exempt from U.S. federal income tax on its income, except to the extent of its UBTI (as defined above under "—Taxation of U.S. Shareholders-Taxation of U.S. Tax-Exempt Shareholders"). Interest income accrued on the debt securities and gain recognized in connection with dispositions of the debt securities generally will not constitute UBTI unless the tax-exempt organization holds the debt securities as debt-financed property (e.g., the tax-exempt organization has incurred "acquisition indebtedness" with respect to such note). Before making an investment in the debt securities, a tax-exempt investor should consult its tax advisors with regard to UBTI and the suitability of the investment in the debt securities.

Non-U.S. Holders of Debt Securities

The following discussion addresses the rules governing U.S. federal income taxation of Non-U.S. Holders of debt securities. For purposes of this summary, "Non-U.S. Holder" is a beneficial owner of our debt securities that is not (i) a U.S. Holder (as defined above under "—U.S. Holders of Debt Securities") or (ii) an entity treated as a partnership for U.S. federal income tax purposes.

Payments of Interest. Subject to the discussions below concerning backup withholding and FATCA (as defined below), all payments of interest on the debt securities made to a Non-U.S. Holder will not be subject to U.S. federal income or withholding taxes under the "portfolio interest" exception of the Code, provided that the Non-U.S. Holder:

- does not own, actually or constructively, 10% or more of our stock,
- is not a controlled foreign corporation with respect to which we are a "related person" (within the meaning of Section 864(d)(4) of the Code),
- is not a bank whose receipt of interest on a note is described in Section 881(c)(3)(A) of the Code, and
- provides its name and address on an IRS Form W-8BEN or IRS Form W-8BEN-E (or other applicable form) and certifies, under penalties of perjury, that it is not a U.S. Holder.

The applicable Treasury Regulations provide alternative methods for satisfying the certification requirement described in this section. In addition, under these Treasury Regulations, special rules apply to pass-through entities and this certification requirement may also apply to beneficial owners of pass-through entities. If a Non-U.S. Holder cannot satisfy the requirements described above, payments of interest will generally be subject to the 30% U.S. federal withholding tax, unless the Non-U.S. Holder provides the applicable withholding agent with a properly executed (1) IRS Form W-8BEN or IRS Form W-8BEN-E (or other applicable form) claiming an exemption from or reduction in withholding under an applicable income tax treaty or (2) IRS Form W-8ECI (or other applicable form) stating that interest paid on the debt securities is not subject to U.S. federal withholding tax because it is effectively connected with the conduct by such Non-U.S. Holder of a trade or business in the United States (as discussed below under "—Non-U.S. Holders of Debt Securities—Income Effectively Connected with a U.S. Trade or Business").

Sale, Exchange, Retirement, Redemption or Other Taxable Disposition of the Debt Securities. Subject to the discussions below concerning backup withholding and FATCA and except with respect to accrued but unpaid interest, which generally will be taxable as interest and may be subject to the rules described above under "—Non-U.S. Holders of Debt Securities—Payments of Interest," a Non-U.S. Holder generally will not be subject to U.S. federal income or withholding tax on the receipt of payments of principal on a note, or on any gain recognized upon the sale, exchange, retirement, redemption or other taxable disposition of a note, unless:

- such gain is effectively connected with the conduct by such Non-U.S. Holder of a trade or business within the United States, in which case such gain will be taxed as described below under "—Non-U.S. Holders of Debt Securities—Income Effectively Connected with a U.S. Trade or Business," or
- such Non-U.S. Holder is an individual who is present in the United States for 183 days or more in the taxable year of disposition, and certain other conditions are met, in which case such Non-U.S. Holder will be subject to tax at 30% (or, if applicable, a lower treaty rate) on the gain derived from such disposition, which may be offset by U.S. source capital losses.

Income Effectively Connected with a U.S. Trade or Business. If a Non-U.S. Holder is engaged in a trade or business in the United States, and if interest on the debt securities or gain realized on the sale, exchange or other taxable disposition (including a retirement or redemption) of the debt securities is effectively connected with the conduct of such trade or business, the Non-U.S. Holder generally will be subject to regular U.S. federal income tax on such income or gain in the same manner as if the

Non-U.S. Holder were a U.S. Holder. If the Non-U.S. Holder is eligible for the benefits of an income tax treaty between the United States and the Non-U.S. Holder's country of residence, any "effectively connected" income or gain generally will be subject to U.S. federal income tax only if it is also attributable to a permanent establishment or fixed base maintained by the Non-U.S. Holder in the United States. In addition, if such a Non-U.S. Holder is a foreign corporation, such holder may also be subject to a branch profits tax equal to 30% (or such lower rate provided by an applicable income tax treaty) of its effectively connected earnings and profits, subject to certain adjustments. Payments of interest that are effectively connected with a U.S. trade or business will not be subject to the 30% U.S. federal withholding tax provided that the Non-U.S. Holder claims exemption from withholding. To claim exemption from withholding, the Non-U.S. Holder must certify its qualification, which generally can be done by filing a properly executed IRS Form W-8ECI (or other applicable form).

Information Reporting and Backup Withholding. Generally, we must report annually to the IRS and to Non-U.S. Holders the amount of interest paid to Non-U.S. Holders and the amount of tax, if any, withheld with respect to those payments. Copies of these information returns reporting such interest and withholding may also be made available under the provisions of a specific treaty or agreement to the tax authorities of the country in which the Non-U.S. Holder resides. In general, a Non-U.S. Holder will not be subject to backup withholding or additional information reporting requirements with respect to payments of interest that we make, provided that the statement described above in last bullet point under "—Non-U.S. Holders of Debt Securities—Interest" has been received and we do not have actual knowledge or reason to know that the holder is a U.S. person, as defined under the Code, that is not an exempt recipient. In addition, proceeds from a sale or other disposition of a note by a Non-U.S. Holder generally will be subject to information reporting and, depending on the circumstances, backup withholding with respect to payments of the proceeds of the sale or disposition (including a retirement or redemption) of a note within the United States or conducted through certain U.S. or U.S.-related financial intermediaries, unless the statement described above has been received and we do not have actual knowledge or reason to know that the holder is a U.S. person. Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules will be allowed as a refund or a credit against a non-U.S. holder's U.S. federal income tax liability if the required information is furnished in a timely manner to the IRS.

Additional Withholding Requirements. As discussed above under "—Information Reporting and Backup Withholding Tax Applicable to Shareholders—Non-U.S. Shareholders —Withholding on Payments to Certain Foreign Entities," FATCA imposes a 30% withholding tax on certain types of payments made to "foreign financial institutions" and certain other non-U.S. entities unless certain due diligence, reporting, withholding, and certification obligations requirements are satisfied.

As a general matter, payments to Non-U.S. Holders that are foreign entities (whether as beneficial owner or intermediary) of interest on a debt obligation of a U.S. issuer will be subject to a withholding tax (separate and apart from, but without duplication of, the withholding tax described above) at a rate of 30%, unless various U.S. information reporting and due diligence requirements (generally relating to ownership by U.S. persons of interests in or accounts with those entities) have been satisfied. While withholding under FATCA would have applied to payments of gross proceeds from the sale or other disposition of, a debt obligation of a U.S. issuer received after December 31, 2018, proposed Treasury Regulations eliminate FATCA withholding on payments of gross proceeds entirely. Taxpayers may generally rely on these proposed Treasury Regulations until final Treasury Regulations are issued.

If withholding is required under FATCA on a payment related to the debt securities, Non-U.S. Holders that otherwise would not be subject to withholding (or that otherwise would be entitled to a reduced rate of withholding) generally will be required to seek a refund or credit from the IRS to obtain the benefit of such exemption or reduction (provided that such benefit is available). Prospective investors should consult their tax advisors regarding the effect of FATCA in their particular circumstances.

Other Tax Considerations

State, Local and Foreign Taxes

We may be required to pay tax in various state or local jurisdictions, including those in which we transact business, and our shareholders may be required to pay tax in various state or local jurisdictions, including those in which they reside. Our state and local tax treatment may not conform to the U.S. federal income tax consequences discussed above. In addition, a shareholder's state and local tax treatment may not conform to the U.S. federal income tax consequences discussed above. Consequently, prospective investors should consult with their tax advisors regarding the effect of state and local tax laws on an investment in our shares and depositary shares.

A portion of our income is earned through our taxable REIT subsidiary. The taxable REIT subsidiary is subject to U.S. federal, state and local income tax at the full applicable corporate rates. In addition, a taxable REIT subsidiary will be limited in its ability to deduct interest payments in excess of a certain amount made directly or indirectly to us. To the extent that we and/or

our taxable REIT subsidiary is required to pay U.S. federal, state or local taxes, we will have less cash available for distribution to shareholders.

Tax Shelter Reporting

If a holder recognizes a loss as a result of a transaction with respect to our shares of at least (i) for a holder that is an individual, S corporation, trust or a partnership with at least one non-corporate partner, $2 million or more in a single taxable year or $4 million or more in a combination of taxable years, or (ii) for a holder that is either a corporation or a partnership with only corporate partners, $10 million or more in a single taxable year or $20 million or more in a combination of taxable years, such holder may be required to file a disclosure statement with the IRS on Form 8886. Direct shareholders of portfolio securities are in many cases exempt from this reporting requirement, but shareholders of a REIT currently are not excepted. The fact that a loss is reportable under these regulations does not affect the legal determination of whether the taxpayer's treatment of the loss is proper. Shareholders should consult their tax advisors to determine the applicability of these regulations in light of their individual circumstances.

Legislative or Other Actions Affecting REITs

The rules dealing with U.S. federal income taxation are constantly under review by persons involved in the legislative process and by the IRS and the U.S. Treasury Department. We cannot give you any assurances as to whether, or in what form, any proposals affecting REITs or their shareholders will be enacted. Changes to the U.S. federal tax laws and interpretations thereof could adversely affect an investment in our shares. Shareholders should consult their tax advisors regarding the effect of potential changes to the U.S. federal tax laws and on an investment in our shares.

ITEM 9C: DISCLOSURE REGARDING FOREIGN JURISDICTIONS THAT PREVENT INSPECTIONS.

Not applicable.

PART III

Certain information required by Part III has been omitted pursuant to General Instruction G(3) to Form 10-K. We will file a definitive proxy statement pursuant to Regulation 14A with respect to our 2023 Annual Meeting (the "Proxy Statement") no later than 120 days after the end of the fiscal year covered by this Form 10-K, and certain information included therein is incorporated herein by reference. Only those sections of the Proxy Statement which specifically address the items set forth herein are incorporated by reference. In addition, we have adopted a code of ethics that applies to all of our trustees, officers and employees, which can be reviewed and printed from our website www.elmecommunities.com. The reference to our website address does not constitute incorporation by reference of the information contained in the website and such information should not be considered part of this document.

ITEM 10: DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

The information required by this Item is hereby incorporated herein by reference to our Proxy Statement.

ITEM 11: EXECUTIVE COMPENSATION

The information required by this Item is hereby incorporated herein by reference to our Proxy Statement.

ITEM 12: SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

The information required by this Item is hereby incorporated herein by reference to our Proxy Statement.

ITEM 13: CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

The information required by this Item is hereby incorporated herein by reference to our Proxy Statement.

ITEM 14: PRINCIPAL ACCOUNTANT FEES AND SERVICES

The information required by this Item is hereby incorporated herein by reference to our Proxy Statement.

PART IV

ITEM 15: EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

(A). The following documents are filed as part of this Form 10-K:

1 Financial Statements Page

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Report of Independent Registered Public Accounting Firm (PCAOB ID:42)	77
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2 Financial Statement Schedules

Schedule II – Valuation and Qualifying Accounts	111
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All other schedules are omitted because they are either not required or the required information is shown in the financial statements or notes thereto.

3 Exhibits:

		Incorporated by Reference				
Exhibit Number	Exhibit Description	Form	File Number	Exhibit	Filing Date	Filed Herewith
3.1	Articles of Amendment and Restatement of Declaration of Trust of the Company, as amended					X
3.2	Amended and Restated Bylaws of Elme Communities, as amended	8-K	001-06622	3.2	10/17/2022	
4.1	Indenture dated as of August 1, 1996 between Washington REIT and The First National Bank of Chicago	8-K	001-06622	(c)	8/13/1996	
4.2	Form of 2028 Notes	8-K	001-06622	99.1	2/25/1998	
4.3	Supplemental Indenture by and between Washington REIT and the Bank of New York Trust Company, N.A. dated as of July 3, 2007	8-K	001-06622	4.1	7/5/2007	
4.4	Description of Registrant's Securities					X
10.1*	Supplemental Executive Retirement Plan II dated January 1, 2008					X
10.2*	Form of Indemnification Agreement by and between Washington REIT and the indemnitee	8-K	001-06622	10(nn)	7/27/2009	
10.3*	Deferred Compensation Plan for Officers, effective January 1, 2007, as amended and restated on January 1, 2011					X
10.4*	Amendment to Amended and Restated Deferred Compensation Plan for Officers, adopted December 31, 2012	10-K	001-06622	10.37	2/27/2013	
10.5*	Amendment to Amended and Restated Deferred Compensation Plan for Officers, adopted February 13, 2013	10-Q	001-06622	10.45	5/9/2013	
10.6*	Amendment to Amended and Restated Deferred Compensation Plan for Officers, adopted February 18, 2014	10-K	001-06622	10.45	3/3/2014	
10.7*	Amended and Restated Trustee Deferred Compensation Plan, effective October 21, 2015	10-Q	001-06622	10.61	11/4/2015	
10.9*	2016 Omnibus Incentive Plan	DEF 14A	001-06622	Annex A	3/23/2016	
10.10*	Long Term Incentive Plan (effective January 1, 2014)	10-Q	001-06622	10.50	8/5/2014	
10.11*	Amendment to Long Term Incentive Plan	10-Q	001-06622	10.60	11/4/2015	
10.12*	Amendment Number Two to Washington Real Estate Investment Trust 2014 Long-Term Incentive Plan (effective January 1, 2018)	10-Q	001-06622	10.54	4/30/2018	

Exhibit Number	Exhibit Description	Incorporated by Reference				Filed Herewith
		Form	File Number	Exhibit	Filing Date	
10.13*	Washington Real Estate Investment Trust Amended and Restated Executive Short-Term Incentive Plan, effective January 1, 2020	10-K	001-06622	10.45	2/19/2020	
10.14*	Washington Real Estate Investment Trust Amended and Restated Executive Long-Term Incentive Plan, effective January 1, 2020	10-K	001-06622	10.46	2/19/2020	
10.15*	Note Purchase Agreement, dated as of September 30, 2020, by and among Washington Real Estate Investment Trust and other parties named therein as Purchasers	10-Q	001-06622	10.1	10/30/2020	
10.16*	Employment Agreement dated August 19, 2013 with Paul T. McDermott	10-Q	001-06622	10.54	11/1/2013	
10.17*	Change in control agreement dated October 1, 2013 with Paul T. McDermott	10-K	001-06622	10.44	3/3/2014	
10.18*	Amendment No. 1 To Change in Control Agreement with Paul T. McDermott					X
10.19*	Executive Officer Severance Pay Plan, adopted August 4, 2014	10-Q	001-06622	10.54	10/30/2014	
10.20*	Offer Letter to Stephen E. Riffee	10-K	001-06622	10.55	3/2/2015	
10.21*	Change in control agreement dated February 27, 2015 with Stephen E. Riffee	10-K	001-06622	10.56	3/2/2015	
10.22*	Change in control agreement dated February 2, 2022 with Susan L. Gerock	10-Q	001-06622	10.1	4/28/2022	
10.23*	Amendment No. 1 To Change in Control Agreement with Susan L. Gerock					X
10.24*	Offer letter to Taryn D. Fielder	10-K	001-06622	10.50	2/20/2018	
10.25*	Change in control agreement dated July 21,2017 with Taryn D. Fielder	10-Q	001-06622	10.1	7/31/2017	
10.26*	Severance Agreement and General Release between Taryn D. Fielder and Washington Real Estate Investment Trust	10-Q	001-06622	10.2	4/28/2022	
10.27*	Agreement and General Release between Stephen E. Riffee and Elme Communities					X
10.28*	Form of Change in Control Agreement					X
10.29*	Amendment Number One to Washington Real Estate Investment Trust Amended and Restated Executive Officer Long-Term Incentive Plan					X
10.30*	Amendment Number One to Washington Real Estate Investment Trust Amended and Restated Executive Officer Short-Term Incentive Plan					X
10.31	Purchase and Sale Agreement, dated as of June 14, 2021, between Washington REIT and BPG Acquisitions, LLC	10-Q	001-06622	10.1	8/3/2021	
10.32	Second Amended and Restated Credit Agreement, dated August 26, 2021, by and among Washington Real Estate Investment Trust, as borrower, the financial institutions party thereto as lenders, and Wells Fargo Bank, National Association, as administrative agent	10-Q	001-06622	10.2	10/29/2021	
10.33	First Amendment to Second Amended and Restated Credit Agreement, dated January 10, 2023, by and among Elme Communities, as borrower, the financial institutions party thereto as lenders, and Wells Fargo Bank, National Association, as administrative agent					X
21	Subsidiaries of Registrant					X
23	Consent of Independent Registered Public Accounting Firm					X
24	Power of Attorney					X
31.1	Certification of the Chief Executive Officer pursuant to Rule 13a-14(a) of the Securities Exchange Act of 1934, as amended (“the Exchange Act”)					X
31.2	Certification of the Chief Financial Officer pursuant to Rule 13a-14(a) of the Exchange Act					X
31.3	Certification of the Chief Accounting Officer pursuant to Rule 13a-14(a) of the Exchange Act					X
32	Certification of the Chief Executive Officer, Chief Financial Officer and Chief Accounting Officer pursuant to Rule 13a-14(b) of the Exchange Act and 18U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002					X
101.INS	XBRL Instance Document - the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.					X
101.SCH	Inline XBRL Taxonomy Extension Schema Document					X
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document					X
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document					X
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document					X
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document					X
104	Cover Page Interactive Data File (embedded within the Inline XBRL document and contained in Exhibit 101)					

* Management contracts or compensation plans or arrangements in which trustees or executive officers are eligible to participate.

In accordance with Item 601(b)(4)(iii)(A) of Regulation S-K, copies of certain instruments defining the rights of holders of long-term debt of Elme Communities or its subsidiaries are not filed herewith. Pursuant to this regulation, we hereby agree to furnish a copy of any such instrument to the SEC upon request.

ITEM 16: FORM 10-K SUMMARY

We have chosen not to include a Form 10-K Summary.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

ELME COMMUNITIES
Date: February 17, 2023
By: /s/ Paul T. McDermott
Paul T. McDermott
President and Chief Executive Officer

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

Signature	Title	Date
/s/ Paul T. McDermott Paul T. McDermott	Chairman and Chief Executive Officer	February 17, 2023
/s/ Edward S. Civera* Edward S. Civera	Lead Independent Trustee	February 17, 2023
/s/ Jennifer S. Banner* Jennifer S. Banner	Trustee	February 17, 2023
/s/ Benjamin S. Butcher* Benjamin S. Butcher	Trustee	February 17, 2023
/s/ William G. Byrnes* William G. Byrnes	Trustee	February 17, 2023
/s/ Ellen M. Goitia* Ellen M. Goitia	Trustee	February 17, 2023
/s/ Thomas H. Nolan, Jr.* Thomas H. Nolan, Jr.	Trustee	February 17, 2023
/s/ Anthony L. Winns* Anthony L. Winns	Trustee	February 17, 2023
/s/ Stephen E. Riffee Stephen E. Riffee	Executive Vice President and Chief Financial Officer (Principal Financial Officer)	February 17, 2023
/s/ W. Drew Hammond W. Drew Hammond	Vice President, Chief Accounting Officer and Treasurer (Principal Accounting Officer)	February 17, 2023

* By: /s/ W. Drew Hammond through power of attorney
W. Drew Hammond

MANAGEMENT'S REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING

Management of Elme Communities is responsible for establishing and maintaining adequate internal control over financial reporting and for the assessment of the effectiveness of internal controls over financial reporting. Elme Communities' internal control system over financial reporting is a process designed under the supervision of Elme Communities' principal executive and principal financial officers to provide reasonable assurance regarding the reliability of financial reporting and the preparation of the consolidated financial statements in accordance with U.S. generally accepted accounting principles.

All internal control systems, no matter how well designed, have inherent limitations. Therefore, even those systems determined to be effective can provide only reasonable assurance with respect to financial statement preparation and presentation. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions.

In connection with the preparation of Elme Communities' annual consolidated financial statements, management has undertaken an assessment of the effectiveness of Elme Communities' internal control over financial reporting as of December 31, 2022, based on criteria established in Internal Control-Integrated Framework issued in 2013 by the Committee of Sponsoring Organizations of the Treadway Commission (the 2013 COSO Framework). Management's assessment included an evaluation of the design of Elme Communities' internal control over financial reporting and testing of the operational effectiveness of those controls.

Based on this assessment, management has concluded that as of December 31, 2022, Elme Communities' internal control over financial reporting was effective at a reasonable assurance level regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with U.S. generally accepted accounting principles.

Ernst & Young LLP, the independent registered public accounting firm that audited Elme Communities' consolidated financial statements included in this report, has issued an unqualified opinion on the effectiveness of Elme Communities' internal control over financial reporting, a copy of which appears on page 85 of this annual report.

Report of Independent Registered Public Accounting Firm

To the Shareholders and the Board of Trustees of Elme Communities

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of Elme Communities and Subsidiaries (the Company) as of December 31, 2022 and 2021, the related consolidated statements of operations, comprehensive income (loss), equity and cash flows for each of the three years in the period ended December 31, 2022, and the related notes and financial statement schedules listed in the Index at Item 15(A) (collectively referred to as the "consolidated financial statements"). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company at December 31, 2022 and 2021, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2022, in conformity with U.S. generally accepted accounting principles.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the Company's internal control over financial reporting as of December 31, 2022, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework) and our report dated February 17, 2023 expressed an unqualified opinion thereon.

Basis for Opinion

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audits. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

Critical Audit Matter

The critical audit matter communicated below is a matter arising from the current period audit of the financial statements that was communicated or required to be communicated to the audit committee and that: (1) relates to accounts or disclosures that are material to the financial statements and (2) involved our especially challenging, subjective, or complex judgments. The communication of the critical audit matter does not alter in any way our opinion on the consolidated financial statements, taken as a whole, and we are not, by communicating the critical audit matter below, providing a separate opinion on the critical audit matter or on the accounts or disclosures to which it relates.

	Accounting for Acquisitions of Real Estate Properties
Description of the Matter	During the year ended December 31, 2022, the Company acquired three properties for an aggregate purchase price of $283.2 million as disclosed in Note 3 to the consolidated financial statements. These transactions were accounted for as asset acquisitions. Auditing the Company's accounting for these acquisitions involves a higher degree of auditor judgment due to management's use of estimates in determining the relative fair values of the tangible and identified intangible assets acquired and liabilities assumed. The significant assumptions used to estimate the values of the tangible and intangible assets included the replacement cost of the acquired real estate assets, estimated future cash flows and other valuation assumptions, which are based on internal analyses and other market data.

How We Addressed the Matter in Our Audit	We obtained an understanding, evaluated the design and tested the operating effectiveness of controls over the Company’s process for estimating the fair value of acquired assets and liabilities and allocating purchase price to the various components, including controls over management’s determination and review of the significant assumptions used in the analyses described above. To test the fair values of acquired tangible and intangible assets and liabilities used in the purchase price allocation, we involved our valuation specialists and performed audit procedures that included, among others, evaluating the Company’s valuation methodologies, testing the significant assumptions described above and testing the completeness and accuracy of the underlying data. For example, we compared the significant assumptions used and the Company’s estimated fair values of acquired assets to observable market data, including other properties within the same submarkets.

/s/ Ernst & Young LLP

We have served as the Company’s auditor since 2002.

Tysons, Virginia
February 17, 2023

Report of Independent Registered Public Accounting Firm

To the Shareholders and the Board of Trustees of Elme Communities

Opinion on Internal Control Over Financial Reporting

We have audited Elme Communities and Subsidiaries' internal control over financial reporting as of December 31, 2022, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework) (the COSO criteria). In our opinion, Elme Communities and Subsidiaries (the Company) maintained, in all material respects, effective internal control over financial reporting as of December 31, 2022, based on the COSO criteria.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the 2022 consolidated financial statements of the Company and our report dated February 17, 2023 expressed an unqualified opinion thereon.

Basis for Opinion

The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting included in the accompanying Management's Report on Internal Control Over Financial Reporting. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects.

Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

Definition and Limitations of Internal Control Over Financial Reporting

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

/s/ Ernst & Young LLP

Tysons, Virginia
February 17, 2023

ELME COMMUNITIES AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEETS
(IN THOUSANDS, EXCEPT PER SHARE DATA)

	December 31,	
	2022	2021
Assets		
Land	$ 373,171	$ 322,623
Income producing property	1,897,835	1,642,147
	2,271,006	1,964,770
Accumulated depreciation and amortization	(481,588)	(402,560)
Net income producing property	1,789,418	1,562,210
Properties under development or held for future development	31,260	30,631
Total real estate held for investment, net	1,820,678	1,592,841
Cash and cash equivalents	8,389	233,600
Restricted cash	1,463	620
Rents and other receivables	16,346	15,067
Prepaid expenses and other assets	25,730	33,866
Total assets	$ 1,872,606	$ 1,875,994
Liabilities		
Notes payable, net	$ 497,359	$ 496,946
Line of credit	55,000	—
Accounts payable and other liabilities	34,386	40,585
Dividend payable	14,934	14,650
Advance rents	1,578	2,082
Tenant security deposits	5,563	4,669
Total liabilities	608,820	558,932
Equity		
Shareholders' equity		
Preferred shares; $0.01 par value; 10,000 shares authorized; no shares issued or outstanding	—	—
Shares of beneficial interest, $0.01 par value; 150,000 shares authorized: 87,534 and 86,261 shares issued and outstanding, as of December 31, 2022 and 2021, respectively	875	863
Additional paid in capital	1,729,854	1,697,477
Distributions in excess of net income	(453,008)	(362,494)
Accumulated other comprehensive loss	(14,233)	(19,091)
Total shareholders' equity	1,263,488	1,316,755
Noncontrolling interests in subsidiaries	298	307
Total equity	1,263,786	1,317,062
Total liabilities and equity	$ 1,872,606	$ 1,875,994

See accompanying notes to the consolidated financial statements.

ELME COMMUNITIES AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF OPERATIONS
(IN THOUSANDS, EXCEPT PER SHARE DATA)

	Year Ended December 31,		
	2022	2021	2020
Revenue			
Real estate rental revenue	$ 209,380	$ 169,151	$ 176,004
Expenses			
Property operating and maintenance	47,530	38,741	39,625
Real estate taxes and insurance	26,471	22,041	23,357
Property management	7,436	6,133	6,145
General and administrative	28,258	27,538	23,951
Transformation costs	9,686	6,635	—
Depreciation and amortization	91,722	72,656	70,336
	211,103	173,744	163,414
Loss on sale of real estate, net	—	—	(15,009)
Real estate operating loss	(1,723)	(4,593)	(2,419)
Other income (expense)			
Interest expense	(24,940)	(34,063)	(37,305)
Loss on interest rate derivatives	—	(5,866)	(560)
Loss on extinguishment of debt, net	(4,917)	(12,727)	(34)
Other income	712	4,109	—
	(29,145)	(48,547)	(37,899)
Loss from continuing operations	(30,868)	(53,140)	(40,318)
Discontinued operations:			
Income from operations of properties sold or held for sale	—	23,083	24,638
Gain on sale of real estate, net	—	46,441	—
Income from discontinued operations	—	69,524	24,638
Net (loss) income	$ (30,868)	$ 16,384	$ (15,680)
Basic net (loss) income per share			
Continuing operations	$ (0.36)	$ (0.63)	$ (0.50)
Discontinued operations	—	0.82	0.30
Basic net (loss) income per share [1]	$ (0.36)	$ 0.19	$ (0.20)
Diluted net (loss) income per share			
Continuing operations	$ (0.36)	$ (0.63)	$ (0.50)
Discontinued operations	—	0.82	0.30
Diluted net (loss) income per share [1]	$ (0.36)	$ 0.19	$ (0.20)
Weighted average shares outstanding – basic	87,388	84,544	82,348
Weighted average shares outstanding – diluted	87,388	84,544	82,348

[1] Earnings per share may not sum due to rounding

See accompanying notes to the consolidated financial statements.

ELME COMMUNITIES AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)
(IN THOUSANDS)

	Year Ended December 31,		
	2022	2021	2020
Net (loss) income	$ (30,868)	$ 16,384	$ (15,680)
Other comprehensive income (loss):			
Unrealized gain (loss) on interest rate derivatives	2,819	3,673	(33,025)
Reclassification of unrealized loss on interest rate derivatives to earnings	2,039	7,799	639
Comprehensive (loss) income	$ (26,010)	$ 27,856	$ (48,066)

See accompanying notes to the consolidated financial statements.

ELME COMMUNITIES AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF EQUITY
(IN THOUSANDS)

	Shares	Shares of Beneficial Interest at Par Value	Additional Paid in Capital	Distributions in Excess of Net Income	Accumulated Other Comprehensive Income (Loss)	Total Shareholders' Equity	Non- controlling Interests in Subsidiary	Total Equity
Balance, December 31, 2019	82,099	821	1,592,487	(183,405)	1,823	1,411,726	336	1,412,062
Net loss	—	—	—	(15,680)	—	(15,680)	—	(15,680)
Unrealized loss on interest rate hedges	—	—	—	—	(33,025)	(33,025)	—	(33,025)
Loss on interest rate derivatives	—	—	—	—	560	560	—	560
Amortization of swap settlements	—	—	—	—	79	79	—	79
Distributions to noncontrolling interests	—	—	—	—	—	—	(14)	(14)
Dividends ($1.20 per common share)	—	—	—	(99,775)	—	(99,775)	—	(99,775)
Equity offerings, net of issuance costs	2,046	20	48,335	—	—	48,355	—	48,355
Shares issued under Dividend Reinvestment Program	90	1	2,120	—	—	2,121	—	2,121
Share grants, net of forfeitures and tax withholdings	174	2	6,424	—	—	6,426	—	6,426
Balance, December 31, 2020	84,409	844	1,649,366	(298,860)	(30,563)	1,320,787	322	1,321,109
Net income	—	—	—	16,384	—	16,384	—	16,384
Unrealized gain on interest rate hedges	—	—	—	—	3,673	3,673	—	3,673
Loss on interest rate derivatives	—	—	—	—	5,760	5,760	—	5,760
Amortization of swap settlements	—	—	—	—	2,039	2,039	—	2,039
Distributions to noncontrolling interests	—	—	—	—	—	—	(15)	(15)
Dividends ($0.94 per common share)	—	—	—	(80,018)	—	(80,018)	—	(80,018)
Equity offerings, net of issuance costs	1,636	17	40,445	—	—	40,462	—	40,462
Shares issued under Dividend Reinvestment Program	75	—	1,744	—	—	1,744	—	1,744
Share grants, net of forfeitures and tax withholdings	141	2	5,922	—	—	5,924	—	5,924
Balance, December 31, 2021	86,261	863	1,697,477	(362,494)	(19,091)	1,316,755	307	1,317,062
Net loss	—	—	—	(30,868)	—	(30,868)	—	(30,868)
Unrealized gain on interest rate hedges	—	—	—	—	2,819	2,819	—	2,819
Amortization of swap settlements	—	—	—	—	2,039	2,039	—	2,039
Distributions to noncontrolling interests	—	—	—	—	—	—	(9)	(9)
Dividends ($0.68 per common share)	—	—	—	(59,646)	—	(59,646)	—	(59,646)
Equity offerings, net of issuance costs	1,032	10	26,839	—	—	26,849	—	26,849
Shares issued under Dividend Reinvestment Program	47	—	1,030	—	—	1,030	—	1,030
Share grants, net of forfeitures and tax withholdings	194	2	4,508	—	—	4,510	—	4,510
Balance, December 31, 2022	87,534	$ 875	$ 1,729,854	$ (453,008)	$ (14,233)	$ 1,263,488	$ 298	$ 1,263,786

See accompanying notes to the consolidated financial statements.

ELME COMMUNITIES AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF CASH FLOWS (IN THOUSANDS)

	Year Ended December 31,		
	2022	2021	2020
Cash flows from operating activities			
Net (loss) income	$ (30,868)	$ 16,384	$ (15,680)
Adjustments to reconcile net income (loss) to net cash provided by operating activities:			
Depreciation and amortization	91,722	95,560	120,030
Credit losses on lease related receivables	2,483	2,482	5,422
(Gain) loss on sale of real estate	—	(46,441)	15,009
Share-based compensation expense	7,988	8,553	7,874
Amortization of debt premiums, discounts and related financing costs	4,052	4,325	2,794
Loss on interest rate derivatives	—	5,866	560
Loss on extinguishment of debt, net	4,917	12,727	34
Changes in other assets	(1,602)	(4,681)	(7,271)
Changes in other liabilities	(5,481)	(5,619)	(15,794)
Net cash provided by operating activities	73,211	89,156	112,978
Cash flows from investing activities			
Real estate acquisitions, net	(204,433)	(153,748)	—
Net cash received from sale of real estate	—	897,783	152,889
Capital improvements to real estate	(36,513)	(32,410)	(58,095)
Development in progress	(698)	(8,406)	(28,812)
Non-real estate capital improvements	(1,743)	(49)	(222)
Insurance proceeds	2,224	—	—
Real estate deposits	—	(1,000)	—
Net cash (used in) provided by investing activities	(241,163)	702,170	65,760
Cash flows from financing activities			
Line of credit borrowings (repayments), net	55,000	(42,000)	(14,000)
Dividends paid	(59,363)	(90,728)	(99,080)
Principal payments – mortgage notes payable	(76,598)	—	(46,567)
Proceeds from notes payable	—	—	350,000
Repayments of notes payable	—	(311,894)	(250,000)
Repayments of unsecured term loan debt	—	(150,000)	(300,000)
Proceeds from term loan	—	—	150,000
Settlement of interest rate derivatives	—	(5,866)	(20,948)
Payment of financing costs	(39)	(4,858)	(3,284)
Distributions to noncontrolling interests	(9)	(15)	(14)
Proceeds from dividend reinvestment program	1,030	1,744	2,121
Net proceeds from equity issuances	26,849	40,462	48,355
Payment of tax withholdings for restricted share awards	(3,286)	(2,241)	(1,782)
Net cash used in financing activities	(56,416)	(565,396)	(185,199)
Net (decrease) increase in cash, cash equivalents and restricted cash	(224,368)	225,930	(6,461)
Cash, cash equivalents and restricted cash at beginning of year	234,220	8,290	14,751
Cash, cash equivalents and restricted cash at end of year	$ 9,852	$ 234,220	$ 8,290

ELME COMMUNITIES AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF CASH FLOWS
(IN THOUSANDS)

	Year Ended December 31,		
	2022	2021	2020
Supplemental disclosure of cash flow information:			
Cash paid for interest, net of capitalized interest expense	$ 20,842	$ 27,166	$ 37,542
Change in accrued capital improvements and development costs	609	(6,949)	(5,850)
Dividend payable	14,934	14,650	25,361
Reconciliation of cash, cash equivalents and restricted cash:			
Cash and cash equivalents	$ 8,389	$ 233,600	$ 7,697
Restricted cash	1,463	620	593
Cash, cash equivalents and restricted cash	$ 9,852	$ 234,220	$ 8,290

See accompanying notes to the consolidated financial statements.

ELME COMMUNITIES AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
FOR THE YEARS ENDED DECEMBER 31, 2022, 2021 AND 2020

NOTE 1: NATURE OF BUSINESS

Elme Communities, a Maryland real estate investment trust, is a self-administered equity real estate investment trust, successor to a trust organized in 1960. In October 2022, the Company changed its name from Washington Real Estate Investment Trust to Elme Communities to reflect the Company's continued transition into a focused multifamily company, and subsequent geographic expansion into Sunbelt markets. On October 20, 2022, the Company's ticker symbol on the New York Stock Exchange changed from "WRE" to "ELME." Our business primarily consists of the ownership and operation of apartment communities in the greater Washington, DC metro and Sunbelt regions.

U.S. Federal Income Taxes

We believe that we qualify as a REIT under Sections 856-860 of the Internal Revenue Code of 1986, as amended (the "Code"), and intend to continue to qualify as such. To maintain our status as a REIT, we are, among other things, required to distribute 90% of our REIT taxable income (which is generally our ordinary taxable income, with certain modifications), excluding any net capital gains and any deductions for dividends paid to our shareholders on an annual basis. When selling a property, we generally have the option of (a) reinvesting the sales proceeds of property sold in a way that allows us to defer recognition of some or all taxable gain realized on the sale, (b) distributing gains to the shareholders with no tax to us or (c) treating net long-term capital gains as having been distributed to our shareholders, paying the tax on the gain deemed distributed and allocating the tax paid as a credit to our shareholders. We sold no properties in 2022. We sold twelve office and eight retail properties for an aggregate gain of $46.4 million and three office properties for an aggregate loss of $14.3 million during the years ended December 31, 2021 and 2020, respectively.

Generally, and subject to our ongoing qualification as a REIT, no provisions for income taxes are necessary except for taxes on undistributed taxable income and taxes on the income generated by our taxable REIT subsidiaries ("TRSs"). Our TRSs are subject to corporate federal and state income tax on their taxable income at regular statutory rates. As of both December 31, 2022 and 2021, our TRSs had a deferred tax asset of $1.4 million that was fully reserved.

Beginning in 2018, ordinary taxable income per share is equal to the Section 199A dividend that was created by the Tax Cuts and Jobs Act.The following is a breakdown of the taxable percentage of our dividends for the three years ended December 31, 2022 (unaudited):

	2022	2021	2020
Ordinary income/Section 199A dividends	20 %	— %	36 %
Return of capital	80 %	100 %	64 %
Qualified dividends	— %	— %	— %
Unrecaptured Section 1250 gain	— %	— %	— %
Capital gain	— %	— %	— %

NOTE 2: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES AND BASIS OF PRESENTATION

Principles of Consolidation and Basis of Presentation

The accompanying audited consolidated financial statements include the consolidated accounts of Elme Communities and our subsidiaries and entities in which Elme Communities has a controlling financial interest. All intercompany balances and transactions have been eliminated in consolidation.

We have prepared the accompanying audited consolidated financial statements pursuant to the rules and regulations of the Securities and Exchange Commission.

Use of Estimates in the Financial Statements

The preparation of financial statements in conformity with Generally Accepted Accounting Principles ("GAAP") requires management to make certain estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure

of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Revenue Recognition

We primarily lease residential properties under operating leases with terms of generally one year or less. Rental revenues are recognized in accordance with ASC Topic 842, *Leases*, using a method that represents straight-line basis over the term of the leases. In circumstances where a lease concession is provided to the resident, primarily in lease-up, we recognize a reduction of rental revenues on a straight-line basis.

We also generate other property-related revenue associated with the leasing of apartment homes, including parking income, move-in charges, pet rent and other miscellaneous revenue. Similar to rental income, such revenues are recorded when due from residents and recognized monthly as they are earned.

We recognize cost reimbursement income at our residential properties from pass-through expenses on an accrual basis over the periods in which the expenses were incurred. Pass-through expenses are primarily comprised of utility costs which are reimbursed by residents in accordance with specific allowable costs per resident lease agreements.

We recognize gains on sales of real estate when we have executed a contract for sale of the asset, transferred controlling financial interest in the asset to the buyer and determined that it is probable that we will collect substantially all of the consideration for the asset. Our real estate sale transactions typically meet these criteria at closing.

Rents and Other Receivables

Lease related receivables, which include contractual amounts accrued and unpaid from residents and accrued straight-line rents receivable, are reduced for credit losses. Such amounts are recognized as a reduction to real estate rental revenues. We evaluate the collectability of lease receivables on a lease-by-lease basis. We recognize the credit loss on lease related receivables when, in the opinion of management, collection of substantially all lease payments is not probable. When collectability is determined not probable, any lease income recognized subsequent to recognizing the credit loss is limited to the lesser of the lease income reflected on a straight-line basis or cash collected.

Debt Issuance Costs

We amortize external debt issuance costs using the effective interest rate method or the straight-line method, which approximates the effective interest rate method over the estimated life of the related debt. We record debt issuance costs related to notes, net of amortization, on our consolidated balance sheets as an offset to their related debt. We record debt issuance costs related to revolving lines of credit on our consolidated balance sheets with Prepaid expenses and other assets, regardless of whether a balance on the line of credit is outstanding. We record the amortization of all debt issuance costs as interest expense.

Real Estate and Depreciation

We depreciate buildings on a straight-line basis over an estimated useful life of 26 to 40 years. We capitalize all capital improvements associated with replacements, improvements or major repairs to real property that extend its useful life and depreciate them using the straight-line method over their estimated useful lives ranging from 3 to 40 years. We also capitalize costs incurred in connection with our development projects, including interest incurred on borrowing obligations and other internal costs during periods in which qualifying expenditures have been made and activities necessary to get the development projects ready for their intended use are in progress. Capitalization of these costs begins when the activities and related expenditures commence and ceases when the project is substantially complete and ready for its intended use, at which time the project is placed into service and depreciation commences.

Real estate depreciation expense from continuing operations was $77.2 million, $66.2 million and $64.6 million during the years ended December 31, 2022, 2021 and 2020, respectively.

We charge maintenance and repair costs that do not extend an asset’s useful life to expense as incurred.

Interest expense from continuing operations and interest capitalized to real estate assets related to development and major renovation activities for the three years ended December 31, 2022 were as follows (in thousands):

	Year Ended December 31,		
	2022	2021	2020
Total interest incurred	$ 25,223	$ 34,813	$ 39,524
Capitalized interest	(283)	(750)	(2,219)
Interest expense, net of capitalized interest	$ 24,940	$ 34,063	$ 37,305

We recognize impairment losses on long-lived assets used in operations, development assets or land held for future development if indicators of impairment are present and the net undiscounted cash flows estimated to be generated by those assets are less than the assets' carrying amount. Estimates of undiscounted cash flows are based on forward-looking assumptions, including annual and residual cash flows and our estimated holding period for each property. Such assumptions involve a high degree of judgment and could be affected by future economic and market conditions. When determining if a property has indicators of impairment, we evaluate the property's occupancy, our expected holding period for the property, strategic decisions regarding the property's future operations or development and other market factors. If such carrying amount is in excess of the estimated undiscounted cash flows from the operation and disposal of the property, we would recognize an impairment loss equivalent to an amount required to adjust the carrying amount to its estimated fair value, calculated in accordance with current GAAP fair value provisions. Assets held for sale are recorded at the lower of cost or fair value less costs to sell.

Asset Acquisitions

The properties we acquire typically are not businesses as defined by ASC 805("Topic 805") - Clarifying the Definition of a Business. Per this definition, a set of transferred assets and activities is not a business when substantially all of the fair value of the gross assets acquired is concentrated in a single identifiable asset or group of similar identifiable assets. We therefore account for such acquisitions as asset acquisitions. Acquisition costs are capitalized and identifiable assets (including physical assets and in-place leases), liabilities assumed and any noncontrolling interests are measured by allocating the cost of the acquisition on a relative fair value basis.

We determine the fair values of acquired buildings on an “as-if-vacant” basis considering a variety of factors, including the replacement cost of the property, estimated rental and absorption rates, estimated future cash flows and valuation assumptions consistent with current market conditions. We determine the fair value of land acquired based on comparisons to similar properties that have been recently marketed for sale or sold.

The fair value of in-place leases are based upon our evaluation of the specific characteristics of the leases. Factors considered in the fair value analysis include the estimated cost to replace the leases, including foregone rent and expense reimbursements during the hypothetical expected lease-up periods (referred to as “absorption cost”), consideration of current market conditions and costs to execute similar leases. We classify leasing absorption costs as other assets and amortize absorption costs as amortization expense on a straight-line basis over the remaining life of the underlying leases.

Software Developed for Internal Use

The costs of software developed for internal use that qualify for capitalization are included with Prepaid expenses and other assets on our consolidated balance sheets. These capitalized costs include external direct costs utilized in developing or obtaining the applications and expenses for employees who are directly associated with the development of the applications. Capitalization of such costs begins when the preliminary project stage is complete and continues until the project is substantially complete and is ready for its intended purpose. Completed projects are amortized on a straight-line basis over their estimated useful lives.

Held for Sale and Discontinued Operations

We classify properties as held for sale when they meet the necessary criteria, which include: (a) senior management commits to a plan to sell the assets; (b) the assets are available for immediate sale in their present condition subject only to terms that are usual and customary for sales of such assets; (c) an active program to locate a buyer and other actions required to complete the plan to sell the assets has been initiated; (d) the sale of the assets is probable and transfer of the assets is expected to qualify for recognition as a completed sale within one year; (e) the assets are being actively marketed for sale at a price that is reasonable in relation to its current fair value; and (f) actions required to complete the plan indicate that it is unlikely that significant changes to the plan will be made or that the plan will be withdrawn. Depreciation on these properties is discontinued at the time they are classified as held for sale, but operating revenues, operating expenses and interest expense continue to be recognized until the date of sale.

Revenues and expenses of properties that are either sold or classified as held for sale are presented as discontinued operations for all periods presented in the consolidated statements of operations if the dispositions represent a strategic shift that has (or will have) a major effect on our operations and financial results. Interest on debt that can be identified as specifically attributed to these properties is included in discontinued operations. If the dispositions do not represent a strategic shift that has (or will have) a major effect on our operations and financial results, then the revenues and expenses of the properties that are classified as sold or held for sale are presented as continuing operations in the consolidated statements of operations for all periods presented.

Segments

We evaluate performance based upon net operating income from the combined properties in each segment. Our reportable operating segment is a consolidation of similar properties. GAAP requires that segment disclosures present the measure(s) used by the chief operating decision maker for purposes of assessing segments' performance. Net operating income is a key measurement of our segment profit and loss. Net operating income is defined as segment real estate rental revenue less segment real estate expenses.

Cash, Cash Equivalents and Restricted Cash

Cash and cash equivalents include cash and commercial paper with original maturities of 90 days or less. We maintain cash deposits with financial institutions that at times exceed applicable insurance limits. We reduce this risk by maintaining such deposits with high quality financial institutions that management believes are credit-worthy.

Restricted cash includes funds escrowed for tenant security deposits.

Transformation Costs

Transformation costs include costs related to the strategic transformation, including the allocation of internal costs, consulting, advisory and termination benefits.

Earnings Per Common Share

We determine "Basic earnings per share" using the two-class method as our unvested restricted share awards and units have non-forfeitable rights to dividends and are therefore considered participating securities. We compute basic earnings per share by dividing net income less the allocation of undistributed earnings to unvested restricted share awards and units by the weighted-average number of common shares outstanding for the period.

We also determine "Diluted earnings per share" under the two-class method with respect to the unvested restricted share awards. We further evaluate any other potentially dilutive securities at the end of the period and adjust the basic earnings per share calculation for the impact of those securities that are dilutive. Our dilutive earnings per share calculation includes the dilutive impact of operating partnership units under the if-converted method and our share based awards with performance conditions prior to the grant date and all market condition awards under the contingently issuable method.

Share-Based Compensation

We currently maintain equity based compensation plans for trustees, officers and employees.

We recognize compensation expense for service-based share awards ratably over the period from the service inception date

through the vesting period based on the fair market value of the shares on the date of grant. We account for forfeitures as they occur. If an award's service inception date precedes the grant date, we initially measure compensation expense for awards with performance conditions at fair value at the service inception date based on probability of payout, and we remeasure compensation expense at subsequent reporting dates until all of the award's key terms and conditions are known and the grant date is established. We amortize awards with performance conditions using the graded expense method. We measure compensation expense for awards with market conditions based on the grant date fair value, as determined using a Monte Carlo simulation, and we amortize the expense ratably over the requisite service period, regardless of whether the market conditions are achieved and the awards ultimately vest. Compensation expense for the trustee grants, which fully vest immediately, is fully recognized upon issuance based upon the fair market value of the shares on the date of grant.

Accounting for Uncertainty in Income Taxes

We can recognize a tax benefit only if it is "more likely than not" that a particular tax position will be sustained upon examination or audit. To the extent that the "more likely than not" standard has been satisfied, the benefit associated with a tax position is measured as the largest amount that is greater than 50% likely of being recognized upon settlement. As of December 31, 2022 and 2021, we did not have any unrecognized tax benefits. We do not believe that there will be any material changes to our uncertain tax positions over the next twelve months.

We are subject to federal income tax as well as income tax of the states of Maryland, Virginia and Georgia, and the District of Columbia. However, as a REIT, we generally are not subject to income tax on our taxable income to the extent it is distributed as dividends to our shareholders.

Tax returns filed for 2019 through 2021 tax years are subject to examination by taxing authorities. We classify interest and penalties related to uncertain tax positions, if any, in our financial statements as a component of general and administrative expenses.

Derivatives

We borrow funds at a combination of fixed and variable rates. Borrowings under our revolving credit facility and term loans bear interest at variable rates. Our interest rate risk management objectives are to minimize interest rate fluctuation on long-term indebtedness and limit the impact of interest rate changes on earnings and cash flows. To achieve these objectives, from time to time, we may enter into interest rate hedge contracts such as collars, swaps, caps and treasury lock agreements in order to mitigate our interest rate risk with respect to various debt instruments. We generally do not hold or issue these derivative contracts for trading or speculative purposes. The interest rate swaps we enter into are recorded at fair value on a recurring basis. We assess the effectiveness of our cash flow hedges both at inception and on an ongoing basis. The effective portion of changes in fair value of the interest rate swaps associated with our cash flow hedges is recorded in Accumulated other comprehensive income (loss). Our cash flow hedges become ineffective if critical terms of the hedging instrument and the debt instrument, such as notional amounts, settlement dates, reset dates, calculation period and LIBOR do not perfectly match. In addition, we evaluate the default risk of the counterparty by monitoring its creditworthiness. When ineffectiveness of a cash flow hedge exists, the ineffective portion of changes in fair value of the interest rate swaps associated with our cash flow hedges is recognized in earnings in the period affected.

NOTE 3: REAL ESTATE

As of December 31, 2022 and 2021, our real estate investment portfolio classified as income producing property that is held and used, at cost, consists of properties valued as follows (in thousands):

	December 31,	
	2022	2021
Residential	$ 2,098,010	$ 1,790,914
Other [1]	172,996	173,856
	$ 2,271,006	$ 1,964,770

[1] Consists of Watergate 600

Our results of operations are dependent on the overall economic health of our markets and residents which are affected by external economic factors, such as inflation, consumer confidence and unemployment rates, as well as changing residents and consumer requirements.

As of December 31, 2022, one property, Riverside Apartments, accounted for more than approximately 10% of total assets and more than approximately 10% of real estate rental revenue.

We have properties under development/redevelopment and held for current or future development. The cost of our real estate portfolio under development or held for future development as of December 31, 2022 and 2021 was $31.3 million and $30.6 million, respectively.

As of December 31, 2022, we have invested $30.4 million, including the cost of acquired land, in a residential development adjacent to Riverside Apartments. During the second quarter of 2022, we paused development activities at the aforementioned property and ceased associated capitalization of interest on spending and real estate taxes, though we still consider the future completion of this development to be probable. We also continue to capitalize qualifying costs on several other projects with minor development activity necessary to ready each project for its intended use.

Acquisitions

Properties and land for development acquired during the three years ended December 31, 2022 were as follows:

Acquisition Date	**Property**	**Type**	**# of Homes (unaudited)**	**Ending Occupancy**	**Contract Purchase Price (in thousands)**
February 1, 2022	Carlyle of Sandy Springs	Residential	389	95.1%	105,586
May 5, 2022	Marietta Crossing	Residential	420	95.5%	107,900
May 5, 2022	Alder Park	Residential	270	93.7%	69,750
			1,079		$ 283,236
August 10, 2021	The Oxford	Residential	240	94.6%	$ 48,000
November 19, 2021	Assembly Eagles Landing	Residential	490	94.3%	106,000
			730		$ 154,000

The results of operations from acquired operating properties are included in the consolidated statements of operations as of their acquisition dates.

The revenue and earnings of our acquisitions during their year of acquisition for the three years ended December 31, 2022 are as follows (in thousands):

	Year Ended December 31,		
	2022	**2021**	**2020**
Real estate rental revenue	$ 14,937	$ 2,262	$ —
Net loss	(11,126)	(1,921)	—

As discussed in note 2, we record the acquired physical assets (land and building) and in-place leases (absorption costs) and any other assumed liabilities by allocating the total cost of the acquisitions on a relative fair value basis.

We recorded the total cost of the above acquisitions as follows (in thousands):

	2022	2021	2020
Land	$ 50,547	$ 20,914	$ —
Building	220,825	128,540	—
Absorption costs	7,300	4,786	—
Aggregate discount on assumed mortgages	5,042	—	—
Total acquisition cost	283,714	154,240	—
Outstanding balance on assumed mortgages	(76,554)	—	—
Total carrying amounts recorded	$ 207,160	$ 154,240	$ —

The weighted average remaining life for the absorption costs istwo months.

The difference in the total cost of the 2022 acquisitions of $283.7 million for the 2022 acquisitions and the cash paid for the acquisitions per the consolidated statements of cash flows of $204.4 million is due to the assumption of two mortgage notes secured by Marietta Crossing and Alder Park for an aggregate outstanding balance of $76.6 million and credits received at settlement totaling $2.8 million. In September 2022, we extinguished the liabilities associated with the two mortgage notes though defeasance arrangements.

The difference in the total cost of the 2021 acquisitions of $154.2 million and the cash paid for the acquisitions per the consolidated statements of cash flows of $153.7 million is primarily due to credits received at settlement totaling $0.5 million.

Fair Value of In-place Leases

Balances, net of accumulated depreciation or amortization, as appropriate, of the components of the fair value of in-place leases at December 31, 2022 and 2021 were as follows (in thousands):

	December 31,					
	2022			2021		
	Gross Carrying Value	Accumulated Amortization	Net	Gross Carrying Value	Accumulated Amortization	Net
Tenant origination costs	$ 11,723	$ 8,000	$ 3,723	$ 12,080	$ 7,344	$ 4,736
Leasing commissions/absorption costs	63,064	56,416	6,648	56,373	45,471	10,902
Net lease intangible assets	621	618	3	621	612	9
Net lease intangible liabilities	13,055	9,683	3,372	13,340	9,021	4,319

Amortization of these combined components during the three years ended December 31, 2022, was as follows (in thousands):

	Year Ended December 31,		
	2022	2021	2020
Depreciation and amortization expense	$ 12,604	$ 4,378	$ 3,194
Real estate rental revenue increase, net	(944)	(765)	(759)
	$ 11,660	$ 3,613	$ 2,435

Amortization of these combined components over the next five years and thereafter is projected to be as follows (in thousands):

	Depreciation and amortization expense	Real estate rental revenue, net increase	Total
2023	$ 2,729	$ (813)	$ 1,916
2024	2,024	(707)	1,317
2025	2,020	(709)	1,311
2026	1,971	(661)	1,310
2027	1,627	(479)	1,148

Properties Sold and Held for Sale

We intend to hold our properties for investment with a view to long-term appreciation, to engage in the business of acquiring, developing and owning our properties, and to make occasional sales of the properties that no longer meet our long-term strategy or return objectives and where market conditions for sale are favorable. The proceeds from the sales may be reinvested into other properties, used to fund development operations or to support other corporate needs or distributed to our shareholders. Depreciation on these properties is discontinued when classified as held for sale, but operating revenues, other operating expenses and interest continue to be recognized through the date of sale.

We sold no properties in 2022. We sold twelve office and eight retail properties for an aggregate gain of $46.4 million and three office properties for an aggregate loss of $14.3 million during the years ended December 31, 2021 and 2020, respectively. The dispositions of the office and retail properties in 2021 represented a strategic shift that had a major effect on our financial results, and we accordingly reported them as discontinued operations.

We have fully transferred control of the assets associated with these disposed properties and do not have continuing involvement in the operations of these properties.

As of December 31, 2022, we assessed our properties for impairment and did not recognize any impairment charges during 2022. We applied reasonable estimates and judgments in evaluating each of the properties as of December 31, 2022. Should external or internal circumstances change requiring the need to shorten holding periods or adjust future estimated cash flows from our properties, we could be required to record impairment charges in the future.

Discontinued Operations

The results of the twelve office and eight retail properties sold in 2021 are classified as discontinued operations and are summarized as follows (amounts in thousands, except for share data):

	Year Ended December 31,	
	2021	2020
Real estate rental revenue	$ 70,519	$ 118,114
Expenses:		
Property operating and maintenance	(11,201)	(20,967)
Real estate taxes and insurance	(11,136)	(19,050)
Property management	(2,195)	(3,765)
Depreciation and amortization	(22,904)	(49,694)
Gain on sale of real estate, net	46,441	—
Income from discontinued operations	$ 69,524	$ 24,638
Basic net income per share	$ 0.82	$ 0.30
Diluted net income per share	$ 0.82	$ 0.30
Capital expenditures	$ 3,316	$ 20,812

All assets and liabilities related to the Office Portfolio and Retail Portfolio were sold as of December 31, 2021.

NOTE 4: LEASE ACCOUNTING

Leasing as a Lessee

For leases where we are the lessee, primarily in our corporate office operating lease, we recognize a right-of-use asset and a lease liability in accordance with ASC Topic 842. The right-of-use asset and associated liability is equal to the present value of the minimum lease payments, applying our incremental borrowing rate. Our borrowing rate is computed based on observable borrowing rates taking into consideration our credit quality and adjusting to a secured borrowing rate for similar assets and term.

Lease expense for the operating lease is recognized on a straight-line basis over the expected lease term and is included in “General and administrative expense.”

Leasing as a Lessor

Future Minimum Rental Income

As of December 31, 2022, non-cancelable commercial operating leases provide for future minimum rental income from continuing operations as follows (in thousands):

2023	$ 17,079
2024	17,149
2025	15,965
2026	15,922
2027	14,049
Thereafter	48,769
	$ 128,933

Apartment leases are not included as the terms are generally for one year or less. Rental income under most of these commercial leases increase in future years based on agreed-upon percentages or in some instances, changes in the Consumer Price Index.

NOTE 5: MORTGAGE NOTE PAYABLE

In May 2022, we assumed a $42.8 million mortgage note in connection with the acquisition of Marietta Crossing. This mortgage note bore interest at 3.36% per annum. The effective interest rate on this mortgage note was 4.50% based on quotes obtained for similar loans. We recorded the mortgage note at its estimated fair value of $40.0 million. Principal and interest were payable monthly until May 1, 2030, at which time all unpaid principal and interest were payable in full.

In May 2022, we assumed a $33.7 million mortgage note in connection with the acquisition of Alder Park. This mortgage note bore interest at 2.93% per annum. The effective interest rate on this mortgage note was 4.00% based on quotes obtained for similar loans. We recorded the mortgage note at its estimated fair value of $31.5 million. Principal and interest were payable monthly until May 1, 2030, at which time all unpaid principal and interest were payable in full.

In September 2022, we extinguished the liabilities associated with both of the mortgage notes through defeasance arrangements, recognizing aggregate losses on extinguishment of debt of $4.9 million.

NOTE 6: UNSECURED LINES OF CREDIT PAYABLE

During the third quarter of 2021, we entered into an amended and restated credit agreement ("Credit Agreement") which provides for a $700.0 million unsecured revolving credit facility ("Revolving Credit Facility") and the continuation of an existing $250.0 million unsecured term loan ("2018 Term Loan"). The Revolving Credit Facility has a four-year term ending in August 2025, with two six-month extension options. The Credit Agreement has an accordion feature that allows us to increase the aggregate facility to $1.5 billion, subject to the lenders' agreement to provide additional revolving loan commitments or term loans. As a result of the transaction, we recognized a loss on extinguishment of debt of $0.2 million related to the write off of unamortized loan origination costs. We incurred $4.8 million of additional loan origination costs which are amortized as interest expense over the term of the Revolving Credit Facility.

On September 27, 2021, we prepaid a $150.0 million portion of the 2018 Term Loan using proceeds from the sale of the Office Portfolio and Retail Portfolio (see note 3). As a result of the prepayment, we recognized a loss on extinguishment of debt of $0.3 million related to the write-off of unamortized loan origination costs. Simultaneous with the prepayment, we terminated five interest rate swap arrangements. Subsequent to the end of 2022, we prepaid the remaining $100.0 million portion of the 2018 Term Loan using proceeds from a $125.0 million unsecured term loan (see note 7).

The amount of the Revolving Credit Facility unused and available at December 31, 2022 was as follows (in thousands):

Committed capacity	$	700,000
Borrowings outstanding		(55,000)
Unused and available	$	645,000

We executed borrowings and repayments on the Revolving Credit Facility during 2022 as follows (in thousands):

Balance, December 31, 2021	$	—
Borrowings		90,000
Repayments		(35,000)
Balance, December 31, 2022	$	55,000

As of December 31, 2022, the Revolving Credit Facility bore interest at a rate of either one month LIBOR plus a margin ranging from 0.70% to 1.40% or the base rate plus a margin ranging from 0.0% to 0.40% (in each case depending upon Elme Communities' credit rating). The base rate was the highest of the administrative agent's prime rate, the federal funds rate plus 0.50% and the LIBOR market index rate plus 1.0%. Subsequent to the end of 2022, we executed an amendment to the Revolving Credit Facility to convert the benchmark interest rate from LIBOR to an adjusted SOFR, with no change in the applicable interest rate margins. In addition, the Revolving Credit Facility requires the payment of a facility fee ranging from 0.10% to 0.30% (depending on Elme Communities' credit rating) on the $700.0 million committed revolving loan capacity, without regard to usage. As of December 31, 2022, the interest rate on the Revolving Credit Facility was one month LIBOR plus 0.85%, the one month LIBOR was 4.39% and the facility fee was 0.20%.

All outstanding advances for the Revolving Credit Facility are due and payable upon maturity in August 2025, unless extended pursuant to one or both of the two six-month extension options. Interest only payments are due and payable generally on a monthly basis.

For the three years ended December 31, 2022, we recognized interest expense (excluding facility fees) and facility fees as follows (in thousands):

	Year Ended December 31,		
	2022	2021	2020
Interest expense (excluding facility fees)	$ 912	$ 390	$ 3,035
Facility fees	1,454	1,419	1,423

The Revolving Credit Facility contains and the prior unsecured credit facility that it replaced contained certain financial and non-financial covenants, all of which we have met as of December 31, 2022 and 2021. Included in these covenants are limits on our total indebtedness, secured and unsecured indebtedness and required debt service payments.

Information related to revolving credit facilities for the three years ended December 31, 2022 as follows (in thousands, except percentage amounts):

	Year Ended December 31,		
	2022	2021	2020
Total revolving credit facilities at December 31	$ 700,000	$ 700,000	$ 700,000
Borrowings outstanding at December 31	55,000	—	42,000
Weighted average daily borrowings during the year	21,636	34,803	204,809
Maximum daily borrowings during the year	67,000	79,000	456,000
Weighted average interest rate during the year	4.22 %	1.12 %	1.48 %
Weighted average interest rate on borrowings outstanding at December 31	5.20 %	— %	1.15 %

The covenants under our Credit Agreement require us to insure our properties against loss or damage in amounts customarily maintained by similar businesses or as they may be required by applicable law. The covenants for the notes require us to keep all of our insurable properties insured against loss or damage at least equal to their then full insurable value. We have an insurance policy that has no terrorism exclusion, except for non-certified nuclear, chemical and biological acts of terrorism. Our financial condition and results of operations are subject to the risks associated with acts of terrorism and the potential for uninsured losses as the result of any such acts. Effective November 26, 2002, under this existing coverage, any losses caused by certified acts of terrorism would be partially reimbursed by the United States under a formula established by federal law. Under this formula, the United States pays 85% of covered terrorism losses exceeding the statutorily established deductible paid by the insurance provider, and insurers pay 10% until aggregate insured losses from all insurers reach $100 billion in a calendar year. If the aggregate amount of insured losses under this program exceeds $100 billion during the applicable period for all insured and insurers combined, then each insurance provider will not be liable for payment of any amount which exceeds the aggregate amount of $100 billion. On December 20, 2019, The Terrorism Risk Insurance Program Reauthorization Act of 2019 was signed into law, extending the program through December 31, 2027.

NOTE 7: NOTES PAYABLE

Our unsecured notes and term loans outstanding as of December 31, 2022 and 2021 are as follows (in thousands):

	Coupon/Stated Rate	Effective Rate [(1)]	December 31, 2022	December 31, 2021	Payoff Date/ Maturity Date [(2)]
2018 Term Loan [(3)]	1 Month LIBOR + 110 basis points	2.31 %	$ 100,000	$ 100,000	1/10/2023
30-Year Unsecured Notes	7.25 %	7.36 %	50,000	50,000	2/25/2028
Green Bonds	3.44 %	4.09 %	350,000	350,000	12/29/2030
Total principal			500,000	500,000	
Premiums and discounts, net			(116)	(138)	
Deferred issuance costs, net			(2,525)	(2,916)	
Total			$ 497,359	$ 496,946	

(1) For fixed rate notes, the effective rate represents the yield on issuance date, including the effects of discounts on the notes. For variable rate notes, the effective rate represents the rate as fixed by interest rate derivatives (see note 8).
(2) No principal amounts are due prior to maturity.
(3) Subsequent to the end of 2022, we prepaid the remaining $ 100.0 million portion of the 2018 Term Loan using proceeds from the 2023 Term Loan (as defined below).

Subsequent to the end of 2022, we executed a $125.0 million unsecured term loan ("2023 Term Loan") with an interest rate of SOFR (subject to a credit spread adjustment of 10 basis points) plus a margin of 95 basis points. The 2023 Term Loan has a two-year term ending in January 2025, with two one year extension options. We used the proceeds to prepay the 2018 Term Loan in full and a portion of our borrowings under our unsecured credit facility.

In August 2021, we redeemed $300.0 million of our existing unsecured notes that were scheduled to mature in 2022. As a result of the prepayment, we recognized a loss on extinguishment of debt of $12.3 million comprised of a prepayment penalty of $11.9 million and the write-off of unamortized loan origination costs of $0.4 million.

On September 29, 2020, we entered into a note purchase agreement to issue $350.0 million aggregate principal amount of 3.44% senior unsecured 10-year notes payable (the “Green Bonds”). The effective interest rate under the Green Bonds, including amortization of the associated interest rate swaps (see note 8), is 4.09%. The closing and full funding of the Green Bonds occurred on December 17, 2020. We incurred $2.6 million of debt issuance costs associated with the Green Bonds which are reported on our consolidated balance sheets as an offset to their related debt. The Green Bonds are senior unsecured obligations of Elme Communities and rank equal in right to payment with all other senior unsecured indebtedness of Elme Communities.

The proceeds of the sale of the Green Bonds were used to finance or refinance recently completed and future green building and energy efficiency, sustainable water and wastewater management and renewable energy projects.

The note purchase agreement contains customary financial covenants, including a maximum total leverage ratio, a maximum secured leverage ratio, a minimum fixed charge coverage ratio, a minimum unencumbered interest coverage ratio, and a maximum unencumbered leverage ratio. The note purchase agreement also contains restrictive covenants that, among other things, restrict the ability of Elme Communities and its subsidiaries to enter into transactions with affiliates, consolidate or merge or transfer or lease all or substantially all of its assets, create liens, make dividends and distributions if an event of default exists, or substantially change the general nature of our business. Such financial and restrictive covenants are substantially similar to the corresponding covenants contained in our Credit Agreement.

The note purchase agreement also contains customary events of default, including payment defaults, cross defaults with certain other indebtedness, breaches of certain covenants and bankruptcy events. In the case of an event of default, we will generally be prohibited from paying any dividends, subject to certain exceptions including payment of dividends necessary to maintain REIT status, and the Purchasers may, among other remedies, accelerate the payment of all obligations. In the event of a change in control of Elme Communities, we must offer to prepay the Green Bonds at par.

The required principal payments on the unsecured notes and term loans as of December 31, 2022 are as follows (in thousands):

2023	$	100,000
2024		—
2025		—
2026		—
2027		—
Thereafter		400,000
	$	500,000

Interest on these notes is payable semi-annually, except for the term loan, for which interest is payable monthly. These notes contain certain financial and non-financial covenants, all of which we have met as of December 31, 2022. Included in these covenants is the requirement to maintain a minimum level of unencumbered assets, as well as limits on our total indebtedness, secured indebtedness and required debt service payments.

NOTE 8: DERIVATIVE INSTRUMENTS

We have one interest rate swap arrangement with a notional amount of $100.0 million that effectively fixed the remaining $100.0 million portion of the 2018 Term Loan at 2.31%. Subsequent to the end of 2022, we prepaid the 2018 Term Loan using proceeds from the $125.0 million 2023 Term Loan (see note 7). Subsequent to this transaction, our interest rate swap arrangement effectively fixes a $100.0 million portion of the 2023 Term Loan.

The interest rate swap arrangement is recorded at fair value in accordance with GAAP, based on discounted cash flow methodologies and observable inputs. We record the effective portion of changes in fair value of the cash flow hedge in Other comprehensive income (loss). We assess the effectiveness of a cash flow hedge both at inception and on an ongoing basis. If a cash flow hedge is no longer expected to be effective, hedge accounting is discontinued. Hedge ineffectiveness of our cash flow hedges is recorded in earnings.
The fair values of the interest rate swap as of December 31, 2022 and 2021, were as follows (in thousands):

					Fair Value Derivative Liabilities December 31,			
Derivative Instrument		**Aggregate Notional Amount**	**Effective Date**	**Maturity Date**		**2022**		**2021**
Interest rate swap	$	100,000	March 31, 2017	July 21, 2023	$	1,998	$	(821)

We record interest rate swaps on our consolidated balance sheets with prepaid expenses and other assets when in a net asset position, and with accounts payable and other liabilities when in a net liability position. The current interest rate swaps have been effective since inception. The gains or losses on the effective swaps are recognized in other comprehensive income, as follows (in thousands):

	Year Ending December 31,					
		2022		**2021**		**2020**
Unrealized gain (loss) on interest rate hedges	$	2,819	$	3,673	$	(33,025)

Amounts reported in Accumulated other comprehensive income related to derivatives will be reclassified to interest expense as interest payments are made on our variable-rate debt. The gains or losses reclassified from Accumulated other comprehensive income into interest expense for the three years ended December 31, 2022, were as follows (in thousands):

	Year Ending December 31,					
		2022		**2021**		**2020**
Loss reclassified from Accumulated other comprehensive income (loss) into interest expense	$	2,039	$	2,039	$	79

During the next twelve months, we estimate that $2.0 million will be reclassified as a decrease to interest expense.

We have agreements with each of our derivative counterparties that contain a provision whereby we could be declared in default on our derivative obligations if repayment of the underlying indebtedness is accelerated by the lender due to our default

on the indebtedness. As of December 31, 2022, the fair value of derivative assets, including accrued interest, was $2.0 million and we did not have any derivatives in a liability position. As of December 31, 2022, we have not posted any collateral related to these agreements.

Derivative instruments expose us to credit risk in the event of non-performance by the counterparty under the terms of the interest rate hedge agreement. We believe that we minimize our credit risk on these transactions by dealing with major, creditworthy financial institutions. We monitor the credit ratings of counterparties and our exposure to any single entity, thus minimizing our credit risk concentration.

NOTE 9: FAIR VALUE DISCLOSURES

Assets and Liabilities Measured at Fair Value

For assets and liabilities measured at fair value on a recurring basis, quantitative disclosures about the fair value measurements are required to be disclosed separately for each major category of assets and liabilities, as follows:

Level 1: Quoted prices in active markets for identical assets
Level 2: Significant other observable inputs
Level 3: Significant unobservable inputs

The only assets or liabilities we had at December 31, 2022 and 2021 that are recorded at fair value on a recurring basis are the assets held in the Supplemental Executive Retirement Plan ("SERP"), which primarily consists of investments in mutual funds, and the interest rate swaps (see note 8).

We base the valuations related to the SERP on assumptions derived from significant other observable inputs and accordingly these valuations fall into Level 2 in the fair value hierarchy.

The valuation of the interest rate swaps is determined using widely accepted valuation techniques, including discounted cash flow analysis on the expected cash flows of each interest rate swap. This analysis reflects the contractual terms of the interest rate swaps, including the period to maturity, and uses observable market-based inputs, including interest rate curves and implied volatilities. The fair values of interest rate swaps are determined using the market standard methodology of netting the discounted future fixed cash payments (or receipts) and the discounted expected variable cash receipts (or payments). The variable cash payments (or receipts) are based on an expectation of future interest rates (forward curves) derived from observable market interest rate curves. To comply with the provisions of ASC 820, we incorporate credit valuation adjustments in the fair value measurements to appropriately reflect both our own nonperformance risk and the respective counterparty's nonperformance risk. These credit valuation adjustments were concluded to not be significant inputs for the fair value calculations for the periods presented. In adjusting the fair value of our derivative contracts for the effect of nonperformance risk, we have considered the impact of netting and any applicable credit enhancements, such as the posting of collateral, thresholds, mutual puts and guarantees. The valuation of interest rate swaps falls into Level 2 in the fair value hierarchy.

The fair values of these assets and liabilities at December 31, 2022 and 2021 were as follows (in thousands):

	December 31, 2022				December 31, 2021			
	Fair Value	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Fair Value	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Assets:								
SERP	$ 2,142	$ —	$ 2,142	$ —	$ 2,566	$ —	$ 2,566	$ —
Interest rate swaps	1,998	—	1,998	—	—	—	—	—
Liabilities:								
Interest rate swaps	$ —	$ —	$ —	$ —	$ (821)	$ —	$ (821)	$ —

Financial Assets and Liabilities Not Measured at Fair Value

The following disclosures of estimated fair value were determined by management using available market information and established valuation methodologies, including discounted cash flow models. Many of these estimates involve significant

judgment. The estimated fair value disclosed may not necessarily be indicative of the amounts we could realize on disposition of the financial instruments. The use of different market assumptions or estimation methodologies could have an effect on the estimated fair value amounts. In addition, fair value estimates are made at a point in time and thus, estimates of fair value subsequent to December 31, 2022 may differ significantly from the amounts presented.

Below is a summary of significant methodologies used in estimating fair values and a schedule of fair values at December 31, 2022.

Cash and Cash Equivalents and Restricted Cash

Cash and cash equivalents and restricted cash include cash and commercial paper with original maturities of less than 90 days, which are valued at the carrying value, which approximates fair value due to the short maturity of these instruments (Level 1 inputs).

Debt

Mortgage notes payable consist of instruments in which certain of our real estate assets are used for collateral. We estimate the fair value of the mortgage notes payable by discounting the contractual cash flows at a rate equal to the relevant treasury rates (with respect to the timing of each cash flow) plus credit spreads estimated through independent comparisons to real estate assets or loans with similar characteristics. Line of credit payable consist of bank facilities which we use for various purposes including working capital, acquisition funding and capital improvements. The line of credit advances and term loans with floating interest rates are priced at a specified rate plus a spread. We estimate the market value based on a comparison of the spreads of the advances to market given the adjustable base rate. We estimate the fair value of the notes payable by discounting the contractual cash flows at a rate equal to the relevant treasury rates (with respect to the timing of each cash flow) plus credit spreads derived using the relevant securities' market prices. We classify these fair value measurements as Level 3 as we use significant unobservable inputs and management judgment due to the absence of quoted market prices.

As of December 31, 2022 and 2021, the carrying values and estimated fair values of our financial instruments were as follows (in thousands):

	December 31,			
	2022		2021	
	Carrying Value	Fair Value	Carrying Value	Fair Value
Cash and cash equivalents	$ 8,389	$ 8,389	$ 233,600	$ 233,600
Restricted cash	1,463	1,463	620	620
Line of credit payable	55,000	55,000	—	—
Notes payable	497,359	454,564	496,946	515,341

NOTE 10: SHARE-BASED COMPENSATION

Elme Communities maintains short-term and long-term incentive plans that allow for share-based awards to officers and non-officer employees. Share-based awards are provided to officers and non-officer employees, as well as trustees, under the Washington Real Estate Investment Trust 2016 Omnibus Incentive Plan which allows for awards in the form of restricted shares, restricted share units, options, and other awards up to an aggregate of 2,400,000 shares over the ten year period in which the plan will be in effect. Restricted share units are converted into shares of our stock upon full vesting through the issuance of new shares. There were no options issued or outstanding as of December 31, 2022 and 2021.

On February 14, 2020, the board of trustees adopted an Amended and Restated Executive Officer Short-Term Incentive Plan (the "Officer STIP") and an Amended and Restated Executive Officer Long-Term Incentive Plan (the "Officer LTIP"). Upon adoption by the board of trustees, both plans became effective for the performance periods beginning January 1, 2020.

Officer STIP

Under the Officer STIP, as revised, all named executive officers will have the opportunity to receive an annual cash bonus based on the achievement of certain performance measures that will be established for each performance period. Each year, the Compensation Committee will establish the threshold, target and high performance goals for each performance measure, as well as the weighting attributable to each such performance measure, with the aggregate weighting for all such performance measures to total 100%. Such performance measures will consist of one or more financial performance measures and, if determined by the Compensation Committee, individual performance measures.

Upon or following completion of a performance period, the degree of achievement of each performance measure will be determined by the Compensation Committee. The degree of achievement of any individual financial performance measures will be determined by the Compensation Committee in its discretion with respect to the Chief Executive Officer, and by the Chief Executive Officer or other immediate supervisor in his or her discretion with respect to all other participants (subject to final approval by the Compensation Committee), and the Compensation Committee will evaluate the degree of achievement of the individual performance measures on a scale of below 1 (below threshold), 1 (threshold), 2 (target) or 3 (high) or any fractional number between 1 and 3.

Each participant's total award under the Officer STIP with respect to a performance period will be stated as a percentage of the participant's annual base salary determined as of the first day of that performance period, which percentage will depend upon the participant's position and the degree of achievement of threshold, target, and high performance goals for the performance period which, except as otherwise determined by the Compensation Committee, will be as set forth in the table below:

	Threshold	*Target*	*High*
President and Chief Executive Officer	63%	125%	188%
Executive Vice President	48%	93%	160%
Senior Vice President	35%	65%	115%

If a Change in Control (as defined in the Officer STIP) occurs during a performance period while the participant is employed, the participant will receive a prorated award under the Officer STIP calculated based on the actual levels of achievement of the prorated performance goals as of the date of the Change in Control.

Officer LTIP

Under the Officer LTIP, as revised, all named executive officers will have the opportunity to receive awards based on (i) the achievement of performance measures, which will be established for each performance period, and (ii) continued employment with the Company. The aggregate weighting for the performance measures and the time-based measures, as determined by the Compensation Committee, will total 100%. The performance measures will consist of one or more shareholder return measures and one or more strategic measures. The awards earned under the Officer LTIP, if any, are payable in our common shares of beneficial interest. Each participant's total award under the Officer LTIP with respect to a performance period will be stated as a percentage of the participant's annual base salary determined as of the beginning of that performance period. The percentage will depend upon the participant's position and the degree of achievement of threshold, target, and high performance goals for the performance period which, except as otherwise determined by the Compensation Committee, will be as set forth in the table below:

	Threshold	*Target*	*High*
President and Chief Executive Officer	198%	275%	440%
Executive Vice President	143%	200%	295%
Senior Vice President	100%	143%	207%

Any time-based awards under the Officer LTIP will be subject to a three-year vesting schedule, with any award vesting in one-third increments on December 15 of each year of the applicable performance period if the participant remains employed by the Company on each of such dates. The Officer LTIP provides that following a performance period, 100% of any performance-based award will vest immediately upon grant.

Each year, the Compensation Committee will establish the threshold, target and high performance goals for each performance measure. Upon or following completion of a performance period, the degree of achievement of each performance measure will be determined by the Compensation Committee in its discretion.

If a Change in Control (as defined in the Officer LTIP) occurs during a performance period while the participant is employed, the Officer LTIP provides that all time-based awards which are unvested will become vested, and the participant will receive a pro-rated portion of the shareholder return measure-based awards and the strategic measure-based awards will be calculated at target.

Prior Short-Term Incentive Plan ("Prior STIP")

Under the Prior STIP, executive officers earned awards, payable 50% in cash and 50% in restricted shares, based on a percentage of salary and an achievement rating subject to the discretion of the Compensation Committee of the board of trustees in consideration of various performance conditions and other subjective factors during a one-year performance period. With respect to the 50% of the Prior STIP award payable in restricted shares, the restricted shares will vest over athree-year period commencing on the January 1 following the end of the one-year performance period. Prior to the adoption of the 2016 Omnibus Incentive Plan, share-based awards to officers, non-officer employees and trustees were issued under the Washington Real Estate Investment Trust 2007 Omnibus Long-Term Incentive Plan which allowed for awards in the form of restricted shares, restricted share units, options and other awards up to an aggregate of 2,000,000 shares while the plan was in effect.

The grant date for the 50% of the Prior STIP award payable in restricted shares was the date on which the Compensation Committee approved the Prior STIP awards. We recognize compensation expense on this 50% when the grant date occurs at the end of the one-year period through the three-year vesting period.

Bonuses payable under the short-term incentive plans for non-executive officers and staff are payable 100% in cash.

Prior Long-Term Incentive Plan ("Prior LTIP")

Under the Prior LTIP, executive officers earned awards payable, 75% in unrestricted shares and 25% in restricted shares, based on a percentage of salary and the achievement of certain market conditions. For performance periods beginning prior to January 1, 2018, performance was evaluated based 50% on absolute total shareholder return (“TSR”) and 50% on relative TSR over a three-year evaluation period with a new three-year period initiating under the existing plan each year. During the first quarter of 2018, we amended the Prior LTIP for executive officers to eliminate the absolute TSR component and only utilize relative TSR in the measurement of market condition performance. Under the amended Prior LTIP, relative TSR was evaluated 50% relative to a defined population of peer companies and 50% relative to the FTSE NAREIT Diversified Index. The amendment became effective for three-year performance periods commencing on or after January 1, 2018. The officers' total award opportunities under the Prior LTIP stated as a percentage of base salary ranged from 80% to 150% at target level. The unrestricted shares vest immediately at the end of thethree-year performance period, and the restricted shares vest over a one-year period commencing on the January 1 following the end of the three-year performance period.

We recognize compensation expense for the Prior LTIP ratably (over three years for the 75% unrestricted shares and over four years for the 25% restricted shares) based on the grant date fair value, as determined using a Monte Carlo simulation, and regardless of whether the market conditions are achieved and the awards ultimately vest.

We use a binomial model which employs the Monte Carlo method as of the grant date to determine the fair value of the Officer LTIP awards. Forthree-year performance periods commencing on or after January 1, 2022, the market condition performance measurement is based on total shareholder return relative to a defined population of peer companies (100% weighting). For three-year performance periods commencing between January 1, 2021 and December 31, 2021, the market condition performance measurement is based on total shareholder return relative to a defined population of peer companies (50% weighting), relative to the FTSE Residential Index (42.5% weighting) and the FTSE Office Index (7.5% weighting). The model evaluates the awards for changing total shareholder return over the term of the vesting, relative to the peer companies and relative to the FTSE indexes, and uses random simulations that are based on past stock characteristics as well as dividend growth and other factors for Elme Communities and each of the peer companies.

The assumptions used to value the TSR portion of the officer LTIP and Prior LTIP awards were as follows:

	2022 Awards	2021 Awards	2020 Awards
Expected volatility [1]	35.2 %	35.5 %	17.5 %
Risk-free interest rate [2]	1.7 %	0.3 %	1.4 %
Expected term [3]	3 years	3 years	3 years
Share price at grant date	$24.54	$23.20	$ 31.50

(1) Expected volatility based upon historical volatility of our daily closing share price.
(2) Risk-free interest rate based on U.S. treasury constant maturity bonds on the measurement date with a maturity equal to the market condition performance period.
(3) Expected term based on the market condition performance period.

The calculated grant date fair value as a percentage of base salary for the officers for thethree-year performance period that commenced in 2022 ranged from approximately 32% to 248% for the 100% of the LTIP based on TSR relative to a defined population of peer companies.

The calculated grant date fair value as a percentage of base salary for the officers for thethree-year performance period that commenced in 2021 ranged from approximately 37% to 78% for the 50% of the LTIP based on TSR relative to a defined population of peer companies and from 38% to 80% for the 50% of the LTIP based on TSR relative to the FTSE indexes.

The calculated grant date fair value as a percentage of base salary for the officers for thethree-year performance period that commenced in 2020 ranged from approximately 20% to 42% for the 50% of the LTIP based on TSR relative to a defined population of peer companies and from 22% to 46% for the 50% of the LTIP based on TSR relative to the FTSE NAREIT Diversified Index.

During 2022, our chief executive officer was granted a one-time equity award of100,000 restricted shares. None of the restricted shares vest until the earlier of the fifth anniversary of the grant date or when our chief executive officer become retirement-eligible, at which time 100% of the restricted shares will vest, subject to Mr. McDermott's continued employment with Elme Communities until such vesting date.

During 2017, our chief executive officer was granted a one-time equity award of100,000 restricted shares which vested in June 2022 on the fifth anniversary of the grant date.

Our non-executive officers and other employees earn restricted share unit awards under a long-term incentive plan for non-executive officers and staff based upon various percentages of their salaries and annual performance calculations. The restricted share unit awards vest ratably over three years from December 15 preceding the grant date based upon continued employment. We recognize compensation expense for these awards according to a graded vesting schedule over the three-year requisite service period.

Restricted share awards made to retirement-eligible employees fully vest on the grant date. Employees are considered retirement-eligible when they are both over the age of55 and have been employed by Elme Communities for at least 20 years, or over the age of 65. We fully recognize compensation expense for such awards as of the grant date.

Trustee Awards

We award share based compensation to our trustees in the form of restricted shares which vest immediately and are restricted from sale for the period of the trustees' service. The value of share-based compensation for each trustee was $100,000 for each of three years ended December 31, 2022.

Total Compensation Expense

Total compensation expense recognized in the consolidated financial statements for each of the three years ended December 31, 2022 for all share based awards was $8.0 million, $8.6 million and $7.9 million, respectively, net of capitalized share-based compensation expense of $0.2 million, $0.3 million and $0.4 million, respectively.

Restricted Share Awards with Performance and Service Conditions

The activity for the three years ended December 31, 2022 related to our restricted share awards, excluding those subject to market conditions, was as follows:

	Shares	Weighted Average Grant Fair Value
Unvested at December 31, 2019	269,383	$ 28.45
Granted	285,101	30.39
Vested during year	(239,033)	27.54
Forfeited	(8,456)	28.35
Unvested at December 31, 2020	306,995	30.96
Granted	238,134	23.53
Vested during year	(277,967)	26.39
Forfeited	(7,467)	26.73
Unvested at December 31, 2021	259,695	29.16
Granted	408,606	22.33
Vested during year	(408,118)	27.13
Forfeited	(17,814)	25.31
Unvested at December 31, 2022	242,369	21.35

The total fair value of share grants vested for each of the three years ended December 31, 2022 was $11.1 million, $7.6 million and $6.6 million, respectively.

As of December 31, 2022, the total compensation cost related to non-vested share awards not yet recognized was $4.7 million, which we expect to recognize over a weighted average period of 30 months.

Unrestricted Shares with Market Conditions

Share-based awards with market conditions under the LTIP were awarded in 2022, 2021 and 2020 with fair market values, as determined using a Monte Carlo simulation, as follows (in thousands):

	2022 Awards [1]	2021 Awards [1]	2020 Awards [1]
Relative Peer TSR	$ 1,480	$ 951	$ 510
Absolute/Index TSR [2]	N/A	971	565

The unamortized value of these awards with market conditions as of December 31, 2022 was as follows (in thousands):

	2022 Awards [1]	2021 Awards [1]	2020 Awards [1]
Relative Peer TSR	$ 1,029	$ 299	$ —
Absolute/Index TSR [2]	N/A	305	—

[1] The 2022, 2021 and 2020 Awards were granted under the Officer LTIP, whereby all of the shares vest immediately at the end of the three-year performance period.

[2] The performance conditions for the 2022 awards were evaluated based on 100% on TSR relative to a defined population of peer companies. The performance conditions for the 2021 awards were evaluated based on 50% on TSR relative to a defined population of peer companies and 50% on TSR relative to the FTSE Multifamily and Office indexes. The performance conditions for the 2020 awards were evaluated based on 50% on TSR relative to a defined population of peer companies and 50% on TSR relative to the FTSE NAREIT Diversified Index.

NOTE 11: OTHER BENEFIT PLANS

We have a Retirement Savings Plan (the "401(k) Plan"), which permits all eligible employees to defer a portion of their compensation in accordance with the Code. Under the 401(k) Plan, we may make discretionary contributions on behalf of eligible employees. For each of the three years ended December 31, 2022, we made contributions to the 401(k) plan of $0.3 million, $0.4 million and $0.4 million, respectively.

We have adopted non-qualified deferred compensation plans for the officers and members of the board of trustees. The plans allow for a deferral of a percentage of annual cash compensation and trustee fees. The plans are unfunded, and payments are to be made out of the general assets of Elme Communities. The deferred compensation liability was $0.2 million and $0.5 million at December 31, 2022 and 2021, respectively.

In November 2005, the board of trustees approved the establishment of a SERP for the benefit of officers. This is a defined contribution plan under which, upon a participant's termination of employment from Elme Communities for any reason other than discharge for cause, the participant will be entitled to receive a benefit equal to the participant's accrued benefit times the participant's vested interest. We account for this plan in accordance with ASC 710-10 and ASC 320-10, whereby the investments are reported at fair value, and unrealized holding gains and losses are included in earnings. At December 31, 2022 and 2021, the accrued benefit liability was $2.1 million and $2.6 million, respectively. For each of the three years ended December 31, 2022, we recognized current service cost of $0.2 million, $0.2 million and $0.2 million, respectively.

NOTE 12: EARNINGS PER COMMON SHARE

We determine "Basic earnings per share" using the two-class method as our unvested restricted share awards and units have non-forfeitable rights to dividends and are therefore considered participating securities. We compute basic earnings per share by dividing net income less the allocation of undistributed earnings to unvested restricted share awards and units by the weighted-average number of common shares outstanding for the period.

We also determine "Diluted earnings per share" as the more dilutive of the two-class method or the treasury stock method with respect to the unvested restricted share awards. We further evaluate any other potentially dilutive securities at the end of the period and adjust the basic earnings per share calculation for the impact of those securities that are dilutive. Our dilutive earnings per share calculation includes the dilutive impact of operating partnership units under the if-converted method and our share based awards with performance conditions prior to the grant date and all market condition awards under the contingently issuable method.

The computation of basic and diluted earnings per share for the three years ended December 31, 2022 was as follows (in thousands, except per share data):

	Year Ended December 31,		
	2022	2021	2020
Numerator:			
Loss from continuing operations	$ (30,868)	$ (53,140)	$ (40,318)
Allocation of earnings to unvested restricted share awards	(232)	(393)	(545)
Adjusted loss from continuing operations	(31,100)	(53,533)	(40,863)
Income from discontinued operations, including gain on sale of real estate	—	69,524	24,638
Adjusted net (loss) income	$ (31,100)	$ 15,991	$ (16,225)
Denominator:			
Weighted average shares outstanding – basic and diluted	87,388	84,544	82,348
Earnings per common share, basic:			
Continuing operations	$ (0.36)	$ (0.63)	$ (0.50)
Discontinued operations	—	0.82	0.30
Basic net income (loss) per common share[(1)]	$ (0.36)	$ 0.19	$ (0.20)
Earnings per common share, diluted:			
Continuing operations	$ (0.36)	$ (0.63)	$ (0.50)
Discontinued operations	—	0.82	0.30
Diluted net income (loss) per common share[(1)]	$ (0.36)	$ 0.19	$ (0.20)
Dividends declared per common share	$ 0.68	$ 0.94	$ 1.20

(1) Earnings per share may not sum due to rounding

NOTE 13: COMMITMENTS AND CONTINGENCIES

Development Commitments

At December 31, 2022, we had no committed contracts outstanding with third parties in connection with our development and redevelopment projects.

Litigation

We are involved from time to time in various legal proceedings, lawsuits, examinations by various tax authorities and claims that have arisen in the ordinary course of business. Management believes that the resolution of any such current matters will not have a material adverse effect on our financial condition or results of operations.

NOTE 14: SEGMENT INFORMATION

We operate in a single reportable segment which includes the ownership, development, redevelopment and acquisition of apartment communities. None of our operating properties meet the criteria to be considered separate operating segments on a stand-alone basis. Within the residential segment, we do not distinguish or group our consolidated operations based on size (only one community, Riverside Apartments, comprises more than 10% of consolidated revenues), type (all assets in the segment are residential) or geography (all but five communities are within the Washington, DC metro region). Further, our apartment communities have similar long-term economic characteristics and provide similar products and services to our residents. As a result, our operating properties are aggregated into a single reportable segment: residential.

Prior to the end of the second quarter of 2021, we hadtwo reportable segments: office and residential. During the third quarter of 2021, we closed on the sales of the Office Portfolio and the Retail Portfolio (see note 3), and following such sales, we have one remaining office property, Watergate 600, which does not meet the criteria for a reportable segment and has been classified within "Other" on our segment disclosure tables.

We evaluate performance based upon net operating income ("NOI") of the combined properties in the segment. Our reportable operating segment consolidates similar properties. GAAP requires that segment disclosures present the measure(s) used by the chief operating decision maker for purposes of assessing each segment's performance. NOI is a key measurement of our segment profit and loss and is defined as real estate rental revenue less real estate expenses.

Real estate rental revenue as a percentage of the total for each of the reportable operating segments for the three years ended December 31, 2022 was as follows:

	Year Ended December 31,		
	2022	2021	2020
Multifamily	91 %	89 %	82 %
Other	9 %	11 %	18 %

The percentage of income producing real estate assets classified as held and used, at cost, for each of the reportable operating segments as of December 31, 2022 and 2021 was as follows:

	2022	2021
Multifamily	92 %	91 %
Other	8 %	9 %

The following tables present revenues, net operating income, capital expenditures and total assets for the three years ended December 31, 2022 from these segments, and reconciles net operating income of reportable segments to net (loss) income as reported (in thousands):

	Twelve Months Ended December 31, 2022		
	Residential	Other [1]	Consolidated
Real estate rental revenue	$ 190,500	$ 18,880	$ 209,380
Real estate expenses	68,735	5,266	74,001
Net operating income	$ 121,765	$ 13,614	$ 135,379
Property management expenses			(7,436)
General and administrative expenses			(28,258)
Transformation costs			(9,686)
Depreciation and amortization			(91,722)
Interest expense			(24,940)
Loss on extinguishment of debt			(4,917)
Other income			712
Net loss			$ (30,868)
Capital expenditures	$ 35,081	$ 3,175	$ 38,256
Total assets	$ 1,691,176	$ 181,430	$ 1,872,606

	Twelve Months Ended December 31, 2021		
	Residential	Other [1], [3]	Consolidated
Real estate rental revenue	$ 150,965	18,186	$ 169,151
Real estate expenses	55,527	5,255	60,782
Net operating income	$ 95,438	$ 12,931	$ 108,369
Property management expenses			(6,133)
General and administrative expenses			(27,538)
Transformation costs			(6,635)
Depreciation and amortization			(72,656)
Interest expense			(34,063)
Loss on interest rate derivatives			(5,866)
Loss on extinguishment of debt			(12,727)
Other income			4,109
Discontinued operations:			
Income from properties sold or held for sale			23,083
Gain on sale of real estate			46,441
Net income			$ 16,384
Capital expenditures	$ 27,953	$ 4,506	$ 32,459
Total assets	$ 1,455,328	$ 420,666	$ 1,875,994

	Twelve Months Ended December 31, 2020		
	Residential	Other [2], [3]	Consolidated
Real estate rental revenue	$ 145,138	$ 30,866	$ 176,004
Real estate expenses	52,852	10,130	62,982
Net operating income	$ 92,286	$ 20,736	$ 113,022
Property management expenses			(6,145)
General and administrative expenses			(23,951)
Depreciation and amortization			(70,336)
Loss on sale of real estate			(15,009)
Interest expense			(37,305)
Loss on extinguishment of debt			(34)
Loss on interest rate derivatives			(560)
Discontinued operations:			
Income from properties sold or held for sale			24,638
Net loss			$ (15,680)
Capital expenditures	$ 24,675	$ 33,642	$ 58,317
Total assets	$ 1,333,235	$ 1,076,583	$ 2,409,818

[1] In 2022 and 2021, Other represents Watergate 600, an office property that does not meet the qualitative or quantitative criteria for a reportable segment.

[2] In 2020, Other represents Watergate 600, an office property that does not meet the qualitative or quantitative criteria for a reportable segment and office properties sold during 2020: John Marshall II, Monument II and 1227 25th Street.

[3] Total assets and capital expenditures include office and retail properties classified as discontinued operations.

NOTE 15: SELECTED QUARTERLY FINANCIAL DATA (UNAUDITED)

While the Company previously owned a combination of commercial and residential assets, we disposed of all but one of our commercial assets in 2021. These commercial assets are classified as discontinued operations as of December 31, 2022.

Unaudited financial data by quarter in each of the years ended December 31, 2022 and 2021 were as follows (in thousands, except for per share data):

	Quarter[1], [2]			
	First	Second	Third	Fourth
2022				
Real estate rental revenue	$ 47,804	$ 51,380	$ 54,603	$ 55,593
Loss from continuing operations	$ (7,724)	$ (8,874)	$ (10,739)	$ (3,531)
Net loss	$ (7,724)	$ (8,874)	$ (10,739)	$ (3,531)
Loss from continuing operations per share				
Basic	$ (0.09)	$ (0.10)	$ (0.12)	$ (0.04)
Diluted	$ (0.09)	$ (0.10)	$ (0.12)	$ (0.04)
Net loss per share				
Basic	$ (0.09)	$ (0.10)	$ (0.12)	$ (0.04)
Diluted	$ (0.09)	$ (0.10)	$ (0.12)	$ (0.04)
2021				
Real estate rental revenue	$ 40,607	$ 41,297	$ 42,499	$ 44,748
Loss from continuing operations	$ (7,277)	$ (16,737)	$ (22,330)	$ (6,796)
Income from operations of properties sold or held for sale	$ 6,130	$ 9,745	$ 7,208	$ —
Net (loss) income	$ (1,147)	$ (6,992)	$ 31,319	$ (6,796)
Loss from continuing operations per share				
Basic	$ (0.09)	$ (0.20)	$ (0.26)	$ (0.08)
Diluted	$ (0.09)	$ (0.20)	$ (0.26)	$ (0.08)
Net (loss) income per share				
Basic	$ (0.02)	$ (0.08)	$ 0.37	$ (0.08)
Diluted	$ (0.02)	$ (0.08)	$ 0.37	$ (0.08)

(1) With regard to per share calculations, the sum of the quarterly results may not equal full year results due to rounding.
(2) The third quarter of 2021 includes net gain on sale of real estate of $ 46.4 million.

NOTE 16: SHAREHOLDERS' EQUITY

On February 17, 2021, we entered into separate amendments to each of our existing equity distribution agreements (“Original Equity Distribution Agreements”) with each of Wells Fargo Securities, LLC, BNY Mellon Capital Markets, LLC, Capital One Securities, Inc., Citigroup Global Markets Inc., Goldman Sachs & Co. LLC, J.P. Morgan Securities LLC, KeyBanc Capital Markets Inc. and Truist Securities, Inc. (f/k/a SunTrust Robinson Humphrey, Inc.), each dated May 4, 2018 (collectively, as amended, the “Equity Distribution Agreements”). Also on February 17, 2021, we entered into a separate equity distribution agreement with BTIG, LLC on the same terms as the Amended Equity Distribution Agreements (the “BTIG Equity Distribution Agreement”). On September 22, 2021, BTIG, LLC notified us that it was terminating the BTIG Equity Distribution Agreement, effective as of September 27, 2021. Pursuant to the Equity Distribution Agreements, we may sell, from time to time, up to an aggregate price of $550.0 million of our common shares of beneficial interest, $0.01 par value per share. Issuances of our common shares are made at market prices prevailing at the time of issuance. We may use net proceeds from the issuance of common shares under this program for general business purposes, including, without limitation, working capital, the acquisition, renovation, expansion, improvement, development or redevelopment of income producing properties or the repayment of debt. Our issuances and net proceeds on the Equity Distribution Agreements in 2020 and 2021 and the Original Equity Distribution Agreements in 2020 and 2019, respectively, for the three years ended December 31, 2022 were as follows (in thousands, except per share data):

	Year Ended December 31,		
	2022	2021	2020
Issuance of common shares	1,032	1,636	2,046
Weighted average price per share	$ 26.27	$ 25.44	$ 23.86
Net proceeds	$ 26,849	40,462	$ 48,355

We have a dividend reinvestment program, whereby shareholders may use their dividends and optional cash payments to purchase common shares. The common shares sold under this program may either be common shares issued by us or common shares purchased in the open market. Net proceeds under this program are used for general corporate purposes.

Our issuances and net proceeds on the dividend reinvestment program for the three years ended December 31, 2022 were as follows (in thousands, except per share data):

	Year Ended December 31,		
	2022	2021	2020
Issuance of common shares	47	75	90
Weighted average price per share	$ 22.40	$ 23.37	$ 24.12
Net proceeds	$ 1,030	$ 1,744	$ 2,121

NOTE 17: DEFERRED COSTS

As of December 31, 2022 and 2021, deferred leasing costs and deferred leasing incentives were included in prepaid expenses and other assets as follows (in thousands):

	December 31,					
	2022			2021		
	Gross Carrying Value	Accumulated Amortization	Net	Gross Carrying Value	Accumulated Amortization	Net
Deferred leasing costs	$ 8,992	$ 5,132	$ 3,860	$ 8,977	$ 4,734	$ 4,243

Amortization, including write-offs, of deferred leasing costs and deferred leasing incentives for the three years ended December 31, 2022 were as follows (in thousands):

	Year Ended December 31,		
	2022	2021	2020
Deferred leasing costs amortization	$ 406	$ 535	$ 1,269

SCHEDULE II

VALUATION AND QUALIFYING ACCOUNTS
FOR THE YEARS ENDED DECEMBER 31, 2022, 2021 AND 2020
(IN THOUSANDS)

	Balance at Beginning of Year	Additions Charged to Expenses	Net Recoveries	Balance at End of Year
Valuation allowance for deferred tax assets				
2022	$ 1,392	$ 7	$ —	$ 1,399
2021	$ 1,402	$ —	$ (10)	$ 1,392
2020	$ 1,402	$ —	$ —	$ 1,402

SCHEDULE III

Properties	Location	Initial Cost (a)		Net Improvements (Retirement) since Acquisition	Gross Amounts at Which Carried at December 31, 2022			Accumulated Depreciation at December 31, 2022 (b)	Year of Construction	Date of Acquisition	Net Rentable Square Feet	Homes	Depreciation Life (d)
		Land	Buildings and Improvements		Land	Buildings and Improvements (b)	Total (c)						
Residential Properties													
3801 Connecticut Avenue	Washington, D.C.	$ 420,000	$ 2,678,000	$ 23,157,000	$ 420,000	$ 25,835,000	$ 26,255,000	$ 16,859,000	1951	Jan 1963	178,000	307	30 years
Roosevelt Towers	Virginia	336,000	1,996,000	14,298,000	336,000	16,294,000	16,630,000	13,412,000	1964	May 1965	170,000	191	40 years
Park Adams	Virginia	287,000	1,654,000	14,583,000	287,000	16,237,000	16,524,000	13,007,000	1959	Jan 1969	173,000	200	35 years
The Ashby at McLean (f)	Virginia	4,356,000	17,102,000	33,870,000	4,356,000	50,972,000	55,328,000	34,836,000	1982	Aug 1996	274,000	256	30 years
Bethesda Hill Apartments	Maryland	3,900,000	13,412,000	17,038,000	3,900,000	30,450,000	34,350,000	23,987,000	1986	Nov 1997	225,000	195	30 years
Bennett Park	Virginia	2,861,000	917,000	83,307,000	4,774,000	82,311,000	87,085,000	49,238,000	2007	Feb 2001	215,000	224	28 years
The Clayborne	Virginia	269,000	—	31,982,000	699,000	31,552,000	32,251,000	19,853,000	2008	Jun 2003	60,000	74	26 years
Kenmore Apartments	Washington, D.C.	28,222,000	33,955,000	21,469,000	28,222,000	55,424,000	83,646,000	24,484,000	1948	Sep 2008	268,000	374	30 years
The Maxwell	Virginia	12,787,000	—	38,726,000	12,848,000	38,665,000	51,513,000	15,585,000	2014	Jun 2011	116,000	163	30 years
Yale West	Washington, D.C.	14,684,000	62,069,000	2,320,000	14,684,000	64,389,000	79,073,000	20,229,000	2011	Feb 2014	173,000	216	30 years
The Paramount (f)	Virginia	8,568,000	38,716,000	4,230,000	8,568,000	42,946,000	51,514,000	16,081,000	1984	Oct 2013	141,000	135	30 years
The Wellington	Virginia	30,548,000	116,563,000	22,311,000	30,548,000	138,874,000	169,422,000	38,914,000	1960	Jul 2015	600,000	711	30 years
Trove	Virginia	15,000,000	—	118,646,000	15,000,000	118,646,000	133,646,000	16,637,000	2020	Jul 2015	293,000	401	30 years
Riverside Apartments	Virginia	38,924,000	184,854,000	47,036,000	38,924,000	231,890,000	270,814,000	62,145,000	1971	May 2016	1,001,000	1,222	30 years
Riverside Apartments land parcel (e)	Virginia	15,968,000	—	14,419,000	—	30,387,000	30,387,000	—	n/a	May 2016	—	n/a	n/a
Assembly Alexandria	Virginia	23,942,000	93,672,000	14,159,000	23,942,000	107,831,000	131,773,000	14,997,000	1990	Jun 2019	437,000	532	30 years
Assembly Manassas	Virginia	13,586,000	68,802,000	6,421,000	13,586,000	75,223,000	88,809,000	11,063,000	1986	Jun 2019	390,000	408	30 years
Assembly Dulles	Virginia	12,476,000	66,852,000	7,476,000	12,476,000	74,328,000	86,804,000	10,798,000	2000	Jun 2019	361,000	328	30 years
Assembly Leesburg	Virginia	4,113,000	21,286,000	1,463,000	4,113,000	22,749,000	26,862,000	3,791,000	1986	Jun 2019	124,000	134	30 years
Assembly Herndon	Virginia	11,225,000	51,534,000	6,378,000	11,225,000	57,912,000	69,137,000	8,937,000	1991	Jun 2019	221,000	283	30 years
Assembly Germantown	Maryland	7,609,000	34,431,000	3,422,000	7,609,000	37,853,000	45,462,000	5,980,000	1990	Jun 2019	211,000	218	30 years
Assembly Watkins Mill	Maryland	7,151,000	30,851,000	1,934,000	7,151,000	32,785,000	39,936,000	5,269,000	1975	Jun 2019	193,000	210	30 years
Cascade at Landmark	Virginia	12,289,000	56,235,000	4,070,000	12,289,000	60,305,000	72,594,000	8,683,000	1988	Jul 2019	273,000	277	30 years
The Oxford	Georgia	4,798,000	42,122,000	1,986,000	4,798,000	44,108,000	48,906,000	2,700,000	1999	Aug 2021	228,000	240	30 years
Assembly Eagles Landing	Georgia	16,117,000	86,460,000	2,271,000	16,117,000	88,731,000	104,848,000	4,443,000	2000	Nov 2021	534,000	490	30 years
Carlyle of Sandy Springs	Georgia	17,423,000	85,817,000	3,123,000	17,423,000	88,940,000	106,363,000	3,205,000	1972	Feb 2022	506,000	389	30 years
Marietta Crossing	Georgia	19,019,000	83,319,000	641,000	19,019,000	83,960,000	102,979,000	2,267,000	1975	May 2022	415,000	420	30 years
Alder Park	Georgia	14,106,000	51,689,000	564,000	14,106,000	52,253,000	66,359,000	1,548,000	1982	May 2022	321,000	270	30 years
		$ 340,984,000	**$ 1,246,986,000**	**$ 541,300,000**	**$ 327,420,000**	**$ 1,801,850,000**	**$ 2,129,270,000**	**$ 448,948,000**			**8,101,000**	**8,868**	
Office Buildings													
Watergate 600	Washington, D.C.	$ 45,981,000	$ 78,325,000	$ 46,136,000	$ 45,751,000	$ 124,691,000	$ 170,442,000	$ 30,898,000	1972	Apr 2017	300,000		30 years
Total		**$ 386,965,000**	**$ 1,325,311,000**	**$ 587,436,000**	**$ 373,171,000**	**$ 1,926,541,000**	**$ 2,299,712,000**	**$ 479,846,000**			**8,401,000**	**8,868**	

a) The purchase cost of real estate investments has been divided between land and buildings and improvements on the basis of management's determination of the fair values.

b) Excludes the right of use asset and associated accumulated depreciation for our corporate office operating lease of $ 2.6 million and $1.7 million, respectively.

c) At December 31, 2022, total land, buildings and improvements are carried at $1,401.0 million for federal income tax purposes.

d) The useful life shown is for the main structure. Buildings and improvements are depreciated over various useful lives ranging from 3 to 40 years.

e) As of December 31, 2022, Elme Communities had one residential property under development, the Riverside Apartments land parcel. The value not yet placed into service at December 31, 2022 was $ 30.4 million.

f) As of December 31, 2022, Elme Communities had investments in various development, redevelopment and renovation projects, including The Ashby at McLean and The Paramount. The total value of these projects, which has not yet been placed in service, is $0.9 million at December 31, 2022.

ELME COMMUNITIES AND SUBSIDIARIES

SUMMARY OF REAL ESTATE INVESTMENTS AND ACCUMULATED DEPRECIATION
(IN THOUSANDS)

The following is a reconciliation of real estate assets and accumulated depreciation for the three years ended December 31, 2022 (in thousands):

	Year Ended December 31,		
	2022	2021	2020
Real estate assets			
Balance, beginning of period	$ 1,990,810	$ 3,021,232	$ 3,159,463
Additions:			
Property acquisitions [1]	271,373	149,497	—
Improvements [1]	37,539	34,095	81,119
Deductions:			
Impairment write-down	—	—	—
Write-off of disposed assets	(10)	(619)	(1,694)
Property sales	—	(1,213,395)	(217,656)
Balance, end of period	$ 2,299,712	$ 1,990,810	$ 3,021,232
Accumulated depreciation			
Balance, beginning of period	$ 401,926	$ 749,014	$ 712,630
Additions:			
Depreciation	78,267	86,399	106,920
Deductions:			
Impairment write-down	—	—	—
Write-off of disposed assets	(347)	(27)	(730)
Property sales	—	(433,460)	(69,806)
Balance, end of period	$ 479,846	$ 401,926	$ 749,014

[1] Includes non-cash accruals for capital items.

WASHINGTON REAL ESTATE INVESTMENT TRUST

ARTICLES OF AMENDMENT AND RESTATEMENT

FIRST: Washington Real Estate Investment Trust, a Maryland real estate investment trust (the "**Trust**") formed under Title 8 of the Corporations and Associations Article of the Annotated Code of Maryland ("**Title 8**"), desires to amend and restate its Declaration of Trust as currently in effect.

SECOND: The following provisions are all the provisions of the Declaration of Trust currently in effect and as hereinafter amended:

ARTICLE I
FORMATION

The Trust is a real estate investment trust within the meaning of Title 8. The Trust shall not be deemed to be a general partnership, limited partnership, joint venture, joint stock company or corporation, but nothing herein shall preclude the Trust from being treated for tax purposes as an association under the Internal Revenue Code of 1986, as amended (the "**Code**").

ARTICLE II
NAME

The name of the Trust is:

Washington Real Estate Investment Trust

Under circumstances in which the Board of Trustees of the Trust (the '**Board of Trustees**" or "**Board**") determines that the use of the name of the Trust is not practicable, the Trust may use any other designation or name for the Trust.

ARTICLE III
PURPOSE AND POWERS

Section 3.1 Purpose. The purpose for which the Trust is formed is to engage in any lawful act or activity for which a real estate investment trust may be organized under the general laws of the State of Maryland as now or hereafter in force, including, without limitation or obligation, engaging in business as a real estate investment trust within the meaning of Section 856 of the Code (a "**REIT**").

Section 3.2 Powers. The Trust shall be a separate legal person and have all of the powers granted to real estate investment trusts by Title 8 and all other powers set forth in the Declaration of Trust that are not inconsistent with law and are appropriate to promote or attain the purpose set forth in the Declaration of Trust.

ARTICLE IV
RESIDENT AGENT AND OFFICES

The name of the resident agent of the Trust in the State of Maryland is The Corporation Trust Incorporated, whose post office address is 351 West Camden Street, Baltimore, Maryland 21201. The resident agent is a Maryland corporation. The Trust may have such offices or places of business within or outside the State of Maryland as the Board of Trustees may from time to time determine.

ARTICLE V
BOARD OF TRUSTEES

Section 5.1 Powers. Subject to any express limitations contained in the Declaration of Trust or in the Bylaws of the Trust (the '**Bylaws**"), (a) the business and affairs of the Trust shall be managed under the direction of the Board of Trustees and (b) the Board shall have full, exclusive and absolute power, control and authority over any and all property of the Trust. The Board may take any action as in its sole judgment and discretion is necessary or appropriate to conduct the business and affairs of the Trust. The Declaration of Trust shall be construed with the presumption in favor of the grant of power and authority to the Board. Any construction of the Declaration of Trust or determination made in good faith by the Board concerning its powers and authority hereunder shall be final and conclusive. The enumeration and definition of particular powers of the Board included in the Declaration of Trust or in the Bylaws shall in no way be construed or deemed by inference or otherwise in any manner to exclude or limit the powers conferred upon the Board or the Trustees (hereinafter the "**Trustees**") under the general laws of the State of Maryland or any other applicable laws.

The Board, without any action by the shareholders of the Trust, shall have and may exercise, on behalf of the Trust, without limitation, the power to cause the Trust to terminate its status as a REIT; to determine that compliance with any restriction or limitations on ownership and transfers of shares of the Trust's beneficial interest set forth in Article VII of the Declaration of Trust is no longer required in order for the Trust to qualify as a REIT; to adopt, amend and repeal Bylaws; to elect officers in the manner prescribed in the Bylaws; to solicit proxies from holders of shares of beneficial interest of the Trust; and to do any other acts and deliver any other documents necessary or appropriate to the purpose set forth in Section 3.1 or any of the foregoing powers.

Section 5.2 Number, Classification and Vacancies. The number of Trustees shall be nine, which number may be increased or decreased only by the Board pursuant to the Bylaws. The Trustees shall be classified, with respect to the terms for which they severally hold office, into three classes, Class I, Class II and Class III, as nearly equal in number as possible. Initially, the Class I Trustees shall be John M. Derrick, Jr., Charles T. Nason and Thomas Edgie Russell, III; the Class II Trustees shall be William G. Byrnes, John P. McDaniel and George F. McKenzie; and the Class III Trustees shall be Edward S. Civera, Terence C. Golden and Wendelin A. White. The Class I Trustees shall serve for a term expiring at the annual meeting of shareholders to be held in 2012; the Class II Trustees shall serve for a term expiring at the annual meeting of shareholders to be held in 2013; and the Class III Trustees shall serve for a term expiring at the annual meeting of shareholders to be held in 2014. At each annual meeting of shareholders, the successor or successors of the class of Trustees whose term expires at that meeting shall be elected in accordance with the Bylaws, and shall hold office for a term expiring at the annual meeting of shareholders held in the third year following the year of their election. The Trustees elected to each class shall hold office until their successors are duly elected and qualify, or until their earlier removal or resignation. It shall not be necessary to list in the Declaration of Trust the names and addresses of any Trustees hereinafter elected.

Except as may be provided by the Board of Trustees in setting the terms of any class or series of Shares, any and all vacancies on the Board of Trustees may be filled by the affirmative vote of a majority of the remaining Trustees in office, even if the remaining Trustees do not constitute a quorum, unless the vacancy occurring through removal has already been filled by the shareholders acting pursuant to the provisions of Section 8.2. Any Trustee elected to fill a vacancy shall serve for the remainder of the full term of the trusteeship in which such vacancy occurred.

Section 5.3 Removal of Trustees. Subject to the rights of holders of one or more classes or series of Shares to elect or remove one or more Trustees, a Trustee may be removed from office at any time at a meeting of the shareholders, but only for cause and then only by the affirmative vote of the holders of not less than a majority of the Shares then outstanding and entitled to vote generally in the election of Trustees. For the purpose of this paragraph, "cause" shall mean, with respect to any particular Trustee, conviction of a felony or a final judgment of a court of competent jurisdiction holding that such Trustee caused demonstrable, material harm to the Trust through bad faith or active and deliberate dishonesty.

Section 5.4 Determinations by Board. The determination as to any of the following matters made by or pursuant to the direction of the Board of Trustees shall be final and conclusive and shall be binding upon the Trust and every holder of Shares: the amount of the net income of the Trust for any period and the amount of assets at any time legally available for the payment of dividends, redemption of Shares or the payment of other distributions on Shares; the amount of paid-in surplus, net assets, other surplus, annual or other cash flow, funds from operations, net profit, net assets in excess of capital, undivided profits or excess of profits over losses on sales of assets; the amount, purpose, time of creation, increase or decrease, alteration or cancellation of any reserves or charges and the propriety thereof (whether or not any obligation or liability for which such reserves or charges shall have been created shall have been paid or discharged); any interpretation of the terms, preferences, conversion or other rights, voting powers or rights, restrictions, limitations as to dividends or other distributions, qualifications or terms or conditions of redemption of any class or series of Shares; the fair value, or any sale, bid or asked price to be applied in determining the fair value, of any asset owned or held by the Trust or of any Shares; the number of Shares of any class or series of the Trust; any matter relating to the acquisition, holding and disposition of any assets by the Trust; or any other matter relating to the business and affairs of the Trust or required or permitted by applicable law, the Declaration of Trust or Bylaws or otherwise to be determined by the Board of Trustees.

Section 5.5 Action By Trustees without a Meeting. The Bylaws may provide that any action required or permitted to be taken by the Board of Trustees or any committee thereof may be taken without a meeting by the consent, in writing or by electronic transmission, of a majority of the Trustees or committee members, as applicable; provided, however, that if the concurrence of a greater proportion is required for such action by applicable law, the Declaration of Trust or the Bylaws, any such consent shall be given by such proportion of the Board of Trustees or members of such committee, as the case may be.

ARTICLE VI
SHARES OF BENEFICIAL INTEREST

Section 6.1 Authorized Shares. The beneficial interest of the Trust shall be divided into shares of beneficial interest (the **Shares**"). The Trust has authority to issue 100,000,000 common shares of beneficial interest, $0.01 par value per share ("**Common Shares**"), and 10,000,000 preferred shares of beneficial interest, $0.01 par value per share ("**Preferred Shares**"). If shares of one class are classified into shares of another class of shares pursuant to this Article VI, the number of authorized shares of the former class shall be automatically decreased and the number of shares of the latter class shall be automatically increased, in each case by the number of shares so classified, so that the aggregate number of shares of beneficial interest of all classes that the Trust has authority to issue shall not be more than the total number of shares of beneficial interest set forth in the second sentence of this paragraph. The Board, with the approval of a majority of the entire Board and without any action by the shareholders of the Trust, may amend the Declaration of Trust from time to time to increase the aggregate number of Common Shares.

Section 6.2 Common Shares. Subject to the provisions of Article VII and except as may otherwise be specified in the Declaration of Trust, each Common Share shall entitle the holder thereof to one vote on each matter upon which holders of Common Shares are entitled to vote.

Section 6.3 Preferred Shares. The Board of Trustees may classify any unissued Preferred Shares from time to time, into one or more classes or series of Preferred Shares.

Section 6.4 Classified Shares. Prior to issuance of classified Shares of any class or series, the Board of Trustees by resolution shall (a) designate that class or series to distinguish it from all other classes and series of Shares; (b) specify the number of Shares to be included in the class or series; (c) set or change, notwithstanding any other provision in the Declaration of Trust and subject to the provisions of Article VII and subject to the express terms of any class or series of Shares outstanding at the time, the preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications and terms and conditions of redemption for each class or series; and (d) cause the Trust to file articles supplementary with the State Department of Assessments and Taxation of Maryland (the "SDAT"). Any of the terms of any class or series of Shares set pursuant to clause (c) of this Section 6.4 may be made dependent upon facts ascertainable outside the Declaration of Trust (including the occurrence of any event, including a determination or action by the Trust or any other person or body) and may vary among holders thereof, provided that the manner in which such facts or variations shall operate upon the terms of such class or series of Shares is clearly and expressly set forth in the articles supplementary filed with the SDAT.

Section 6.5 Authorization by Board of Share Issuance. The Board of Trustees may authorize the issuance from time to time of Shares of any class or series, whether now or hereafter authorized, or securities or rights convertible into Shares of any class or series, whether now or hereafter authorized, for such consideration (whether in cash, property, past or future services, obligation for future payment or otherwise) as the Board of Trustees may deem advisable (or without consideration in the case of a Share split or Share dividend), subject to such restrictions or limitations, if any, as may be set forth in the Declaration of Trust or the Bylaws.

Section 6.6 Dividends and Distributions. The Board of Trustees may from time to time authorize, and cause the Trust to declare and pay to shareholders, such dividends or distributions, in cash or other assets of the Trust or in securities of the Trust or from any other source, as the Board of Trustees in its discretion shall determine. The Board of Trustees shall endeavor to cause the Trust to declare and pay such dividends and distributions as shall be necessary for the Trust to qualify as a REIT; however, shareholders shall have no right to any dividend or distribution unless and until authorized by the Board and declared by the Trust. The exercise of the powers and rights of the Board of Trustees pursuant to this Section 6.6 shall be subject to the provisions of any class or series of Shares at the time outstanding. Notwithstanding any other provision in the Declaration of Trust, no determination shall be made by the Board of Trustees nor shall any transaction be entered into by the Trust which would cause any Shares or other beneficial interest in the Trust not to constitute "transferable shares" or "transferable certificates of beneficial interest" under Section 856(a)(2) of the Code or which would cause any distribution to constitute a preferential dividend as described in Section 562(c) of the Code.

Section 6.7 General Nature of Shares. All Shares shall be personal property entitling the shareholders only to those rights provided in the Declaration of Trust. The shareholders shall have no interest in the property of the Trust and shall have no right to compel any partition, division, dividend or distribution of the Trust or of the property of the Trust. The death of a shareholder shall not terminate the Trust. The Trust is entitled to treat as shareholders only those persons in whose names Shares are registered as holders of Shares on the share ledger of the Trust.

Section 6.8 Fractional Shares. The Trust may, without the consent or approval of any shareholder, issue fractional Shares, eliminate a fraction of a Share by rounding up to a full Share, arrange for the disposition of a fraction of a Share by the person entitled to it, or pay cash for the fair value of a fraction of a Share.

Section 6.9 Declaration and Bylaws. The rights of all shareholders and the terms of all Shares are subject to the provisions of the Declaration of Trust and the Bylaws.

ARTICLE VII
RESTRICTIONS ON TRANSFER AND OWNERSHIP OF SHARES

Section 7.1 Definitions. For the purpose of this Article VII, the following terms shall have the following meanings:

Aggregate Share Ownership Limit. The term "Aggregate Share Ownership Limit" shall mean 9.8 percent in value of the aggregate of the outstanding Equity Shares, or such other percentage determined by the Board of Trustees in accordance with Section 7.2.8 of the Declaration of Trust.

Beneficial Ownership. The term "Beneficial Ownership" shall mean ownership of Equity Shares by a Person, whether the interest in Equity Shares is held directly or indirectly (including by a nominee), and shall include interests that would be treated as owned through the application of Section 544 of the Code, as modified by Section 856(h)(1)(B) of the Code. The terms "Beneficial Owner," "Beneficially Owns" and "Beneficially Owned" shall have the correlative meanings.

Business Day. The term "Business Day" shall mean any day, other than a Saturday or Sunday, that is neither a legal holiday nor a day on which banking institutions in New York City are authorized or required by law, regulation or executive order to close.

Charitable Beneficiary. The term "Charitable Beneficiary" shall mean one or more beneficiaries of the Charitable Trust as determined pursuant to Section 7.3.6, provided that each such organization must be described in Section 501(c)(3) of the Code and contributions to each such organization must be eligible for deduction under each of Sections 170(b)(1)(A), 2055 and 2522 of the Code.

Charitable Trust. The term "Charitable Trust" shall mean any trust provided for in Section 7.3.1.

Charitable Trustee. The term "Charitable Trustee" shall mean the Person unaffiliated with the Trust and a Prohibited Owner that is appointed by the Trust to serve as trustee of the Charitable Trust.

Common Share Ownership Limit. The term "Common Share Ownership Limit" shall mean 9.8 percent (in value or in number of shares, whichever is more restrictive) of the aggregate number of the outstanding Common Shares, or such other percentage determined by the Board of Trustees in accordance with Section 7.2.8 of the Declaration of Trust.

Constructive Ownership. The term "Constructive Ownership" shall mean ownership of Equity Shares by a Person, whether the interest in Equity Shares is held directly or indirectly (including by a nominee), and shall include interests that would be treated as owned through the application of Section 318(a) of the Code, as modified by Section 856(d)(5) of the Code. The terms "Constructive Owner," "Constructively Owns" and "Constructively Owned" shall have the correlative meanings.

Declaration of Trust. The term "Declaration of Trust" shall mean these Articles of Amendment and Restatement as accepted for record by the SDAT, and any amendments and supplements thereto.

Equity Shares. The term "Equity Shares" shall mean Shares of all classes or series, including, without limitation, Common Shares and Preferred Shares.

Excepted Holder. The term "Excepted Holder" shall mean a shareholder of the Trust for whom an Excepted Holder Limit is created by this Article VII or by the Board of Trustees pursuant to Section 7.2.7.

Excepted Holder Limit. The term "Excepted Holder Limit" shall mean, provided that the affected Excepted Holder agrees to comply with the requirements established by the Board of Trustees pursuant to Section 7.2.7 and subject to adjustment pursuant to Section 7.2.7, the percentage limit established by the Board of Trustees pursuant to Section 7.2.7.

Initial Date. The term "Initial Date" shall mean the date upon which these Articles of Amendment and Restatement containing this Article VII is accepted for record by the SDAT.

Market Price. The term "Market Price" on any date shall mean, with respect to any class or series of outstanding Equity Shares, the Closing Price for such Equity Shares on such date. The "Closing Price" on any date shall mean the last sale price for such Equity Shares, regular way, or, in case no such sale takes place on such day, the average of the closing bid and asked prices, regular way, for such Equity Shares, in either case as reported in the

principal consolidated transaction reporting system with respect to securities listed or admitted to trading on the NYSE or, if such Equity Shares are not listed or admitted to trading on the NYSE, as reported on the principal consolidated transaction reporting system with respect to securities listed on the principal national securities exchange on which such Equity Shares are listed or admitted to trading or, if such Equity Shares are not listed or admitted to trading on any national securities exchange, the last quoted price, or, if not so quoted, the average of the high bid and low asked prices in the over-the-counter market, as reported by the principal automated quotation system that may then be in use or, if such Equity Shares are not quoted by any such system, the average of the closing bid and asked prices as furnished by a professional market maker making a market in such Equity Shares selected by the Board of Trustees or, in the event that no trading price is available for such Equity Shares, the fair market value of Equity Shares, as determined in good faith by the Board of Trustees.

NYSE. The term "NYSE" shall mean the New York Stock Exchange.

Person. The term "Person" shall mean an individual, corporation, partnership, limited liability company, estate, trust (including a trust qualified under Sections 401(a) or 501(c)(17) of the Code), a portion of a trust permanently set aside for or to be used exclusively for the purposes described in Section 642(c) of the Code, association, private foundation within the meaning of Section 509(a) of the Code, joint stock company or other entity and also includes a group as that term is used for purposes of Section 13(d)(3) of the Securities Exchange Act of 1934, as amended, and a group to which an Excepted Holder Limit applies.

Prohibited Owner. The term "Prohibited Owner" shall mean, with respect to any purported Transfer, any Person who, but for the provisions of this Article VII, would Beneficially Own or Constructively Own Equity Shares in violation of Section 7.2.1, and if appropriate in the context, shall also mean any Person who would have been the record owner of Equity Shares that the Prohibited Owner would have so owned.

REIT. The term "REIT" shall mean a real estate investment trust within the meaning of Section 856 of the Code.

Restriction Termination Date. The term "Restriction Termination Date" shall mean the first day after the Initial Date on which the Board of Trustees determines that it is no longer in the best interests of the Trust to attempt to, or continue to, qualify as a REIT or that compliance with the restrictions and limitations on Beneficial Ownership, Constructive Ownership and Transfers of Equity Shares set forth herein is no longer required in order for the Trust to qualify as a REIT.

SDAT. The term "SDAT" shall mean the State Department of Assessments and Taxation of Maryland.

Transfer. The term "Transfer" shall mean any issuance, sale, transfer, gift, assignment, devise or other disposition, as well as any other event that causes any Person to acquire Beneficial Ownership or Constructive Ownership, or any agreement to take any such actions or cause any such events, of Equity Shares or the right to vote or receive dividends on Equity Shares, including (a) the granting or exercise of any option (or any disposition of any option), (b) any disposition of any securities or rights convertible into or exchangeable for Equity Shares or any interest in Equity Shares or any exercise of any such conversion or exchange right and (c) Transfers of interests in other entities that result in changes in Beneficial or Constructive Ownership of Equity Shares; in each case, whether voluntary or involuntary, whether owned of record, Constructively Owned or Beneficially Owned and whether by operation of law or otherwise. The terms "Transferring" and "Transferred" shall have the correlative meanings.

Section 7.2 Equity Shares.

Section 7.2.1 Ownership Limitations. During the period commencing on the Initial Date and prior to the Restriction Termination Date:

(a) Basic Restrictions.

(i) (1) No Person, other than an Excepted Holder, shall Beneficially Own or Constructively Own Equity Shares in excess of the Aggregate Share Ownership Limit, (2) no Person, other than an Excepted Holder, shall Beneficially Own or Constructively Own Common Shares in excess of the Common Share Ownership Limit and (3) no Excepted Holder shall Beneficially Own or Constructively Own Equity Shares in excess of the Excepted Holder Limit for such Excepted Holder.

(ii) No Person shall Beneficially or Constructively Own Equity Shares to the extent that such Beneficial or Constructive Ownership of Equity Shares would result in the Trust being "closely held" within the meaning of Section 856(h) of the Code (without regard to whether the ownership interest is held during the last half of a taxable year), or otherwise failing to qualify as a REIT (including, but not limited to, Beneficial or Constructive Ownership that would result in the Trust owning (actually or Constructively) an interest in a tenant that is described in Section 856(d)(2)(B) of the Code if the income derived by the Trust from such tenant would cause the Trust to fail to satisfy any of the gross income requirements of Section 856(c) of the Code).

(iii) Notwithstanding any other provisions contained herein, any Transfer of Equity Shares (whether or not such Transfer is the result of a transaction entered into through the facilities of the NYSE or any other national securities exchange or automated inter-dealer quotation system) that, if effective, would result in Equity Shares being beneficially owned by fewer than 100 Persons (determined under the principles of Section 856(a)(5) of the Code) shall be void ab initio, and the intended transferee shall acquire no rights in such Equity Shares.

(b) Transfer in Trust. If any Transfer of Equity Shares (whether or not such Transfer is the result of a transaction entered into through the facilities of the NYSE or any other national securities exchange or automated inter-dealer quotation system) occurs which, if effective, would result in any Person Beneficially Owning or Constructively Owning Equity Shares in violation of Section 7.2.1(a)(i) or (ii),

(i) then that number of Equity Shares the Beneficial or Constructive Ownership of which otherwise would cause such Person to violate Section 7.2.1(a)(i) or (ii) (rounded up to the nearest whole share) shall be automatically transferred to a Charitable Trust for the benefit of a Charitable Beneficiary, as described in Section 7.3, effective as of the close of business on the Business Day prior to the date of such Transfer, and such Person shall acquire no rights in such Equity Shares; or

(ii) if the transfer to the Charitable Trust described in clause (i) of this sentence would not be effective for any reason to prevent the violation of Section 7.2.1(a)(i) or (ii), then the Transfer of that number of Equity Shares that otherwise would cause any Person to violate Section 7.2.1(a)(i) or (ii) shall be void ab initio, and the intended transferee shall acquire no rights in such Equity Shares.

(iii) To the extent that, upon a transfer of Equity Shares pursuant to this Section 7.2.1(b), a violation of any provision of this Article VII would nonetheless be continuing (for example where the ownership of Equity Shares by a single Charitable Trust would violate the 100 shareholder requirement applicable to REITs), then Equity Shares shall be transferred to that number of Charitable Trusts, each having a distinct Charitable Trustee and a Charitable Beneficiary or Beneficiaries that are distinct from those of each other Charitable Trust, such that there is no violation of any provision of this Article VII.

Section 7.2.2 Remedies for Breach. If the Board of Trustees or any duly authorized committee thereof shall at any time determine in good faith that a Transfer or other event has taken place that results in a violation of Section 7.2.1 or that a Person intends to acquire or has attempted to acquire Beneficial or Constructive Ownership of any Equity Shares in violation of Section 7.2.1 (whether or not such violation is intended), the Board of Trustees or a committee thereof shall take such action as it deems advisable to refuse to give effect to or to prevent such Transfer or other event, including, without limitation, causing the Trust to redeem Equity Shares, refusing to give effect to such Transfer on the books of the Trust or instituting proceedings to enjoin such Transfer or other event; provided, however, that any Transfer or attempted Transfer or other event in violation of Section 7.2.1 shall automatically result in the transfer to the Charitable Trust described above, and, where applicable, such Transfer (or other event) shall be void ab initio as provided above irrespective of any action (or non-action) by the Board of Trustees or a committee thereof.

Section 7.2.3 Notice of Restricted Transfer. Any Person who acquires or attempts or intends to acquire Beneficial Ownership or Constructive Ownership of Equity Shares that will or may violate Section 7.2.1(a), or any Person who would have owned Equity Shares that resulted in a transfer to the Charitable Trust pursuant to the provisions of Section 7.2.1(b), shall immediately give written notice to the Trust of such event or, in the case of such a proposed or attempted transaction, give at least 15 days prior written notice, and shall provide to the Trust such other information as the Trust may request in order to determine the effect, if any, of such Transfer on the Trust’s status as a REIT.

Section 7.2.4 Owners Required To Provide Information. From the Initial Date and prior to the Restriction Termination Date:

(a) every owner of more than five percent (or such lower percentage as required by the Code or the Treasury Regulations promulgated thereunder) of the outstanding Equity Shares, within 30 days after the end of each taxable year, shall give written notice to the Trust stating the name and address of such owner, the number of Equity Shares Beneficially Owned and a description of the manner in which such shares are held. Each such owner shall provide to the Trust such additional information as the Trust may request in order to determine the effect, if any, of such Beneficial Ownership on the Trust’s status as a REIT and to ensure compliance with the Aggregate Share Ownership Limit, Common Share Ownership Limit or Excepted Holder Limit, as applicable.

(b) each Person who is a Beneficial or Constructive Owner of Equity Shares and each Person (including the shareholder of record) who is holding Equity Shares for a Beneficial or Constructive Owner shall provide to the Trust such information as the Trust may request, in good faith, in order to determine the Trust’s status as a REIT and to comply with requirements of any taxing authority or governmental authority or to determine such compliance.

Section 7.2.5 Remedies Not Limited. Subject to Section 5.1 of the Declaration of Trust, nothing contained in this Section 7.2 shall limit the authority of the Board of Trustees to take such other action as it deems necessary or advisable to protect the Trust and the interests of its shareholders in preserving the Trust's status as a REIT.

Section 7.2.6 Ambiguity. In the case of an ambiguity in the application of any of the provisions of Section 7.2, Section 7.3 or any definition contained in Section 7.1, the Board of Trustees shall have the power to determine the application of the provisions of Section 7.2 or Section 7.3 with respect to any situation based on the facts known to it. In the event Section 7.2 or 7.3 requires an action by the Board of Trustees and the Declaration of Trust fails to provide specific guidance with respect to such action, the Board of Trustees shall have the power to determine the action to be taken so long as such action is not contrary to the provisions of Section 7.1, 7.2 or 7.3.

Section 7.2.7 Exceptions.

(a) Subject to Section 7.2.1(a)(ii), the Board of Trustees, in its sole discretion, may exempt a Person from the Aggregate Share Ownership Limit and the Common Share Ownership Limit, as the case may be, and may establish or increase an Excepted Holder Limit for such Person if:

(i) the Board of Trustees obtains such representations and undertakings from such Person as are reasonably necessary to ascertain that no individual's (as defined in Section 542(a)(2) of the Code) Beneficial or Constructive Ownership of such Equity Shares will violate Section 7.2.1(a)(ii);

(ii) such Person does not and represents that it will not own, actually or Constructively, an interest in a tenant of the Trust (or a tenant of any entity owned or controlled by the Trust) that would cause the Trust to own, actually or Constructively, more than a 9.9% interest (as set forth in Section 856(d)(2)(B) of the Code) in such tenant and the Board of Trustees obtains such representations and undertakings from such Person as are reasonably necessary to ascertain this fact (for this purpose, a tenant from which the Trust (or an entity owned or controlled by the Trust) derives (and is expected to continue to derive) a sufficiently small amount of revenue such that, in the opinion of the Board of Trustees, rent from such tenant would not adversely affect the Trust's ability to qualify as a REIT, shall not be treated as a tenant of the Trust); and

(iii) such Person agrees that any violation or attempted violation of such representations or undertakings (or other action which is contrary to the restrictions contained in Sections 7.2.1 through 7.2.6) will result in such Equity Shares being automatically transferred to a Charitable Trust in accordance with Sections 7.2.1(b) and 7.3.

(b) Prior to granting any exception pursuant to Section 7.2.7(a), the Board of Trustees may require a ruling from the Internal Revenue Service, and/or an opinion of counsel, in either case in form and substance satisfactory to the Board of Trustees in its sole discretion, as it may deem necessary or advisable in order to determine or ensure the Trust's status as a REIT. Notwithstanding the receipt of any ruling or opinion, the Board of Trustees may impose such conditions or restrictions as it deems appropriate in connection with granting such exception.

(c) Subject to Section 7.2.1(a)(ii), an underwriter which participates in a public offering or a private placement of Equity Shares (or securities convertible into or exchangeable for Equity Shares) may Beneficially Own or Constructively Own Equity Shares (or securities convertible into or exchangeable for Equity Shares) in excess of the Aggregate Share Ownership Limit, the Common Share Ownership Limit or both such limits, but only to the extent necessary to facilitate such public offering or private placement.

(d) The Board of Trustees may only reduce the Excepted Holder Limit for an Excepted Holder: (1) with the written consent of such Excepted Holder at any time, or (2) pursuant to the terms and conditions of the agreements and undertakings entered into with such Excepted Holder in connection with the establishment of the Excepted Holder Limit for that Excepted Holder. No Excepted Holder Limit shall be reduced to a percentage that is less than the Common Share Ownership Limit.

Section 7.2.8 Change in Aggregate Share Ownership and Common Share Ownership Limits. Subject to Section 7.2.1(a)(ii), the Board may from time to time increase or decrease the Aggregate Share Ownership Limit and the Common Share Ownership Limit; provided, however, that the decreased Aggregate Share Ownership Limit and/or Common Share Ownership Limit will not be effective for any Person whose percentage ownership of Equity Shares is in excess of such decreased Aggregate Share Ownership Limit and/or Common Share Ownership Limit until such time as such Person's percentage of Equity Shares equals or falls below the decreased Aggregate Share Ownership Limit and/or Common Share Ownership Limit, but any further acquisition of Equity Shares in excess of such percentage ownership of Equity Shares will be in violation of the Aggregate Share Ownership Limit and/or Common Share Ownership Limit.

Section 7.2.9 Legend. Each certificate for Equity Shares shall bear substantially the following legend:

The shares represented by this certificate are subject to restrictions on Beneficial and Constructive Ownership and Transfer for the purpose of the Trust's maintenance of its status as a Real Estate Investment Trust (a "**REIT**") under the Internal Revenue Code of 1986, as amended (the "**Code**"). Subject to certain further restrictions and except as expressly provided in the Trust's Declaration of Trust, (i) no Person may Beneficially or Constructively Own Common Shares of the Trust in excess of the Common Share Ownership Limit of the Trust unless such Person is an Excepted Holder (in which case the Excepted Holder Limit shall be applicable); (ii) no Person may Beneficially or Constructively Own Equity Shares of the Trust in excess of the Aggregate Share Ownership Limit, unless such Person is an Excepted Holder (in which case the Excepted Holder Limit shall be applicable); (iii) no Person may Beneficially or Constructively Own Equity Shares that would result in the Trust being "closely held" under Section 856(h) of the Code or otherwise cause the Trust to fail to qualify as a REIT; and (iv) no Person may Transfer Equity Shares if such Transfer would result in Equity Shares of the Trust being owned by fewer than 100 Persons. Any Person who Beneficially or Constructively Owns or attempts to Beneficially or Constructively Own Equity Shares which cause or will cause a Person to Beneficially or Constructively Own Equity Shares in excess or in violation of the above limitations must immediately notify the Trust. If any of the restrictions on transfer or ownership provided in (i), (ii) or (iii) above is violated, the Equity Shares represented hereby will be automatically transferred to a Charitable Trustee of a Charitable Trust for the benefit of one or more Charitable Beneficiaries. In addition, if the ownership restriction provided in (iv) above would be violated or upon the occurrence of certain events, attempted Transfers in violation of the restrictions described above may be void ab initio. All capitalized terms in this legend have the meanings defined in the Trust's Declaration of Trust, as the same may be amended from time to time, a copy of which, including the restrictions on transfer and ownership, will be furnished to each holder of Equity Shares of the Trust on request and without charge.

Instead of the foregoing legend, the certificate may state that the Trust will furnish a full statement about certain restrictions on transferability to a shareholder on request and without charge.

Section 7.3 Transfer of Equity Shares in Trust.

Section 7.3.1 Ownership in Trust. Upon any purported Transfer or other event described in Section 7.2.1(b) that would result in a transfer of Equity Shares to a Charitable Trust, such Equity Shares shall be deemed to have been transferred to the Charitable Trustee, as trustee of a Charitable Trust, for the exclusive benefit of one or more Charitable Beneficiaries. Such transfer to the Charitable Trustee shall be deemed to be effective as of the close of business on the Business Day prior to the purported Transfer or other event that results in the transfer to the Charitable Trust pursuant to Section 7.2.1(b). The Charitable Trustee shall be appointed by the Trust and shall be a Person unaffiliated with the Trust and any Prohibited Owner. Each Charitable Beneficiary shall be designated by the Trust as provided in Section 7.3.6.

Section 7.3.2 Status of Shares Held by the Charitable Trustee. Equity Shares held by the Charitable Trustee shall be issued and outstanding Equity Shares of the Trust. The Prohibited Owner shall have no rights in the shares held by the Charitable Trustee. The Prohibited Owner shall not benefit economically from ownership of any shares held in trust by the Charitable Trustee, shall have no rights to dividends or other distributions and shall not possess any rights to vote or other rights attributable to the shares held in the Charitable Trust.

Section 7.3.3 Dividend and Voting Rights. The Charitable Trustee shall have all voting rights and rights to dividends or other distributions with respect to Equity Shares held in the Charitable Trust, which rights shall be exercised for the exclusive benefit of the Charitable Beneficiary. Any dividend or other distribution paid prior to the discovery by the Trust that Equity Shares have been transferred to the Charitable Trustee shall be paid with respect to such Equity Shares to the Charitable Trustee upon demand and any dividend or other distribution authorized but unpaid shall be paid when due to the Charitable Trustee. Any dividends or distributions so paid over to the Charitable Trustee shall be held in trust for the Charitable Beneficiary. The Prohibited Owner shall have no voting rights with respect to shares held in the Charitable Trust, and, subject to Maryland law, effective as of the date that Equity Shares have been transferred to the Charitable Trustee, the Charitable Trustee shall have the authority (at the Charitable Trustee's sole discretion) (i) to rescind as void any vote cast by a Prohibited Owner prior to the discovery by the Trust that Equity Shares have been transferred to the Charitable Trustee and (ii) to recast such vote in accordance with the desires of the Charitable Trustee acting for the benefit of the Charitable Beneficiary; provided, however, that if the Trust has already taken irreversible trust action, then the Charitable Trustee shall not have the authority to rescind and recast such vote. Notwithstanding the provisions of this Article VII, until the Trust has received notification that Equity Shares have been transferred into a Charitable Trust, the Trust shall be entitled to rely on its share transfer and other shareholder records for purposes of preparing lists of shareholders entitled to vote at meetings, determining the validity and authority of proxies and otherwise conducting votes of shareholders.

Section 7.3.4 Sale of Shares by Charitable Trustee. Within 20 days of receiving notice from the Trust that Equity Shares have been transferred to the Charitable Trust, the Charitable Trustee of the Charitable Trust shall sell the shares held in the Charitable Trust to a person, designated by the Charitable Trustee, whose ownership of the

shares will not violate the ownership limitations set forth in Section 7.2.1(a). Upon such sale, the interest of the Charitable Beneficiary in the shares sold shall terminate and the Charitable Trustee shall distribute the net proceeds of the sale to the Prohibited Owner and to the Charitable Beneficiary as provided in this Section 7.3.4. The Prohibited Owner shall receive the lesser of (1) the price paid by the Prohibited Owner for the shares or, if the Prohibited Owner did not give value for the shares in connection with the event causing the shares to be held in the Charitable Trust (*e.g.*, in the case of a gift, devise or other such transaction), the Market Price of the shares on the day of the event causing the shares to be held in the Charitable Trust and (2) the price per share received by the Charitable Trustee from the sale or other disposition of the shares held in the Charitable Trust. Any net sales proceeds in excess of the amount payable to the Prohibited Owner shall be immediately paid to the Charitable Beneficiary. If, prior to the discovery by the Trust that Equity Shares have been transferred to the Charitable Trustee, such shares are sold by a Prohibited Owner, then (i) such shares shall be deemed to have been sold on behalf of the Charitable Trust and (ii) to the extent that the Prohibited Owner received an amount for such shares that exceeds the amount that such Prohibited Owner was entitled to receive pursuant to this Section 7.3.4, such excess shall be paid to the Charitable Trustee upon demand.

Section 7.3.5 Purchase Right in Shares Transferred to the Charitable Trustee. Equity Shares transferred to the Charitable Trustee shall be deemed to have been offered for sale to the Trust, or its designee, at a price per share equal to the lesser of (i) the price per share in the transaction that resulted in such transfer to the Charitable Trust (or, in the case of a devise or gift, the Market Price at the time of such devise or gift) and (ii) the Market Price on the date the Trust, or its designee, accepts such offer. The Trust shall have the right to accept such offer until the Charitable Trustee has sold the shares held in the Charitable Trust pursuant to Section 7.3.4. Upon such a sale to the Trust, the interest of the Charitable Beneficiary in the shares sold shall terminate and the Charitable Trustee shall distribute the net proceeds of the sale to the Prohibited Owner.

Section 7.3.6 Designation of Charitable Beneficiaries. By written notice to the Charitable Trustee, the Trust shall designate one or more nonprofit organizations to be the Charitable Beneficiary of the interest in the Charitable Trust such that (i) Equity Shares held in the Charitable Trust would not violate the restrictions set forth in Section 7.2.1(a) in the hands of such Charitable Beneficiary and (ii) each such organization must meet the requirements of a Charitable Beneficiary set forth in the definition thereof.

Section 7.4 NYSE Transactions. Nothing in this Article VII shall preclude the settlement of any transaction entered into through the facilities of the NYSE or any other national securities exchange or automated inter-dealer quotation system. The fact that the settlement of any transaction occurs shall not negate the effect of any other provision of this Article VII, and any transferee in such a transaction shall be subject to all of the provisions and limitations set forth in this Article VII.

Section 7.5 Enforcement. The Trust is authorized specifically to seek equitable relief, including injunctive relief, to enforce the provisions of this Article VII.

Section 7.6 Non-Waiver. No delay or failure on the part of the Trust or the Board of Trustees in exercising any right hereunder shall operate as a waiver of any right of the Trust or the Board of Trustees, as the case may be, except to the extent specifically waived in writing.

ARTICLE VIII
SHAREHOLDERS

Section 8.1 Meetings. There shall be an annual meeting of the shareholders, to be held on proper notice at such time (after the delivery of the annual report) and convenient location as shall be determined by or in the manner prescribed in the Bylaws, for the election of the Trustees, if required, and for the transaction of any other business within the powers of the Trust. Except as otherwise provided in the Declaration of Trust, special meetings of shareholders may be called in the manner provided in the Bylaws. If there are no Trustees, the Chief Executive Officer, the President or any vice president of the Trust shall promptly call a special meeting of the shareholders entitled to vote for the election of successor Trustees. Any meeting may be adjourned and reconvened as the Trustees determine or as provided in the Bylaws.

Section 8.2 Voting Rights. Subject to the provisions of any class or series of Shares then outstanding, the shareholders shall be entitled to vote only on the following matters: (a) election of Trustees as provided in Section 5.2 and the removal of Trustees as provided in Section 5.3; (b) amendment of the Declaration of Trust as provided in Article X; (c) termination of the Trust as provided in Section 12.2; (d) merger or consolidation of the Trust, or the sale or disposition of all or substantially all of the Trust property, as provided in Article XI; and (e) such other matters with respect to which the Board of Trustees has adopted a resolution declaring that a proposed action is advisable and directing that the matter be submitted to the shareholders for approval or ratification. Except with respect to the foregoing matters, no action taken by the shareholders at any meeting shall in any way bind the Board of Trustees.

Section 8.3 Preemptive and Appraisal Rights. Except as may be provided by the Board of Trustees in setting the terms of classified or reclassified Shares pursuant to Section 6.4, or as may otherwise be provided by contract approved by the Board of Trustees, no holder of Shares, as such holder, shall have any preemptive right to purchase or subscribe for any additional Shares of the Trust or any other security of the Trust which it may issue or sell. Holders of shares of beneficial interest shall not be entitled to exercise any rights of an objecting shareholder provided for under Title 8 and Title 3, Subtitle 2 of the Maryland General Corporation Law ("**MGCL**") or any successor statute unless the Board of Trustees, upon the affirmative vote of a majority of the Board of Trustees, shall determine that such rights apply, with respect to all or any classes or series of shares of beneficial interest, to one or more transactions occurring after the date of such determination in connection with which holders of such shares would otherwise be entitled to exercise such rights.

Section 8.4 Extraordinary Actions. Except as otherwise permitted by law, any merger, consolidation, sale of all or substantially all of the Trust's assets, dissolution, liquidation, termination of the Trust or amendment of the Declaration of Trust shall be effective and valid if taken or approved by the affirmative vote of holders of Shares entitled to cast a majority of all the votes entitled to be cast on the matter.

Section 8.5 Board Approval. The submission of any action of the Trust to the shareholders for their consideration shall first be approved by the Board of Trustees.

Section 8.6 Action By Shareholders without a Meeting. The Bylaws may provide that any action required or permitted to be taken by the shareholders may be taken without a meeting by the consent, in writing or by electronic transmission, of the shareholders entitled to cast a sufficient number of votes to approve the matter as required by statute, the Declaration of Trust or the Bylaws, as the case may be.

ARTICLE IX
LIABILITY LIMITATION, INDEMNIFICATION AND TRANSACTIONS WITH THE TRUST

Section 9.1 Limitation of Shareholder Liability. No shareholder shall be liable for any debt, claim, demand, judgment or obligation of any kind of, against or with respect to the Trust by reason of his being a shareholder, nor shall any shareholder be subject to any personal liability whatsoever, in tort, contract or otherwise, to any person in connection with the property or the affairs of the Trust by reason of his being a shareholder.

Section 9.2 Limitation of Trustee and Officer Liability. To the maximum extent that Maryland law in effect from time to time permits limitation of the liability of trustees and officers of a real estate investment trust, no present or former Trustee or officer of the Trust shall be liable to the Trust or to any shareholder for money damages. Neither the amendment nor repeal of this Section 9.2, nor the adoption or amendment of any other provision of the Declaration of Trust inconsistent with this Section 9.2, shall apply to or affect in any respect the applicability of the preceding sentence with respect to any act or failure to act which occurred prior to such amendment, repeal or adoption. No Trustee or officer of the Trust shall be liable to the Trust or to any shareholder for money damages except to the extent that (a) the Trustee or officer actually received an improper benefit or profit in money, property or services, for the amount of the benefit or profit in money, property or services actually received; or (b) a judgment or other final adjudication adverse to the Trustee or officer is entered in a proceeding based on a finding in the proceeding that the Trustee's or officer's action or failure to act was the result of active and deliberate dishonesty and was material to the cause of action adjudicated in the proceeding.

Section 9.3 Indemnification. The Trust shall have the power, to the maximum extent permitted by Maryland law in effect from time to time, to obligate itself to indemnify, and to pay or reimburse reasonable expenses in advance of final disposition of a proceeding to, (a) any individual who is a present or former shareholder, Trustee or officer of the Trust or (b) any individual who, while a Trustee or officer of the Trust and at the request of the Trust, serves or has served as a director, officer, partner, member, manager, trustee, employee or agent of another real estate investment trust, corporation, partnership, limited liability company, joint venture, trust, employee benefit plan or any other enterprise, from and against any claim or liability to which such person may become subject or which such person may incur by reason of his status as a present or former shareholder, Trustee or officer of the Trust. The Trust shall have the power, with the approval of its Board of Trustees, to provide such indemnification and advancement of expenses to a person who served a predecessor of the Trust in any of the capacities described in (a) or (b) above and to any employee or agent of the Trust or a predecessor of the Trust.

Section 9.4 Transactions Between the Trust and its Trustees, Officers, Employees and Agents. Subject to any express restrictions in the Declaration of Trust or adopted by the Trustees in the Bylaws or by resolution, the Trust may enter into any contract or transaction of any kind with any person, including any Trustee, officer, employee or agent of the Trust or any person affiliated with a Trustee, officer, employee or agent of the Trust, whether or not any of them has a financial interest in such transaction. Section 2-419 of the MGCL shall be available for and apply to any contract or other transaction between the Trust and any of its Trustees or between the Trust and any other trust,

corporation, firm or other entity in which any of its Trustees is a trustee or director or has a material financial interest.

ARTICLE X
AMENDMENTS

Section 10.1 General. The Trust reserves the right from time to time to make any amendment to the Declaration of Trust, now or hereafter authorized by law, including any amendment altering the terms or contract rights, as expressly set forth in the Declaration of Trust, of any Shares. All rights and powers conferred by the Declaration of Trust on shareholders, Trustees and officers are granted subject to this reservation. An amendment to the Declaration of Trust (a) shall be signed and acknowledged by at least a majority of the Trustees, or an officer duly authorized by at least a majority of the Trustees, (b) shall be filed for record as provided in Section 13.5 and (c) shall become effective as of the later of the time the SDAT accepts the amendment for record or the time established in the amendment, not to exceed 30 days after the amendment is accepted for record. All references to the Declaration of Trust shall include all amendments and supplements thereto.

Section 10.2 By Trustees. The Trustees may amend the Declaration of Trust from time to time, in the manner provided by Title 8, without any action by the shareholders, (i) to qualify as a real estate investment trust under the Code or under Title 8, (ii) in any respect in which the charter of a corporation may be amended in accordance with Section 2-605 of the MGCL and (iii) as otherwise provided by Title 8 or in the Declaration of Trust.

Section 10.3 By Shareholders. Except as otherwise provided in the Declaration of Trust, any amendment to the Declaration of Trust shall be valid only if approved by the affirmative vote of a majority of all the votes entitled to be cast on the matter.

ARTICLE XI
MERGER, CONSOLIDATION OR SALE OF TRUST PROPERTY

Subject to the provisions of any class or series of Shares at the time outstanding, the Trust may (a) merge the Trust into another entity, (b) consolidate the Trust with one or more other entities into a new entity or (c) sell, lease, exchange or otherwise transfer all or substantially all of the Trust property. Any such action must be approved by the Board of Trustees and, after notice to all shareholders entitled to vote on the matter, by the affirmative vote of a majority of all the votes entitled to be cast on the matter.

ARTICLE XII
DURATION AND TERMINATION OF TRUST

Section 12.1 Duration. The Trust shall continue perpetually unless terminated pursuant to Section 12.2 or pursuant to any applicable provision of Title 8.

Section 12.2 Termination.

(a) Subject to the provisions of any class or series of Shares at the time outstanding, after approval by a majority of the entire Board of Trustees, the Trust may be terminated at any meeting of shareholders, by the affirmative vote of a majority of all the votes entitled to be cast on the matter. Upon the termination of the Trust:

(i) The Trust shall carry on no business except for the purpose of winding up its affairs.

(ii) The Trustees shall proceed to wind up the affairs of the Trust and all of the powers of the Trustees under the Declaration of Trust shall continue, including the powers to fulfill or discharge the Trust's contracts, collect its assets, sell, convey, assign, exchange, transfer or otherwise dispose of all or any part of the remaining property of the Trust to one or more persons at public or private sale for consideration which may consist in whole or in part of cash, securities or other property of any kind, discharge or pay its liabilities and do all other acts appropriate to liquidate its business. The Trustees may appoint any officer of the Trust or any other person to supervise the winding up of the affairs of the Trust and delegate to such officer or such person any or all powers of the Trustees in this regard.

(iii) After paying or adequately providing for the payment of all liabilities, and upon receipt of such releases, indemnities and agreements as the Board of Trustees deems necessary for the Trustees' or the Trust's protection, the Trust may distribute the remaining property of the Trust among the shareholders so that after payment in full or the setting apart for payment of such preferential amounts, if any, to which the holders of any Shares at the time outstanding shall be entitled, the remaining property of the Trust shall, subject to any participating or similar rights of Shares at the time outstanding, be distributed ratably among the holders of Common Shares at the time outstanding.

(b) After termination of the Trust, the liquidation of its business and the distribution to the shareholders as herein provided, a majority of the Trustees shall execute and file with the Trust's records a document certifying that the Trust has been duly terminated, and the Trustees shall be discharged from all liabilities and duties hereunder, and the rights and interests of all shareholders shall cease.

ARTICLE XIII
MISCELLANEOUS

Section 13.1 Governing Law. This Declaration of Trust is executed by the undersigned and delivered in the State of Maryland with reference to the laws thereof, and the rights of all parties and the validity, construction and effect of every provision hereof shall be subject to and construed according to the laws of the State of Maryland without regard to conflicts of laws provisions thereof.

Section 13.2 Reliance by Third Parties. Any certificate shall be final and conclusive as to any person dealing with the Trust if executed by the Secretary or an Assistant Secretary of the Trust or a Trustee, and if certifying to: (a) the number or identity of Trustees, officers of the Trust or shareholders; (b) the due authorization of the execution of any document; (c) the action or vote taken, and the existence of a quorum, at a meeting of the Board of Trustees or shareholders; (d) a copy of the Declaration of Trust or of the Bylaws as a true and complete copy as then in force; (e) an amendment to the Declaration of Trust; (f) the termination of the Trust; or (g) the existence of any fact relating to the affairs of the Trust. No purchaser, lender, transfer agent or other person shall be bound to make any inquiry concerning the validity of any transaction purporting to be made by the Trust on its behalf or by any officer, employee or agent of the Trust.

Section 13.3 Severability.

(a) The provisions of the Declaration of Trust are severable, and if the Board of Trustees shall determine, with the advice of counsel, that any one or more of such provisions (the "**Conflicting Provisions**") are in conflict with the Code, Title 8 or other applicable federal or state laws, the Conflicting Provisions, to the extent of the conflict, shall be deemed never to have constituted a part of the Declaration of Trust, even without any amendment of the Declaration of Trust pursuant to Article X and without affecting or impairing any of the remaining provisions of the Declaration of Trust or rendering invalid or improper any action taken or omitted prior to such determination. No Trustee shall be liable for making or failing to make such a determination. In the event of any such determination by the Board of Trustees, the Board shall amend the Declaration of Trust in the manner provided in Section 10.2.

(b) If any provision of the Declaration of Trust shall be held invalid or unenforceable in any jurisdiction, such holding shall apply only to the extent of any such invalidity or unenforceability and shall not in any manner affect, impair or render invalid or unenforceable such provision in any other jurisdiction or any other provision of the Declaration of Trust in any jurisdiction.

Section 13.4 Construction. In the Declaration of Trust, unless the context otherwise requires, words used in the singular or in the plural include both the plural and singular and words denoting any gender include all genders. The title and headings of different parts are inserted for convenience and shall not affect the meaning, construction or effect of the Declaration of Trust. In defining or interpreting the powers and duties of the Trust and its Trustees and officers, reference may be made by the Trustees or officers, to the extent appropriate and not inconsistent with the Code or Title 8, to the MGCL.

Section 13.5 Recordation. The Declaration of Trust and any amendment or supplement hereto shall be filed for record with the SDAT and may also be filed or recorded in such other places as the Trustees deem appropriate, but failure to file for record the Declaration of Trust or any amendment or supplement hereto in any office other than in the State of Maryland shall not affect or impair the validity or effectiveness of the Declaration of Trust or any amendment or supplement hereto. A restated Declaration of Trust shall, upon filing, be conclusive evidence of all amendments and supplements contained therein and may thereafter be referred to in lieu of the original Declaration of Trust and the various amendments or supplements thereto.

THIRD: The amendment to and restatement of the Declaration of Trust of the Trust as hereinabove set forth have been duly advised by the Board of Trustees and approved by the shareholders of the Trust as required by law.

FOURTH: The name and address of the Trust's current resident agent are as set forth in Article IV of the foregoing amendment and restatement of the Declaration of Trust of the Trust.

FIFTH: The number of Trustees of the Trust and the names of those currently in office are as set forth in Article V of the foregoing amendment and restatement of the Declaration of Trust of the Trust.

SIXTH: The total number of shares of beneficial interest which the Trust had authority to issue immediately prior to this amendment and restatement was 100,000,000, consisting of 100,000,000 Common Shares, $0.01 par value per share. The aggregate par value of all shares of beneficial interest having par value was $1,000,000.

SEVENTH: The total number of shares of beneficial interest which the Trust has authority to issue pursuant to the foregoing amendment and restatement of the Declaration of Trust is 110,000,000, consisting of 100,000,000 Common Shares, $0.01 par value per share, and 10,000,000 Preferred Shares, $0.01 par value per share. The aggregate par value of all authorized shares of beneficial interest having par value is $1,100,000.

EIGHTH: The undersigned acknowledges these Articles of Amendment and Restatement to be the trust act of the Trust and as to all matters or facts required to be verified under oath, the undersigned acknowledges that to the best of his knowledge, information and belief, these matters and facts are true in all material respects and that this statement is made under the penalties for perjury.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Trust has caused these Articles of Amendment and Restatement to be signed in its name and on its behalf by its President and Chief Executive Officer and attested to by its Secretary on this 17th day of May, 2011.

ATTEST:

/s/ Laura M. Franklin

Laura M. Franklin

Secretary

WASHINGTON REAL ESTATE INVESTMENT TRUST

By: /s/ George F. McKenzie (SEAL)

George F. McKenzie

President and Chief Executive Officer

WASHINGTON REAL ESTATE INVESTMENT TRUST

ARTICLES OF AMENDMENT

Washington Real Estate Investment Trust, a Maryland real estate investment trust (the "Trust"), hereby certifies to the State Department of Assessments and Taxation of Maryland (the "Department") that:

FIRST: The Trust desires to amend the Articles of Amendment and Restatement of the Trust (the "Declaration of Trust") as currently in effect.

SECOND: The Declaration of Trust is hereby amended by deleting therefrom in its entirety the first paragraph of Section 5.2 of Article V and inserting in lieu thereof a new first paragraph of Section 5.2 to read as follows:

> The number of Trustees of the Trust shall be eight (8), which number may be increased or decreased only by the Board pursuant to the Bylaws. Until the 2019 annual meeting of shareholders, the Trustees of the Trust shall be divided into more than one class, reflecting the classified board structure that was in existence prior to the 2017 annual meeting of shareholders, with the Trustees of each class serving for a term expiring at the annual meeting of shareholders held during the third (3rd) year after election (except as set forth in this Section 5.2) and until their successors shall have been duly elected and shall have qualified or until their earlier removal or resignation. At the 2017 annual meeting of shareholders, the Trustees who shall be elected at the 2017 annual meeting to fill the trusteeships held by Trustees whose terms expire at the 2017 annual meeting shall be elected for one-year terms expiring at the 2018 annual meeting of shareholders; at the 2018 annual meeting of shareholders, the Trustees who shall be elected at the 2018 annual meeting to fill the trusteeships held by Trustees whose terms expire at the 2018 annual meeting shall be elected for one-year terms expiring at the 2019 annual meeting of shareholders; at the 2019 annual meeting of shareholders, the terms of all Trustees shall expire and at such annual meeting, and at each annual meeting thereafter, all Trustees shall be elected for one-year terms expiring at the next annual meeting. Each Trustee elected at the 2017 annual meeting of shareholders shall serve a one-year term as provided in this Section 5.2 notwithstanding that the Articles effecting these amendments to declassify the Board of Trustees as provided herein may be filed with the Department after the 2017 annual meeting of shareholders at which such Trustee was elected and these amendments were adopted by the shareholders. The names of the seven (7) current Trustees who shall serve until the expiration of their respective terms for which they were elected, and until their successors are duly elected and qualified or until their earlier removal or resignation, and the year in which the current term of each such trustee shall expire are:

Edward S. Civera	(Term to expire in 2017)
Benjamin S. Butcher	(Term to expire in 2017)
Charles T. Nason	(Term to expire in 2018)
Thomas H. Nolan, Jr.	(Term to expire in 2018)
Anthony L. Winns	(Term to expire in 2018)
William G. Byrnes	(Term to expire in 2019)
Paul T. McDermott	(Term to expire in 2019)

THIRD: The Declaration of Trust is hereby amended by replacing "and (e)" in Section 8.2 with the following language "(e) amendment of the Bylaws in accordance with terms thereof; and (f)."

FOURTH: The foregoing amendments to the Declaration of Trust have been duly advised by the Board of Trustees of the Trust and approved by the shareholders of the Trust as required by law.

FIFTH: There has been no increase in the authorized shares of beneficial interest of the Trust effected by the amendments to the Declaration of Trust as set forth above.

SIXTH: These Articles of Amendment shall be effective upon filing with the Department.

SEVENTH: The undersigned acknowledges these Articles of Amendment to be the trust act of the Trust and as to all matters or facts required to be verified under oath, the undersigned acknowledges that to the best of his knowledge, information and belief, these matters and facts are true in al material respects and that this statement is made under the penalties for perjury.

[Signature Page Follows]

IN WITNESS WHEREOF, the Trust has caused these Articles of Amendment to be signed in its name and on its behalf by its President and Chief Executive Officer and attested to be its Secretary on this 2nd day of June, 2017.

WASHINGTON REAL ESTATE
INVESTMENT TRUST

By: /s/ Paul T. McDermott
Name: Paul T. McDermott
Title: President and Chief Executive Officer

By: /s/ Taryn D. Fielder
Name: Taryn D. Fielder
Title: Senior Vice President, General Counsel
And Corporate Secretary

WASHINGTON REAL ESTATE INVESTMENT TRUST

ARTICLES OF AMENDMENT

Washington Real Estate Investment Trust, a Maryland real estate investment trust (the "Trust") hereby certifies to the State Department of Assessments and Taxation of Maryland that:

FIRST: The Trust desires to amend the Articles of Amendment and Restatement of the Trust, as amended (the "Declaration of Trust") as currently in effect.

SECOND: The Declaration of Trust is hereby amended by deleting therefrom the second sentence of Section 6.1 of Article VI and inserting in lieu thereof a new second sentence of Section 6.1 to read as follows:

"The Trust has authority to issue 150,000,000 common shares of beneficial interest, $0.01 par value per share ("**Common Shares**"), and 10,000,000 preferred shares of beneficial interest, $0.01 par value per share ("**Preferred Shares**")."

THIRD: This amendment to the Declaration of Trust as set forth above has been duly approved by a majority of the entire the Board of Trustees of the Trust as required by law and the Declaration of Trust, and is limited to the change which, under Section 8-203(a)(8) of the Maryland REIT Law and Section 6.1 of the Declaration of Trust, does not require approval by the shareholders of the Trust.

FOURTH: The total number of shares of beneficial interest that the Trust had authority to issue immediately prior to the filing of these Articles of Amendment was 110,000,000, consisting of 100,000,000 Common Shares, $0.01 par value per share, and 10,000,000 Preferred Shares, $0.01 par value per share. Immediately prior to the filing of these Articles of Amendment, the aggregate par value of all authorized shares of beneficial interest having par value is $1,100,000.

FIFTH: The total number of shares of beneficial interest that the Trust has authority to issue immediately upon the filing of these Articles of Amendment is 160,000,000, consisting of 150,000,000 Common Shares, $0.01 par value per share, and 10,000,000 Preferred Shares, $0.01 par value per share. Immediately upon the filing of these Articles of Amendment, the aggregate par of all authorized shares of beneficial interest having par value is $1,600,000.

SIXTH: The preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends, qualifications and terms and conditions of redemption were not changed by the foregoing amendment.

SEVENTH: The undersigned acknowledges these Articles of Amendment to be the trust act of the Trust and as to all matters of facts required to be verified under oath, the undersigned acknowledges that to the best of his knowledge, information and belief, these matters and facts are true in all material respects and that this statement is made under the penalties of perjury.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Trust has caused these Articles of Amendment to be signed in its name and on its behalf by its President and Chief Executive Officer and attested to by its Secretary on this 10th day of February, 2021.

WASHINGTON REAL ESTATE
INVESTMENT TRUST

By: /s/ Paul T. McDermott

Name: Paul T. McDermott
Title: President and Chief Executive Officer

By: /s/ Taryn D. Fielder

Name: Taryn D. Fielder
Title: Senior Vice President, General Counsel and Corporate Secretary

WASHINGTON REAL ESTATE INVESTMENT TRUST

ARTICLES OF AMENDMENT

Washington Real Estate Investment Trust, a Maryland real estate investment trust (the “Trust”), hereby certifies to the State Department of Assessments and Taxation of Maryland (the “Department”) that:

FIRST: The Trust desires to amend the Articles of Amendment and Restatement of the Trust, as amended (the “Declaration of Trust”) as currently in effect.

SECOND: The Declaration of Trust is hereby amended by deleting the first sentence of existing Article II and substituting in lieu thereof the following:

ARTICLE II
NAME

The name of the Trust is:

Elme Communities

THIRD: The foregoing amendment to the Declaration of Trust has been duly approved by at least a majority of the entire Board of Trustees of the Trust as required by law. The amendment set forth herein is made without action by the shareholders of the Trust, pursuant to Section 8-501(e)(2) of the Maryland REIT Law.

FOURTH: These Articles of Amendment shall become effective as of 12:01 a.m. Eastern time on October 17, 2022.

FIFTH: The undersigned acknowledges these Articles of Amendment to be the trust act of the Trust and as to all matters or facts required to be verified under oath, the undersigned acknowledges that to the best of his knowledge, information and belief, these matters and facts are true in all material respects and that this statement is made under the penalties for perjury.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Trust has caused these Articles of Amendment to be signed in its name and on its behalf by its President and Chief Executive Officer and attested to be its Executive Vice President and Chief Financial Officer on this 12th day of October, 2022.

WASHINGTON REAL ESTATE INVESTMENT TRUST

/s/ Paul T. McDermott

Name: Paul T. McDermott

Title: President and Chief Executive Officer

/s/ Stephen E. Riffee

Name: Stephen E. Riffee

Title: Executive Vice President and Chief Financial Officer

Exhibit 4.4

DESCRIPTION OF THE REGISTRANT'S SECURITIES REGISTERED PURSUANT TO SECTION 12 OF THE SECURITIES EXCHANGE ACT OF 1934

The following description sets forth certain material terms and provisions of our common stock, par value $0.01 per share, which is our only security registered under Section 12 of the Securities Exchange Act of 1934, as amended. This description also summarizes relevant provisions of the Maryland General Corporation Law ("Maryland law") and certain provisions of our Articles of Amendment and Restatement, as amended (the "Declaration of Trust") and our Amended and Restated Bylaws, as amended (the "Bylaws"). The following summary does not purport to be complete and is subject to, and is qualified in its entirety by reference to, the applicable provisions of Maryland law and our Declaration of Trust and Bylaws, each of which are incorporated by reference as exhibits to the Annual Report on Form 10-K of which this Exhibit 4.4 is a part. We encourage you to read the Declaration of Trust, the Bylaws and the applicable provisions of Maryland law for additional information.

General

Elme Communities' Declaration of Trust provides that it is authorized to issue up to 160,000,000 shares of beneficial interest (referred to herein as "shares") consisting of 150,000,000 common shares of beneficial interest, par value $.01 per share, which are referred to herein as Elme Communities' "common shares," and 10,000,000 preferred shares of beneficial interest, par value $.01 per share, which are referred to herein as Elme Communities' "preferred shares."

Elme Communities' Declaration of Trust, as permitted by Maryland law, contains a provision that permits our board of trustees, without shareholder approval, to amend the Declaration of Trust to increase the aggregate number of authorized common shares. The authorized common shares and undesignated preferred shares are generally available for future issuance without further action by Elme Communities' shareholders, unless such action is required by applicable law or the rules of any stock exchange or automated quotation system on which Elme Communities' securities may be listed or traded.

Maryland's statutory law governing real estate investment trusts formed under Maryland law, and Elme Communities' Declaration of Trust and Bylaws, provide that none of its shareholders will be personally liable, by reason of such shareholder's status as a shareholder, for any of its obligations. Elme Communities' Declaration of Trust and Bylaws further provide that it will indemnify any shareholder or former shareholder against any claim or liability to which such shareholder may become subject by reason of being or having been a shareholder, and that Elme Communities shall reimburse each shareholder for reasonable expenses in advance of final disposition of a proceeding to which the shareholder has been made or threatened to be made a party by reason of such status.

Elme Communities' Declaration of Trust provides that, subject to the provisions of any class or series of preferred shares then outstanding and to the mandatory provisions of applicable law, its shareholders are entitled to vote only on the following matters:

- election or removal of trustees;
- amendment of the Declaration of Trust (except as otherwise provided in the Declaration of Trust, including an amendment to increase the number of authorized common shares);
- Elme Communities' termination;
- Elme Communities' merger or consolidation with another entity, or the sale of all or substantially all of Elme Communities' property;
- Amendment of the Bylaws; and
- such other matters with respect to which the board of trustees has adopted a resolution declaring that a proposed action is advisable and directing that the matter be submitted to the shareholders for approval or ratification

Except with respect to these matters, no action taken by Elme Communities' shareholders at any meeting binds the board of trustees.

Common Shares

Voting Rights of Holders of Common Shares

Subject to the provisions of our Declaration of Trust regarding the restrictions on ownership and transfer of shares of beneficial interest, each outstanding common share entitles the holder to one vote on all matters submitted to a vote of shareholders, including the election of trustees, and, except as provided with respect to any other class or series of beneficial interest, the holders of common shares will possess the exclusive voting power. There is no cumulative voting in the election of trustees, which means that the holders of a majority of the outstanding common shares, voting as a single class, can elect all of the trustees then standing for election. In the future, Elme Communities may issue a series of preferred shares that votes together with the common shares as a single class.

Dividends, Liquidation and Other Rights

Holders of our common shares will be entitled to receive dividends when, as and if authorized by our board of trustees, as declared by Elme Communities, out of assets legally available for the payment of dividends. They also will be entitled to share ratably in our assets legally available for distribution to our shareholders in the event of any liquidation, dissolution or winding up of Elme Communities' affairs, after payment of or adequate provision for all of our known debts and liabilities. These rights will be subject to the preferential rights, if any, of holders of any other class or series of our shares and to the provisions of our Declaration of Trust relating to the restrictions on ownership and transfer of our shares.

Holders of our common shares have no preference, conversion, exchange, sinking fund, redemption or appraisal rights and will have no preemptive rights to subscribe for any Elme Communities securities. Subject to the restrictions on ownership and transfer of shares contained in our Declaration of Trust, all common shares will have equal dividend, liquidation and other rights.

Power to Classify and Reclassify Preferred Shares and Issue Additional Common Shares or Preferred Shares

Our Declaration of Trust authorizes our board of trustees to classify any unissued preferred shares from time to time into one or more classes or series of preferred shares. Prior to issuance of preferred shares of each class or series, the board of trustees is required by the Maryland statute governing real estate investment trusts formed under the laws of that state, which we refer to as the Maryland REIT Law, and our Declaration of Trust to set for each such class or series, subject to the provisions of our Declaration of Trust regarding the restrictions on ownership and transfer of shares and subject to the express terms of any class or series of shares then outstanding, the preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications and terms and conditions of redemption for each such class or series. As a result, our board of trustees could authorize the issuance of preferred shares that have priority over the common shares with respect to dividends and rights upon liquidation and with other terms and conditions that could have the effect of delaying, deterring or preventing a transaction or a change in control that might involve a premium price for holders of common shares or otherwise might be in their best interest. As of December 31, 2022, no preferred shares are presently outstanding.

To permit us increased flexibility in structuring possible future financings and acquisitions and in meeting other needs that might arise, our Declaration of Trust allows us to issue additional common shares and to classify unissued preferred shares and thereafter to issue the classified shares without shareholder approval, unless shareholder approval is required by applicable law or the rules of any stock exchange or automated quotation system on which our securities may be listed or traded. Although we have no present intention of doing so, we could issue a class or series of shares that could delay, deter or prevent a transaction or a change in control that might involve a premium price for holders of common shares or might otherwise be in their best interests.

Transfer Agent and Registrar

The transfer agent and registrar for the common shares is Computershare Trust Company, N.A.

Exchange Listing

Elme Communities' common shares are listed on the New York Stock Exchange under the symbol "ELME."

Certain Provisions of Maryland Law and Our Declaration of Trust and Bylaws

The following description of certain provisions of Maryland law and of our Declaration of Trust and Bylaws is only a summary. For a complete description, we refer you to the applicable Maryland law, our Declaration of Trust and Bylaws.

Number of Trustees; Vacancies

Our Declaration of Trust provides that the number of trustees on our board of trustees will be fixed exclusively by our board of trustees pursuant to our Bylaws. Our Bylaws provide that our board of trustees will consist of not less than the minimum required by the Maryland REIT Law and not more than eleven trustees. Our Declaration of Trust and Bylaws provide that, except as otherwise provided in the terms of any class or series of our shares, any vacancy, including a vacancy created by an increase in the number of trustees, may be filled by a vote of a majority of the remaining trustees, even if the remaining trustees do not constitute a quorum, unless the vacancy occurring through removal has already been filled by the shareholders, and any trustee elected to fill a vacancy shall serve for the remainder of the full term of the trusteeship in which such vacancy occurred. Since the 2019 annual meeting of shareholders, all members of the board of trustees are elected annually.

Removal of Trustees

Our Declaration of Trust provides that, subject to the rights of holders of one or more classes or series of our shares to elect or remove one or more trustees, a trustee may be removed from office only with cause and then only by the affirmative vote of the holders of not less than a majority of the shares then outstanding and entitled to vote generally in the election of trustees.

Business Combinations

Under Maryland law as applicable to Maryland REITs, certain "business combinations" (including a merger, consolidation, share exchange or, in certain circumstances, an asset transfer or issuance or reclassification of equity securities) between a Maryland REIT and any person who beneficially owns ten percent or more of the voting power of the REIT's shares (defined in Maryland law as an interested stockholder) or an affiliate of an interested stockholder are prohibited for five years after the most recent date on which the interested stockholder became an interested stockholder. Thereafter, any such business combination must generally be recommended by the board of trustees of such REIT and approved by the affirmative vote of at least (a) 80% of the votes entitled to be cast by holders of outstanding voting shares of beneficial interest of the REIT and (b) two-thirds of the votes entitled to be cast by holders of voting shares of the REIT other than shares held by the interested stockholder and the affiliates and associates of the interested stockholder with whom (or with whose affiliate) the business combination is to be effected, unless, among other conditions, the REIT's common shareholders receive a minimum price (as defined in Maryland law) for their shares and the consideration is received in cash or in the same form as previously paid by the interested stockholder for its shares.

These provisions of Maryland law do not apply, however, to business combinations that are approved or exempted by the board of trustees of the REIT prior to the time that the interested stockholder became an interested stockholder. A person is not an interested stockholder under the statute if the board of trustees approved in advance the transaction by which he otherwise would have become an interested stockholder. The board of trustees may provide that its approval is subject to compliance with any terms and conditions determined by the board.

We have not elected to opt-out of the business combination statute. The business combination statute may have the effect of inhibiting a third party from making an acquisition proposal for us or of delaying, deferring or preventing a

change of control of us under circumstances that otherwise could provide our shareholders with the opportunity to realize a premium over the then-current market price or that our shareholders may otherwise believe is in their best interests.

Control Share Acquisitions

Maryland law as applicable to Maryland REITs, provides that a holder of "control shares" of a Maryland REIT acquired in a "control share acquisition" has no voting rights with respect to such shares except to the extent approved by a vote of two-thirds of the votes entitled to be cast on the matter, excluding shares of beneficial interest owned by the acquiror, by officers or by trustees who are employees of the REIT. "Control shares" are voting shares of beneficial interest which, if aggregated with all other such shares of beneficial interest previously acquired by the acquiror, or in respect of which the acquiror is able to exercise or direct the exercise of voting power (except solely by virtue of a revocable proxy), would entitle the acquiror to exercise voting power in electing trustees within one of the following ranges of voting power: (a) one-tenth or more but less than one-third, (b) one-third or more but less than a majority, or (c) a majority or more of all voting power. Control shares do not include shares the acquiring person is then entitled to vote as a result of having previously obtained shareholder approval. A "control share acquisition" means the acquisition of issued and outstanding control shares, subject to certain exceptions.

A person who has made or proposes to make a control share acquisition, upon satisfaction of certain conditions (including an undertaking to pay expenses), may compel the board of trustees of the REIT to call a special meeting of shareholders to be held within 50 days of demand to consider the voting rights of the shares. If no request for a meeting is made, the REIT may itself present the question at any shareholders meeting.

If voting rights are not approved at the meeting or if the acquiring person does not deliver an "acquiring person statement" as required by the statute, then, subject to certain conditions and limitations, the REIT may redeem any or all of the control shares (except those for which voting rights have previously been approved) for fair value determined, without regard to the absence of voting rights for the control shares, as of the date of the last control share acquisition by the acquiror or, if a meeting of shareholders is held at which the voting rights of such shares are considered and not approved, as of the date of the meeting. If voting rights for control shares are approved at a shareholders meeting and the acquiror becomes entitled to vote a majority of the shares entitled to vote, all other shareholders may exercise appraisal rights. The fair value of the shares as determined for purposes of such appraisal rights may not be less than the highest price per share paid by the acquiror in the control share acquisition.
The control share acquisition statute does not apply (a) to shares acquired in a merger, consolidation or share exchange if the REIT is a party to the transaction or (b) to acquisitions approved or exempted by the declaration of trust or bylaws of the REIT.

Our Bylaws contain a provision exempting from the control share acquisition statute any and all acquisitions by any person of Elme Communities' shares of beneficial interest. There can be no assurance that this provision will not be amended or eliminated at any time in the future, and may be amended or eliminated with retroactive effect.

Unsolicited Takeovers

Subtitle 8 of Title 3 of the Maryland General Corporation Law, as applicable to Maryland REITs, permits a Maryland real estate investment trust with a class of equity securities registered under the Exchange Act and at least three independent trustees to elect to be subject, by provision in its declaration of trust or bylaws or a resolution of its board of trustees and notwithstanding any contrary provision in its declaration of trust or bylaws, to any or all of five provisions:

- a classified board;
- a two-thirds vote requirement for removing a trustees;
- a requirement that the number of trustees be fixed only by vote of the trustees;
- a requirement that a vacancy on the board be filled only by the affirmative vote of a majority of the remaining trustees then in office (even if the remaining trustees do not constitute a quorum) and for the remainder of the full term of the class of trustees in which the vacancy occurred; and
- a majority requirement for the calling of a shareholder-requested special meeting of shareholders.

Through provisions in the Declaration of Trust and Bylaws unrelated to Subtitle 8 of Title 3 of the Maryland General Corporation Law, Elme Communities already requires, unless called by the chairperson of Elme Communities' board of trustees, the president, the chief executive officer, or the board of trustees, the request of holders of a majority of outstanding shares to call a special meeting of shareholders. The board of trustees of Elme Communities has the power, under Maryland law and without shareholder approval, to re-classify its board of trustees pursuant to the provisions of Subtitle 8 of Title 3 of the Maryland General Corporation Law or elect to be subject to any of the other provisions described above.

Merger, Amendment of Declaration of Trust and Bylaws

Under the Maryland REIT Law, a Maryland REIT generally cannot dissolve, amend its declaration of trust or merge with, or convert into, another entity unless recommended by the board of trustees and approved by the affirmative vote of shareholders holding at least two-thirds of the votes entitled to be cast on the matter, unless a lesser percentage, but not less than a majority of all the votes entitled to be cast on the matter, is set forth in the REIT's declaration of trust. Under our Declaration of Trust, we cannot dissolve, merge with another entity, sell all or substantially all of our assets, or amend our Declaration of Trust without the affirmative vote of the holders of shares entitled to cast a majority of all the votes entitled to be cast on the matter. Our board of trustees may amend the Declaration of Trust, without any action by the shareholders, (a) to qualify as a real estate investment trust under the Internal Revenue Code or the Maryland REIT Law, (b) in any respect in which the charter of a corporation may be amended in accordance with Section 2-605 of Maryland law (*e.g.*, to change the name of Elme Communities or the par value of any class or series of our shares) and (c) as otherwise provided by the Maryland REIT Law or in the Declaration of Trust.

Our Bylaws may be altered, amended or repealed and new Bylaws may be adopted by the affirmative vote of a majority of our board of trustees or by our shareholders by the affirmative vote of a majority of all the votes entitled to be cast on the matter.

Limitation of Liability and Indemnification

The Maryland REIT Law permits a Maryland REIT to include in its declaration of trust a provision eliminating the liability of its trustees and officers to the REIT and its shareholders for money damages except for liability resulting from (a) actual receipt of an improper benefit or profit in money, property or services or (b) active and deliberate dishonesty established by a final judgment as being material to the cause of action. Our Declaration of Trust contains such a provision which eliminates such liability to the maximum extent permitted by Maryland law.

Our Declaration of Trust authorizes us, and our Bylaws obligate us, to the maximum extent permitted by Maryland law, to indemnify and, without requiring a preliminary determination of the ultimate entitlement to indemnification, to pay or reimburse reasonable expenses in advance of final disposition of a proceeding to (a) any present or former shareholder, trustee or officer of Elme Communities who is made or threatened to be made a party to the proceeding or (b) any individual who, while a trustee or officer of Elme Communities and at the request of Elme Communities, serves or has served as a trustee, director, officer, member, manager or partner of another REIT, corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise from and against any claim or liability to which such person may become subject or which such person may incur by reason of his status as a present or former shareholder, trustee or officer of Elme Communities. The rights to indemnification and advance of expenses provided by our Declaration of Trust and Bylaws vest immediately upon election of a trustee or officer. Our Declaration of Trust and Bylaws also permit us to indemnify and advance expenses to any individual who served a predecessor of Elme Communities in any of the capacities described above and to any employee or agent of Elme Communities or a predecessor of Elme Communities.

The Maryland REIT Law permits a Maryland REIT to indemnify and advance expenses to its trustees and officers to the same extent as permitted by Maryland law for directors and officers of Maryland corporations. Maryland law permits a corporation to indemnify its present and former directors and officers, among others, against judgments, penalties, fines, settlements and reasonable expenses actually incurred by them in connection with any proceeding to which they may be made a party by reason of their service in those or other capacities unless it is established that (a) the act or omission of the director or officer was material to the matter giving rise to the proceeding and (i) was committed in bad faith or (ii) was the result of active and deliberate dishonesty, (b) the director or officer actually received an improper personal benefit in money, property or services or (c) in the case of any criminal proceeding, the director or officer had reasonable cause to believe that the act or omission was unlawful. However, a Maryland corporation may not indemnify for an adverse judgment in a suit by or in the right of the corporation or for a judgment of liability on the basis that a personal benefit was improperly received, unless, in either case, a court orders indemnification and then only for expenses. In addition, Maryland law permits a corporation to advance reasonable expenses to a director or officer upon the corporation’s receipt of (a) a written affirmation by the director or officer of his or her good faith belief that he or she has met the standard of conduct necessary for indemnification by the corporation and (b) a written undertaking by him or on his behalf to repay the amount paid or reimbursed by the corporation if it shall ultimately be determined that the standard of conduct was not met.

In addition, we have entered into indemnification agreements with each of our trustees and executive officers that provide for indemnification to the maximum extent permitted by Maryland law.

Term and Termination

Our Declaration of Trust provides for us to have a perpetual existence. Pursuant to our Declaration of Trust, and subject to the provisions of any class or series of our shares of beneficial interest then outstanding, after approval by a majority of the entire board of trustees, our shareholders, by the affirmative vote of a majority of all of the votes entitled to be cast on the matter, may approve the dissolution of Elme Communities.

Meetings of Shareholders

Under our Bylaws, annual meetings of shareholders are to be held each year on the date and at the time and place as determined by our board of trustees. Special meetings of shareholders may be called only by our board of trustees, the chairman of our board of trustees, our president or our chief executive officer, or by the secretary of Elme Communities to act on any matter that may properly be considered at a meeting of shareholders upon the written request of shareholders entitled to cast not less than a majority of all the votes entitled to be cast on such matter at such meeting. Only matters set forth in the notice of the special meeting may be considered and acted upon at such a meeting. Our Bylaws provide that any action required or permitted to be taken at a meeting of shareholders may be taken without a meeting (a) if a unanimous consent setting forth the action is given in writing or by electronic transmission by each shareholder entitled to vote on the matter and filed with the minutes of proceedings of the shareholders or (b) if the action is advised, and submitted to the shareholders for approval, by the board of trustees and a consent in writing or by electronic transmission of shareholders entitled to cast not less than the minimum number of votes that would be necessary to authorize or take the action at a meeting of shareholders is delivered to Elme Communities in accordance with the Maryland REIT Law.

Advance Notice of Trustee Nominations and New Business

Our Bylaws provide that, with respect to an annual meeting of shareholders, nominations of individuals for election to our board of trustees and the proposal of other business to be considered by shareholders at the annual meeting may be made (a) pursuant to our notice of the meeting, (b) by our board of trustees or (c) by a shareholder who was a shareholder of record both at the time of giving of notice by the shareholder and at the time of the meeting, who is entitled to vote at the meeting and who has complied with the advance notice procedures set forth in our Bylaws.

With respect to special meetings of shareholders, only the business specified in our notice of meeting may be brought before the meeting of shareholders. Nominations of individuals for election to our board of trustees may be made only (a) by our board of trustees, (b) by a shareholder that has requested that a special meeting be called for the purpose of electing trustees in compliance with our Bylaws and that has supplied the information required by our Bylaws about each individual whom the shareholder proposes to nominate for election as a trustee or (c) provided that our board of trustees has determined that trustees shall be elected at such meeting, by a shareholder who was a shareholder of record both at the time of giving of notice by the shareholder and at the time of the meeting, who is entitled to vote at the meeting and who has complied with the advance notice provisions set forth in our Bylaws.

The purpose of requiring shareholders to give advance notice of nominations and other proposals is to afford our board of trustees the opportunity to consider the qualifications of the proposed nominees or the advisability of the other proposals and, to the extent considered necessary by our board of trustees, to inform shareholders and make recommendations regarding the nominations or other proposals. The advance notice procedures also permit a more orderly procedure for conducting our shareholder meetings. Although our Bylaws do not give our board of trustees

the power to disapprove timely shareholder nominations and proposals, they may have the effect of precluding a contest for the election of trustees or proposals for other action if the proper procedures are not followed, and of discouraging or deterring a third party from conducting a solicitation of proxies to elect its own slate of trustees to our board of trustees or to approve its own proposal.

Restrictions on Ownership and Transfer

In order to qualify as a REIT under the Internal Revenue Code, our shares must be beneficially owned by 100 or more persons during at least 335 days of a taxable year of twelve months or during a proportionate part of a shorter taxable year. Also, not more than 50% of the value of our outstanding shares (after taking into account any options to acquire shares) may be owned, directly or indirectly, or through attribution, by five or fewer individuals (as defined in the Internal Revenue Code to include certain entities) during the last half of a taxable year.

Our Declaration of Trust contains restrictions on the ownership and transfer of our shares of beneficial interest that are intended to, among other purposes, assist us in complying with these requirements. Our Declaration of Trust provides that, subject to the exceptions described below, no person may own, or be deemed to own by virtue of the attribution provisions of the Internal Revenue Code, more than 9.8% in value of the aggregate of our outstanding shares, referred to as the “Aggregate Share Ownership Limit,” or more than 9.8% (in value or in number of shares, whichever is more restrictive) of the aggregate of our outstanding common shares, referred to as the “Common Share Ownership Limit.” The Aggregate Share Ownership Limit and the Common Share Ownership Limit are referred to collectively as the “Ownership Limits.”

The Declaration of Trust further prohibits (a) any person from beneficially or constructively owning shares that would result in Elme Communities being “closely held” under Section 856(h) of the Internal Revenue Code or otherwise cause us to fail to qualify as a REIT (including, but not limited to beneficial or constructive ownership that would result in us owning (actually or constructively) an interest in a tenant that is described in Section 856(d)(2)(B) of the Internal Revenue Code if the income derived by us (either directly or indirectly through one or more partnerships or limited liability companies) from such tenant would cause us to fail to satisfy any of the gross income requirements of Section 856(c) of the Internal Revenue Code) and (b) any person from transferring shares if such transfer would result in shares being beneficially owned by fewer than 100 persons. Any person who acquires or attempts or intends to acquire beneficial or constructive ownership of shares that will or may violate any of the foregoing restrictions on transferability and ownership, or any person who would have owned shares that resulted in a transfer of shares to the charitable trust (as described below), is required to give notice immediately to us or, in the case of a proposed or attempted transaction, provide us at least 15 days prior notice, and provide us with such other information as we may request in order to determine the effect of such transfer, if any, on our status as a REIT.

The board of trustees, in its sole discretion, may exempt a proposed transferee from the Ownership Limits, which transferee is referred to in this prospectus as an “Excepted Holder.” However, the board of trustees may not grant such an exemption to any person if such exemption would result in Elme Communities being “closely held” within the meaning of Section 856(h) of the Internal Revenue Code or otherwise would result in us failing to qualify as a REIT. Also, in order to be considered by the board of trustees as an Excepted Holder, a person must not own, directly or indirectly, an interest in one of our tenants (or a tenant of any entity owned or controlled by us) that

would cause us to own, directly or indirectly, more than a 9.9% interest in such a tenant. This restriction is designed to ensure that rents from a tenant will qualify as "rents from real property" in satisfying the gross income tests applicable to REITs under the Internal Revenue Code. The person seeking an exemption must represent to the satisfaction of the board of trustees that it will not violate the two foregoing restrictions. The person also must agree that any violation or attempted violation of any of the foregoing restrictions will result in the automatic transfer of the shares causing such violation to the charitable trust. The board of trustees may require a ruling from the Internal Revenue Service or an opinion of counsel, in either case in form and substance satisfactory to the board of trustees, in its sole discretion, in order to determine or ensure our status as a REIT. The board of trustees may impose such conditions or restrictions as it deems appropriate in connection with granting such an exemption.

The board of trustees may from time to time increase or decrease the Ownership Limits, unless, after giving effect to such decrease or increase, Elme Communities would be "closely held" under Section 856(h) of the Internal Revenue Code or otherwise fail to qualify as a REIT. A reduced ownership limit will not apply to any person or entity whose percentage ownership of our common shares or our shares of all classes and series, as applicable, is at the effective time of such reduction, in excess of such decreased ownership limit until such time as such person's or entity's percentage ownership of our common shares or our shares of all classes and series, as applicable, equals or falls below the decreased ownership limit, but any further acquisition of our common shares or shares of all classes or series, as applicable, will violate the decreased ownership limit.

Pursuant to the Declaration of Trust, if any transfer of shares would result in shares being owned by fewer than 100 persons, such transfer will be null and void and the intended transferee will acquire no rights in such shares. In addition, if any transfer of shares occurs which, if effective, would result in any person beneficially or constructively owning shares in excess or in violation of the other transfer or ownership limitations described above (a "Prohibited Owner"), then that number of shares the beneficial or constructive ownership of which otherwise would cause such person to violate such limitations (rounded up to the nearest whole share) will be automatically transferred to a trust for the exclusive benefit of one or more charitable beneficiaries (the "Charitable Beneficiary"), and the Prohibited Owner will not acquire any rights in such shares. Such automatic transfer will be deemed to be effective as of the close of business on the business day prior to the date of such violative transfer. Shares held in the charitable trust will be issued and outstanding shares. The Prohibited Owner will not benefit economically from ownership of any shares held in the charitable trust, will have no rights to dividends and will not possess any rights to vote or other rights attributable to the shares held in the charitable trust. The trustee of the charitable trust (the "Charitable Trustee") will have all voting rights and rights to dividends or other distributions with respect to shares held in the charitable trust, which rights will be exercised for the exclusive benefit of the Charitable Beneficiary. Any dividend or other distribution paid prior to our discovery that shares have been transferred to the Charitable Trustee will be paid by the recipient of such dividend or other distribution to the Charitable Trustee upon demand, and any dividend or other distribution authorized but unpaid will be paid when due to the Charitable Trustee. Any dividend or other distribution so paid to the Charitable Trustee will be held in trust for the Charitable Beneficiary. Subject to Maryland law, effective as of the date that such shares have been transferred to the charitable trust, the Charitable Trustee will have the authority (at the Charitable Trustee's sole discretion) (a) to rescind as void any vote cast by a Prohibited Owner prior to our discovery that such shares have been transferred to the charitable trust and (b) to recast such vote in accordance with the desires of the Charitable Trustee acting for the benefit of the Charitable Beneficiary.

However, if we have already taken irreversible trust action, then the Charitable Trustee will not have the authority to rescind and recast such vote.

Within 20 days of receiving notice from us that shares have been transferred to the charitable trust, the Charitable Trustee must sell the shares held in the charitable trust to a person, designated by the Charitable Trustee, whose ownership of the shares will not violate the ownership limitations set forth in the Declaration of Trust. Upon such sale, the interest of the Charitable Beneficiary in the shares sold will terminate and the Charitable Trustee must distribute the net proceeds of the sale to the Prohibited Owner and to the Charitable Beneficiary as follows. The Prohibited Owner shall receive the lesser of (a) the price paid by the Prohibited Owner for the shares or, if the Prohibited Owner did not give value for the shares in connection with the event causing the shares to be held in the charitable trust (e.g., a gift, devise or other such transaction), the Market Price (as defined in our Declaration of Trust) of such shares on the day of the event causing the shares to be held in the charitable trust and (b) the price per share received by the Charitable Trustee from the sale or other disposition of the shares held in the charitable trust. Any net sale proceeds in excess of the amount payable to the Prohibited Owner will be paid immediately to the Charitable Beneficiary. If, prior to our discovery that shares have been transferred to the charitable trust, such shares are sold by a Prohibited Owner, then (a) such shares will be deemed to have been sold on behalf of the charitable trust and (b) to the extent that the Prohibited Owner received an amount for such shares that exceeds the amount that such Prohibited Owner was entitled to receive pursuant to the aforementioned requirement, such excess will be paid to the Charitable Trustee upon demand.

In addition, shares held in the charitable trust will be deemed to have been offered for sale to us, or our designee, at a price per share equal to the lesser of (a) the price per share in the transaction that resulted in such transfer to the charitable trust (or, in the case of a devise or gift, the Market Price at the time of such devise or gift) and (b) the Market Price on the date that we, or our designee, accepts such offer. We will have the right to accept such offer until the Charitable Trustee has sold the shares held in the charitable trust. Upon such a sale to us, the interest of the Charitable Beneficiary in the shares sold will terminate and the Charitable Trustee will distribute the net proceeds of the sale to the Prohibited Owner.

All certificates evidencing our shares will bear a legend referring to the restrictions described above.

Every owner of more than 5% (or such lower percentage as required by the Internal Revenue Code or the regulations promulgated thereunder) of all classes or series of shares, including common shares, will be required to give written notice to us within 30 days after the end of each taxable year stating the name and address of such owner, the number of shares of each class and series of shares that the owner beneficially owns and a description of the manner in which such shares are held. Each such owner must provide to us such additional information as we may request in order to determine the effect, if any, of such beneficial ownership on our status as a REIT and to ensure compliance with the Ownership Limits. In addition, each shareholder will, upon demand, be required to provide to us such information as we may request, in good faith, in order to determine our status as a REIT and to comply with the requirements of any taxing authority or governmental authority or to determine such compliance.

The foregoing restrictions on transferability and ownership will not apply if the board of trustees determines that it is no longer in our best interests to attempt to qualify, or to continue to qualify, as a REIT.

The ownership limitations contained in the Declaration of Trust could delay, defer or prevent a transaction or a change in control of us that might involve a premium price for our common shares or otherwise be in the best interest of our shareholders.

Possible Anti-Takeover Effect of Certain Provisions of Maryland Law and of Our Declaration of Trust and Bylaws

The business combination provisions of Maryland law, the control share acquisition provisions of Maryland law (if the applicable provision in our Bylaws is modified or rescinded), the unsolicited takeover provisions of Maryland law, the limitations on removal of trustees, the restrictions on the ownership and transfer of our shares of beneficial interest and the advance notice provisions of our Bylaws could have the effect of delaying, deterring or preventing a transaction or a change in the control that might involve a premium price for holders of the common shares or might otherwise be in their best interest.

WASHINGTON REAL ESTATE INVESTMENT TRUST
SUPPLEMENTAL EXECUTIVE RETIREMENT PLAN #2

As Amended and Restated

Effective January 1, 2008

Prepared: October 1, 2008

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Appendix A Designated Participants

WASHINGTON REAL ESTATE INVESTMENT TRUST
SUPPLEMENTAL EXECUTIVE RETIREMENT PLAN #2

This is the Washington Real Estate Investment Trust Supplemental Executive Retirement Plan #2 (the "Plan"), as initially adopted, and as amended and restated by the Board of Trustees, effective January 1, 2005. The Plan is intended to provide selected executives of Washington Real Estate Investment Trust ("WRIT") with supplemental retirement benefits that are reflective of their special contributions to the success of WRIT and that are competitive with the compensation of similarly-situated executive positions.

This Plan is intended to be an unfunded plan maintained by WRIT primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees as described in sections 201(2), 301(3) and 401(1) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). This Plan is also intended to comply with section 409A of the Internal Revenue Code of 1986, as amended (the "Code").

ARTICLE I. DEFINITIONS

When used herein, the following terms shall have the meanings set forth below, unless the context clearly indicates otherwise:

1.1 "Account" means the bookkeeping account maintained for each Participant on the books of WRIT to which Employer Allocations, and earnings and losses, thereon, are credited.

1.2 "Annual Allocation Rate" means the percentage of a Participant's annual base salary that will be allocated to the Plan shown in Appendix A.

1.3 "Beneficiary" means the Participant's spouse or other person or persons designated by the Participant in the manner prescribed by the Committee to receive his Account balance under the Plan, in the event of his death prior to full payment of his Account balance. If a Participant has no spouse and makes no effective Beneficiary designation, then the Participant's Beneficiary shall be the Participant's estate.

1.4 "Board" means the Board of Trustees of WRIT.

1.5 "Code" means the Internal Revenue Code of 1986, as amended.

1.6 "Committee" means the individual or committee appointed by WRIT to administer this Plan.

1.7 "Date of Participation" means the date an Employee becomes a Participant in the Plan, as set forth in Section 2.1.

1.8 "Effective Date of Plan" means January 1, 2005. The Effective Date of the Amendment and Restated Plan is January 1, 2008.

1.9 "Employee" means an Officer or other executive employee of WRIT.

1.10 "Employer Allocation" means an amount allocated to the Participant's Account in accordance with Section 3.1.

1.11 "ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

1.12 "Investment Funds" means the investment vehicles selected by the Committee to be used as measurements for the returns on Participants' Accounts, as provided in Article III.

1.13 "Officer" means an Employee who is a corporate officer of WRIT.

1.14 "Participant" means an Employee who becomes a Participant as provided in Section 2.1.

1.15 "Plan" means the Washington Real Estate Investment Trust Supplemental Executive Retirement Plan #2, as set forth herein and as it may be amended from time to time.

1.16 "Plan Year" means the calendar year, beginning with calendar year 2005.

1.17 "Prohibited Competition" means the Participant's employment by, service as a director of, or provision of consulting services to, any real estate investment trust located within a reasonable commuting distance (as determined by the Committee in its sole discretion) of WRIT or the residence of the Participant at the time of his termination of employment with WRIT, during the 24-month period that begins upon the Participant's voluntary termination of employment with WRIT, other than his retirement on or after his 65th birthday. Notwithstanding the foregoing sentence, service as a director of another real estate trust, which has been approved by the Board, shall not be included within the definition of "Prohibited Competition."

1.18 "Savings Plan" means the Washington Real Estate Investment Trust Employees' 401(k) Plan, a qualified plan under section 401(k) of the Code which includes a qualified cash or deferred arrangement under section 401(a) of the Code.

1.19 "Total and Permanent Disability" means any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, as a result of which the Participant is receiving income replacement benefits for a period of not less than three months under an accident and health plan covering employees of WRIT.

1.20 "Change in Control" means an occasion upon which (i) any "person" (as such term is used in Section 13(d) and 14(d) of the Exchange Act) other than a trustee or other fiduciary holding securities under an employee benefit plan of the Trust or a corporation controlled by the Trust, acquires (either directly and/or through becoming the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act)), directly or indirectly, securities of the Trust representing 40% or more of the combined voting power of the Trust's then outstanding securities (or has acquired securities representing 40% or more of the combined voting power of the Trust's then outstanding securities during the 12-month period ending on the date of the most recent acquisition of Trust securities by such person); or (ii) during any period of twelve (12) consecutive months (not including any period prior to the adoption of this Plan), individuals who at the beginning of such period constitute the Board and any new trustee (other than a trustee designated by a person who has entered into an agreement with the Trust to effect a transaction described in clauses (i) or (iii) of this Paragraph) whose election by the Board or nomination for election by the Trust's shareholders was approved by a vote of at least a majority of the trustees then still in office who either were trustees at the beginning of the period or whose election or nomination for election was previously so approved, cease for any reason to constitute a majority thereof; or (iii) any of (a) the Trust consummates a merger, consolidation,

reorganization, recapitalization or statutory share exchange (a "Business Combination"), other than a Business Combination which would result in the voting securities of the Trust outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) at least 50% of the combined voting power and at least 50% of the combined total fair market value of the securities of the Trust or such surviving entity outstanding immediately after such Business Combination, (b) the Trust's shareholders approve a plan of complete liquidation of the Trust, or (c) the Trust completes the sale or other disposition of all or substantially all of its assets in one or a series of transactions.

1.21 "Separation from Service" or "Separates from Service" means the definition set forth in Treas. Reg. § 1.409A-1(h).

ARTICLE II. ELIGIBILITY AND PARTICIPATION

2.1 Participation. An Employee shall become a Participant upon his designation and approval for participation by the Board. Employees who have been designated and approved as Participants and their Dates of Participation are listed in Appendix A.

2.2 Cessation of Participation. A Participant shall cease to be a Participant on the earlier of the following dates: (a) the date of his Separation from Service for any reason, or (b) the date the Board determines that he shall no longer be a Participant. A Participant whose participation is terminated shall nevertheless remain entitled to receive the vested balance of his Account (as determined under Article IV) in accordance with Article VI.

ARTICLE III. PARTICIPANTS' ACCOUNTS

3.1 Employer Allocation. WRIT shall allocate to each Participant's Account for each calendar month, or portion thereof, in which an Employee is a Participant an amount equal to the product of "A" and "B", where:

"A" equals the Participant's monthly rate of base salary as of the first of that month, and

"B" equals the Annual Allocation Rate shown in Appendix A.

3.2 Crediting of Accounts. Employer Allocations under Section 3.1 shall be credited to the respective Accounts of the Participants for whom they are made as soon as practicable after the beginning of the calendar month to which they relate, or at such subsequent date during the Plan Year as the Committee, at its discretion, determines is most practicable.

3.3 Investment Elections. In accordance with Article V, the Committee shall select Investment Funds to be used as measurements of investment returns on the Participants' Accounts, which Investment Funds shall be similar to the Investment Funds available under the Savings Plan. A Participant may specify the percentage of Employer Allocations to his Account to be credited with the investment returns earned by each such Investment Fund by filing an investment election form with the Committee in accordance with procedures established by the Committee. These procedures shall be similar to those used under the Savings Plan. The Participant may change his Investment Fund selections for future Employer Allocations, or for amounts already credited to his Account, in accordance with procedures established by the Committee that are similar to those used under the Savings Plan. Notwithstanding the foregoing, WRIT reserves the right to disregard the Participant's investment selections to the extent necessary to avoid adverse tax consequences. In addition, prior to the establishment of the Investment Funds, the Committee shall credit or debit a Participant's Account with the

investment returns determined by reference to a recognized index or a reasonable interest rate selected by the Committee in its discretion.

3.4 Crediting of Investment Returns to Accounts. The Committee shall credit or debit each of the Participant's Account with the investment returns attributable to the balance of that Account, to the extent practicable, at the times such investment returns are credited or debited under the trust accounts established in accordance Article V.

ARTICLE IV. VESTING

4.1 Conditional Vesting Schedule . Subject to the forfeiture provisions of Sections 4.3 and 4.4, a Participant shall become 100% vested in his Account Balance on the first to occur of the following events:

4.1.1 the Participant's attainment of age 55 and completion of 20 years of continuous employment with WRIT, if the Participant is employed by WRIT on such date;

4.1.2 in the case of a Participant whose Date of Participation is January 1, 2006 or earlier, the tenth anniversary of his continuous employment with WRIT; or

4.1.3 in the case of a Participant whose Date of Participation is after January 1, 2006, the tenth anniversary of his Date of Participation, provided he has been continuously employed by WRIT from his Date of Participation through the tenth anniversary of such date.

4.2 Events of Unconditional Vesting . Notwithstanding anything in this Article IV to the contrary, a Participant shall be 100% vested in his Account upon the earliest to occur of the following events:

4.2.1 the Participant's 65th birthday, if the Participant is employed by WRIT on such date;

4.2.2 the Participant's death, if the Participant dies while employed by WRIT or following his retirement or voluntary termination on or after an event of conditional vesting under Section 4.1 without having engaged in Prohibited Competition;

4.2.3 the date the Participant sustains a Total and Permanent Disability, if the Participant terminates employment with WRIT on account of such Total and Permanent Disability;

4.2.4 the involuntary discharge of the Participant by WRIT, other than for "cause," as defined in Section 4.5;

4.2.5 if a Participant has retired or otherwise voluntarily terminated employment before his 65th birthday or after conditionally vesting in his Account under Section 4.1, the Participant's completion of the 24-month period following such retirement or other employment termination without having engaged in Prohibited Competition; or

4.2.6 a Change in Control, if the Participant is employed by WRIT on the date of the Change in Control.

4.3 Prohibited Competition Following Retirement or Voluntary Termination of Employment. Notwithstanding Section 4.1, a Participant who retires or otherwise voluntarily terminates his employment with WRIT on or after an event of conditional vesting under Section 4.1, and thereafter engages in Prohibited Competition shall forfeit his entire Account. Such forfeiture shall occur as of the first day the Participant engages in Prohibited Competition.

4.4 Termination by WRIT For Cause. Notwithstanding Section 4.1, if a Participant is discharged from employment for "cause," as defined in Section 4.5, his entire Account shall be forfeited upon the date of his discharge.

4.5 Cause Defined. For purposes of this Plan, "cause" means any of the following:

4.5.1 commission by a Participant of a felony or crime of moral turpitude;

4.5.2 conduct by a Participant in the performance of his duties which is illegal, dishonest, fraudulent or disloyal;

4.5.3 the breach by a Participant of any fiduciary duty the Participant owes to WRIT; or

4.5.4 gross neglect of duty or poor performance by the Participant which is not cured to the reasonable satisfaction of WRIT within 30 days of the Participant's receipt of written notice from WRIT advising the Participant of said gross neglect or poor performance.

4.6 Committee Determination. The Committee in its sole discretion shall determine the application of the "for cause" conditions of the Plan.

ARTICLE V. FUNDING

5.1 Funding. WRIT shall establish a grantor trust for the purpose of maintaining Participant Accounts. The trust so created shall conform to the terms of the model trust provided by the Internal Revenue Service as described in Revenue Procedure 92-64. Investment allocations shall be determined and maintained in accordance with Section 3.3. Notwithstanding the establishment of such trust, it is the intention of WRIT and the Participants that the Plan shall be unfunded for tax purposes and for purposes of Title I of ERISA. The Plan constitutes a mere promise by WRIT to pay benefits in the future. To the extent that any Participant or any other person acquires a right to receive benefits under this Plan, such right shall be no greater than the right of any unsecured general creditor of WRIT.

ARTICLE VI. PAYMENT OF BENEFITS

6.1 Early Retirement or Voluntary Termination of Employment. If a Participant retires or otherwise voluntarily terminates employment with WRIT after conditionally vesting in his Account under the provisions of Section 4.1, but prior to his 65th birthday, and does not engage in Prohibited Competition following such early retirement or other voluntary termination of employment during the 24-month period following the date of such termination, he shall be entitled to receive the entire balance of his Account upon unconditionally vesting in his Account under Section 4.2.4. Such benefits shall be paid, or shall begin to be paid, within 90 days after the completion of such 24-month period in the manner determined under Section 6.6. If, however, the Participant dies during such 24-month period following his termination of

employment with WRIT without having engaged in Prohibited Competition, his Beneficiary shall be paid the entire balance of his Account within 90 days after his death.

6.2 Retirement On or After Age 65 . If a Participant retires or otherwise Separates from Service on or after his 65th birthday, he shall be entitled to receive the entire balance of his Account as of the date six months after the date of his retirement. Such benefits shall be paid, or shall begin to be paid, within 90 days after the expiration of such six-month period in the manner determined under Section 6.6. If, however, the Participant dies during the six-month period following his retirement, his Beneficiary shall be paid the entire balance of his Account within 90 days after his death.

6.3 Separation from Service on Account of Death. If a Participant's Separates from Service on account of death, his Beneficiary shall be paid the entire balance of his Account within 90 days after his death.

6.4 Separation from Service on Account of Total and Permanent Disability. A Participant who Separates from Service on account of Total and Permanent Disability shall be entitled to receive the entire balance of his Account subject to the principles set forth below.

6.4.1 If, (i) as of the date of such Separation from Service, the Participant was not otherwise vested in his Account pursuant to Section 4.1 or any of the other provisions of this Article VI, and (ii) the Participant has not elected to receive his Account in installments pursuant to Section 6.6.1, then such Account will be paid in full within 90 days after his Separation from Service and by no later than March 15 of the calendar year following such date of Separation from Service.

6.4.2 If, (i) as of the date of such Separation from Service, the Participant had already become vested in his Account pursuant to Section 4.1 or any of the other provisions of this Article VI, or (ii) the Participant had elected to receive his Account in installments pursuant to Section 6.6.1, then such Account shall be paid, or shall begin to be paid, within 90 days after the expiration of six months following such date of Separation from Service in the manner determined under Section 6.6. If the Participant dies prior to the commencement of payment of such Account, his Beneficiary shall be paid the entire balance of the Account within 90 days after his death.

6.5 Involuntary Discharge by WRIT Other Than For "Cause". A Participant who incurs a Separation from Service due to an involuntary discharge by WRIT other than for "cause" as defined in Section 4.5 shall be entitled to receive the entire balance of his Account subject to the principles set forth below.

6.5.1 If, (i) as of the date of such Separation from Service, the Participant was not otherwise vested in his Account pursuant to Section 4.1 or any of the other provisions of this Article VI, and (ii) the Participant has not elected to receive his Account in installments pursuant to Section 6.6.1, then such Account will be paid in full within 90 days after his Separation from Service and by no later than March 15 of the calendar year following such date of Separation from Service.

6.5.2 If, (i) as of the date of such Separation from Service, the Participant had already become vested in his Account pursuant to Section 4.1 or any of the other provisions of this Article VI, or (ii) the Participant had elected to receive his Account in installments pursuant to Section 6.6.1, then such Account shall be paid, or shall begin to be paid, within 90 days after the expiration of 6 months following such date of Separation from Service in the manner determined under Section 6.6. If the Participant dies prior to the commencement of payment of

such Account, his Beneficiary shall be paid the entire balance of the Account within 90 days after his death.

6.5A Change in Control. A Participant shall become fully vested in his Account upon a Change in Control. A Participant who incurs a Separation from Service following a Change in Control shall be entitled to receive the entire balance of his Account subject to the principles set forth below:

6.5A.1 If, (i) as of the date of Change in Control, the Participant was not otherwise vested in his Account pursuant to Section 4.1 or any of the other provisions of this Article VI, (ii) the Participant has not elected to receive his Account in installments pursuant to Section 6.6.1 and (iii) the Participant incurs a Separation from Service in the same calendar year in which the Change in Control took place, then such Account will be paid in full within 90 days after his Separation from Service and by no later than March 15 of the calendar year following such date of Separation from Service.

6.5A.2 If, (i) as of the date of such Change in Control, the Participant had already become vested in his Account pursuant to Section 4.1 or any of the other provisions of this Article VI, (ii) the Participant had elected to receive his Account in installments pursuant to Section 6.6.1, or (iii) the Participant incurs a Separation from Service after the calendar year in which the Change in Control takes place, then such Account shall be paid, or shall begin to be paid, within 90 days after the expiration of 6 months following such date of Separation from Service in the manner determined under Section 6.6. If the Participant dies prior to the commencement of payment of such Account, his Beneficiary shall be paid the entire balance of the Account within 90 days after his death.

6.6 Form of Payment. All payments to a Participant (or a Participant's beneficiary, in the event of the Participant's death) of the balance of the Participant's Account shall be made in the form of a single cash lump sum, as of the date the Participant is entitled to receive the balance of his Account as determined under this Article VI, except as otherwise provided in this Section 6.6.

6.6.1 Installment Payment Option. If the Participant has made a valid and irrevocable election to receive all or a portion of his Account in substantially equal monthly installments (adjusted to reflect earnings through the date of payment) over a period of 10 years, that portion of his Account to which his election applies shall begin to be paid as of the date on which he would have been entitled to receive the entire balance of his Account, but for his election, and shall continue to be paid in monthly installments until all installments have been paid and the Account is exhausted or the date of the Participant's death, if sooner. In the event of the Participant's death with any balance remaining in his Account, the balance shall be paid in a cash lump sum to the Participant's Beneficiary as soon as practicable after the Participant's death. To the extent that a Participant has made a valid and irrevocable election to receive all or a portion of his Account in installments and the payment commencement date established pursuant to Section 6.2, Section 6.4, Section 6.5 and Section 6.5A is 6 months after the date of the Participant's Separation of Service, then the first such payment shall consist of 6 monthly

payments all payable as of such payment commencement date and the remaining payments shall constitute the normal monthly payments elected by the Participant.

6.6.2 Election Requirements. An election of installment payments shall be valid only if such election:

6.6.2.1 is made within 30 days after the date the Participant first becomes eligible to participate in the Plan;

6.6.2.2 is made only with respect to that portion of the Participant's Account that is attributable to Employer Allocations made for Plan Years beginning after the Plan Year during which such election is made; or

6.6.3.3 does not take effect for at least 12 months after the date on which the election is made and results in the deferral of the first installment payment for a period of at least five years from the date such cash lump sum would have been paid.

Notwithstanding anything in this Section 6.6 to the contrary, an election to receive installment payments in lieu of a cash lump sum shall be valid only to the extent such election shall not cause the Plan to violate section 409A of the Code.

6.7 Tax Year During Which Payments are Made . Except to the extent otherwise provided in Section 6.6, a Participant shall not have the right to designate the taxable year of payment.

ARTICLE VII. ADMINISTRATION

7.1 Plan Interpretation. The Committee shall have the authority to interpret the Plan and to determine the amount and time of payment of benefits and other issues arising in the administration of the Plan. Any construction or interpretation of the Plan and any determination of fact in administering the Plan made in good faith by the Committee shall be final and conclusive for all Plan purposes.

7.2 Claims Procedure.

7.2.1 Initial Determination. Upon presentation to the Committee of a claim for benefits under the Plan, the Committee shall make a determination of the validity thereof. If the determination is adverse to the claimant, the Committee shall furnish to the claimant within 90 days after the receipt of the claim a written notice setting forth the following:

a) the specific reason or reasons for the denial;

b) specific references to pertinent provisions of the Plan on which the denial is based;

c) a description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary; and

d) a description of the Plan's review procedures, and the time limits applicable to such procedures, including a statement of the

claimant's right to bring a civil action under section 502(a) of ERISA following an adverse determination.

If it is necessary to extend the period of time for making a decision beyond 90 days after the receipt of the request, the claimant shall be notified in writing of the extension of time prior to the beginning of such extension. In no event shall the extension exceed a period of 90 days from the end of the initial 90-day period. The extension notice shall indicate the special circumstances requiring an extension of time and the date by which the Committee expects to render the benefit determination.

7.2.2 Appeal Procedure. In the event of a denial of a claim, the claimant or his duly authorized representative may appeal such denial to the Committee for a full and fair review of the adverse determination. The claimant's request for review must be in writing and made to the Committee within 60 days after receipt by the claimant of the written notification described in Section 7.2.1; provided, however, that such 60-day period shall be extended if circumstances so warrant. The claimant or his duly authorized representative shall be provided, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claimant's claim for benefits, and may submit written comments, documents, records and other information relating to his claim, which shall be given full consideration by the Committee in its review. The Committee may, in its sole discretion, conduct a hearing. A request for a hearing made by the claimant will be given full consideration. At such hearing, the claimant shall be entitled to appear and present evidence and be represented by counsel.

7.2.3 Decision on Appeal. A recommendation on a requestion for review shall be made by the Committee to the Board, and a decision shall be made by the Board not later than 60 days after receipt of the request; provided, however, in the event of a hearing or other special circumstances, such decision shall be made not later than 120 days after receipt of such request. If it is necessary to extend the period of time for making a decision beyond 60 days after the receipt of the request, the claimant shall be notified in writing of the extension of time prior to the beginning of such extension. The Board's decision on review, if adverse to the claimant, shall state in writing the specific reasons and references to the Plan provisions on which it is based. Such decision shall be promptly provided to the claimant.

7.24.4 Arbitration. In the event that the Board's decision on review is adverse to the claimant, the claimant or his duly authorized representative may appeal such decision by submitting a request for arbitration to the American Arbitration Association within 60 days after receipt by the claimant of the written notification described in Section 7.2.3. Such appeal shall be adjudicated in Washington, D. C. by a single independent arbitrator pursuant to the Employee Benefits Plan Claims Arbitration Rules of the American Arbitration Association then in effect. The decision of the arbitrator shall be final and binding on all parties hereto and judgment may be entered in any court having jurisdiction. Each party shall bear its own costs in any arbitration proceeding held hereunder and the parties shall share the cost of the arbitrator.

ARTICLE VIII. MISCELLANEOUS

8.1 No Effect on Employment Rights. Nothing contained herein will confer upon any Participant the right to be retained in the service of WRIT nor limit the right of WRIT to discharge any Participant.

8.2 Spendthrift Provisions. No benefit payable under the Plan shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, or charge

prior to actual receipt thereof by the payee; and any attempt so to anticipate, alienate, sell, transfer, assign, pledge, encumber or charge prior to such receipt shall be void; and WRIT shall not be liable in any manner for or subject to the debts, contracts, liabilities, engagements or torts of any person entitled to any benefit under the Plan.

8.3 Governing Law. The Plan is established under and will be construed according to the laws of the State of Maryland (without regard to its conflict of laws provisions), to the extent that such laws are not preempted by ERISA and valid regulations promulgated thereunder.

8.4 Incapacity of Recipient. In the event a Participant is declared incompetent and a conservator or other person legally charged with the care of the person or the estate of such Participant is appointed, any benefits under the Plan to which such Participant is entitled shall be paid to the conservator or other person legally charged with the care of such Participant. Except as provided in the preceding sentence, should the Committee, in its discretion, determine that a Participant is unable to manage his personal affairs, the Committee may make distributions to any person for the benefit of such Participant, provided the Committee makes a reasonable good faith judgment that such person shall expend the funds so distributed for the benefit of such Participant.

8.5 Taxes. Any taxes imposed upon a Participant as a result of his participation in the Plan shall be the sole responsibility of the Participant. WRIT shall have the right to deduct from the Participant's compensation or any payment made pursuant to this Plan any federal, state, local or other taxes required to be deducted or withheld from such compensation or payment, as the Committee may determine in its sole discretion.

8.6 Amendment or Termination. WRIT reserves the right to amend or terminate the Plan by or pursuant to action of the Board when, in the sole opinion of WRIT, an amendment or termination is advisable. Any amendment or termination shall be made pursuant to a resolution of the Board and shall be effective as of the date of the resolution. No amendment or termination of the Plan shall directly or indirectly deprive any Participant of all or any portion of the Participant's Account considered to be vested under the Plan before the date of amendment or termination. Further, no amendment or termination of the Plan shall cause benefits under the Plan to be distributed except at the time and in the form provided under Article VI. Notwithstanding the preceding sentence, however, if the Plan is terminated under circumstances with respect to which an acceleration of benefit payments would be permitted under final regulations issued by the U.S. Department of Treasury under section 409A of the Code, WRIT reserves the discretion to distribute benefits in accordance with the requirements of such regulations.

8.7 Entire Agreement. Except with respect to any retirement plan maintained or contributed to by WRIT for the benefit of a substantial number of its full-time employees, this Plan constitutes the entire agreement and understanding between WRIT and the Participants with respect to the provision of retirement benefits to the Participants.

8.8 Severability. If any provision of this Plan conflicts with the law under which the Plan is to be construed or is determined to be invalid or unenforceable by any court of competent jurisdiction or an arbitrator, such provision shall be deleted from the Plan and the Plan shall be construed to give full force and effect to the remaining provisions thereof.

8.9 Construction. The masculine gender shall include the feminine and the singular the plural, unless the context clearly requires otherwise.

To record its adoption of this amendment and restatement of the Plan, effective January 1, 2008 (with the provisions relating to the satisfaction of the requirements established pursuant to Section 409A of the Internal Revenue Code being deemed made effective as of the earliest date necessary to ensure compliance with Section 409A, Washington Real Estate Investment Trust has caused its authorized officers to affix its corporate name and seal this 1st day of January, 2008.

WASHINGTON REAL ESTATE INVESTMENT TRUST

By: /s/ Laura M. Franklin

Title: EVP Accounting, Administration
and Corporate Secretary

Appendix A

Designated Participants

Participant Name	Date of Participation	Annual Allocation Rate
George McKenzie	January 1, 2005	19.0%
Tom Regnell	January 1, 2005	16.0%
Laura Franklin	January 1, 2005	13.0%
Sara Grootwassink	January 1, 2005	9.5%
David DiNardo	July 1, 2005	15.0%
Chris Mundy	January 1, 2006	14.5% (1)
Brad Cederdahl	January 1, 2006	14.0%
Mike Paukstitus	June 1, 2007	15.5%

(1) Effective 6/30/2006, Mr. Mundy terminated employment with WRIT.

SERP Contributions ceased 6/30/06.

Prepared: August 2, 2007

WASHINGTON REAL ESTATE INVESTMENT TRUST DEFERRED COMPENSATION FOR OFFICERS

Effective January 1, 2007

As Amended and Restated January 1, 2011

(includes all amendments to date)

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WASHINGTON REAL ESTATE INVESTMENT TRUST DEFFERED COMPENSATION PLAN FOR OFFICERS

This is the Washington Real Estate Investment Trust Deferred Compensation Plan for Officers (the "Plan"), as adopted effective January **1,** 2007. The Plan is intended to provide each officer of Washington Real Estate Investment Trust ("WRIT") with the opportunity to defer a percentage of his or her salary and his or her incentive award under WRIT's short term incentive program, and to receive an employer matching contribution with respect to a deferral of an incentive award.

This Plan is intended to be an unfunded plan maintained by WRIT primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees as described in sections 201(2), 301(3) and 401(1) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). This Plan is also intended to comply with section 409A of the Internal Revenue Code of 1986, as amended (the "Code").

ARTICLE I. DEFINITIONS

When used herein, the following terms shall have the meanings set forth below, unless the context clearly indicates otherwise:

1.1 "Account" means the bookkeeping account maintained for each Participant on the books of WRIT that is comprised of the following subaccounts:

1.1.1 "Salary Deferral Accounts" to which a Participant's Salary Deferrals, as described in Section 3.1, and Earnings thereon, are credited;

1.1.2 "STI Deferral Accounts" to which a Participant's STI Deferrals, as described in Section 3.2, are credited; and

1.1.3 "Matching Contribution Accounts" to which Matching Contributions made by WRIT, as described in Section 3.3, are credited.

A Salary Deferral Account shall be created for each Participant for each Plan Year that such Participant makes Salary Deferrals. An STI Deferral Account and a Matching Contribution Account shall be created for each Participant for each Plan Year that such Participant makes STI Deferrals.

1.2 "Beneficiary" means the Participant's spouse or other person or persons designated by the Participant in the manner prescribed by the Committee to receive his Account balance under the Plan, in the event of his death prior to full payment of his Account balance. If a Participant has no spouse and makes no effective Beneficiary designation, then the Participant's Beneficiary shall be the Participant's estate.

1.3 "Board" means the Board of Trustees of WRIT.

1.4 "Change in Control" means an occasion upon which (i) any "person" (as such term is used in Section 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act")), other than a trustee or other fiduciary holding securities under an employee benefit plan of WRIT or a corporation owned, directly or indirectly, by the shareholders of WRIT in substantially the same proportions as their ownership of Shares of WRIT, is or becomes the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Trust representing 35% or more of the combined voting power or combined total fair market value of WRIT's then outstanding securities; or (ii) during any period of twelve (12) consecutive months (not including any period prior to the adoption of this Plan), individuals who at the beginning of such period constitute the Board and any new trustee (other than a trustee designated by a person who has entered into an agreement with WRIT to effect a transaction described in clauses (i) or (iii) of this Paragraph) whose election by the Board or nomination for election by WRIT's shareholders was approved by a vote of at least a majority of the trustees then still in office who either were trustees at the beginning of the period or whose election or nomination for election was previously so approved, cease for any reason to constitute a majority thereof; or (iii) (a) WRIT merges or consolidates with any other corporation or trust, other than a merger or consolidation which would result in the voting securities of WRIT outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) at least 50% of the combined voting power or at least 50% of the combined total fair market value of the securities of WRIT or such surviving entity outstanding immediately after such merger or consolidation, (b) WRIT adopts a plan of complete liquidation and in connection therewith terminates this Plan, or (c) WRIT completes the sale or other disposition of all or substantially all of its assets.

1.5 "Code" means the Internal Revenue Code of 1986, as amended.

1.6 "Committee" means the individual or committee appointed by WRIT to administer this Plan.

1.7 "Distribution Date" means which of the following dates is applicable:

1.7.l the date selected by the Participant for distribution of his Salary Deferral Account, in accordance with his deferral election under Section 3.1 or his re-deferral election under Section 3.4; or

1.7.2 the date selected by the Participant for distribution of his STI Deferral Account and his Matching Contribution Account , in accordance with his deferral election under Section 3.2 or his re-deferral election under Section 3.4.

1.8 "Earnings" means the rate of interest applicable to a Participant's Salary Deferral Account. The rate shall equal the Company's weighted average interest on its fixed rate bonds as of December 31 of each calendar year. Such rate may be changed to any other rate approved by the Board as of any subsequent January 1.

1.9 "Effective Date" means January 1, 2007.

1.10 "Employee" means any individual employed by WRIT.

1.11 "ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

1.12 "Matching Contribution" means the amount allocated to the Participant's Employer Matching Contribution Account in accordance with Section 3.2.

1.13 "Officer" means an Employee who is a corporate officer of WRIT.

1.14 "Participant" means an Officer who becomes a Participant as provided in Section 2.2.

1.15 "Plan" means the Washington Real Estate Investment Trust Deferred Compensation Plan for Officers, as set forth herein and as it may be amended from time to time.

1.16 "Plan Year" means the calendar year, beginning with calendar year 2007.

1.17 "Retirement" means the Participant's retirement on or after the earlier of (i) the Participant's 65th birthday, and (ii) the first date that the Participant has attained age 55 and completed 20 years of continuous employment as an Employee (determined without regard to any periods during which the Participant was absent on an authorized leave).

1.18 "RSU" means a Restricted Share Unit, issued under the authority of the Share Grant Plan, or any successor of such plan, which has a value equal to the value of a Share.

1.19 "Salary" means the amount of base salary paid to a Participant by WRIT during a Plan Year that is taken into account under the Plan . For each Participant, Salary shall include: the base salary paid to him by WRIT during the Plan Year , including any amounts that would be paid to him but for an election under a qualified cash or deferred arrangement under section 401(k) or the Code; a cafeteria plan under section 125 of the Code; a qualified transportation fringe benefit under section 132(f) of the Code; or any non-qualified deferred compensation plan maintained by WRIT, including this Plan. Except as provided in the preceding two sentences, Salary shall not include any allocations, contributions, or payments by WRIT under this Plan or any plan or plans for the benefit of its employees, including any severance plan or separation agreement, special one-time awards, or payments under any short or long:-term incentive plan, fringe benefits (whether or not a fringe benefit within the meaning of the Code), or any amounts identified by WRIT as expense allowances or reimbursements, regardless of whether such amounts are treated as wages under the Code.

1.20 "Salary Deferral" means the amount a Participant elects to defer out of his Salary, in accordance with Section 3.1.

1.21 "Share" means a share of beneficial interest in WRIT that is publicly traded on the New York Stock Exchange.

1.22 "Share Grant Plan" means the Washington Real Estate Investment Trust Share Grant Plan, as amended, and any succesor plan approved by the shareholders of the Trust, pursuant to which RSUs may be granted and Shares issued to Participants and other employees of WRIT .

1.23 "STI Deferral" means the amount of a Participant's STI Award that such Participant has elected to defer, in accordance with Section 3.2 .

1.24 "STI Award" means that portion of the award granted to a Participant under WRIT's short-term incentive plan and paid to the Participant for services performed during a Plan Year as of December 15th of such Plan Year, or that would be paid to the Participant on such date but for the Participant's STI Deferral election under Section 3.2.

1.25 "Total and Permanent Disability" means any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, as a result of which the Participant is receiving income replacement benefits for a period of not less than three months under an accident and health plan covering employees of WRIT. The determination of whether the Participant's physical or mental impairment satisfies the conditions set forth in this Section 1 .25 shall be made under a disability insurance program covering employees of WRIT; provided, however, that if the Participant is determined to be totally disabled by the Social Security Administration, his physical or mental impairment shall be deemed to satisfy the conditions of this Section.

1.26 "Unforeseeable Emergency" means a severe financial hardship of the Participant or Beneficiary, resulting from an illness or accident of the Participant or Beneficiary, the Participant's or Beneficiary's spouse, or the Participant's or Beneficiary's dependent (as defined in section 152(a) of the Code); loss of the Participant's or Beneficiary's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered insurance, for example, as a result of a natural disaster); or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant or Beneficiary, as described regulations issued under Section 409A of the Code, as determined by the Committee. An Unforeseeable Emergency shall not include any financial hardship to the extent that such emergency is or may be relieved through reimbursement or compensation from insurance or otherwise, by liquidation of the service provider's assets, to the extent the liquidation of such assets would not cause severe financial hardship, or by cessation of deferrals under the arrangement.

ARTICLE II. ELIGIBILITY AND PARTICIPATION

2.1 Eligibility. Each Officer who is employed as an Officer on the Effective Date shall be eligible to participate in the Plan. Each individual who is hired as an Officer after the

Effective Date, or who is promoted to an Officer position after the Effective Date, shall be eligible to participate in the Plan beginning on the January 1 following the date of his employment or his promotion, as applicable.

2.2 Participation. An Officer who is eligible to participate may become a Participant by electing to make a Salary Deferral, in accordance with Section 3.1, or an STI Deferral with respect to his STI Award payable on or about December 15th of the Plan Year following his election, in accordance with Section 3.2.

2.3 Cessation of Participation. A Participant shall cease to be a Participant on the earlier of the following dates: (i) the date of his termination of employment for any reason, (ii) the date the entire vested balance of his Account is paid to him; or (iii) the date the Board determines that he shall no longer be a Participant. A Participant whose participation is terminated shall nevertheless remain entitled to receive the vested balance of his Account (as determined under Article IV) in accordance with Article VI.

ARTICLE III. PARTICIPANT DEFERRALS AND MATCHING CONTRIBUTIONS

3.1 Salary Deferrals. Each Participant may elect to have his Salary reduced by a whole percentage or a set dollar amount and the amount of the reduction paid into his Salary Deferral Account for such Plan Year by completing and filing an election form provided by the Committee during the annual election period specified by the Committee, which shall end not later than December 15th of the year preceding the Plan Year to which the Participant's election relates. A Participant shall be required to complete and file a new election, in accordance with this Section 3.1, for each Plan Year that the Participant elects to make Salary Deferrals.

3.1.1 Contents of Election. The Participant's election under this Section 3.1 shall specify the following:

3.1.1.1 The percentage or dollar amount of Salary reduction elected by the Participant to be paid into his Salary Deferral Account for the Plan Year; and

3.1.1.2 The Distribution Date selected by the Participant for the Salary Deferrals, which shall be no earlier than the the third anniversary of the first day of the Plan Year to which the Salary Deferral election relates.

3.1.2 Modification; Revocation and Termination. A Participant may not change or revoke his election under this Section 3.1 during a Plan Year. A Participant's election will automatically terminate as of (1) the end of the Plan Year to which the election relates, or (2) the date of the Participant's termination of employment. A Participant may make a new election, which changes the percentage or dollar amount to be withheld from his Salary effective as of the first day of the next Plan Year by completing and filing a new election during the annual election period that precedes the Plan Year to which the election relates.

3.2 STI Deferrals. Each Participant may elect to have his STI Award for a Plan Year reduced by a whole percentage or a set dollar amount, and the amount of the reduction converted into RSUs and allocated to his STI Deferral Account for such Plan Year, by completing and filing an election form provided by the Committee during the annual election period specified by the Committee, which shall end not later than December 15th of the year preceding the Plan Year for which the STI Award is paid. A Participant shall be required to complete and file a new election, in accordance with this Section 3.2, for each Plan Year that the Participant elects to make STI Deferrals.

3.2.1 Contents of Election. The Participant's election under this Section 3.2 shall specify the following:

3.2.1.1 The percentage or dollar amount of Salary reduction elected by the Participant to be converted into RSUs and allocated to his STI Deferral Account for the Plan Year; and

3.2.1.2 For elections made during enrollment periods ending December 15, 2006 or 2007, for STI Deferrals of STI Awards payable in 2007 or 2008, the Distribution Date selected by the Participant for his STI Deferral, which shall be no earlier than the third anniversary of the date on which the STI Award to which the STI Deferral election relates would have been paid to the Participant, but for his deferral election; or

3.2.1.3 For elections made after 2007, for STI Deferrals of STI Awards payable after 2008, the Distribution Date selected by the Participant for his STI Deferral, which shall be no earlier than the fifth anniversary of the date on which the STI Award to which the STI Deferral election relates would have been paid to the Participant, but for his deferral election.

3.2.2 Modification; Revocation and Termination. A Participant may not change or revoke his election under this Section 3.1 during a Plan Year. A Participant's election will automatically terminate as of (i) the end of the Plan Year to which the election relates, or (ii) the date of the Participant's termination of employment. A Participant may make a new election, which changes the percentage or dollar amount to be withheld from his STI Award for the next Plan Year by completing and filing a new election during the annual election period that precedes the Plan Year to which the election relates.

3.3 Employer Matching Contributions. For each Plan Year that a Participant elects to make an STI Deferral, WRJT shall credit to a Matching Contribution Account established for such Participant for the Plan Year that number of RSUs equal in value to 25% of the value of the RSUs credited to the Participant's STI Deferral Account for such Plan Year. The Distribution Date elected by the Participant for his STI Deferrals for such Plan Year shall apply to his Matching Contribution Account for such Plan Year.

3.4 Re-Deferral Elections. A Participant may elect to defer the Distribution Date of any of his Salary Deferral Accounts, STI Deferral Accounts, or Matching Contribution Accounts, elected (or determined) under Section 3.1, Section 3.2, or Section 3 .3, as applicable, by electing, at least 12 months in advance of the Djstribution Date initially elected under such Section (the "initial Distribution Date"), a new Distribution Date that is not less than five years after the initial Distribution; provided, however, that such election shall not take effect until at least 12 months after the date the re-deferral election is made.

ARTICLE IV. PARTICIPANTS' ACCOUNTS

4.1 Crediting of Accounts.

4.1.1 Participant Salary Deferrals and STI Deferrals made under Section 3.1 and Section 3.2, respectively, shall be credited to the Participant's Salary Deferral Account and STI Deferral Account, as applicable, as of the date such amounts would have been paid to the Participant but for his elections. Employer Matching Contributions made under Section 3.3 shall be credited to a Participant's Matching Contribution Account as of the same date that the STI Deferral to which it relates is credited.

4.1.2 A Participant's Salary Deferral Accounts shall be credited with Earnings attributable to the balance of such Accounts, as of the last day of each calendar quarter and at such other times as the Committee may determine in its discretion.

4.1.3 A Participant's STI Deferral Accounts and Matching Contribution Accounts shall be credited with the cash equivalent of dividends declared on Shares, equal in value to the RSUs allocated to such Accounts, as of the date such dividends are declared.

4.2 Vesting of Participant Deferral Accounts. A Participant shall be fully vested in his Salary Deferral Accounts and his STI Deferral Accounts at all times.

4.3 Vesting of Matching Contribution Accounts.

4.3.1 Full Vesting. A Participant who is employed by WRIT on the date any of the events described in this Section 4.3.1 occurs shall be 100% vested in each of his Matching Contribution Accounts upon the earliest to occur of the following events:

4.3.1.1 The third anniversary of the date the STI Award to which such Matching Contribution Account relates would have been paid to a Participant but for his deferral election under Section 3.2;

4.3.1.2 The date a Participant sustains a Total and Permanent Disability;

4.3.1.3 The Participant's death; or

4.3.1.4 A Change in Control.

4.3.2 Pro Rata Vesting. If, prior to the occurrence of an event described in Section 4.3.1, a Participant terminates employment on account of Retirement, or if such Participant's employment is involuntarily terminated by WRIT on account of a reduction in force, such Participant shall vest in a pro rata portion of the RSUs allocated to each of his Matching Contribution Accounts, which shall be determined by multiplying the number ofRSUs allocated to such Account by a fraction, the numerator of which is the number of "months of employment" the Participant has been employed by WRIT, following the date the RSUs were allocated to the Participant's Account and the denominator of which is 36. For purposes of this Section 4.3.2, a month of employment shall be each 30 day period, beginning in the date following the date the RSUs were allocated to such Participant's Account under Section 4.3.1 during which a Participant has been an Employee of WRIT for at least 16 days.

4.3.3 Forfeitures. A Participant who terminates employment with WRIT for any reason prior to the third anniversary of the date that RSUs were credited to one or more of his Matching Contribution Accounts and terminates employment with WRIT for any reason other than an event of full or pro rata vesting described in Section 4.3.1 or Section 4.3.2 shall forfeit his entire Matching Contribution Account as of the date of termination. If a Participant vests in a pro rata portion of one or more of his Matching Contribution Accounts on account a termination of employment described in Section 4.3.2, he shall forfeit any portion of the Matching Contribution Accounts that has not vested under Section 4 .3.2 on the date of his employment termination.

4.4 Reduction in Account for Unforeseeable Emergency Distributions. Notwithstanding anything to the contrary in the Plan, a Participant's Account shall be reduced by the amount of any distributions on account of an Unforeseeable Emergency under Section 6.4.

ARTICLE V. FUNDING

5.1 Funding. WRIT shall establish a grantor trust for the purpose of maintaining Participant Accounts. The trust so created shall conform to the terms of the model trust provided by the Internal Revenue Service as described in Revenue Procedure 92-64. Notwithstanding the establishment of such trust, it is the intention of WRIT and the Participants that the Plan shall be unfunded for tax purposes and for purposes of Title I of ERISA. The Plan constitutes a mere promise by WRIT to pay benefits in the future. To the extent that any Participant or any other person acquires a right to receive benefits under this Plan, such right shall be no greater than the right of any unsecured general creditor of WRIT.

ARTICLE VI. DISTRIBUTION OF ACCOUNTS

6.1 Entitlement to Benefits. Except as otherwise provided in this Article VI, a Participant (or his Beneficiary, in the case of his death) shall be entitled to a distribution of the balance of one or more of his Accounts upon the earliest to occur of the following:

6.1.1 The Distribution Date selected by the Participant, with respect to such Account, in accordance with the applicable Section of Article IV;

6.1.2 In the case of a Participant's Salary Deferral Account, unless the Participant has elected to re-defer the Distribution Date under Section 3.4 (and such election has become effective), the date of his termination of employment;

6.1.3 The Participant's death;

6.1.4 The date the Participant sustains a Total and Permanent Disability; or

6.1.5 Except in the case of an Account with respect to which the Participant has re-deferred his Distribution Date under Section 3.4 (and such election has become effective), a Change in Control.

6.2 Timing of Benefit Payment. A Participant who is entitled to receive a distribution of his Account shall be paid the balance of such Account at the time determined under this Section 6.2.

6.2.1 Objectively Determinable Distribution Date. If a Participant is entitled to a distribution of one or more of his Accounts following a Distribution Date that is a specified time that is objectively determinable at the time such amounts are deferred, the Account or Accounts shall be distributed to such Participant as soon as practicable following the specified Distribution Date.

6.2.2 Death, Disability, or Change in Control. If a Participant or Participant's Beneficiary is entitled to a distribution of one or more of the Participant's Accounts on account of the Participant's Total and Permanent Disability or death, or as a result of a Change in Control, the Account shall be distributed to such Participant or his Beneficiary as soon as practicable following the occurrence of such event.

6.2.3 Termination of Employment. If a Participant has elected as his Distribution Date for one or more of his Accounts the date of his termination of employment for any reason, including his Retirement, such Account or Accounts shall be distributed as of the date six months after the date of such termination of employment; provided, however, that if the Participant dies during the six-month period following his termination of employment, his Beneficiary shall be paid the entire balance of his Account as soon as practicable after his death.

6.3 Form of Payment. All payments to a Participant (or a Participant's beneficiary, in the event of the Participant's death) of the balance of one or more of the Participant's Account shall be made in the form determined under this Section 6.3.

6.3.1 Salary Deferral Accounts. The balance of a Participant's Salary Deferral Account shall be distributed in a cash lump sum at the time or times determined under Section 6.2.

6.3.2 STI Deferral Accounts; Matching Contribution Accounts. The balance of a Participant's STI Deferral Account or Matching Distribution Account shall be distributed in Shares and cash. Shares shall be distributed in an amount equal to the number of RSUs allocated to such Account, and the balance of such Account shall be distributed in a cash lump sum.

6.4 Unforeseeable Emergency Distributions. Notwithstanding anything in this Plan to the contrary, a Participant who has an Unforeseeable Emergency may request a distribution of all or a portion of the balance of one or more of Accounts. Distributions on account of an Unforeseeable Emergency may be permitted only to the extent determined by the Committee to be reasonably necessary to satisfy the emergency need (which may include amounts necessary to pay any Federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution). Such distribution shall be made as soon as administratively practicable after the Committee determines that the request shall be granted. The Participant shall be required to provide any information reasonably necessary for the Committee to determine whether an Unforeseeable Emergency exists and the amount of the distribution necessary to relieve the hardship resulting from such Unforeseeable Emergency. The balance of the Participant's Account shall be reduced to reflect any distribution to a Participant made in accordance with this Section 6.4.

ARTICLE VII. ADMINISTRATION

7.1 Plan Interpretation. The Committee shall have the authority to interpret the Plan and to determine the amount and time of payment of benefits and other issues arising in the administration of the Plan. Any construction or interpretation of the Plan and any determination of fact in administering the Plan made in good faith by the Committee shall be final and conclusive for all Plan purposes.

7.2 Claims Procedure.

7.2.1 Initial Determination. Upon presentation to the Committee of a claim for benefits under the Plan, the Committee shall make a determination of the validity thereof. If the determination is adverse to the claimant, the Committee shall furnish to the claimant within 90 days after the receipt of the claim a written notice setting forth the following:

a) the specific reason or reasons for the denial;

b) specific references to pertinent provisions of the Plan on which the denial is based;

c) a description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary; and

d) a description of the Plan's review procedures, and the time limits applicable to such procedures, including a statement of the claimant's right to bring a civil action under section 502(a) of ERISA following an adverse determination.

If it is necessary to extend the period of time for making a decision beyond 90 days after the receipt of the request, the claimant shall be notified in writing of the extension of time prior to the beginning of such extension. In no event shall the extension exceed a period of 90 days from the end of the initial 90-day period. The extension notice shall indicate the special circumstances requiring an extension of time and the date by which the Committee expects to render the benefit determination.

7.2.2 Appeal Procedure. In the event of a denial of a claim, the claimant or his duly authorized representative may appeal such denial to the Committee for a full and fair review of the adverse determination. The claimant's request for review must be in writing and made to the Committee within 60 days after receipt by the claimant of the written notification described in Section 7.2.1; provided, however, that such 60-day period shall be extended if circumstances so warrant. The claimant or his duly authorized representative shall be provided, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claimant's claim for benefits, and may submit written comments, documents, records and other information relating to his claim, which shall be given full consideration by the Committee in its review. The Committee may, in its sole discretion, conduct a hearing. A request for a hearing made by the claimant will be given full consideration. At such hearing, the claimant shall be entitled to appear and present evidence and be represented by counsel.

7.2.3 Decision on Appeal. A recommendation on a request for review shall be made by the Committee to the Board, and a decision shall be made by the Board not later than 60 days after receipt of the request; provided, however, in the event of a hearing or other special circumstances, such decision shall be made not later than 120 days after receipt of such request. If it is necessary to extend the period of time for making a decision beyond 60 days after the receipt of the request, the claimant shall be notified in writing of the extension of time prior to the beginning of such extension. The Board's decision on review, if adverse to the claimant, shall state in writing the specific reasons and references to the Plan provisions on which it is based. Such decision shall be promptly provided to the claimant.

7.2.4 Arbitration. In the event that the Board's decision on review is adverse to the claimant, the claimant or his duly authorized representative may appeal such decision by submitting a request for arbitration to the American Arbitration Association within 60 days after receipt by the claimant of the written notification described in Section 7.2.3. Such appeal shall be adjudicated in Washington, D. C. by a single independent arbitrator pursuant to the Employee Benefits Plan Claims Arbitration Rules of the American Arbitration Association then in effect. The decision of the arbitrator shall be final and binding on all parties hereto and judgment may be entered in any court having jurisdiction. Each party shall bear its own costs in any arbitration proceeding held hereunder and the parties shall share the cost of the arbitrator.

ARTICLE VIII. MISCELLANEOUS

8.1 No Effect on Employment Rights. Nothing contained herein will confer upon any Participant the right to be retained in the service of WRIT nor limit the right of WRIT to discharge any Participant.

8.2 Spendthrift Provisions. No benefit payable under the Plan shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, or charge prior to actual receipt thereof by the payee; and any attempt so to anticipate, alienate, sell, transfer, assign, pledge, encumber or charge prior to such receipt shall be void; and WRIT shall not be liable in any manner for or subject to the debts, contracts, liabilities, engagements or torts of any person entitled to any benefit under the Plan.

8.3 Governing Law. The Plan is established under and will be construed according to the laws of the State of Maryland (without regard to its conflict of laws provisions), to the extent that such laws are not preempted by ERISA and valid regulations promulgated thereunder.

8.4 Incapacity of Recipient. In the event a Participant is declared incompetent and a conservator or other person legally charged with the care of the person or the estate of such Participant is appointed, any benefits under the Plan to which such Participant is entitled shall be paid to the conservator or other person legally charged with the care of such Participant. Except as provided in the preceding sentence, should the Committee, in its discretion, determine that a Participant is unable to manage his personal affairs, the Committee may make distributions to any person for the benefit of such Participant, provided the Committee makes a reasonable good faith judgment that such person shall expend the funds so distributed for the benefit of such Participant.

8.5 Taxes. Any taxes imposed upon a Participant as a result of his participation in the Plan shall be the sole responsibility of the Participant. WRIT shall have the right to deduct from the Participant's compensation or any payment made pursuant to this Plan any federal, state, local or other taxes required to be deducted or withheld from such compensation or payment, as the Committee may determine in its sole discretion.

8.6 Amendment or Termination. WRIT reserves the right to amend or terminate the Plan by or pursuant to action of the Board when, in the sole opinion of WRIT, an amendment or termination is advisable. Any amendment or termination shall be made pursuant to a resolution of the Board and shall be effective as of the date of the resolution. No amendment or termination of the Plan shall directly or indirectly deprive any Participant of all or any portion of the Participant's Account considered to be vested under the Plan before the date of amendment or termination. Further, no amendment or termination of the Plan shall cause benefits under the Plan to be distributed except at the time and in the form provided under Article VI. Notwithstanding the preceding sentence, however, if the Plan is terminated under circumstances

with respect to which an acceleration of benefit payments would be permitted under final regulations issued by the U.S. Department of Treasury under section 409A of the Code, WRIT reserves the discretion to distribute benefits in accordance with the requirements of such regulations.

8.7 Entire Agreement. Except with respect to any retirement plan maintained or contributed to by WRIT for the benefit of a substantial number of its full-time employees, this Plan constitutes the entire agreement and understanding between WRIT and the Participants with respect to the deferral of Salary or STI Awards..

8.8 Severability. If any provision of this Plan conflicts with the law under which the Plan is to be construed or is determined to be invalid or unenforceable by any court of competent jurisdiction or an arbitrator, such provision shall be deleted from the Plan and the Plan shall be construed to give full force and effect to the remaining provisions thereof.

8.9 Construction. The masculine gender shall include the feminine and the singular the plural, unless the context clearly requires otherwise.

To record its adoption of the Plan, Washington Real Estate Investment Trust has caused its authorized officers to affix its corporate name and seal this 1 day of January, 2011.

WASHINGTON REAL ESTATE INVESTMENT TRUST

By: /s/ Laura M. Franklin
Title: Corp Secretary

AMENDMENT NO. 1 TO CHANGE IN CONTROL AGREEMENT FOR PRESIDENT AND CHIEF EXECUTIVE OFFICER

THIS AMENDMENT (this "Amendment") to the Change in Control Agreement for President and Chief Executive Officer (the "Agreement"), dated October 1, 2013 by and between Paul T. McDermott ("Executive") and Washington Real Estate Investment Trust, now known as Elme Communities (the "Company"), is entered into by the parties as of February 15, 2023. Capitalized terms used but not defined herein shall have the meanings set forth in the Agreement.

RECITALS

A. The Company and the Executive are parties to the Agreement; and

B. The Company and the Executive wish to amend the Agreement in the manner set forth herein.

AGREEMENT

NOW, THEREFORE, Company and Executive, in consideration of the agreements, covenants and conditions contained herein, hereby agree as follows:

1. **Amendments to the Agreement**

1.1. Section 2 of the Agreement is amended by adding the following new Section 2(G) at the end:

"**G**. As a condition to receiving the payments and benefits set forth in this Agreement, Employee must sign a separation agreement and release of claims (a "Release") in the form provided by the Trust and any revocation periods applicable to the Release must have expired within sixty (60) days following the Employee's date of termination. For the avoidance of doubt, if Employee does not sign the Release in a manner in which it becomes irrevocable on or within sixty (60) days following the date of termination or if Employee signs but later revokes the Release, the Employee will not be entitled to any payments under this Agreement."

1.2. Section 3 of the Agreement is amended and restated in its entirety as follows:

"**3. Mitigation.** If a Change in Control occurs while Employee is employed by the Trust, and Employee's employment is involuntarily terminated as a result of the Change in Control, Employee shall have no obligation to seek other employment in order to mitigate the payment of the Termination Benefits described in Section 2 hereunder."

1.3 Section 4 of the Agreement is amended to delete subsection D in its entirety and to add the following new sentence at the end of Section 4:

"For purposes of Section 409A, Employee's right to receive any installment payments pursuant to this Agreement shall be treated as a right to receive a series of separate and distinct payments."

2. **Counterparts.** This Amendment may be executed in one or more counterparts, each of which when taken together shall constitute one and the same original. The execution of this Amendment may be effected by electronically transmitted or facsimile signatures, all of which shall be treated as originals for all purposes, and the signature page of either party to any counterpart may be appended to any other counterpart.

3. **Agreement.** Except as provided herein, there are no other changes to the Agreement.

IN WITNESS WHEREOF, each of the parties hereto has duly executed this Amendment effective as of the date first written above.

PAUL T. MCDERMOTT

By: /s/ Paul T. McDermott
Print Name: Paul T. McDermott
Title: President and Chief Executive Officer
Date: February 15, 2023

ELME COMMUNITIES

By: /s/ W. Drew Hammond
Name: W. Drew Hammond
Title: VP, CAO, Treasurer and Secretary
Date: February 15, 2023

AMENDMENT NO. 1 TO CHANGE IN CONTROL AGREEMENT FOR SENIOR VICE PRESIDENT AND CHIEF INFORMATION OFFICER

THIS AMENDMENT (this "Amendment") to the Change in Control Agreement for Senior Vice President and Chief Information Officer (the "Agreement"), dated February 2, 2022, by and between Susan L. Gerock ("Executive") and Washington Real Estate Investment Trust, now known as Elme Communities (the "Company"), is entered into by the parties as of February 15, 2023. Capitalized terms used but not defined herein shall have the meanings set forth in the Agreement.

RECITALS

A. The Company and the Executive are parties to the Agreement; and

B. The Company and the Executive wish to amend the Agreement in the manner set forth herein.

AGREEMENT

NOW, THEREFORE, Company and Executive, in consideration of the agreements, covenants and conditions contained herein, hereby agree as follows:

1. **Amendments to the Agreement**

1.1. Section 2 of the Agreement is amended by adding the following new Section 2(G) at the end:

"**G**. As a condition to receiving the payments and benefits set forth in this Agreement, Employee must sign a separation agreement and release of claims (a "Release") in the form provided by the Trust and any revocation periods applicable to the Release must have expired within sixty (60) days following the Employee's date of termination. For the avoidance of doubt, if Employee does not sign the Release in a manner in which it becomes irrevocable on or within sixty (60) days following the date of termination or if Employee signs but later revokes the Release, the Employee will not be entitled to any payments under this Agreement."

1.2. Section 3 of the Agreement is amended and restated in its entirety as follows:

"**3 . Mitigation.** If a Change in Control occurs while Employee is employed by the Trust, and Employee's employment is involuntarily terminated as a result of the Change in Control, Employee shall have no obligation to seek other employment in order to mitigate the payment of the Termination Benefits described in Section 2 hereunder."

1.3. Section 4 of the Agreement is amended to delete subsection D in its entirety add the following new sentence at the end of Section 4:

"For purposes of Section 409A, Employee's right to receive any installment payments pursuant to this Agreement shall be treated as a right to receive a series of separate and distinct payments."

2. **Counterparts.** This Amendment may be executed in one or more counterparts, each of which when taken together shall constitute one and the same original. The execution of this Amendment may be effected by electronically transmitted or facsimile signatures, all of which shall be treated as originals for all purposes, and the signature page of either party to any counterpart may be appended to any other counterpart.

3. **Agreement.** Except as provided herein, there are no other changes to the Agreement.

IN WITNESS WHEREOF, each of the parties hereto has duly executed this Amendment effective as of the date first written above.

SUSAN L. GEROCK

By: /s/ Susan L. Gerock
Print Name: Susan L. Gerock
Title: Senior Vice President and Chief Information Officer
Date: February 15, 2023

ELME COMMUNITIES

By: /s/ Paul T. McDermott
Print Name: Paul T. McDermott
Title: President and Chief Executive Officer
Date: February 15, 2023

<u>AGREEMENT AND GENERAL RELEASE</u>

This Agreement and General Release ("Agreement"), effective as of the date described in Section 9 below (the "Effective Date"), is made and entered into by and between Elme Communities ("Company") and Stephen Riffee ("Executive").

WHEREAS, Executive has been employed by Company as its Executive Vice President and Chief Financial Officer; and

WHEREAS, Executive has decided to retire from the Company; and

WHEREAS, the parties desire to resolve amicably all matters between them on a full and final basis;

NOW, THEREFORE, in consideration of the promises contained herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. <u>Retirement Date and Return of Property</u>: Executive's last day of employment is February 28, 2023 (the "Retirement Date").

2. <u>Final Paycheck</u>: Regardless of whether or not Executive signs this Agreement, Company will pay Executive for all earned but unpaid salary and accrued but unused vacation as of the Retirement Date in accordance with its payroll practices and applicable law.

3. <u>Benefits</u>: Executive's Company provided medical benefits shall cease as of the Retirement Date. Executive may be eligible to participate in a healthcare continuation coverage program such as under COBRA or any similar state medical and dental insurance continuation coverage program if Executive timely elected such COBRA continuation coverage. Should Executive sign and not revoke this Agreement and elect COBRA continuation coverage, the Company will, as consideration for the obligations and promises contained herein, subsidize Executive's COBRA continuation coverage for seven (7) months (the "COBRA Coverage Period"). For purposes of this paragraph "subsidize" means that the Company will pay on your behalf an amount equal to the lesser of (i) the Company's portion of the group health plan premium or the Company's cost of coverage for an active employee and family coverage, and (ii) the COBRA premium (the "COBRA Payments").

4. <u>General Release</u>: In consideration for the benefits described herein, and for other good and valuable consideration, which are of greater value than Executive would normally be entitled upon resignation, Executive, on behalf of Executive, Executive's heirs, executors, administrators, attorneys, agents, representatives and assigns, hereby forever releases Company and its Affiliates, and each of their officers, directors, trustees, owners, shareholders, employees, insurers, benefit plans, agents, attorneys and representatives, and each of their predecessors (including but not limited to Washington Real Estate Investment Trust), successors and assigns (collectively, "Releasees"), from any and all claims, demands, suits, actions, damages, losses, expenses, charges or causes of action of any nature whatsoever, whether known or unknown, relating in any way to any act, omission, event, relationship, conduct, policy or practice prior to

the Effective Date, including without limitation based on any agreements between Executive and the Company or based on Executive's employment with Company and the termination thereof ("Claims"). This release includes without limitation Claims for discrimination, harassment, retaliation or any other violation under the Age Discrimination in Employment Act, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the District of Columbia Human Rights Act, and any other Claims under all other federal, state or local laws; Claims for breach of contract; Claims for wrongful discharge; Claims for emotional distress, defamation, fraud, misrepresentation or any other personal injury; Claims for unpaid compensation; Claims relating to benefits; Claims for attorneys' fees and costs, Claims for reinstatement or employment; and all other Claims under any federal, state or local law or cause of action. Executive represents that Executive has not filed or joined any such Claims, and Executive further agrees not to pursue or bring any such Claim seeking monetary or other relief. It is understood and agreed that this release does not apply to claims for breach of this Agreement, Claims for any vested benefits (including without limitation, vested benefits under the Company's Short-Term and Long-Term Incentive Plan), or Claims that cannot be released by law including claims for unemployment insurance, worker's compensation benefits, state disability compensation or previously vested benefits under any Company-sponsored benefits plan.

Notwithstanding anything to the contrary herein, Executive understands that nothing in this Agreement or any other agreement that Executive may have with the Company restricts or prohibits Executive from initiating communications directly with, responding to any inquiries from, providing testimony before, providing confidential information to, reporting possible violations of law or regulation to, or from filing a claim or assisting with an investigation directly with a self-regulatory authority or a government agency or entity, including but not limited to the Securities Exchange Commission and the federal Office of Occupational Health (collectively, "Government Agencies"), or from making other disclosures that are protected under the whistleblower provisions of state or federal law or regulation, and Executive does not need the Company's prior authorization to engage in such conduct. Notwithstanding, in making any such disclosures or communications, Executive must take all reasonable precautions to prevent any unauthorized use or disclosure of any information that may constitute Confidential Information (as defined herein) to any parties other than the Government Agencies. This Agreement does not limit Executive's right to receive an award for information provided to any Government Agencies.

5. Confidentiality: Except as necessary to enforce or effectuate this Agreement or as required by law or otherwise to satisfy SEC filing or disclosure requirements or to the extent Company in good faith deems necessary in communications with analysts and institutional investors of real estate investment trusts, the parties agree to in good faith endeavor to keep this Agreement, the existence of this Agreement, and the terms of this Agreement confidential and not to initiate any disclosures of it. Subject to the foregoing, Executive shall not initiate any disclosure of the same to any third party except as necessary to Executive's attorneys, financial advisors, accountants, future employer and immediate family members (and only on the condition that they maintain such confidentiality until and unless such Agreement is publicly disclosed). Also subject to the foregoing, Company shall not initiate any disclosure of the same to any third party except its board of directors, executive officers, attorneys, accountants and employees responsible for effectuating the Agreement (and only on the condition that they

maintain such confidentiality and Company guarantees such confidentiality until and unless such Agreement is publicly disclosed).

6. Nondisparagement and Nonassistance: Executive agrees not to provide any disparaging information relating to Company or any of its Affiliates or its or their past, present or future management, officers, trustees or executives to any person or entity, and Executive agrees to the extent permitted by law not to provide any form of assistance to, or to cooperate with, any person or entity asserting or intending to assert any claim or legal proceeding against Company or any of its Affiliates except as may be required by law or legal process. Nothing herein prohibits Executive from reporting alleged violations to the SEC or other government agencies, although Executive is not aware of any alleged violations as of the date Executive signed this Agreement.

7. Cooperation: Executive agrees to reasonably cooperate with Company upon request by answering questions and providing information about matters of which Executive has personal knowledge, including without limitation any litigations, investigations or other legal proceedings. In the event that Company becomes involved in any civil or criminal litigation, administrative proceeding or governmental investigation, Executive shall, upon request and with due regard for Executive's personal and professional schedule, provide reasonable cooperation and assistance to Company, including without limitation, furnishing relevant information, attending meetings and providing statements and testimony. Company will reimburse Executive for all reasonable and necessary expenses Executive incurs in complying with this Section 7, provided said expenses are reasonable and necessary and approved by Company in advance. Notwithstanding anything to the contrary herein, Executive's obligations under this Section 7 shall not (other than on an immaterial basis) interfere with Executive's full-time employment with another Company.

8. Miscellaneous: This Agreement represents the entire agreement of the parties, and supersedes all other agreements, discussions and understandings of the parties, concerning the subject matter. All other express or implied agreements of the parties not expressly contained or incorporated by reference herein are terminated and of no further force or effect. This Agreement may not be modified in any manner except in a written document signed by both parties. Should any provision of this Agreement be held to be invalid or unenforceable by a court of competent jurisdiction, it shall be deemed severed from the Agreement, and the remaining provisions of the Agreement shall continue in full force and effect. In the event of any litigation to enforce this Agreement, the prevailing party shall be awarded their reasonable attorneys' fees and costs.

9. Consultation and Consideration: Company hereby advises Executive to consult with an attorney at Executive's own expense prior to signing this Agreement. Executive may take up to twenty-one (21) days from the date Executive is given this Agreement to consider it, but Executive may sign it sooner if Executive wishes. If Executive signs the Agreement, Executive will have a period of seven (7) days to revoke Executive's signature (the "Revocation Period"). Thus, this Agreement will not become effective or enforceable until the date that each party has signed the Agreement and the Revocation Period has expired without Executive exercising Executive's right of revocation (the "Effective Date"). Any notice of revocation must be in

writing and must be received by Drew Hammond at dhammond@elmecommunities.com prior to the expiration of the Revocation Period. If Executive signs this Agreement, Executive represents that Executive has had sufficient time to consider it, and that Executive enters into it knowingly and voluntarily with full understanding of its meaning and effect. If Executive does not sign this Agreement by 11:59 p.m. on March 3, 2023, this Agreement shall be deemed null and void.

10. Governing Law: This Agreement shall be construed exclusively in accordance with the laws of the District of Columbia, without regard to the principles of conflicts of laws therein.

11. Assignment: This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns. Executive may not assign any right or obligation hereunder without Company's prior written consent. Company may assign its rights and obligations here under to any successor in interest.

12. Counterparts: This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and together which shall constitute one and the same instrument. A signature transmitted by email shall be considered an original signature.

13. Nonadmissions: By entering into this Agreement, neither party is admitting that it did anything wrong or improper or that it has any liability to the other party.

[*Signatures on Next Page*]

Executive has had an opportunity to carefully review and consider this Agreement with an attorney, and Executive has had sufficient time to consider it. After such careful consideration, Executive knowingly and voluntarily enters into this Agreement with full understanding of its meaning and effect.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement.

STEPHEN RIFFEE ELME COMMUNITIES

/s/ Stephen Riffee By: /s/ Paul T. McDermott
Signature
Title: President and Chief Executive Officer

Date: February 15, 2023 Date: February 15, 2023

CHANGE IN CONTROL AGREEMENT FOR
[●]

THIS CHANGE IN CONTROL AGREEMENT (“Agreement”), with an effective date of [●], 20[●], is made and entered into by and between Elme Communities, a real estate investment trust organized under the laws of the State of Maryland (the “Trust”), and [●] (“Employee”).

WHEREAS, Employee is employed in a key position with the Trust as [●]; and

WHEREAS, subject to the terms and conditions of this Agreement, the Trust has agreed to continue Employee’s compensation and certain health benefits for a period of time should Employee’s employment be terminated under certain conditions described herein;

NOW, THEREFORE, in consideration of the promises contained herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree to the following terms:

1. **Definitions**. For purposes of this Agreement, the following words and phrases shall have the meanings set forth below:

A. **Change in Control**. “Change in Control” means an event or occurrence set forth in any one or more of subsections (i) through (iv) below (including any event or occurrence that constitutes a Change in Control under one of such subsections but is specifically exempted from another such subsection):

(i) the acquisition by an individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”)) (a “Person”) of beneficial ownership of any shares of beneficial interest in the Trust if, after such acquisition, such Person beneficially owns (within the meaning of rule 13d-3 promulgated under the Exchange Act) 40% or more of either (A) the then-outstanding shares of beneficial interest in the Trust (the “Outstanding Trust Shares”) or (B) the combined voting power of the then-outstanding shares of beneficial interest the Trust entitled to vote generally in the election of trustees (the “Outstanding Trust Voting Shares”); provided, however, that for purposes of this subsection (i), the following acquisitions shall not constitute a Change in Control: (A) any acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Trust or any corporation controlled by the Trust, or (B) any acquisition by any corporation pursuant to a transaction which complies with clauses (A) and (B) of subsection (iii) of this Section 1(A); or

(ii) such time as the Continuing Trustees (as defined below) do not constitute a majority of the Board (or, if applicable, the Board of Directors or Trustees of a successor corporation or other entity to the Trust), where the term “Continuing Trustee” means at any date a member of the Board (A) who was a member of the Board on the date hereof or (B) who was nominated or elected subsequent to the date hereof with the approval of other Board members who themselves constitute Continuing Trustees at the time of such nomination or election; provided, however, that there shall be excluded from this clause (B) any individual whose initial assumption of office occurred as a result of an actual or threatened election contest with respect to the election or removal of trustees or other actual or threatened solicitation of proxies or consents, by or on behalf of a person other than the Board; or

(iii) the consummation of a merger, consolidation, reorganization, recapitalization or statutory share exchange involving the Trust or a sale or other disposition of all or substantially all of the assets of the Trust in one or a series of transactions (a "Business Combination"), unless, immediately following such Business Combination, each of the following two conditions is satisfied: (A) all or substantially all of the individuals and entities who were the beneficial owners of the Outstanding Trust Shares and Outstanding Trust Voting Shares immediately prior to such Business Combination beneficially own, directly or indirectly, more than 60% of the then-outstanding shares of beneficial interest or stock, as the case may be, and the combined voting power of the then-outstanding shares or stock, as the case may be, entitled to vote generally in the election of trustees, or directors, as the case may be, respectively, of the resulting or acquiring corporation or other entity in such Business Combination (which shall include, without limitation, a corporation or other entity which as a result of such transaction owns the Trust or substantially all of the Trust's assets either directly or through one or more subsidiaries) (such resulting or acquiring corporation or other entity referred to herein as the "Acquiring Entity") in substantially the same proportions as their ownership, immediately prior to such Business Combination, of the Outstanding Trust Shares and Outstanding Trust Voting Shares, respectively; and (B) no Person (excluding the Acquiring Entity or any employee benefit plan (or related trust) maintained or sponsored by the Trust or by the Acquiring Entity) beneficially owns, directly or indirectly, 40% or more of the then outstanding shares of beneficial interest or stock, as the case may be, of the Acquiring Entity, or of the combined voting power of the then-outstanding shares of such corporation or other entity entitled to vote generally in the election of trustees or directors, as the case may be; or

(iv) approval by the shareholders of the Trust of a complete liquidation or dissolution of the Trust.

B. **Involuntarily Terminated**. Employee's employment will be deemed to have been involuntarily terminated due to a Change in Control only if, on or after the date on which a Change in Control occurs, (i) Employee's employment is terminated by the Trust or the successor owner of the Trust without cause or (ii) Employee resigns because Employee's duties, responsibilities or compensation are materially diminished, provided (A) Employee gives written notice to the Trust within thirty (30) days following the diminution or receipt of notice of the diminution of his objection to the diminution, (B) the Trust fails to remedy the diminution within thirty (30) days following Employee's written notice, and (C) Employee terminates his or her employment within thirty (30) days following the Trust's failure to remedy the diminution; provided that if a termination otherwise covered by (i) or (ii) occurs during the ninety (90) day period before the date on which a Change in Control occurs, the termination will be presumed to be due to the Change in Control unless the Trust or the successor owner of the Trust can show, through a preponderance of the evidence, that the termination did not occur because of the impending Change in Control.

C. **Termination For Cause**. A termination for cause shall be deemed to occur only if the Trust or the successor owner of the Trust terminates Employee's employment for any of the following reasons: (1) commission by Employee of a felony or crime of moral turpitude; (2) conduct by Employee in the performance of Employee's duties which is illegal, dishonest, fraudulent or disloyal; (3) the breach by Employee of any fiduciary duty Employee owes to the Trust; or (4) gross neglect of duty or poor performance which is not cured by Employee to the reasonable satisfaction of the Trust

within 30 days of Employee's receipt of written notice from the Trust advising Employee of said gross neglect or poor performance.

2. **Termination Benefits**. In the event Employee's employment with the Trust or the successor owner of the Trust is involuntarily terminated due to a Change in Control but not for cause, and such termination occurs within [●] months following the Change in Control or within ninety (90) days before the Change in Control as specified in Section 1(B), the Trust or the successor owner shall provide Employee with the following termination benefits:

A. A lump sum payment equal to [●] times Employee's base salary at the rate in effect at the time of Employee's termination, such lump sum being payable within sixty (60) days following Employee's termination (or, in the case of a termination in the ninety (90) day period prior to a Change in Control, within sixty (60) days following the Change in Control);

B. A lump sum payment equal to [●] times the greater of (i) the average annual bonus received by Employee during the three years prior to the involuntary termination, provided that, if Employee was employed for fewer than three years prior to the termination, the bonus will be based on the average of the bonuses received by Employee in the year or years Employee received a bonus, and if Employee has not been eligible to receive an annual bonus prior to Employee's termination, the bonus will be based on Employee's target bonus amount for the Employee's year of termination, and (ii) Employee's target short-term incentive amount for the year of Employee's termination, such lump payment being payable within sixty (60) days following Employee's termination (or, in the case of a termination in the ninety (90) day period prior to a Change in Control, within sixty (60) days following the Change in Control)

C. the Trust will pay the full cost for Employee to continue coverage under the Trust's group health insurance plan pursuant to the Consolidated Omnibus Budget Reconciliation Act ("COBRA") for a period of up to a maximum of [●] months or until Employee obtains other comparable coverage, whichever is sooner;

D. immediate vesting in all then unvested options granted to Employee under the Trust's 2016 Omnibus Long-Term Incentive Plan or other plan under which such grants have been made by the Trust to Employee (the "Omnibus Plan") and immediate vesting in all unvested accrued dividend equivalent units under the Omnibus Plan, and Employee shall have the right, in Employee's sole discretion, to exercise all or any of such options and to sell the shares acquired pursuant thereto. In the event that Employee wishes to sell Employee's shares within 60 days of the involuntary termination, the shares must first be offered to the Trust for purchase at the Trust's option at the then current fair market value. The Trust shall respond within one business day to the offer or its rights to purchase the shares shall expire. Sales occurring more than 60 days after the involuntary termination shall not be subject to this option;

E. immediate vesting in all then unvested share grants granted to Employee under the Omnibus Plan and Employee shall have the right, in Employee's sole discretion, to sell the shares acquired pursuant thereto. In the event that Employee wishes to sell Employee's shares within 60 days of the involuntary termination, the shares must first be offered to the Trust for purchase at the Trust's option at the then current fair market value. The Trust shall respond within one business day to the offer or its rights to purchase the shares shall expire. Sales occurring more than 60 days after the involuntary termination shall not be subject to this option; and

F. if, by virtue of receipt of the Termination Benefits described above and any other payments in the nature of compensation, Employee is subject to excise tax pursuant to Section 4999 of the Internal Revenue Code (the "Code"), the Termination Benefits shall be reduced to the minimum extent necessary to avoid imposition of the excise tax, but only if such reduction would result in Employee retaining a greater amount after taking into account the excise tax that would be owed if no such reduction were made. If such reduction is required to be made, the Termination Benefits shall be reduced in such manner as required so as not to give rise to there being deemed to be more than one time or form of payment of any amount that constitutes nonqualified deferred compensation under Code Section 409A. To that end (i) to the extent permissible under Code Section 409A, such reductions shall be made so that the latest payments in time are reduced first, starting with payments under Section 2(B) until those payments have been eliminated if necessary, then payments under Section 2(A) until those payments have been eliminated if necessary, and ending with payments under Section 2(C) (if the payments under Section 2(C) are taxable payments) until those payments have been eliminated if necessary, or (ii) to the extent that is not permissible under Code Section 409A, the reductions shall be made ratably from each payment under Sections 2(B), 2(A), and 2(C) (if the payments under Section 2(C) are taxable payments). To the extent that the reduction of payments in Section 2(B), 2(A) and 2(C) is not sufficient to avoid imposition of the excise tax, then after making such reductions, accelerated vesting shall be reduced, starting with the vesting that otherwise would occur latest in time, first under Section 2(E) until accelerated vesting has been eliminated under that Section if necessary and last, accelerated vesting under Section 2(D) until accelerated vesting has been eliminated under that Section if necessary. Any reduction of payments or accelerated vesting required under Section 2(F) shall occur only to the minimum extent necessary to avoid imposition of the excise tax.

G. As a condition to receiving the payments and benefits set forth in this Agreement, Employee must sign a separation agreement and release of claims (a "Release") in the form provided by the Trust and any revocation periods applicable to the Release must have expired within sixty (60) days following the Employee's date of termination. For the avoidance of doubt, if Employee does not sign the Release in a manner in which it becomes irrevocable on or within sixty (60) days following the date of termination or if Employee signs but later revokes the Release, the Employee will not be entitled to any payments under this Agreement.

3. **No Mitigation**. If a Change in Control occurs while Employee is employed by the Trust, and Employee's employment is involuntarily terminated as a result of the Change in Control, Employee shall have no obligation to seek other employment in order to mitigate the payment of the Termination Benefits described in Section 2 hereunder.

4. **Code Section 409A**. It is intended that this Agreement and the payments hereunder will, to the fullest extent possible, be exempt from Code Section 409A, and the Agreement shall be interpreted to that end to the fullest extent possible. In this regard, it is intended that, to the extent possible, the maximum amount of severance pay possible be exempt from Code Section 409A as separation pay upon involuntary separation from service under Treas. Regs. Section 1.409A-1(b)(9)(iii). However, to the extent that any payment or benefit (or portion thereof) provided pursuant to this Agreement is determined to be subject to Code Section 409A, this Agreement shall be interpreted in a manner that complies with Code Section 409A to the fullest extent possible. If payment or provision of any amount or benefit hereunder at the time specified in this Agreement would subject such amount or benefit to any tax under Code Section 409A, the payment or provision of such amount or benefit shall be postponed to the earliest commencement date on which the payment or the provision of such amount or benefit could be made without incurring such tax (including paying any severance that is delayed in a

lump sum upon the earliest possible payment date which is consistent with Code Section 409A). A termination of employment shall not be deemed to have occurred for purposes of this Agreement, unless such termination is also a "separation from service" within the meaning of Code Section 409A. For purposes of this Agreement, references to a "termination," "termination of employment" or like terms shall mean such "separation from service." Notwithstanding anything to the contrary in this Agreement, if at the time of Employee's separation from service from the Trust, the Trust has shares which are publicly-traded on an established securities market and Employee is a "specified employee" within the meaning of Code Section 409A, then no payment, compensation, benefit or entitlement payable or provided to the Employee in connection with his separation from service that is determined, in whole or in part, to constitute a payment of nonqualified deferred compensation within the meaning of Code Section 409A shall be paid or provided to Employee before the earlier of (A) Employee's death or (B) the day that is six (6) months after the date of his separation from service date (the "New Payment Date"). The aggregate of any payments, compensation, benefits and entitlements that otherwise would have been paid to Employee during the period between the date of his separation from service date and the New Payment Date shall be paid to Employee in a lump sum on such New Payment Date. Thereafter, any payments, compensation, benefits and entitlements that remain outstanding as of the day immediately following the New Payment Date shall be paid without delay over the time period originally scheduled, in accordance with the terms of this Agreement. With regard to any provision herein that provides for reimbursement of expenses that are not excluded from Employee's taxable income and are nonqualified deferred compensation subject to Section 409A, then except as otherwise permitted by Section 409A (i) the right to reimbursement shall not be subject to liquidation or exchange for another benefit; (ii) the amount of expenses eligible for reimbursement provided during any taxable year shall not affect the expenses eligible for reimbursement, or in-kind benefits to be provided, in any other taxable year; and (iii) such payments shall be made, as soon as practicable, but in any case on or before the last day of Employee's taxable year following the taxable year in which the expense was incurred. For purposes of Section 409A, Employee's right to receive any installment payments pursuant to this Agreement shall be treated as a right to receive a series of separate and distinct payments.

5. **Limitations of Agreement**. Nothing in this Agreement shall be construed to require the Trust or its successor owner to continue to employ Employee for any definite period of time. Either Employee or the Trust may terminate the employment relationship at any time with or without cause, unless otherwise expressly required by law or contract, and provided that the terms of this Agreement are observed.

6. **Arbitration**. Any dispute or controversy arising under or in connection with this Agreement which cannot be resolved informally by the parties shall be submitted to arbitration and adjudicated in Washington, D.C. pursuant to the commercial rules (single arbitrator) of the American Arbitration Association then in effect. The decision of the arbitrator shall be final and binding on all parties hereto. Each party shall bear its own costs in any arbitration proceeding held hereunder and the parties shall share the costs of the arbitrator.

7. **Severability**. In the event that any provision of this Agreement conflicts with the law under which this Agreement is to be construed, or if any such provision is held invalid or unenforceable by a court of competent jurisdiction or an arbitrator, such provision shall be deleted from this Agreement and the Agreement shall be construed to give full effect to the remaining provisions thereof.

8. **Governing Law**. This Agreement shall be interpreted, construed and governed according to the laws of the District of Columbia, without regard to the principles of conflicts of law thereof.

9. **Assignability**. Neither this Agreement nor any rights or obligations hereunder may be assigned by either party without the prior written consent of the other. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

10. **Entire Agreement**. This Agreement contains and represents the entire agreement of the parties and supersedes all prior agreements, representations or understandings, oral or written, express or implied, with respect to the subject matter hereof, which are hereby terminated and of no further force or effect. This Agreement may not be modified or amended in any way unless in a writing signed by both parties.

11. **Counterparts**. This Agreement may be executed in one or more counterparts, each of which shall be considered an original and together which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement.

EMPLOYEE
By: ___________________
Name: [NAME]
Title: [TITLE]
Date: [●], 20[●]

ELME COMMUNITIES

By: ___________________
Name: [NAME]
Title: [TITLE]
Date: [●], 20[●]

AMENDMENT NUMBER ONE TO
WASHINGTON REAL ESTATE INVESTMENT TRUST
AMENDED AND RESTATED EXECUTIVE OFFICER
LONG-TERM INCENTIVE PLAN

(Effective January 1, 2023)

The Washington Real Estate Investment Trust Amended and Restated Executive Officer Long-Term Incentive Plan (the "Plan") is hereby amended, effective January 1, 2023, with respect to performance periods beginning on and after January 1, 2023, as set forth below. The terms of the Plan as in effect prior to this Amendment Number One shall continue to apply for all performance periods commencing prior to January 1, 2023.

1. The Plan is hereby amended to change all references from "Washington Real Estate Investment Trust" to "Elme Communities" and to change the name of the Plan to the Elme Communities Amended and Restated Executive Officer Long-Term Incentive Plan.

2. Section 4.1 is hereby deleted in its entirety and replaced with the following:

   "4.1 Award Opportunity. Each Participant's total Award under the Plan shall be stated as a percentage of the Participant's annual base salary determined as of the beginning of the applicable Performance Period, which percentage shall depend upon the Participant's position and the degree of achievement of threshold, target and high performance goals for the Performance Period and which shall be determined by the Committee as soon as practicable following the commencement of the Performance Period, provided, however, that if Participant's employment is terminated by the Trust without Cause, or the Participant resigns with Good Reason, Retires, dies or becomes subject to a Disability while employed by the Trust, in each case, before the Committee has established the Participant's total Award as a percentage of the Participant's annual base salary for such Performance Period, then the Participant's total Award as a percentage of the Participant's annual base salary shall be the values in effect for the prior Performance Period."

3. The last paragraph of Section 4.2 is hereby deleted in its entirety and replaced with the following:

   "The allocation of each Participant's total Award shall be as determined by the Committee as soon as reasonably practicable following commencement of the applicable Performance Period provided, however, that if Participant's employment is terminated by the Trust without Cause, or the Participant resigns with Good Reason, Retires, dies or becomes subject to a Disability while employed by the Trust, in each case, before the Committee has established the allocation of the Participant's total Award, then the Participant's allocation shall be the allocation in effect for the prior Performance Period."

4. Section 4.6(b) is hereby deleted in its entirety and replaced with the following:

“(b) *Strategic Goals Equity Grant.* If during the Performance Period, the Participant’s employment is terminated by the Trust without Cause, or the Participant resigns with Good Reason, Retires, dies or becomes subject to a Disability while employed by the Trust, the Participant shall receive an Award of a Strategic Goals Equity Grant calculated based on actual levels of achievement of the strategic goals measure as of the date of such event and treating the day of such event as if it were the last day of the Performance Period. The Award shall be prorated in the proportion that the number of days elapsed from the beginning of the Performance Period through the date the Participant ceases to be an employee of the Trust bears to the total number of days in the Performance Period. In such event, the number of Common Shares shall be calculated based on the closing price per Common Share on the trading date coinciding with (or if that is not a trading day, next following) such event, such Common Shares shall be fully vested, and the Common Shares shall be issued to the Participant within thirty (30) days after such event; provided, however, if a Participant is a “specified employee” within the meaning of Section 409A, the issuance shall occur six (6) months after the Participant’s termination of employment if such delay is required to avoid adverse tax consequences under Section 409A, except if the Participant dies, in which case, the issuance shall occur within thirty (30) days after the Participant’s death.”

5. Prong (b) of the first sentence in Section 4.7 of the Plan is hereby amended and replaced with the following:

“(b) The Participant shall receive an Award of a Strategic Goals Equity Grant at the greater of the target level and the actual level of attainment of the strategic goals as of the Change in Control.”

This amendment shall be effective as of January 1, 2023.

ELME COMMUNITIES

By: /s/ Paul T. McDermott

Paul T. McDermott, President and Chief Executive Officer

February 15, 2023

AMENDMENT NUMBER ONE TO
WASHINGTON REAL ESTATE INVESTMENT TRUST
AMENDED AND RESTATED EXECUTIVE OFFICER
SHORT-TERM INCENTIVE PLAN

(Effective January 1, 2023)

The Washington Real Estate Investment Trust Amended and Restated Executive Officer Short-Term Incentive Plan (the "Plan") is hereby amended, effective January 1, 2023, with respect to performance periods beginning on and after January 1, 2023, as set forth below. The terms of the Plan as in effect prior to this Amendment Number One shall continue to apply for all performance periods commencing prior to January 1, 2023.

1. The Plan is hereby amended to change all references from "Washington Real Estate Investment Trust" to "Elme Communities" and to change the name of the Plan to the Elme Communities Amended and Restated Executive Officer Short-Term Incentive Plan.

2. Section 4.1 is hereby deleted in its entirety and replaced with the following:

   "4.1 Award Opportunity. Each Participant's total Award under the Plan with respect to a Performance Period shall be stated as a percentage of the Participant's annual base salary determined as of the first day of that Performance Period, which percentage shall depend upon the Participant's position and the degree of achievement of threshold, target, and high performance goals for the Performance Period and which shall be determined by the Committee as soon as practicable following the commencement of the Performance Period."

3. Section 4.4 is hereby deleted in its entirety and replaced with the following:

   "4.4 Qualifying Termination during the Performance Period. If during the Performance Period, the Participant's employment is terminated by the Trust without Cause, or the Participant resigns with Good Reason, Retires, dies or becomes subject to a Disability while employed by the Trust, the Participant shall receive an Award calculated based on the actual levels of achievement of the performance goals for the entire Performance Period, but the award shall be prorated in the proportion that the number of days elapsed from the beginning of the Performance Period through the date the Participant ceases to be an employee of the Trust bears to the total number of days in the Performance Period, provided, however, that if Participant's employment is terminated by the Trust without Cause, or the Participant resigns with Good Reason, Retires, dies or becomes subject to a Disability while employed by the Trust, in each case, before the Committee has established the Participant's total Award as a percentage of the Participant's annual base salary for such Performance Period, then the

Participant’s total Award as a percentage of the Participant’s annual base salary shall be the values in effect for the prior Performance Period.

This amendment shall be effective as of January 1, 2023.

ELME COMMUNITIES

By: /s/ Paul T. McDermott
Paul T. McDermott, President and Chief Executive Officer
February 15, 2023

FIRST AMENDMENT TO
SECOND AMENDED AND RESTATED CREDIT AGREEMENT

THIS **FIRST AMENDMENT TO SECOND AMENDED AND RESTATED CREDIT AGREEMENT** (this "Amendment") dated as of January 10, 2023, by and among ELME COMMUNITIES (f/k/a Washington Real Estate Investment Trust), a real estate investment trust formed under the laws of the State of Maryland (the "Borrower"), each of the Lenders party hereto, and WELLS FARGO BANK, NATIONAL ASSOCIATION, as Administrative Agent (together with its successors and assigns, the "Administrative Agent").

WHEREAS, the Borrower, the Lenders, the Issuing Banks, the Administrative Agent and certain other parties have entered into that certain Second Amended and Restated Credit Agreement dated as of August 26, 2021 (as amended and as in effect immediately prior to the effectiveness of this Amendment, the "Credit Agreement"); and

WHEREAS, the Borrower, the Lenders party hereto and the Administrative Agent desire to amend certain provisions of the Credit Agreement on the terms and conditions contained herein;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, the parties hereto hereby agree as follows:

Section 1. Specific Amendments to Credit Agreement. Upon the satisfaction of each of the conditions set forth in Section 2 of this Amendment, the parties hereto agree that the Credit Agreement is amended as follows:

(a) The Credit Agreement is amended to delete the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the underlined text (indicated textually in the same manner as the following example: underlined text) as set forth in Annex A attached hereto.

(b) The Credit Agreement is further amended by replacing Exhibits F, G, H, L and M with Exhibits F, G, H, L and M, respectively, attached hereto.

Section 2. Conditions Precedent. The effectiveness of this Amendment is subject to receipt by the Administrative Agent of each of the following, each in form and substance satisfactory to the Administrative Agent:

(a) a counterpart of this Amendment duly executed by the Borrower, the Administrative Agent and each of the Lenders; and

(b) such other documents, instruments and agreements as the Administrative Agent may reasonably request.

Section 3. Representations. The Borrower represents and warrants to the Administrative Agent and the Lenders that:

(a) Authorization. The Borrower has the right and power, and has taken all necessary action to authorize it, to execute and deliver this Amendment and to perform its obligations hereunder and under the Credit Agreement, as amended by this Amendment, in accordance with their respective terms. This Amendment has been duly executed and delivered by a duly authorized officer of the Borrower and each of this Amendment and the Credit Agreement, as amended by this Amendment, is a legal, valid and binding obligation of the Borrower enforceable against the Borrower in accordance with its respective terms except as the same may be limited by bankruptcy, insolvency, and other similar laws affecting the rights of creditors generally and the availability of equitable remedies for the enforcement of certain obligations contained herein or therein and as may be limited by equitable principles generally.

(b) Compliance with Laws, etc. The execution and delivery by the Borrower of this Amendment and the performance by the Borrower of this Amendment and the Credit Agreement, as

amended by this Amendment, in accordance with their respective terms, do not and will not, by the passage of time, the giving of notice or otherwise: (i) require any Loan Party to obtain a Governmental Approval (other than any required filing with the SEC) or violate any Applicable Law (including all Environmental Laws) relating to the Borrower or any other Loan Party; (ii) conflict with, result in a breach of or constitute a default under the organizational documents of the Borrower or any other Loan Party, or any indenture, agreement or other instrument to which the Borrower or any other Loan Party is a party or by which it or any of its respective properties may be bound; or (iii) result in or require the creation or imposition of any Lien upon or with respect to any property now owned or hereafter acquired by the Borrower or any other Loan Party.

(c) No Material Adverse Change. Since December 31, 2021, there have been no changes, events, acts, conditions or occurrences of any nature, singly or in the aggregate, that have had or could reasonably be expected to have a Material Adverse Effect. The Borrower, the other Loan Parties, if any, and the respective Subsidiaries of each of the foregoing, taken as a whole, are Solvent.

(d) No Default. No Default or Event of Default has occurred and is continuing as of the date hereof or will exist immediately after giving effect to this Amendment.

Section 4. Reaffirmation of Representations by Borrower. The Borrower hereby reaffirms that the representations and warranties made or deemed made by the Borrower and each other Loan Party in the Loan Documents to which any of them is a party are true and correct in all material respects (except in the case of a representation or warranty qualified by materiality, in which case such representation or warranty is true and correct in all respects) on and as of the date hereof with the same force and effect as if made on and as of the date hereof except to the extent that such representations and warranties expressly relate solely to an earlier date (in which case such representations and warranties were true and correct in all material respects (except in the case of a representation or warranty qualified by materiality, in which case such representation or warranty was true and correct in all respects) on and as of such earlier date) and except for changes in factual circumstances not prohibited under the Credit Agreement.

Section 5. Certain References. Each reference to the Credit Agreement in any of the Loan Documents shall be deemed to be a reference to the Credit Agreement as amended by this Amendment. This Amendment shall constitute a Loan Document.

Section 6. Expenses. The Borrower shall reimburse the Administrative Agent upon demand for all reasonable and documented out-of-pocket costs and reasonable and documented expenses (including reasonable attorneys' fees) incurred by the Administrative Agent in connection with the preparation, negotiation and execution of this Amendment and the other agreements and documents executed and delivered in connection herewith.

Section 7. Benefits. This Amendment shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

Section 8. GOVERNING LAW. THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS EXECUTED, AND TO BE FULLY PERFORMED, IN SUCH STATE.

Section 9. Effect. Except as expressly herein amended, the terms and conditions of the Credit Agreement and the other Loan Documents remain in full force and effect. The amendments contained herein shall be deemed to have prospective application only from the date as of which this Amendment is dated, unless otherwise specifically stated herein.

Section 10. Counterparts. This Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original and shall be binding upon all parties, their successors and assigns.

Section 11. Definitions. All capitalized terms not otherwise defined herein are used herein with the respective definitions given them in the Credit Agreement.

[Signatures on Next Page]

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to Second Amended and Restated Credit Agreement to be executed as of the date first above written.

BORROWER:

ELME COMMUNITIES

By: /s/ Stephen E. Riffee

Name: Stephen E. Riffee
Its: Executive Vice President and Chief Financial Officer

[Signatures Continued on Next Page]

WELLS FARGO BANK, NATIONAL ASSOCIATION, as Administrative Agent and as a Lender

By: /s/ Scott S. Solis
Name: Scott S. Solis
Title: Managing Director

[Signatures Continued on Next Page]

KEYBANK NATIONAL ASSOCIATION, as a Lender

By: /s/ Sara Jo Smith
Name: Sarah Jo Smith
Title: Senior Vice President

[Signatures Continued on Next Page]

CAPITAL ONE, NATIONAL ASSOCIATION, as a Lender

By: /s/ Dennis J. Haydel
Name: Dennis J. Haydel
Title: Vice President

[Signatures Continued on Next Page]

U.S. BANK NATIONAL ASSOCIATION, as a Lender

By: /s/ Timothy J. Tillman
Name: Timothy J. Tillman
Title: Senior Vice President

[Signatures Continued on Next Page]

PNC BANK, NATIONAL ASSOCIATION, as a Lender

By: /s/ Katie Chowdhry
Name: Katie Chowdhry
Title: Senior Vice President

[Signatures Continued on Next Page]

TRUIST BANK, as a Lender

By: /s/ C. Vincent Hughes, Jr.
Name: C. Vincent Hughes, Jr.
Title: Director

[Signatures Continued on Next Page]

TD BANK N.A., as a Lender

By: /s/ Brian DelGreco
Name: Brian DelGreco
Title: Vice President

[Signatures Continued on Next Page]

CITIBANK, N.A., as a Lender

By: /s/ David Bouton
Name: David Bouton
Title: Authorized Signatory

[Signatures Continued on Next Page]

GOLDMAN SACHS BANK USA, as a Lender

By: /s/ Keshia Leday
Name: Keshia Leday
Title: Authorized Signatory

[Signatures Continued on Next Page]

JPMORGAN CHASE BANK, N.A., as a Lender

By: /s/ Brad Olmsted
Name: Brad Olmsted
Title: Vice President

[Signatures Continued on Next Page]

THE BANK OF NEW YORK MELLON, as a Lender

By: /s/ Carol Murray
Name: Carol Murray
Title: Director

ANNEX A

AMENDED CREDIT AGREEMENT

[See attached]

Loan Number: 1014769J

~~*Execution Version*~~
Conformed through First Amendment dated 1/10/2023

SECOND AMENDED AND RESTATED CREDIT AGREEMENT

Dated as of August 26, 2021

by and among

~~WASHINGTON REAL ESTATE INVESTMENT TRUST~~ELME COMMUNITIES,
as Borrower,

THE FINANCIAL INSTITUTIONS PARTY HERETO AND THEIR ASSIGNEES UNDER SECTION 12.5.,
as Lenders,

and

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Administrative Agent

WELLS FARGO SECURITIES, LLC, KEYBANC CAPITAL MARKETS INC., TRUIST SECURITIES INC, CAPITAL ONE, NATIONAL ASSOCIATION, TD BANK, N.A. and PNC CAPITAL MARKETS LLC
as Joint Lead Arrangers for the Revolving Credit Facility,

WELLS FARGO SECURITIES, LLC and KEYBANC CAPITAL MARKETS INC.
as Joint Bookrunners for the Revolving Credit Facility,

KEYBANK NATIONAL ASSOCIATION AND CAPITAL ONE, NATIONAL ASSOCIATION
as Syndication Agents for the Revolving Credit Facility,

CAPITAL ONE, NATIONAL ASSOCIATION, TD BANK, N.A., PNC BANK, NATIONAL ASSOCIATION and TRUIST BANK,
as Documentation Agents for the Revolving Credit Facility,

WELLS FARGO SECURITIES, LLC, CAPITAL ONE, NATIONAL ASSOCIATION and U.S. BANK NATIONAL ASSOCIATION
as Joint Lead Arrangers and Joint Bookrunners for the Tranche B Term Loan Facility,

and

CAPITAL ONE, NATIONAL ASSOCIATION and U.S. BANK NATIONAL ASSOCIATION
as Syndication Agents for the Tranche B Term Loan Facility

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THIS SECOND AMENDED AND RESTATED CREDIT AGREEMENT (this "Agreement") dated as of August 26, 2021 by and among ~~WASHINGTON REAL ESTATE INVESTMENT TRUST,~~ ELME COMMUNITIES (f/k/a Washington Real Estate Investment Trust), a real estate investment trust formed under the laws of the State of Maryland (the "Borrower"), each of the financial institutions initially a signatory hereto together with their successors and assignees under Section 12.5. (the "Lenders"), and WELLS FARGO BANK, NATIONAL ASSOCIATION, as Administrative Agent (the "Administrative Agent"), with WELLS FARGO SECURITIES, LLC, KEYBANC CAPITAL MARKETS INC., TRUIST SECURITIES INC., CAPITAL ONE, NATIONAL ASSOCIATION, TD BANK, N.A. and PNC CAPITAL MARKETS LLC, as joint lead arrangers for the revolving credit facility (the "Revolving Credit Facility Lead Arrangers"), WELLS FARGO SECURITIES, LLC and KEYBANC CAPITAL MARKETS INC., as joint bookrunners for the revolving credit facility (the "Revolving Credit Facility Joint Bookrunners"), KEYBANK NATIONAL ASSOCIATION AND CAPITAL ONE, NATIONAL ASSOCIATION, as Syndication Agents for the revolving credit facility (the "Revolving Credit Facility Syndication Agents"), CAPITAL ONE, NATIONAL ASSOCIATION, TD BANK, N.A., PNC BANK, NATIONAL ASSOCIATION and TRUIST BANK, as Documentation Agents for the revolving credit facility (the "Documentation Agents"), WELLS FARGO SECURITIES, LLC, CAPITAL ONE, NATIONAL ASSOCIATION and U.S. BANK NATIONAL ASSOCIATION, as joint lead arrangers and joint bookrunners for the Tranche B Term Loan facility (together with the Revolving Credit Facility Lead Arrangers, the "Lead Arrangers" and together with the Revolving Credit Facility Joint Bookrunners, the "Joint Bookrunners"), CAPITAL ONE, NATIONAL ASSOCIATION and U.S. BANK NATIONAL ASSOCIATION, as Syndication Agents for the Tranche B Term Loan facilities (together with the Revolving Credit Facility Syndication Agents, the "Syndication Agents").

WHEREAS, the Administrative Agent, the Issuing Banks~~, the Swingline Lenders~~ and the Lenders desire to make available to the Borrower credit facilities in the aggregate amount of $950,000,000 consisting of (a) a revolving credit facility in the initial amount of $700,000,000, which will include a $~~75,000,000 swingline subfacility, a $~~ 60,000,000 letter of credit subfacility and a competitive bid loan subfacility and (b) a $250,000,000 term loan facility, all on the terms and conditions contained herein;

WHEREAS, Borrower and certain of the Lenders entered into that certain Amended and Restated Credit Agreement, dated as of March 29, 2018 (as amended, restated, modified or supplemented from time to time through the date hereof, the "Existing Credit Agreement"); and

WHEREAS, the Administrative Agent and the Lenders desire to amend and restate the terms of the Existing Credit Agreement on the terms and conditions contained herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, the parties hereto agree that the Existing Credit Agreement is amended and restated in its entirety as follows:

Article I. Definitions

Section 1.1. Definitions.

In addition to terms defined elsewhere herein, the following terms shall have the following meanings for the purposes of this Agreement:

"**1031 Property**" means any Property that is at any time held by a "qualified intermediary" (a "QI"), as defined in the Treasury Regulations promulgated pursuant to Section 1031 of the Internal Revenue Code, or an "exchange accommodation titleholder" (an "EAT"), as defined in Internal Revenue Service Revenue Procedure 2000-37, as modified by Internal Revenue Procedure 2004-51, (or in either case, by one or more Wholly Owned Subsidiaries thereof, singly or as tenants in common) which is a single purpose entity and has entered into an "exchange agreement" or a "qualified exchange accommodation agreement" with the Borrower or a Wholly Owned Subsidiary in connection with the

acquisition (or possible disposition) of such Property by the Borrower or a Wholly Owned Subsidiary pursuant to, and intended to qualify for tax treatment under, Section 1031 of the Internal Revenue Code.

"**Absolute Rate**" has the meaning given that term in Section 2.2.(c)(ii)(C).

"**Absolute Rate Auction**" means a solicitation of Bid Rate Quotes setting forth Absolute Rates pursuant to Section 2.2.

"**Absolute Rate Loan**" means a Bid Rate Loan, the interest rate on which is determined on the basis of an Absolute Rate pursuant to an Absolute Rate Auction.

"**Accession Agreement**" means an Accession Agreement substantially in the form of Annex I to the Guaranty.

"**Additional Costs**" has the meaning given that term in Section 4.1.(b).

"**Additional Term Loans**" has the meaning given that term in Section 2.17.

"**Adjusted Daily Simple SOFR**" means, for any day (a "Simple SOFR Rate Day"), a rate per annum equal to the greater of (a) the sum of (i) SOFR for the day (such day, a "Simple SOFR Determination Day") that is five (5) U.S. Government Securities Business Days prior to (A) if such Simple SOFR Rate Day is a U.S. Government Securities Business Day, such Simple SOFR Rate Day or (B) if such Simple SOFR Rate Day is not a U.S. Government Securities Business Day, the U.S. Government Securities Business Day immediately preceding such Simple SOFR Rate Day, in each case, as such SOFR is published by the SOFR Administrator on the SOFR Administrator's Website; provided that if by 5:00 p.m. on the second (2nd) U.S. Government Securities Business Day immediately following any Simple SOFR Determination Day, SOFR in respect of such Simple SOFR Determination Day has not been published on the SOFR Administrator's Website and a Benchmark Replacement Date with respect to Adjusted Daily Simple SOFR has not occurred, then SOFR for such Simple SOFR Determination Day will be SOFR as published in respect of the first preceding U.S. Government Securities Business Day for which such SOFR was published on the SOFR Administrator's Website; provided further that SOFR as determined pursuant to this proviso shall be utilized for purposes of calculation of Adjusted Daily Simple SOFR for no more than three (3) consecutive Simple SOFR Rate Days and (ii) the Simple SOFR Adjustment and (b) the Floor. Any change in Adjusted Daily Simple SOFR due to a change in SOFR shall be effective from and including the effective date of such change in SOFR without notice to the Borrower.

"**Adjusted Term SOFR**" means, for purposes of any calculation, the rate per annum equal to (a) Term SOFR for such calculation plus (b) the Term SOFR Adjustment; provided that if Adjusted Term SOFR as so determined shall ever be less than the Floor, then Adjusted Term SOFR shall be deemed to be the Floor.

"**Administrative Agent**" means Wells Fargo Bank, National Association as contractual representative of the Lenders under this Agreement, or any successor Administrative Agent appointed pursuant to Section 11.8.

"**Administrative Questionnaire**" means the Administrative Questionnaire completed by each Lender and delivered to the Administrative Agent in a form supplied by the Administrative Agent to the Lenders from time to time.

"**Affected Financial Institution**" means (a) any EEA Financial Institution or (b) any UK Financial Institution.

"**Affected Lender**" has the meaning given that term in Section 4.6.

"**Affiliate**" means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified. In no event shall the Administrative Agent, any Issuing Bank or any Lender be deemed to be an Affiliate of the Borrower.

“**Agreement Date**” means the date as of which this Agreement is dated.

“**Announcements**” has the meaning assigned thereto in Section 1.4.

“**Anti-Corruption Laws**” means all Applicable Laws of any jurisdiction concerning or relating to bribery, corruption or money laundering, including without limitation, the Foreign Corrupt Practices Act of 1977, as amended.

“**Anti-Terrorism Laws**” has the meaning given that term in Section 6.1.(v).

“**Applicable Facility Fee**” means the percentage set forth in the table below corresponding to the Level at which the “Applicable Margin” is determined in accordance with the definition thereof:

Level	Facility Fee
1	0.100%
2	0.125%
3	0.150%
4	0.200%
5	0.250%
6	0.300%

Any change in the applicable Level at which the Applicable Margin is determined shall result in a corresponding and simultaneous change in the Applicable Facility Fee.

“**Applicable Law**” means all international, foreign, federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes, executive orders, and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

“**Applicable Margin**” means, with respect to a particular Class and Type of Loans, the percentage rate set forth in the table below corresponding to the level (each a “Level”) into which the Borrower’s Credit Rating then falls. As of the Effective Date, the Applicable Margins are determined based on Level 4. Any change in the Borrower’s Credit Rating which would cause the Applicable Margins to be determined based on a different Level shall be effective as of the first day of the first calendar month immediately following receipt by the Administrative Agent of written notice delivered by the Borrower in accordance with Section 8.4.(c) that the Borrower’s Credit Rating has changed; provided, however, if the Borrower has not delivered the notice required by such Section but the Administrative Agent becomes aware that the Borrower’s Credit Rating has changed, then the Administrative Agent may, in its sole discretion, adjust the Level effective as of the first day of the first calendar month following the date the Administrative Agent becomes aware that the Borrower’s Credit Rating has changed. During any period that the Borrower has received two Credit Ratings that are not equivalent, the Applicable Margins shall be determined based on the Level corresponding to the higher of such two Credit Ratings. During any period that the Borrower has received more than two Credit Ratings and such Credit Ratings are not equivalent, the Applicable Margin for a Class of Loans shall equal the average of the Applicable Margins for such Class of Loans as determined in accordance with the two highest of such Credit Ratings. During any period for which the Borrower has received a Credit Rating from only one Rating Agency, then the Applicable Margins shall be determined based on such Credit Rating so long as such Credit Rating is from either S&P or Moody’s. During any period that the Borrower has (a) not received a Credit Rating from any Rating Agency or (b) received a Credit Rating from only one Rating Agency that is neither S&P or Moody’s, then the Applicable Margins shall be determined based on Level 6.

During any applicable Sustainability Adjustment Period, the Applicable Margin with respect to Revolving Loans only set forth in the table below shall be decreased by the Applicable Sustainability

Adjustment (if any) in effect during such Sustainability Adjustment Period; provided that in no event shall the Applicable Margin be less than zero.

Level	Borrower's Credit Rating (S&P/Moody's or equivalent)	Applicable Margin for Revolving Loans that are ~~LIBOR~~SOFR Loans	Applicable Margin for Revolving Loans that are Base Rate Loans	Applicable Margin for Tranche B Term Loans that are ~~LIBOR~~SOFR Loans	Applicable Margin for Tranche B Term Loans that are Base Rate Loans
1	A/A2 (or equivalent) or higher	0.700%	0.00%	0.85%	0.00%
2	A-/A3 (or equivalent)	0.725%	0.00%	0.90%	0.00%
3	BBB+/Baa1 (or equivalent)	0.775%	0.00%	0.95%	0.00%
4	BBB/Baa2 (or equivalent)	0.850%	0.00%	1.10%	0.10%
5	BBB-/Baa3 (or equivalent)	1.05%	0.05%	1.35%	0.35%
6	BB+/Ba1 (or equivalent) or lower or unrated	1.40%	0.40%	1.75%	0.75%

"**Applicable Sustainability Adjustment**" means for any Sustainability Adjustment Period (beginning with the Sustainability Adjustment Period commencing on the Sustainability Adjustment Date corresponding to the Compliance Certificate delivered in respect of the fiscal quarter in which the Sustainability Rating for the fiscal year ending December 31, 2021 is first reported by GRESB), determined, in the case of the following clause (a)(i) or (b)(i), by reference to the Sustainability Rating Change or Sustainability Rating, as applicable, reported in the Compliance Certificate delivered by the Borrower pursuant to Section 8.3 for the immediately preceding fiscal year of the Borrower (a "**Reference Year**"):

(a) if (i) the Sustainability Rating Change for such Reference Year shall be an improvement in the Sustainability Rating equal to or greater than two percent (2.0%) or (ii) the Sustainability Rating reported in the Compliance Certificate delivered by the Borrower pursuant to Section 8.3 in respect of such Sustainability Adjustment Period is equal to or greater than 90, then the Applicable Sustainability Adjustment for such Sustainability Adjustment Period shall be a one (1) basis point reduction in the Applicable Margin set forth in the pricing table above; and

(b) if (i) the Sustainability Rating Change for such Reference Year shall be an improvement in the Sustainability Rating of less than two percent (2.0%) (or if the Sustainability Rating Change for such Reference Year shall have declined) or (ii) the Borrower shall have elected in its sole discretion to not report a Sustainability Rating Adjustment in the applicable Compliance Certificate, then the Applicable Sustainability Adjustment for such Sustainability Adjustment Period shall be zero and there shall be no Applicable Sustainability Adjustment to the Applicable Margin; provided that this clause (b) shall not apply if the Sustainability Rating Change for such Reference Year cannot be determined due to the occurrence of any event described in clause (A), (B) or (C) of clause (i) of the following proviso;

provided, that, notwithstanding the foregoing,

(i) if (A) GRESB fails or is no longer able to issue a Sustainability Rating, or otherwise delays the issuance of a Sustainability Rating without the consent of the Borrower, (B) GRESB notifies the Borrower, or makes an announcement to the effect, that it will no longer issue a Sustainability Rating, or (C) the scoring methodologies or other basis upon which the Sustainability Rating is determined shall

materially change from the methodologies and basis for the determination of the Sustainability Rating in effect for the Reference Year ending December 31, 2021, then in any such case,

(x) the Borrower or the Administrative Agent (acting on the instructions of the Requisite Lenders) may request that discussions be entered into between the Borrower and the Administrative Agent (for a period of no more than 30 consecutive days, or such longer period as may be mutually agreed by the Borrower and the Administrative Agent (with the consent of the Requisite Lenders)) with a view to agreeing on a substitute basis for determining a Sustainability Rating;

(y) during any such discussion period, the Applicable Sustainability Adjustment with respect to the applicable Sustainability Adjustment Period shall be determined pursuant to clause (a) or (b) of this definition above, based on the Sustainability Rating Change or Sustainability Rating, as applicable, that was in effect and applied immediately prior to the date on which such discussion period commenced;

(z) if no agreement can be reached between the Borrower and the Administrative Agent during such discussion period, unless otherwise agreed by the Borrower and the Administrative Agent (with the consent of the Requisite Lenders), the Applicable Sustainability Adjustment shall be determined pursuant to clause (b) of this definition above and shall apply to the Applicable Margin from and after the last day of such discussion period;

(ii) until the Compliance Certificate is delivered pursuant to Section 8.3 in respect of the first fiscal quarter for which the Sustainability Rating Change is able to be determined by reference to the Sustainability Rating reported for the immediately preceding Reference Year, clause (a)(i) above shall be disregarded for purposes of determining the Applicable Sustainability Adjustment for any Sustainability Adjustment Period ending prior to such date of delivery, and there shall be no Applicable Sustainability Adjustment to the Applicable Margin in reliance on clause (a)(i) above; and

(iii) the Borrower may elect to deliver to the Administrative Agent a revised Compliance Certificate for any Reference Year reflecting a revised Sustainability Rating Change or Sustainability Rating, as applicable, and commencing on the Business Day immediately following the date of delivery of such revised Compliance Certificate through the end of such Sustainability Adjustment Period, such revised Sustainability Rating Change or Sustainability Rating as applicable, shall apply.

"**Approved Fund**" means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender, or (c) an entity or an Affiliate of any entity that administers or manages a Lender.

"**Arrangers**" has the meaning set forth in the introductory paragraph hereof.

"**Assignment and Assumption**" means an Assignment and Assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 12.5.), and accepted by the Administrative Agent, in substantially the form of Exhibit A or any other form approved by the Administrative Agent.

"**Assumption Date**" has the meaning given that term in Section 12.20.

"**Assumption Transaction**" has the meaning given that term in Section 12.20.

"**Available Tenor**" means, as of any date of determination and with respect to ~~the~~any then-current Benchmark, as applicable, (a) if ~~the then-current~~such Benchmark is a term rate, any tenor for such Benchmark (or ~~(b) otherwise, any payment period for interest calculated with reference to such Benchmark, as applicable,~~component thereof) that is or may be used for determining the length of an Interest Period pursuant to this Agreement or (b) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark, in each case, as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of "Interest Period" pursuant to Section 4.2(b)(iv).

"**Bail-In Action**" means the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of any liability of an Affected Financial Institution.

"**Bail-In Legislation**" means (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, regulation, rule or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

"**Bankruptcy Code**" means the Bankruptcy Code of 1978, as amended.

"**Base Rate**" means, at any time, the highest of (a) the Prime Rate, (b) the Federal Funds Rate plus 0.50% and (c) the LIBOR Market Index RateAdjusted Daily Simple SOFR in effect on such day plus 1.0%. Each change in the Base Rate shall take effect simultaneously with the corresponding change or changes in the Prime Rate, the Federal Funds Rate or the LIBOR Market Index RateAdjusted Daily Simple SOFR, as applicable (provided that clause (c) shall not be applicable during any period in which LIBORAdjusted Daily Simple SOFR is unavailable or unascertainable).

"**Base Rate Loan**" means a Revolving Loan or Term Loan (or any portion thereof) bearing interest at a rate based on the Base Rate.

"**Benchmark**" means, initially, USD LIBORAdjusted Daily Simple SOFR or Adjusted Term SOFR, as applicable; provided that if a Benchmark Transition Event, a Term SOFR Transition Event, an Early Opt-in Election or an Other Benchmark Rate Election, as applicable, and its related Benchmark Replacement Date have has occurred with respect to USD LIBOR or theAdjusted Daily Simple SOFR or Adjusted Term SOFR, as applicable, or the applicable then-current Benchmark, then "Benchmark" means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 4.2(b)(i).

"**Benchmark Replacement**" means, for any Available Tenor,

(a) with respect to any Benchmark Transition Event or Early Opt-in Election, the first alternative set forth in the order below that can be determined by the Administrative Agent for the applicable Benchmark Replacement Date:

(1) the sum of: (A) Term SOFR and (B) the related Benchmark Replacement Adjustment; provided, that, if the Borrower has provided a notification to the Administrative Agent in writing on or prior to such Benchmark Replacement Date that the Borrower has a Derivative Contract in place with respect to any of the Loans as of the date of such notice (which such notification the Administrative Agent shall be entitled to rely upon and shall have no duty or obligation to ascertain the correctness or completeness of), then the Administrative Agent, in its sole discretion, may decide not to determine the Benchmark Replacement pursuant to this clause (a)(1) for such Benchmark Transition Event or Early Opt-in Election, as applicable;

(2) the sum of: (A) Daily Simple SOFR and (B) the related Benchmark Replacement Adjustment;

(3) "**Benchmark Replacement**" means, with respect to any Benchmark Transition Event for any then-current Benchmark, the sum of: (Aa) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower as the replacement for the then-currentsuch Benchmark for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for theto such then-current Benchmark for Dollar-denominated syndicated credit facilities at such time and (Bb) the related Benchmark Replacement Adjustment; provided that, if such Benchmark Replacement as so determined would be less than the Floor, such Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

(b) with respect to any Term SOFR Transition Event, the sum of (i) Term SOFR and (ii) the related Benchmark Replacement Adjustment; or

~~(c) with respect to any Other Benchmark Rate Election, the sum of: (i) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for Dollar-denominated syndicated credit facilities at such time and (ii) the related Benchmark Replacement Adjustment;~~

~~provided that, (i) in the case of clause (a)(1), if the Administrative Agent decides that Term SOFR is not administratively feasible for the Administrative Agent, then Term SOFR will be deemed unable to be determined for purposes of this definition and (ii) in the case of clause (a)(1) or clause (b) of this definition, the applicable Unadjusted Benchmark Replacement is displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion. If the Benchmark Replacement as determined pursuant to clause (a)(1), (a)(2) or (a)(3), clause (b) or clause (c) of this definition would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.~~

"**Benchmark Replacement Adjustment**" means, with respect to any replacement of ~~the~~any then-current Benchmark with an Unadjusted Benchmark Replacement for any applicable ~~Interest Period and~~ Available Tenor ~~for any setting of such Unadjusted Benchmark Replacement:~~

~~(1)~~ (if applicable), ~~for purposes of clauses (a)(1) and (b) of the definition of "Benchmark Replacement," an amount equal to (A) 0.11448% (11.448 basis points) for an Available Tenor of one-month's duration, (B) 0.26161% (26.161 basis points) for an Available Tenor of three-months' duration and (C) 0.42826% (42.826 basis points) for an Available Tenor of six-months' duration;~~

~~(2) for purposes of clause (a)(2) of the definition of "Benchmark Replacement," an amount equal to 0.11448% (11.448 basis points);~~

~~(3) for purposes of clause (a)(3) of the definition of "Benchmark Replacement,"~~ the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Borrower giving due consideration to (~~i~~a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such ~~Available Tenor of such~~ Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body ~~on the applicable Benchmark Replacement Date~~ or (~~ii~~b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such ~~Available Tenor of such~~ Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities~~; and~~.

~~(4) for purposes of clause (c) of the definition of "Benchmark Replacement," the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Borrower giving due consideration to any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Available Tenor of such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities.~~

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

"**Benchmark Replacement Date**" means the earliest to occur of the following events with respect to the then-current Benchmark:

(a) in the case of clause (a) or (b) of the definition of "Benchmark Transition Event," the later of (~~a~~i) the date of the public statement or publication of information referenced therein and (~~b~~ii) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors (if applicable) of such Benchmark (or such component thereof); or

(b) in the case of clause (c) of the definition of "Benchmark Transition Event," the first date ~~of the public~~on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative; provided, that such non-representativeness will be determined by reference to the most recent statement or publication ~~of information~~ referenced ~~therein;~~in such clause (c) and even if any Available Tenor (if applicable) of such Benchmark (or such component thereof) continues to be provided on such date.

~~(c) in the case of a Term SOFR Transition Event, the date that is thirty (30) days after the Administrative Agent has provided the Term SOFR Notice to the Lenders and the Borrower pursuant to Section 4.2(b)(i)(B); or~~

~~(d) in the case of an Early Opt-in Election or an Other Benchmark Rate Election, the sixth (6th) Business Day after the date notice of such Early Opt-in Election or Other Benchmark Rate Election, as applicable, is provided to the Lenders, so long as the Administrative Agent has not received, by 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Early Opt-in Election or Other Benchmark Rate Election, as applicable, is provided to the Lenders, written notice of objection to such Early Opt-in Election or Other Benchmark Rate Election, as applicable, from Lenders comprising the Requisite Lenders.~~

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

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

(a) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors (if applicable) of such Benchmark (or such component thereof), permanently or indefinitely~~,~~; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor (if applicable) of such Benchmark (or such component thereof);

(b) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the FRB, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors (if applicable) of such Benchmark (or such component thereof) permanently or indefinitely~~,~~; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor (if applicable) of such Benchmark (or such component thereof); or

(c) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof)

announcing that all Available Tenors (if applicable) of such Benchmark (or such component thereof) are no longernot, or as of a specified future date will not be, representative.

For the avoidance of doubt, if the applicable then-current Benchmark has any Available Tenors, a "Benchmark Transition Event" will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

"**Benchmark Transition Start Date**" means, in the case of a Benchmark Transition Event, the earlier of (a) the applicable Benchmark Replacement Date and (b) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the 90th day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than 90 days after such statement or publication, the date of such statement or publication).

"**Benchmark Unavailability Period**" means, with respect to any then-current Benchmark, the period (if any) (x) beginning at the time that a Benchmark Replacement Date pursuant to clauses (a) or (b) of that definitionwith respect to such Benchmark has occurred if, at such time, no Benchmark Replacement has replaced the then-currentsuch Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 4.2(b) and (y) ending at the time that a Benchmark Replacement has replaced the then-currentsuch Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 4.2(b).

"**Benefit Arrangement**" means at any time an employee benefit plan within the meaning of Section 3(3) of ERISA which is not a Plan or a Multiemployer Plan and which is maintained or otherwise contributed to by any member of the ERISA Group.

"**Bid Rate Borrowing**" has the meaning given that term in Section 2.2.(b).

"**Bid Rate Loan**" means a loan made by a Lender under Section 2.2.(f).

"**Bid Rate Note**" means a promissory note of the Borrower substantially in the form of Exhibit B, payable to the order of a Lender and otherwise duly completed and in any event shall include any new Bid Rate Note that may be issued from time to time pursuant to Section 12.5.(g).

"**Bid Rate Quote**" means an offer in accordance with Section 2.2.(c) by a Lender to make a Bid Rate Loan with one single specified interest rate.

"**Bid Rate Quote Request**" has the meaning given that term in Section 2.2.(b).

"**Borrower**" has the meaning set forth in the introductory paragraph hereof and shall include the Borrower's successors and permitted assigns.

"**Business Day**" means (a) for all purposes other than as set forth in clause (b) below, any day (other than a Saturday, Sunday or legal holiday) on which banks in New York, New York, are open for the conduct of their commercial banking business, and (b) with respect to all notices and determinations in connection with, and payments of principal and interest on, any LIBORSOFR Loan, or any Base Rate Loan as to which the interest rate is determined by reference to LIBORAdjusted Daily Simple SOFR, any day that is a Business Day described in clause (a) and that is also a day for trading by and between banks in Dollar deposits in the London interbank market U.S. Government Securities Business Day. Unless specifically referenced in this Agreement as a Business Day, all references to "days" shall be to calendar days.

"**Capital One**" means Capital One, National Association, and its successors and assigns.

"**Capital Reserves**" means, for any period and with respect to any Property, an amount equal to (a)(i) for any commercial Property which is not a multifamily Property (A) the aggregate square footage of all completed space of such Property times (B) $0.15 and (ii) for any multifamily Property (A) the number of multifamily units located on such Property times (B) $250, times (b) the number of days in

such period divided by (c) 365. If the term Capital Reserves is used without reference to any specific Property or group of Properties, then it shall be determined on an aggregate basis with respect to all Properties of the Borrower and its Subsidiaries and the applicable Ownership Shares of all Properties of all Unconsolidated Affiliates.

"**Capitalization Rate**" means (a) 6.00% for office Properties, (b) 6.50% for retail Properties and (c) 5.75% for multifamily Properties. For purposes of this definition, if a Property is a mixed use Property, then the Capitalization Rate for such Property shall be determined by the use to which the greatest proportion of revenue is attributable for the preceding fiscal quarter.

"**Capitalized Lease Obligations**" means obligations under a lease (or other arrangement conveying the right to use property) to pay rent or other amounts that are required to be capitalized for financial reporting purposes in accordance with GAAP. The amount of a Capitalized Lease Obligation is the capitalized amount of such obligation as would be required to be reflected on a balance sheet of the applicable Person prepared in accordance with GAAP.

"**Cash Collateralize**" means to pledge and deposit with or deliver to the Administrative Agent, for the benefit of the Issuing Banks or the Revolving Lenders, as collateral for Letter of Credit Liabilities or obligations of Revolving Lenders to fund participations in respect of Letter of Credit Liabilities, cash or deposit account balances or, if the Administrative Agent and any Issuing Bank shall agree in their sole discretion, other credit support, in each case pursuant to documentation in form and substance satisfactory to the Administrative Agent and such Issuing Bank. "Cash Collateral" shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

"**Cash Equivalents**" means (a) securities issued, guaranteed or insured by the United States of America or any of its agencies with maturities of not more than one year from the date acquired; (b) certificates of deposit with maturities of not more than one year from the date acquired issued by a United States federal or state chartered commercial bank of recognized standing, or a commercial bank organized under the laws of any other country which is a member of the Organisation for Economic Cooperation and Development, or a political subdivision of any such country, acting through a branch or agency, which bank has capital and unimpaired surplus in excess of $500,000,000 and which bank or its holding company has a short-term commercial paper rating of at least A-2 or the equivalent by S&P or at least P-2 or the equivalent by Moody's; (c) reverse repurchase agreements with terms of not more than seven days from the date acquired, for securities of the type described in clause (a) above and entered into only with commercial banks having the qualifications described in clause (b) above; (d) commercial paper issued by any Person incorporated under the laws of the United States of America or any State thereof and rated at least A-2 or the equivalent thereof by S&P or at least P-2 or the equivalent thereof by Moody's, in each case with maturities of not more than one year from the date acquired; and (e) investments in money market funds registered under the Investment Company Act of 1940, as amended, which have net assets of at least $500,000,000 and at least eighty-five percent (85%) of whose assets consist of securities and other obligations of the type described in clauses (a) through (d) above.

"**Class**" means, when used in reference to (a) any Loan, such Loan or the other Loans made by the Lenders to the Borrower pursuant to Section 2.1., 2.2.~~, 2.4.~~ or 2.9., or a Loan or Loans of another class established pursuant to Sections 2.17. or 12.6.(e); (b) any Commitment, such Commitment is a Commitment on the date hereof or a commitment of another class established pursuant to Sections 2.17. or 12.6.(e); and (c) any Lender, refers to whether such Lender has a Loan or Commitment of a particular Class.

"**Commitment**" means a Revolving Commitment or a Term Loan Commitment, as the context may require.

"**Commitment Percentage**" means, as to each Revolving Lender, the ratio, expressed as a percentage, of (a) the amount of such Lender's Revolving Commitment to (b) the aggregate amount of the Revolving Commitments of all Revolving Lenders; provided, however, that if at the time of determination the Revolving Commitments have been terminated or been reduced to zero, the "Commitment Percentage" of each Revolving Lender shall be the "Commitment Percentage" of such Revolving Lender in effect immediately prior to such termination or reduction.

"**Commodity Exchange Act**" means the Commodity Exchange Act (7 U.S.C. § 1 et seq.) as amended from time to time, and any successor statute.

"**Compliance Certificate**" has the meaning given that term in Section 8.3.

"**Conforming Changes**" means, with respect to either the use or administration of an initial Benchmark or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of "Base Rate," the definition of "Business Day," the definition of "U.S. Government Securities Business Day," the definition of "Interest Period" or any similar or analogous definition (or the addition of a concept of "interest period"), timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of Section 4.4 and other technical, administrative or operational matters) that the Administrative Agent decides in its reasonable discretion may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

"**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.

"**Consolidated Adjusted EBITDA**" means, for any period (a) Consolidated EBITDA for such period minus (b) Capital Reserves for such period.

"**Consolidated EBITDA**" means, with respect to the Borrower and its Subsidiaries, determined on a consolidated basis for any period and without duplication, net earnings (loss) for such period excluding the following amounts (but only to the extent included in determining net earnings (loss) for such period): (a) depreciation and amortization expense and other non-cash charges for such period; (b) interest expense for such period; (c) income tax expense in respect of such period; (d) gains, losses, charges or expenses resulting from extraordinary, unusual or nonrecurring transactions for such period, including without limitation, non-recurring severance payments, sales of assets, early extinguishment or restructuring of Indebtedness (including prepayment premiums), acquisition costs, Reorganization costs, write-offs and forgiveness of debt and (e) other non-cash charges, including amortization expense for stock options and impairment charges or expenses (other than non-cash charges that constitute an accrual of a reserve for future cash payments). For purposes of this definition, net earnings (loss) shall (x) be determined before minority interests and distributions to holders of Preferred Equity Interest and (y) include the Borrower's Ownership Share of net earnings (loss) of its Unconsolidated Affiliates, determined in a manner consistent with the determination of consolidated net earnings (loss) pursuant to the first sentence of this definition.

"**Consolidated Fixed Charges**" means, for any period, the sum of (a) Consolidated Interest Expense for such period, (b) all regularly scheduled principal payments made with respect to Indebtedness of the Borrower and its Subsidiaries, determined on a consolidated basis, during such period, other than any balloon, bullet or similar principal payment which repays such Indebtedness in full and (c) all Preferred Dividends paid during such period. The Borrower's Ownership Share of the expenses, payments, and dividends described in the foregoing clauses (a) through (c) of its Unconsolidated Affiliates, to the extent not already covered in such clauses, shall be included in determinations of Consolidated Fixed Charges.

"**Consolidated Interest Expense**" means, with respect to the Borrower and its Subsidiaries, determined on a consolidated basis for any period, (a) all paid or accrued interest expense, including all letter of credit fees and all interest expense with respect to any Indebtedness in respect of which the Borrower or any of its Subsidiaries is wholly or partially liable whether pursuant to any repayment, interest carry, performance guarantee or otherwise (excluding (i) capitalized interest expense, (ii) amortization of deferred financing costs, (iii) any non-cash portion of interest expense attributable to

"convertible debt" under FASB ASC 470-20, (iv) non-cash interest related to the reclassification of accumulated other comprehensive income (loss) related to settled hedges, and (v) charges related to early extinguishment or restructuring of Indebtedness), plus (b) to the extent not already included in the foregoing clause (a) the Borrower's Ownership Share of all interest expense described in such clause (a) for such period of its Unconsolidated Affiliates.

"**Consolidated Secured Indebtedness**" means, with respect to the Borrower and its Subsidiaries, determined on a consolidated basis at the time of computation, any Indebtedness that is secured in any manner by any Lien on any property and shall include the Borrower's Ownership Share of the Indebtedness of any of its Unconsolidated Affiliates that is secured in any manner by any Lien on any property of its Unconsolidated Affiliates; provided, however, that any Indebtedness that is secured only by a pledge of Equity Interests shall not be deemed to be Consolidated Secured Indebtedness.

"**Consolidated Total Asset Value** " means, at a given time, the sum (without duplication) of all of the following of the Borrower and its Subsidiaries determined on a consolidated basis in accordance with GAAP applied on a consistent basis: (a) Unrestricted Cash; plus (b) the quotient of (i) the Net Operating Income for each Property owned, or leased as lessee under a ground lease, by the Borrower or any Subsidiary (including any 1031 Property but excluding a Property the value of which is included in the determination of Consolidated Total Asset Value under any of the immediately following clauses (c) or (e)), for the fiscal quarter most recently ended multiplied by 4, divided by (ii) the applicable Capitalization Rate; plus (c) the acquisition cost of Properties (including any 1031 Property) acquired during the period of six fiscal quarters most recently ended; provided that the Borrower may irrevocably elect that the value of a recently acquired Property not yet owned for six quarters be determined in accordance with the preceding clause (b); plus (d) all Construction-in-Process for all Development Properties; plus (e) the aggregate Major Redevelopment Property Values of all Major Redevelopment Properties; plus (f) the GAAP book value of Unimproved Land; plus (g) the contractual purchase price of Properties of the Borrower and its Subsidiaries subject to purchase obligations, repurchase obligations, forward commitments and unfunded obligations but only to the extent such amounts are included in determinations of Consolidated Total Indebtedness; plus (h) Marketable Securities, valued at the lower of cost or Fair Market Value (to the extent that the Fair Market Value of such Marketable Securities is reasonably capable of being verified or is otherwise acceptable to the Administrative Agent); plus (i) the aggregate book value of Mortgage Receivables. The Borrower's Ownership Share of assets held by Unconsolidated Affiliates (excluding assets of the type described in the immediately preceding clause (a) and (h)) will be included in the calculation of Consolidated Total Asset Value consistent with the above described treatment for wholly owned assets. Properties disposed of during the fiscal quarter most recently ended shall not be included in the calculation of Consolidated Total Asset Value. Other Commercial Properties may only contribute to Consolidated Total Asset Value to the extent applicable under clause (c) above. In addition, to the extent (A) the amount of Consolidated Total Asset Value attributable to assets held by Unconsolidated Affiliates would exceed 20.0% of Consolidated Total Asset Value, such excess shall be excluded from Consolidated Total Asset Value and (B) the amount of Consolidated Total Asset Value attributable to Marketable Securities, Development Properties, Major Redevelopment Properties, Unimproved Land and Mortgage Receivables would exceed 30.0% of Consolidated Total Asset Value, such excess shall be excluded from Consolidated Total Asset Value.

"**Consolidated Total Indebtedness**" means, at any time of determination and without duplication, (a) the Indebtedness of the Borrower and its Subsidiaries, determined on a consolidated basis plus (b) the Borrower's Ownership Share of the Indebtedness of the Borrower's Unconsolidated Affiliates.

"**Consolidated Unsecured Indebtedness**" means, with respect to the Borrower and its Subsidiaries, determined on a consolidated basis at any time of determination, Consolidated Total Indebtedness (other than Indebtedness described in clauses (b) and (h) of the definition of such term) which is not Consolidated Secured Indebtedness; provided, however, that any Indebtedness that is secured only by a pledge of Equity Interests shall be deemed to be Consolidated Unsecured Indebtedness.

"**Construction-in-Process**" means construction in process as determined in accordance with GAAP (including the book value for the portion of the land owned by the Borrower or a Subsidiary related to such Construction-in-Process).

"**Continue**", "**Continuation**" and "**Continued**" each refers to the continuation of a ~~LIBOR~~SOFR Loan from one Interest Period to another Interest Period pursuant to Section 2.10.

"**Continuing Representations**" means those representations and warranties made or deemed made under Sections 6.1.(a), (c), (d), (e), (h), (k), (l), (m), (o), (p), (s), (t), (v), (w), (x) and (y).

"**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. "Controlling" and "Controlled" have meanings correlative thereto.

"**Controlled JV Subsidiary**" means a Subsidiary (a) that is not a Wholly Owned Subsidiary of the Borrower and (b) in respect of which the Borrower or a Wholly Owned Subsidiary of the Borrower owns or controls at least 80.0% of all outstanding Equity Interests.

"**Convert**", "**Conversion**" and "**Converted**" each refers to the conversion of a Loan of one Type into a Loan of another Type pursuant to Section 2.11.

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

"**Credit Event**" means any of the following: (a) the making (or deemed making) of any Loan and (b) the issuance of a Letter of Credit or the amendment of a Letter of Credit that extends the maturity, or increases the Stated Amount, of such Letter of Credit.

"**Credit Rating**" means the rating assigned by a Rating Agency to the senior unsecured long term Indebtedness of a Person.

"**Daily Simple SOFR Loan**" means~~, for~~ any ~~day, SOFR, with the conventions for this rate (which will include a lookback) being established by the Administrative Agent in accordance with the conventions for this rate selected or recommended by the Relevant Governmental Body for determining "~~Term Loan or Revolving Loan bearing interest at a rate based on Adjusted Daily Simple SOFR~~" for syndicated business loans; provided, that if the Administrative Agent decides that any such convention is not administratively feasible for the Administrative Agent, then the Administrative Agent may establish another convention in its reasonable discretion.~~ (other than pursuant to the Adjusted Daily Simple SOFR component of the definition of "Base Rate").

"**Debtor Relief Laws**" means the Bankruptcy Code, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar Applicable Laws relating to the relief of debtors in the United States of America or other applicable jurisdictions from time to time in effect.

"**Default**" means any of the events specified in Section 10.1., whether or not there has been satisfied any requirement for the giving of notice, the lapse of time, or both; provided, however, that the failure to make any payment of interest or any payment of fees provided for in Section 3.5.(b) or 3.5.(c) shall not constitute a Default unless and until such failure continues for 10 Business Days following the Administrative Agent's delivery to the Borrower of an invoice therefor (which delivery may be effected by actual delivery of the written invoice or by electronic communications pursuant to Section 8.5.).

"**Defaulting Lender**" means, subject to Section 3.9.(f), any Lender that (a) has failed to (i) fund all or any portion of its Loans within 2 Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender's reasonable determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent, any Issuing Banks~~, the Swingline Lenders~~ or any other Lender any other amount required to be paid by it hereunder (including, with respect to a Revolving Lender, in respect of its participation in Letters of Credit ~~or Swingline Loans~~) within 2 Business Days of the date when due, (b) has notified the Borrower, the Administrative Agent ~~,~~ or any Issuing Bank ~~or any Swingline Lender~~ in writing that it does not intend to

comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's reasonable determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) in the case of a Revolving Lender, has failed, within 3 Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity or (iii) become the subject of a Bail-In Action; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States of America or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 3.9.(f)) upon delivery of written notice of such determination to the Borrower, each Issuing Bank~~, each Swingline Lender~~ and each Lender.

"**Derivatives Contract**" means a "swap agreement" as defined in Section 101 of the Bankruptcy Code.

"**Derivatives Termination Value**" means, in respect of any one or more Derivatives Contracts, after taking into account the effect of any legally enforceable netting agreement or provision relating thereto, (a) for any date on or after the date such Derivatives Contracts have been terminated or closed out, the termination amount or value determined in accordance therewith, and (b) for any date prior to the date such Derivatives Contracts have been terminated or closed out, the then-current mark-to-market value for such Derivatives Contracts, determined based upon one or more mid-market quotations or estimates provided by any recognized dealer in Derivatives Contracts (which may include the Administrative Agent, any Lender or any of their respective Affiliates).

"**Designated Lender**" means a special purpose corporation which is an Affiliate of, or sponsored by, a Lender, that is engaged in making, purchasing or otherwise investing in commercial loans in the ordinary course of its business and that issues (or the parent of which issues) commercial paper rated at least P-1 (or the then equivalent grade) by Moody's or A-1 (or the then equivalent grade) by S&P that, in either case, (a) is organized under the laws of the United States of America or any state thereof, (b) shall have become a party to this Agreement pursuant to Section 12.5.(g) and (c) is not otherwise a Lender.

"**Designating Lender**" has the meaning given that term in Section 12.5.(g).

"**Designation Agreement**" means a Designation Agreement between a Lender and a Designated Lender and accepted by the Administrative Agent, substantially in the form of Exhibit C or such other form as may be agreed to by such Lender, such Designated Lender and the Administrative Agent.

"**Development Property**" means a Property currently under development or redevelopment (or which (as determined in good faith by the Borrower) will commence development or redevelopment within 12 months) that (i) has not achieved, does not or will not maintain an Occupancy Rate of 80% or more or, subject to the last sentence of this definition, on which the improvements (other than tenant improvements on unoccupied space) related to the development or redevelopment have not been completed and (ii) the Borrower has elected to classify as a Development Property. The term "Development Property" shall include real property of the type described in the immediately preceding sentence that satisfies both of the following conditions: (i) it is expected to be (but has not yet been) acquired by the Borrower, any Subsidiary or any Unconsolidated Affiliate upon completion of

construction pursuant to a contract in which the seller of such real property is required to develop or renovate prior to, and as a condition precedent to, such acquisition and (ii) a third party is developing such property using the proceeds of a loan that is Guaranteed by, or is otherwise recourse to, the Borrower, any Subsidiary or any Unconsolidated Affiliate. A Development Property shall cease to be a Development Property at such time as either (i) all improvements (other than tenant improvements on unoccupied space) related to the development of such Property have been substantially completed for at least 4 full fiscal quarters (notwithstanding the fact that such Property may not achieved an Occupancy Rate of at least 80%) or (ii) the Borrower irrevocably elects to no longer treat such Property as a Development Property.

"**Disbursement Instruction Agreement**" means an agreement substantially in the form of Exhibit D to be executed and delivered by the Borrower pursuant to Section 5.1.(a)(x), as the same may be amended, restated or modified from time to time with the prior written approval of the Administrative Agent.

"**Dollars**" or "**$**" means the lawful currency of the United States of America.

"**Early Opt-in Election**" means, if the then-current Benchmark is USD LIBOR, the occurrence of:
(a) a notification by the Administrative Agent to (or the request by the Borrower to the Administrative Agent to notify) each of the other parties hereto that at least five (5) currently outstanding Dollar-denominated syndicated credit facilities at such time contain (as a result of amendment or as originally executed) a SOFR-based rate (including SOFR, a term SOFR or any other rate based upon SOFR) as a benchmark rate (and such syndicated credit facilities are identified in such notice and are publicly available for review), and
(b) the joint election by the Administrative Agent and the Borrower to trigger a fallback from USD LIBOR and the provision by the Administrative Agent of written notice of such election to the Lenders.
"**EAT**" has the meaning given that term in the definition of 1031 Property.

"**EEA Financial Institution**" means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

"**EEA Member Country**" means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"**EEA Resolution Authority**" means any public administrative authority or any Person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any credit institution or investment firm established in any EEA Member Country.

"**Effective Date**" means the later of (a) the Agreement Date and (b) the date on which all of the conditions precedent set forth in Section 5.1. shall have been fulfilled or waived by all of the Lenders.

"**Eligible 1031 Property**" means a 1031 Property which satisfies all of the following requirements: (a) such Property is (i) an office, retail or multifamily Property or (ii) an Other Commercial Property; (b) such Property is located in a State of the United States of America or in the District of Columbia; (c) the Borrower or a Wholly Owned Subsidiary thereof leases such 1031 Property from the applicable EAT (or Wholly Owned Subsidiary(ies) thereof, as applicable) and the Borrower or a Wholly Owned Subsidiary thereof manages such 1031 Property; (d) the Borrower or a Wholly Owned Subsidiary thereof is obligated to purchase such 1031 Property (or Wholly Owned Subsidiary(ies) of the applicable EAT that owns such 1031 Property) from the applicable EAT (or such Wholly Owned Subsidiary(ies) of the EAT, as applicable) (other than in circumstances where the 1031 Property is disposed of by the Borrower or any Subsidiary); (e) the applicable EAT is obligated to transfer such 1031 Property (or its

Wholly Owned Subsidiary(ies) that owns such 1031 Property, as applicable) to the Borrower or a Wholly Owned Subsidiary thereof, directly or indirectly (including through a QI); (f) the applicable EAT (or Wholly Owned Subsidiary(ies) thereof that owns such 1031 Property, as applicable) acquired such 1031 Property with the proceeds of a loan made by the Borrower or a Wholly Owned Subsidiary, which loan is secured either by a Mortgage on such 1031 Property and/or a pledge of all of the Equity Interests of the applicable Wholly Owned Subsidiary(ies) of an EAT that owns such 1031 Property, as applicable); (g) neither such 1031 Property, nor if such Property is owned or leased by a Subsidiary, any of the Borrower's direct or indirect ownership interest in such Subsidiary, is subject to (i) any Lien (other than Permitted Liens or the Lien of a Mortgage or pledge referred to in the immediately preceding clause (e)) or (ii) a Negative Pledge, except (x) Permitted Negative Pledge Provisions and (y) a Negative Pledge binding on the EAT in favor of the Borrower or any Wholly Owned Subsidiary; and (h) such 1031 Property is either (i) free of all structural defects or major architectural deficiencies, title defects, environmental conditions or other adverse matters except for defects, deficiencies, conditions or other matters individually or collectively which are not material to the profitable operation of such Property or (ii) the Borrower has identified all structural defects, major architectural deficiencies, title defects, environmental conditions or other adverse matters related to such Property which are material to the profitable operation of such Property and delivered any documents, reports, appraisals or other information relating to such Property including, without limitation, a copy of a recent ALTA Owner's Policy of Title Insurance and a "Phase I" environmental assessment in accordance with ASTM E 1527-00 standards (or ASTM E 1527-05 standards, if applicable) as reasonably requested by the Administrative Agent, and the Administrative Agent has agreed to allow such Property to be an Eligible 1031 Property subject to any discounts in the amount of the Unencumbered Pool Value attributable to such Property reasonably deemed necessary by the Administrative Agent as a result of such structural defects, title defects, environmental conditions or other adverse matters. In no event shall a 1031 Property qualify as an Eligible 1031 Property for a period in excess of 185 consecutive days or such later period (plus 5 consecutive days) if the relevant period under Section 1031 of the Code (including the Treasury Regulations thereunder, and including as provided under Rev. Proc. 2000-37 (as modified by Rev. Proc. 2004-51)) is extended pursuant to Rev. Proc. 2007-56 (or relevant successor or replacement guidance). A Property shall be excluded from calculations of Unencumbered NOI and Unencumbered Pool Value as an Eligible 1031 Property if such Property shall cease to be an Eligible 1031 Property; provided, that a Property so excluded shall again be included in such calculations upon satisfying the requirements of an Eligible 1031 Property. Notwithstanding anything to the contrary set forth herein, for purposes of determining Consolidated Total Asset Value and Unencumbered NOI, such 1031 Property shall be deemed to have been owned or leased by a Wholly Owned Subsidiary of the Borrower from the date acquired by the applicable EAT (or Wholly Owned Subsidiary(ies) of the EAT that owns such 1031 Property, as applicable).

"**Eligible Assignee**" means (a) a Lender, (b) an Affiliate of a Lender, (c) an Approved Fund and (d) any other Person (other than a natural person) approved by the Administrative Agent (such approval not to be unreasonably withheld or delayed).

"**Eligible Ground Lease**" means a ground lease pursuant to which the Borrower or any of its Subsidiaries is a lessee and that contains terms and conditions customarily required by mortgagees making a loan secured by the interest of the holder of the leasehold estate demised pursuant to a ground lease, including without limitation, the following: (a) a remaining term (including renewal options exercisable at lessee's sole option) of 25 years or more from the Agreement Date or, in the case of a shorter term, the leasehold interest of the Borrower or applicable Subsidiary therein reverts to a fee interest of the Borrower or such Subsidiary without requirement that the Borrower or such Subsidiary pay any consideration for such reversion other than consideration that is nominal or reasonably estimated by the Borrower to be less than twenty percent (20%) of the Fair Market Value of such Property, as confirmed by the Administrative Agent; (b) the right of the lessee to pledge, mortgage and encumber its interest in the leased property, and to amend the terms of any such pledge, mortgage or encumbrance, in each case, without the consent of the lessor; (c) the obligation of the lessor to give the holder of any mortgage Lien on such leased property written notice of any defaults on the part of the lessee and agreement of such lessor that such lease will not be terminated until such holder has had a reasonable opportunity to cure or complete foreclosures, and fails to do so; (d) reasonable transferability of the lessee's interest under such lease, including ability to sublease; (e) acceptable limitations on the use of the leased property; and (f) clearly determinable rental payment terms which in no event contain profit participation rights. Notwithstanding the foregoing, in the case of a surface parking lot or structure

ancillary to a Property subject to a ground lease, the requirements of this definition shall not be required to be satisfied with respect to such surface parking lot or structure if the rights associated therewith are not material to the profitable operation of such Property.

"**Eligible Property**" means a Property which satisfies all of the following requirements: (a) such Property is (i) an office, retail or multifamily Property or (ii) an Other Commercial Property; (b) such Property is owned in fee simple, or leased under an Eligible Ground Lease, by the Borrower, a Wholly Owned Subsidiary or a Controlled JV Subsidiary; (c) such Property is located in a State of the United States of America or in the District of Columbia; (d) neither such Property, nor if such Property is owned or leased by a Subsidiary, any of the Borrower's direct or indirect ownership interest in such Subsidiary, is subject to (i) any Lien (other than Permitted Liens) or (ii) a Negative Pledge, except (x) Permitted Negative Pledge Provisions and (y) a Property owned or leased by a Controlled JV Subsidiary, and the Borrower's direct or indirect ownership interest in such Controlled JV Subsidiary, may be subject to a Negative Pledge arising out of the consent rights of any holder of Equity Interests in such Controlled JV Subsidiary described in the following clause (e); (e) if such Property is owned or leased by a Subsidiary, the Borrower directly, or indirectly through a Subsidiary, has the right to take the following actions without the need to obtain the consent of any Person (except in the case of a Property owned or leased by a Controlled JV Subsidiary, for the consent of any holder of Equity Interests in such Controlled JV Subsidiary): (x) to sell, transfer or otherwise dispose of such Property and (y) to create Liens on such Property as security for Indebtedness of the Borrower or such Subsidiary, as applicable; and (f) such Property is either (i) free of all structural defects or major architectural deficiencies, title defects, environmental conditions or other adverse matters except for defects, deficiencies, conditions or other matters individually or collectively which are not material to the profitable operation of such Property or (ii) the Borrower has identified all structural defects, major architectural deficiencies, title defects, environmental conditions or other adverse matters related to such Property which are material to the profitable operation of such Property and delivered any documents, reports, appraisals or other information relating to such Property including, without limitation, a copy of a recent ALTA Owner's Policy of Title Insurance and a "Phase I" environmental assessment in accordance with ASTM E 1527-00 standards (or ASTM E 1527-05 standards, if applicable) as reasonably requested by the Administrative Agent, and the Administrative Agent has agreed to allow such Property to be Eligible Property subject to any discounts in the amount of the Unencumbered Pool Value attributable to such Property reasonably deemed necessary by the Administrative Agent as a result of such structural defects, title defects, environmental conditions or other adverse matters. A Property shall be excluded from calculations of Unencumbered NOI and Unencumbered Pool Value if such Property shall cease to be an Eligible Property; provided, that a Property so excluded shall again be included in such calculations upon satisfying the requirements of an Eligible Property. Notwithstanding anything to the contrary above in this definition, an Eligible 1031 Property shall also constitute an Eligible Property.

"**Environmental Claims**" means any and all administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, accusations, allegations, notices of noncompliance or violation, investigations (other than internal reports prepared by any Person in the ordinary course of business and not in response to any third party action or request of any kind) or proceedings relating in any way to any actual or alleged violation of or liability under any Environmental Law or relating to any permit issued, or any approval given, under any such Environmental Law, including, without limitation, any and all claims by Governmental Authorities for enforcement, cleanup, removal, response, remedial or other actions or damages, contribution, indemnification cost recovery, compensation or injunctive relief resulting from Hazardous Materials or arising from alleged injury or threat of injury to human health or the environment.

"**Environmental Laws**" means any Applicable Law relating to environmental protection or the manufacture, storage, remediation, disposal or clean-up of Hazardous Materials including, without limitation, the following: Clean Air Act, 42 U.S.C. § 7401 et seq.; Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.; Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq.; National Environmental Policy Act, 42 U.S.C. § 4321 et seq.; regulations of the Environmental Protection Agency, any applicable rule of common law and any judicial interpretation thereof relating primarily to the environment or Hazardous Materials, and any analogous or comparable state or local laws, regulations or ordinances that concern Hazardous Materials or protection of the environment.

"**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.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as in effect from time to time.

"**ERISA Event**" means, with respect to the ERISA Group, (a) any "reportable event" as defined in Section 4043 of ERISA with respect to a Plan (other than an event for which the 30-day notice period is waived); (b) the withdrawal of a member of the ERISA Group from a 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 or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) the incurrence by a member of the ERISA Group of any liability with respect to the withdrawal or partial withdrawal from any Multiemployer Plan; (d) the incurrence by any member of the ERISA Group of any liability under Title IV of ERISA with respect to the termination of any Plan or Multiemployer Plan; (e) the institution of proceedings to terminate a Plan or Multiemployer Plan by the PBGC; (f) the failure by any member of the ERISA Group to make when due required contributions to a Multiemployer Plan or Plan unless such failure is cured within 30 days or the filing pursuant to Section 412(c) of the Internal Revenue Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard; (g) any other event or condition that might reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan or Multiemployer Plan or the imposition of liability under Section 4069 or 4212(c) of ERISA; (h) the receipt by any member of the ERISA Group of any notice or the receipt by any Multiemployer Plan from any member of the ERISA Group of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent (within the meaning of Section 4245 of ERISA), in reorganization (within the meaning of Section 4241 of ERISA), or in "critical" status (within the meaning of Section 432 of the Internal Revenue Code or Section 305 of ERISA); (i) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any member of the ERISA Group or the imposition of any Lien in favor of the PBGC under Title IV of ERISA; or (j) a determination that a Plan is, or is reasonably expected to be, in "at risk" status (within the meaning of Section 430 of the Internal Revenue Code or Section 303 of ERISA).

"**ERISA Group**" means the Borrower, any Subsidiary and all members of a controlled group of corporations and all trades or businesses (whether or not incorporated) under common control, which, together with the Borrower or any Subsidiary, are treated as a single employer under Section 414 of the Internal Revenue Code.

"**Erroneous Payment**" has the meaning assigned thereto in Section 11.11(a).

"**Erroneous Payment Deficiency Assignment**" has the meaning assigned thereto in Section 11.11(d).

"**Erroneous Payment Impacted Class**" has the meaning assigned thereto in Section 11.11(d).

"**Erroneous Payment Return Deficiency**" has the meaning assigned thereto in Section 11.11(d).

"**EU Bail-In Legislation Schedule**" means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor thereto), as in effect from time to time.

"**Event of Default**" means any of the events specified in Section 10.1., provided that any requirement for notice or lapse of time or any other condition has been satisfied.

“**Excluded Subsidiary**” means (a)(i) any Subsidiary that holds title to assets or, in the case of a 1031 Property, leasing such 1031 Property from a QI or EAT, that are (or become) collateral for any Indebtedness of such Subsidiary (or EAT (or Wholly Owned Subsidiary(ies) thereof) or QI, as applicable) that is secured in any manner by any Lien (“Subsidiary Secured Indebtedness”) or (ii) any Subsidiary that is a direct or indirect owner of a Subsidiary with title to assets described in the immediately preceding clause (a)(i) (but which has no assets other than the Equity Interests in such Subsidiary (or if an indirect owner, other than the Equity Interests in another direct or indirect owner of such Subsidiary) and other assets of nominal value incidental thereto) and which, in the case of clauses (a)(i) and (a)(ii), is prohibited from Guaranteeing the Indebtedness of any Person (other than, in the case of a Subsidiary described in clause (a)(ii), the Subsidiary Secured Indebtedness of the Subsidiary of which it is the owner) pursuant to (A) any document, instrument or agreement evidencing such Subsidiary Secured Indebtedness or (B) a provision included in such Subsidiary’s organizational documents as a condition to the extension of such Subsidiary Secured Indebtedness, or (b) any Subsidiary (the “Subsidiary Guarantor”) obligated pursuant to a limited recourse Guarantee by such Subsidiary Guarantor in respect of Indebtedness incurred or assumed by another Subsidiary (the “Guarantied Subsidiary”) that is either (i) a direct, Wholly Owned Subsidiary of such Subsidiary Guarantor or (ii) the direct owner of such Subsidiary Guarantor, so long as (x) in either case, such limited recourse Guarantee is secured by an indemnity deed of trust on the Property owned by such Subsidiary Guarantor, (y) in either case, such Subsidiary Guarantor is prohibited from Guaranteeing the Indebtedness of any Person other than the Guarantied Subsidiary pursuant to (1) any document, instrument or agreement evidencing such Indebtedness or (2) a provision included in such Subsidiary Guarantor’s organizational documents as a condition to the extension of such Indebtedness, and (z) such Subsidiary Guarantor owns no assets other than the Property subject to the indemnity deed of trust and other assets of nominal value incidental thereto, and, in the case where the Guarantied Subsidiary is a Wholly Owned Subsidiary of such Subsidiary Guarantor, Equity Interests in the Guarantied Subsidiary. A Subsidiary shall only remain an Excluded Subsidiary for so long as the criteria in clauses (a) or (b) above are satisfied. For purposes of Section 9.3, in addition to the Subsidiaries described in clauses (a) and (b) above, a Guarantied Subsidiary shall be an “Excluded Subsidiary”.

“**Excluded Swap Obligation**” means, with respect to any Loan Party, any Swap Obligation if, and to the extent that, all or a portion of the liability of such Loan Party for or the Guarantee of such Loan Party of, or the grant by such Loan Party of a Lien to secure, such Swap Obligation (or any liability or guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Loan Party’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder at the time the liability for or the Guarantee of such Loan Party or the grant of such Lien becomes effective with respect to such Swap Obligation (such determination being made after giving effect to any applicable keepwell, support or other agreement for the benefit of the applicable Loan Party, including under Section 31 of the Guaranty). If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guarantee or Lien is or becomes illegal for the reasons identified in the immediately preceding sentence of this definition.

“**Excluded Taxes**” means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) 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 a Loan or Commitment pursuant to an Applicable Law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower under Section 4.6.) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 3.10., 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 3.10.(g) and (d) any U.S. federal withholding Taxes imposed under FATCA.

“**Existing Credit Agreement**” has the meaning given that term in the second WHEREAS clause of this Agreement.

“**Existing Letters of Credit**” means the letters of credit issued and outstanding under the Existing Credit Agreement and set forth on Schedule 1.1.

“**Extended Commitment**” means any Class of Commitments the maturity of which shall have been extended pursuant to Section 12.6.(g).

“**Extended Letter of Credit**” has the meaning given that term in Section 2.3.(b).

“**Extended Revolving Loans**” means any Revolving Loans made pursuant to the Extended Commitments.

“**Extended Term Loans**” means any Class of Term Loans the maturity of which shall have been extended pursuant to Section 12.6.(g).

“**Extension**” has the meaning given that term in Section 12.6.(g)(i).

“**Extension Amendment**” means an amendment to this Agreement (which may, at the option of the Administrative Agent and the Borrower, be in the form an amendment and restatement of this Agreement) among the Loan Parties, the applicable extending Lenders, the Administrative Agent and, to the extent required by Section 12.6.(g), the Issuing Banks and/or the Swingline Lenders implementing an Extension in accordance with Section 12.6.(g).

“**Extension Offer**” has the meaning given that term in Section 12.6.(g)(i).

“**Fair Market Value**” means, (a) with respect to a security listed on a national securities exchange or the NASDAQ National Market, the price of such security as reported on such exchange or market by any widely recognized reporting method customarily relied upon by financial institutions and (b) with respect to any other property, the price which could be negotiated in an arm's-length free market transaction, for cash, between a willing seller and a willing buyer, neither of which is under pressure or compulsion to complete the transaction.

“**FASB ASC**” means the Accounting Standards Codification of the Financial Accounting Standards Board.

“**FATCA**” means Sections 1471 through 1474 of the Internal Revenue 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) and any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Internal Revenue Code.

“**FCA**” has the meaning assigned thereto in Section 1.4.

“**FDIC**” means the Federal Deposit Insurance Corporation.

“**Federal Funds Rate**” means, for any period, a fluctuating interest rate per annum equal for each day during such period to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System, as published for such day (or, if such day is not a Business Day, for the immediately preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for such day on such transactions received by the Administrative Agent from three Federal Funds brokers of recognized standing selected by the Administrative Agent. If the Federal Funds Rate determined as provided above would be less than zero, the Federal Funds Rate shall be deemed to be zero.

“**Fee Letter**” means those certain fee letters by and between or among the Borrower, Wells Fargo, Wells Fargo Securities, LLC, KeyBank, KeyBanc Capital Markets, Inc., Capital One, TD Bank, N.A., Truist Securities Inc., PNC Capital Markets LLC and U.S. Bank National Association.

"**Fees**" means the fees and commissions provided for or referred to in Section 3.5. and any other fees payable by the Borrower hereunder, under any other Loan Document or under any Fee Letter.

"**Fitch**" means Fitch, Inc., or any successor.

"**Floor**" means ~~the benchmark rate floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to USD LIBOR (it being understood that as of the execution of this Agreement, the Floor is zero).~~a rate of interest equal to 0.00%.

"**Foreign Lender**" means (a) if the Borrower is a U.S. Person, a Lender that is not a U.S. Person, and (b) if the Borrower is not a U.S. Person, a Lender that is resident or organized under the laws of a jurisdiction other than that in which the Borrower is resident for tax purposes.

"**FRB**" means the Board of Governors of the Federal Reserve System of the United States.

"**Fronting Exposure**" means, at any time there is a Revolving Lender that is a Defaulting Lender, ~~(a)~~ with respect to any Issuing Bank, such Defaulting Lender's Commitment Percentage of the outstanding Letter of Credit Liabilities with respect to Letters of Credit issued by such Issuing Bank other than Letter of Credit Liabilities as to which such Defaulting Lender's participation obligation has been reallocated to other Revolving Lenders or Cash Collateralized in accordance with the terms hereof~~, and (b) with respect to any Swingline Lender, such Defaulting Lender's Commitment Percentage of outstanding Swingline Loans other than Swingline Loans as to which such Defaulting Lender's participation obligation has been reallocated to other Revolving Lenders.~~.

"**Fund**" means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

"**Funds From Operations**" means, with respect to a Person and for a given period, Funds from Operations as defined from time to time by the National Association of Real Estate Investment Trusts.

"**GAAP**" means generally accepted accounting principles in the United States of America set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (including Statement of Financial Accounting Standards No. 168, "The FASB Accounting Standards Codification") or in such other statements by such other entity as may be approved by a significant segment of the accounting profession in the United States of America, which are applicable to the circumstances as of the date of determination.

"**Governmental Approvals**" means all authorizations, consents, approvals, licenses and exemptions of, registrations and filings with, and reports to, all Governmental Authorities.

"**Governmental Authority**" means any national, state or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, administrative, public or statutory instrumentality, authority, body, agency, bureau, commission, board, department or other entity (including, without limitation, the Federal Deposit Insurance Corporation, the Comptroller of the Currency or the Federal Reserve Board, any central bank or any comparable authority) exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank), or any arbitrator with authority to bind a party at law.

"**GRESB**" means GRESB B.V., a wholly owned subsidiary of Green Business Certification Inc., a non-profit corporation incorporated in the United States under the laws of the District of Columbia.

"**Gross Construction Budget**" means the fully-budgeted costs for the acquisition of, and construction or renovation of improvements on, a Property (or phase of development or renovation of a Property), including without limitation the cost of acquiring such Property (if applicable), reserves for

construction interest and operating deficits, tenant improvements, leasing commissions, and infrastructure costs, all as reasonably determined by the Borrower in good faith.

"**Guaranteed Obligations**" means, collectively, (a) the Obligations and (b) all existing or future payment and other obligations owing by any Loan Party under any Specified Derivatives Contract (other than any Excluded Swap Obligation).

"**Guarantor**" means any Person that is party to the Guaranty as a "Guarantor", including any Person that becomes a party to the Guaranty in accordance with Section 7.13. but excluding any Person released from the Guaranty pursuant to Section 7.13.(c). There are no Guarantors as of the Agreement Date.

"**Guaranty**", "**Guaranteed**" or to "**Guarantee**" as applied to any obligation means and includes: (a) a guaranty (other than by endorsement of negotiable instruments for collection in the ordinary course of business), directly or indirectly, in any manner, of any part or all of such obligation, or (b) an agreement, direct or indirect, contingent or otherwise, and whether or not constituting a guaranty, the practical effect of which is to assure the payment or performance (or payment of damages in the event of nonperformance) of any part or all of such obligation whether by: (i) the purchase of securities or obligations, (ii) the purchase, sale or lease (as lessee or lessor) of property or the purchase or sale of services primarily for the purpose of enabling the obligor with respect to such obligation to make any payment or performance (or payment of damages in the event of nonperformance) of or on account of any part or all of such obligation, or to assure the owner of such obligation against loss, rather than primarily for the purpose of acquiring property or services, (iii) the supplying of funds to or in any other manner investing in the obligor with respect to such obligation, (iv) repayment of amounts drawn down by beneficiaries of letters of credit (including Letters of Credit), or (v) the supplying of funds to or investing in a Person on account of all or any part of such Person's obligation under a Guaranty of any obligation or indemnifying or holding harmless, in any way, such Person against any part or all of such obligation. As the context requires, "Guaranty" shall also mean the guaranty executed and delivered pursuant to Section 7.13. and substantially in the form of Exhibit E.

"**Hazardous Materials**" means all or any of the following: (a) substances that are defined or listed in, or otherwise classified pursuant to, any applicable Environmental Laws as "hazardous substances", "hazardous materials", "hazardous wastes", "toxic substances" or any other formulation intended to define, list or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, reproductive toxicity, "TCLP" toxicity, or "EP toxicity"; (b) oil, petroleum or petroleum derived substances, natural gas, natural gas liquids or synthetic gas and drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources; (c) any flammable substances or explosives or any radioactive materials; (d) asbestos in any form; (e) toxic mold; and (f) electrical equipment which contains any oil or dielectric fluid containing levels of polychlorinated biphenyls in excess of fifty parts per million.
~~"**IBA**" has the meaning assigned thereto in Section 1.4.~~

"**Indebtedness**" means, with respect to a Person, at the time of computation thereof, all of the following (without duplication): (a) all obligations of such Person in respect of money borrowed; (b) all obligations for the deferred purchase price of property or services (other than trade debt, accruals or bank drafts arising in the ordinary course of business); (c) all obligations of such Person, whether or not for money borrowed (i) represented by notes payable, or drafts accepted, in each case representing extensions of credit, (ii) evidenced by bonds, debentures, notes or similar instruments, or (iii) constituting purchase money indebtedness, conditional sales contracts, title retention debt instruments or other similar instruments, upon which interest charges are customarily paid or that are issued or assumed as full or partial payment for property or for services rendered (other than trade debt, accruals or bank drafts arising in the ordinary course of business); (d) Capitalized Lease Obligations of such Person; (e) all reimbursement obligations (contingent or otherwise) of such Person under or in respect of any letters of credit or acceptances (whether or not the same have been presented for payment); (f) all Off-Balance Sheet Liabilities of such Person; (g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Mandatorily Redeemable Stock issued by such Person or

any other Person, valued at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; (h) all obligations of such Person in respect of any purchase obligation, repurchase obligation, takeout commitment or forward equity commitment, in each case evidenced by a binding agreement (excluding any such obligation (x) that would not then be required to be reflected as a liability on a balance sheet of such Person prepared in accordance with GAAP or (y) to the extent the obligation can be satisfied by the issuance of Equity Interests (other than Mandatorily Redeemable Stock)); (i) net obligations under any Derivatives Contract not entered into as a hedge against existing interest rate risk in respect of Indebtedness (which shall be deemed to have an amount equal to the Derivatives Termination Value thereof at such time but in no event shall be less than zero); (j) all Indebtedness of other Persons which such Person has guaranteed or is otherwise recourse to such Person (except for Nonrecourse Indebtedness Guarantees); and (k) all Indebtedness of another Person secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property or assets owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness or other payment obligation (valued, in the case of any such Indebtedness as to which recourse for the payment thereof is expressly limited to the property or assets on which such Lien is granted, at the lesser of (i) the stated or determinable amount of the Indebtedness that is so secured or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such Person is required to perform thereunder) and (ii) the Fair Market Value of such property or assets). Indebtedness of any Person shall include Indebtedness of any partnership or joint venture in which such Person is a general partner or joint venturer to the extent of such Person's Ownership Share of such partnership or joint venture (except if such Indebtedness, or portion thereof, is recourse to such Person, in which case the greater of such Person's Ownership Share of such Indebtedness or the amount of the recourse portion of such Indebtedness, shall be included as Indebtedness of such Person). Notwithstanding the use of GAAP, the calculation of Indebtedness shall not include any fair value adjustments to the carrying value of liabilities to record such liabilities at fair value pursuant to electing the fair value option election under FASB ASC 825-10-25 (formerly known as FAS 159, The Fair Value Option for Financial Assets and Financial Liabilities) or other FASB standards allowing entities to elect fair value option for financial liabilities.

"**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 or any other Loan Party under any Loan Document and (b) to the extent not otherwise described in the immediately preceding clause (a), Other Taxes.

"**Interest Period**" means:

(a) with respect to each ~~LIBOR~~Term SOFR Loan, each period commencing on the date such ~~LIBOR~~Term SOFR Loan is made, or in the case of the Continuation of a ~~LIBOR~~Term SOFR Loan the last day of the preceding Interest Period for such Loan, and ending ~~7 days thereafter (only if such period is available to all Lenders of the Class of the applicable LIBOR Loans) or~~ on the numerically corresponding day in the first, third or sixth calendar month thereafter, as the Borrower may select in a Notice of Borrowing, Notice of Continuation or Notice of Conversion, as the case may be, except that each Interest Period ~~(other than an Interest Period having a duration of 7 days)~~ that commences on the last Business Day of a calendar month (or on any day for which there is no numerically corresponding day in the appropriate subsequent calendar month) shall end on the last Business Day of the appropriate subsequent calendar month; and

(b) with respect to each Bid Rate Loan, the period commencing on the date such Bid Rate Loan is made and ending on any business day not less than 7 nor more than 90 days thereafter, as the Borrower may select as provided in Section 2.2.(b).

Notwithstanding the foregoing: (i) if any Interest Period for a Class of Loans would otherwise end after the Termination Date for such Class of Loans, such Interest Period shall end on the Termination Date for such Class of Loans; ~~and~~ (ii) each Interest Period that would otherwise end on a day which is not a Business Day shall end on the immediately following Business Day (or, if such immediately following Business Day falls in the next calendar month, on the immediately preceding Business Day) and (iii) no tenor that has been removed from this definition pursuant to Section 4.2(c)(iv) shall be available for specification in any Notice of Borrowing, Notice of Conversion or Notice of Continuation.

"**Internal Revenue Code**" means the Internal Revenue Code of 1986, as amended.

"**Investment**" means, with respect to any Person, any acquisition or investment (whether or not of a controlling interest) by such Person, whether by means of any of the following: (a) the purchase or other acquisition of any Equity Interest in another Person, (b) a loan, advance or extension of credit to, capital contribution to, guaranty of Indebtedness of, or purchase or other acquisition of any Indebtedness of, another Person, including any partnership or joint venture interest in such other Person, or (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person that constitute the business or a division or operating unit of another Person. Any commitment to make an Investment in any other Person, as well as any option of another Person to require an Investment in such Person, shall constitute an Investment. Cash Equivalents shall not constitute Investments. Except as expressly provided otherwise, for purposes of determining compliance with any covenant contained in a Loan Document, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

"**Investment Grade Rating**" means a Credit Rating of BBB-/Baa3 (or the equivalent) or higher from a Rating Agency.

"**Issuing Bank**" means each of Wells Fargo, KeyBank and Capital One each in its capacity as an issuer of Letters of Credit pursuant to Section 2.3.

"**KeyBank**" means KeyBank National Association, and its successors and assigns.

"**L/C Commitment Amount**" has the meaning given to that term in Section 2.3.(a).

"**L/C Disbursement**" has the meaning given to that term in Section 3.9.(b).

"**Lender**" means each financial institution from time to time party hereto as a "Lender" or a "Designated Lender," together with its respective successors and permitted assigns ~~, and, as the context requires, includes the Swingline Lenders~~; provided, however, that the term "Lender" (i) shall exclude each Designated Lender when used in reference to any Loan other than a Bid Rate Loan, the Commitments or terms relating to any Loan other than a Bid Rate Loan and shall further exclude each Designated Lender for all other purposes under the Loan Documents except that any Designated Lender which funds a Bid Rate Loan shall, subject to Section 12.5.(d), have only the rights (including the rights given to a Lender contained in Sections 12.2. and 12.9.) and obligations of a Lender associated with holding such Bid Rate Loan and (ii) except as otherwise expressly provided herein, shall exclude any Lender (or its Affiliates) in its capacity as a Specified Derivatives Provider.

"**Lender Parties**" means, collectively, the Administrative Agent, the Lenders, the Issuing Banks, the Specified Derivatives Providers, each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 11.5., any other holder from time to time of any of any Obligations and, in each case, their respective successors and permitted assigns.

"**Lending Office**" means, for each Lender and for each Type of Loan, the office of such Lender specified in such Lender's Administrative Questionnaire or in the applicable Assignment and Assumption, or such other office of such Lender as such Lender may notify the Administrative Agent in writing from time to time.

"**Letter of Credit**" has the meaning given that term in Section 2.3.(a).

"**Letter of Credit Collateral Account**" means, if any, a special deposit account maintained by the Administrative Agent, for the benefit of the Administrative Agent, the Issuing Banks and the Revolving Lenders, and under the sole dominion and control of the Administrative Agent.

"**Letter of Credit Documents**" means, with respect to any Letter of Credit, collectively, any application therefor, any certificate or other document presented in connection with a drawing under such Letter of Credit and any other agreement, instrument or other document governing or providing for (a) the rights and obligations of the parties concerned or at risk with respect to such Letter of Credit or (b) any collateral security for any of such obligations.

"**Letter of Credit Liabilities**" means, without duplication, at any time and in respect of any Letter of Credit (a) the Stated Amount of such Letter of Credit plus (b) the aggregate unpaid principal amount of all Reimbursement Obligations of the Borrower at such time due and payable in respect of all drawings made under such Letter of Credit. For purposes of this Agreement, a Revolving Lender (other than a Revolving Lender then acting as an Issuing Bank) shall be deemed to hold a Letter of Credit Liability in an amount equal to its participation interest under Section 2.3. in the related Letter of Credit, and the Revolving Lender that is the Issuing Bank of the related Letter of Credit shall be deemed to hold a Letter of Credit Liability in an amount equal to its retained interest in the related Letter of Credit after giving effect to the acquisition by the Revolving Lenders (other than such Issuing Bank in its capacity as a Revolving Lender) of their participation interests under such Section.

"**Level**" has the meaning given that term in the definition of the term "Applicable Margin."

~~"**LIBOR**" means, subject to the implementation of a Benchmark Replacement in accordance with Section 4.2.(b), with respect to any LIBOR Loan for any Interest Period, the rate of interest obtained by dividing (i) the rate of interest per annum determined on the basis of the rate for deposits in Dollars for a period equal to the applicable Interest Period as published by the ICE Benchmark Administration Limited, a United Kingdom company, or a comparable or successor quoting service approved by the Administrative Agent, at approximately 11:00 a.m. (London time) two Business Days prior to the first day of the applicable Interest Period by (ii) a percentage equal to 1 minus the stated maximum rate (stated as a decimal) of all reserves, if any, required to be maintained with respect to Eurocurrency funding (currently referred to as "Eurocurrency liabilities") as specified in Regulation D of the Board of Governors of the Federal Reserve System (or against any other category of liabilities which includes deposits by reference to which the interest rate on LIBOR Loans is determined or any applicable category of extensions of credit or other assets which includes loans by an office of any Lender outside of the United States of America). If, for any reason, the rate referred to in the preceding clause (i) is not so published, then the rate to be used for such clause (i) shall be determined by the Administrative Agent to be the arithmetic average of the rate per annum at which deposits in Dollars would be offered by first class banks in the London interbank market to the Administrative Agent at approximately 11:00 a.m. (London time) two Business Days prior to the first day of the applicable Interest Period for a period equal to such Interest Period. Any change in the maximum rate of reserves described in the preceding clause (ii) shall result in a change in LIBOR on the date on which such change in such maximum rate becomes effective. Each calculation by the Administrative Agent of LIBOR shall be conclusive and binding for all purposes, absent manifest error. Notwithstanding the foregoing, (x) in no event shall LIBOR (including any Benchmark Replacement with respect thereto) be less than 0%, and (y) unless otherwise specified in any amendment to this Agreement entered into in accordance with Section 4.2.(b), in the event that a Benchmark Replacement with respect to LIBOR is implemented then all references herein to LIBOR shall be deemed references to such Benchmark Replacement.~~

~~"**LIBOR Auction**" means a solicitation of Bid Rate Quotes setting forth LIBOR Margin Loans based on LIBOR pursuant to Section 2.2.~~

~~"**LIBOR Loan**" means a Revolving Loan or Term Loan (or any portion thereof) (other than a Base Rate Loan) bearing interest at a rate based on LIBOR.~~

~~"**LIBOR Margin**" has the meaning given that term in Section 2.2.(c)(ii)(D).~~

~~"**LIBOR Margin Loan**" means a Bid Rate Loan the interest rate on which is determined on the basis of LIBOR pursuant to a LIBOR Auction.~~

~~"**LIBOR Market Index Rate**" means, for any day, LIBOR as of that day that would be applicable for a LIBOR Loan having a one-month Interest Period determined at approximately 10:00 a.m. Central time on such day (rather than 11:00 a.m. (London time) two Business Days prior to the first day of such Interest Period as otherwise provided in the definition of "LIBOR"), or if such day is not a Business Day, the immediately preceding Business Day. The LIBOR Market Index Rate shall be determined on a daily basis.~~

"**Lien**" as applied to the property of any Person means: (a) any security interest, encumbrance to provide security for any obligation, mortgage, deed to secure debt, deed of trust, assignment of leases and rents, pledge, lien, hypothecation, assignment, charge or lease constituting a Capitalized Lease Obligation, conditional sale or other title retention agreement, or other security title or encumbrance of any kind in respect of any property of such Person, or upon the income, rents or profits therefrom; (b) any arrangement, express or implied, under which any property of such Person is transferred, sequestered or otherwise identified for the purpose of subjecting the same to the payment of Indebtedness or

performance of any other obligation in priority to the payment of the general, unsecured creditors of such Person; and (c) the authorized filing of any financing statement under the UCC or its equivalent in any jurisdiction, other than any precautionary filing not otherwise constituting or giving rise to a Lien, including a financing statement filed (i) in respect of a lease not constituting a Capitalized Lease Obligation pursuant to Section 9-505 (or a successor provision) of the UCC or its equivalent as in effect in an applicable jurisdiction or (ii) in connection with a sale or other disposition of accounts or other assets not prohibited by this Agreement in a transaction not otherwise constituting or giving rise to a Lien.

"**Loan**" means a Revolving Loan, a Term Loan~~,~~ or a Bid Rate Loan~~ or a Swingline Loan~~.

"**Loan Document**" means this Agreement, each Note, the Guaranty, each Letter of Credit Document, each Fee Letter and each other document or instrument now or hereafter executed and delivered by a Loan Party in connection with, pursuant to or relating to this Agreement (other than any Specified Derivatives Contract).

"**Loan Party**" means each of the Borrower and each Guarantor.

~~"**London Banking Day**" means any day on which dealings in Dollar deposits are conducted by and between banks in the London interbank Eurodollar market.~~

"**Major Redevelopment Property**" means a Property (i) owned by the Borrower, any Subsidiary or any Unconsolidated Affiliate undergoing redevelopment (or which (as determined in good faith by the Borrower) will commence redevelopment within 12 months) where the Gross Construction Budget for such redevelopment is equal to or greater than 25.0% of the undepreciated GAAP book value of such Property immediately prior to the commencement of such redevelopment and (ii) the Borrower has elected to classify such Property as a Major Redevelopment Property. A Major Redevelopment Property shall cease to be a Major Redevelopment Property upon the first to occur of (i) such time as all improvements (other than tenant improvements on unoccupied space) related to the redevelopment of such Property have been substantially completed for at least 4 full fiscal quarters (notwithstanding the fact that such Property may not achieved an Occupancy Rate of at least 80%) and (ii) the Borrower's irrevocable election to no longer treat such Property as a Major Redevelopment Property.

"**Major Redevelopment Property Value**" means, with respect to a Major Redevelopment Property, at the Borrower's election, either (a) 80.0% of the undepreciated GAAP book value of such Major Redevelopment Property immediately prior to the commencement of such redevelopment plus all incremental redevelopment cost incurred to date with respect to such Major Redevelopment Property or (b) the sum of (i) the quotient of (x) the NOI of such Major Redevelopment Property for the period of two fiscal quarters most recently ended immediately prior to the designation of such Property as a Major Redevelopment Property times 2 divided by (y) the applicable Capitalization Rate, plus (ii) all incremental redevelopment cost incurred to date with respect to such Major Redevelopment Property; provided, however, that a Major Redevelopment Property shall only be eligible for valuation pursuant to clause (b) hereof for up to 24 months following the commencement of the redevelopment of such Major Redevelopment Property.

"**Mandatorily Redeemable Stock**" means, with respect to any Person, any Equity Interest of such Person which by the terms of such Equity Interest (or by the terms of any security into which it is convertible or for which it is exchangeable or exercisable), upon the happening of any event or otherwise, (a) matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise (other than an Equity Interest to the extent redeemable in exchange for common stock or other equivalent common Equity Interests at the option of the issuer of such Equity Interest), (b) is convertible into or exchangeable or exercisable for Indebtedness or Mandatorily Redeemable Stock, or (c) is redeemable at the option of the holder thereof, in whole or in part (other than an Equity Interest which is redeemable solely in exchange for common stock or other equivalent common Equity Interests), in the case of each of clauses (a) through (c), on or prior to the latest Termination Date.

"**Marketable Securities**" means: (a) common or preferred Equity Interests of Persons located in, and formed under the laws of, any State of the United States or America or the District of Columbia, which Equity Interests are subject to price quotations (quoted at least daily) on The NASDAQ Stock Market's National Market System or shall have trading privileges on the New York Stock Exchange, the American Stock Exchange or another recognized national United States securities exchange and

(b) securities evidencing Indebtedness issued by Persons located in, and formed under the laws of, any State of the United States or America or the District of Columbia, which Persons have a Credit Rating of BBB- or Baa3 or better.

"**Material Adverse Effect**" means a materially adverse effect on (a) the business, assets, liabilities, financial condition, results of operations or business of the Borrower and its Subsidiaries taken as a whole, (b) the ability of the Borrower and the Loan Parties, taken as a whole, to perform their obligations under the Loan Documents, (c) the validity or enforceability of any of the Loan Documents, or (d) the rights and remedies of the Lenders, the Issuing Banks, and the Administrative Agent under any of the Loan Documents.

"**Material Recourse Indebtedness**" has the meaning given that term in Section 10.1.(d)(i).

"**Material Subsidiary**" means any Person that (a) is a Subsidiary and (b) has assets with a Fair Market Value equal to or greater than 10.0% of Consolidated Total Asset Value.

"**Moody's**" means Moody's Investors Service, Inc. and its successors.

"**Mortgage**" means a mortgage, deed of trust, deed to secure debt or similar security instrument made by a Person owning an interest in real estate granting a Lien on such interest in real estate as security for the payment of Indebtedness.

"**Mortgage Receivable**" means a promissory note secured by a Mortgage of which the Borrower or a Subsidiary is the holder and retains the rights of collection of all payments thereunder (but excluding any such promissory note made by a Wholly Owned Subsidiary or a Controlled JV Subsidiary).

"**Multiemployer Plan**" means at any time a multiemployer plan within the meaning of Section 4001(a)(3) of ERISA to which any member of the ERISA Group is then making or accruing an obligation to make contributions or has within the preceding six plan years made contributions, including for these purposes any Person which ceased to be a member of the ERISA Group during such six-year period.

"**Negative Pledge**" means, with respect to a given asset, any provision of a document, instrument or agreement (other than any Loan Document or Specified Derivatives Contract) which prohibits or purports to prohibit the creation or assumption of any Lien on such asset as security for Indebtedness of the Person owning such asset or any other Person; provided, however, that an agreement that conditions a Person's ability to encumber its assets upon the maintenance of one or more specified ratios that limit such Person's ability to encumber its assets but that do not generally prohibit the encumbrance of its assets, or the encumbrance of specific assets, shall not constitute a Negative Pledge.

"**Net Operating Income**" or "**NOI**" means, for any Property and for a given period, the sum of the following (without duplication and determined on a consistent basis with prior periods): (a) rents and other revenues received in the ordinary course from such Property (including proceeds of rent loss or business interruption insurance (but not in excess of the actual rent otherwise payable) but excluding pre-paid rents and revenues and security deposits except to the extent applied in satisfaction of tenants' obligations for rent) minus (b) all expenses paid (excluding interest but including an appropriate accrual for property taxes and insurance) related to the ownership, operation or maintenance of such Property, including but not limited to property taxes, assessments and the like, insurance, utilities, payroll costs, maintenance, repair and landscaping expenses, marketing expenses, and general and administrative expenses with respect to such Property (including an appropriate allocation for legal, accounting, advertising, marketing and other expenses incurred in connection with such Property, but specifically excluding acquisition costs, general overhead expenses of the Borrower and its Subsidiaries and any property management fees) minus (c) the greater of (i) the actual property management fee paid during such period and (ii) an imputed management fee in the amount of 3.0% of the gross revenues for such Property for such period.

"**Non-Defaulting Lender**" means, at any time, each Lender that is not a Defaulting Lender at such time.

"**Non-Wholly Owned Subsidiary**" means any Subsidiary of a Person that is not a Wholly Owned Subsidiary.

"**Nonrecourse Indebtedness**" means, with respect to a Person, Indebtedness for borrowed money in respect of which recourse for payment (except for customary exceptions for fraud, misapplication of funds, environmental indemnities, prohibited transfers, failure to pay taxes, non-compliance with "separateness covenants," voluntary bankruptcy, collusive involuntary bankruptcy and other exceptions to nonrecourse liability that are either customary in non-recourse financings for real estate or are approved by the Administrative Agent) is contractually limited to specific assets of such Person (including without limitation Equity Interest in other Persons held by such Person) encumbered by a Lien securing such Indebtedness.

"**Nonrecourse Indebtedness Guarantees**" means Guarantees in respect of Nonrecourse Indebtedness where liability of the guarantor is limited to customary exceptions for fraud, misapplication of funds, environmental indemnities, prohibited transfers, failure to pay taxes, non-compliance with "separateness covenants," voluntary bankruptcy, collusive involuntary bankruptcy and other exceptions to nonrecourse liability that are either customary in non-recourse financings for real estate or are approved by the Administrative Agent.

"**Note**" means a Revolving Note, a Tranche B Term Note~~,~~ or a Bid Rate Note ~~or a Swingline Note~~.

"**Notice of Borrowing**" means a notice substantially in the form of Exhibit F (or such other form reasonably acceptable to the Administrative Agent and containing the information required in such Exhibit) to be delivered to the Administrative Agent pursuant to Section 2.1.(b) or any other applicable provision of this Agreement evidencing the Borrower's request for a borrowing of Loans of a particular Class.

"**Notice of Continuation**" means a notice substantially in the form of Exhibit G (or such other form reasonably acceptable to the Administrative Agent and containing the information required in such Exhibit) to be delivered to the Administrative Agent pursuant to Section 2.10. evidencing the Borrower's request for the Continuation of a ~~LIBOR~~SOFR Loan.

"**Notice of Conversion**" means a notice substantially in the form of Exhibit H (or such other form reasonably acceptable to the Administrative Agent and containing the information required in such Exhibit) to be delivered to the Administrative Agent pursuant to Section 2.11. evidencing the Borrower's request for the Conversion of a Loan from one Type to another Type.

~~"**Notice of Swingline Borrowing**" means a notice substantially in the form of Exhibit I (or such other form reasonably acceptable to the Administrative Agent and containing the information required in such Exhibit) to be delivered to the Administrative Agent and the Swingline Lender selected by the Borrower to make a Swingline Loan pursuant to Section 2.4.(b) evidencing the Borrower's request for a Swingline Loan.~~

"**Obligations**" means, individually and collectively: (a) the aggregate principal balance of, and all accrued and unpaid interest on, all Loans; (b) all Reimbursement Obligations and all other Letter of Credit Liabilities; and (c) all other indebtedness, liabilities, obligations, covenants and duties of the Borrower or any of the other Loan Parties owing to the Administrative Agent, any Issuing Bank or any Lender of every kind, nature and description, under or in respect of this Agreement or any of the other Loan Documents, including, without limitation, the Fees and indemnification obligations, whether direct or indirect, absolute or contingent, due or not due, contractual or tortious, liquidated or unliquidated, and whether or not evidenced by any promissory note. For the avoidance of doubt, "Obligations" shall not include any indebtedness, liabilities, obligations, covenants or duties in respect of Specified Derivatives Contracts.

"**Occupancy Rate**" means, with respect to a Property at any time, the ratio, expressed as a percentage, of (a) the number of units in the case of an multifamily Property or square feet in the case of any other Property leased to tenants that are not affiliated with the Borrower pursuant to binding leases to (b) the aggregate number of units or square feet, as applicable, of such Property.

"**Off-Balance Sheet Liabilities**" means liabilities and obligations of the Borrower, any Subsidiary or any other Person in respect of "off-balance sheet arrangements" (as defined in Item 303(a)(4)(ii) of Regulation S-K promulgated under the Securities Act) which the Borrower would be required to disclose in the "Management's Discussion and Analysis of Financial Condition and Results of Operations" section of the Borrower's report on Form 10-Q or Form 10-K (or their equivalents) which the Borrower is required to file with the SEC.

"**OP**" has the meaning given that term in Section 12.20.

"Original Agreement Date" means, March 29, 2018.

~~"**Other Benchmark Rate Election**" means, if the then-current Benchmark is USD LIBOR, the occurrence of:~~

~~(a) a notification by the Administrative Agent to (or the request by the Borrower to the Administrative Agent to notify) each of the other parties hereto that at least five currently outstanding Dollar-denominated syndicated credit facilities at such time contain (as a result of amendment or as originally executed), in lieu of a USD LIBOR-based rate, a term benchmark rate that is not a SOFR-based rate as a benchmark rate (and such syndicated credit facilities are identified in such notice and are publicly available for review), and~~

~~(b) the joint election by the Administrative Agent and the Borrower to trigger a fallback from USD LIBOR and the provision by the Administrative Agent of written notice of such election to the Lenders.~~

"**Other Commercial Property**" means a commercial Property other than an office, retail or multifamily Property.

"**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 Loan Document, or sold or assigned an interest in any Loan or Loan Document).

"**Other Taxes**" means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 4.6.).

"**Ownership Share**" means, with respect to any Subsidiary (other than a Wholly Owned Subsidiary) or any Unconsolidated Affiliate of the Borrower, the greater of (a) the Borrower's relative nominal direct and indirect ownership interest (expressed as a percentage) in such Subsidiary or Unconsolidated Affiliate or (b) the Borrower's relative direct and indirect economic interest (calculated as a percentage) in such Subsidiary or Unconsolidated Affiliate determined in accordance with the applicable provisions of the declaration of trust, articles or certificate of incorporation, articles of organization, partnership agreement, joint venture agreement or other applicable organizational document of such Subsidiary or Unconsolidated Affiliate.

"**Participant**" has the meaning given that term in Section 12.5.(d).

"**Participant Register**" has the meaning given that term in Section 12.5.(d).

"**Patriot Act**" means The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. No. 107-56 (signed into law October 26, 2001)).

"**Payment Recipient**" has the meaning assigned thereto in Section 11.11(a).

"**PBGC**" means the Pension Benefit Guaranty Corporation and any successor agency.

"**Permitted Liens**" means, with respect to any asset or property of a Person, (a) Liens securing taxes, assessments and other charges or levies imposed by any Governmental Authority (excluding any Lien imposed pursuant to any of the provisions of ERISA or pursuant to any environmental laws) or the claims of materialmen, mechanics, carriers, warehousemen or landlords for labor, materials, supplies or rentals incurred in the ordinary course of business, which, in each case, are not at the time required to be paid or discharged under Section 7.6.; (b) Liens consisting of deposits or pledges made, in the ordinary course of business, in connection with, or to secure payment of, obligations under workers' compensation, unemployment insurance or similar Applicable Laws; (c) Liens consisting of encumbrances in the nature of zoning restrictions, easements, and rights or restrictions of record on the use of real property, which do not materially detract from the value of such property or impair the intended use thereof in the business of such Person; (d) the rights of tenants under leases or subleases not interfering with the ordinary conduct of business of such Person; (e) Liens in favor of the Administrative Agent for its benefit and the benefit of the Lenders and the Issuing Banks; (f) Liens in favor of the Borrower or any other Wholly Owned Subsidiary securing Indebtedness owing by a Subsidiary to the Borrower or such Wholly Owned Subsidiary; (g) any Eligible Ground Lease that constitutes a Capitalized Lease Obligation; and (h) to the extent constituting a Lien, any Permitted Negative Pledge Provision of the type described in clauses (b) and (c) of the definition thereof.

"**Permitted Negative Pledge Provision**" means a Negative Pledge contained in any agreement (a) evidencing unsecured Indebtedness which contains restrictions on encumbering assets that are substantially the same as the corresponding restrictions contained in the Loan Documents, (b) related to assets or equity interests to be sold where such Negative Pledge relates only to such assets pending such sale or (c) Permitted Transfer Restrictions.

"**Permitted Transfer Restrictions**" means (a) reasonable and customary restrictions on transfer, mortgage liens, pledges and changes in beneficial ownership arising under management agreements and Eligible Ground Leases entered into in the ordinary course of business (including in connection with any acquisition or development of any applicable Property, without regard to the transaction value), including rights of first offer or refusal arising under such agreements and leases, in each case, that limit, but do not prohibit, sale or mortgage transactions, and (b) solely with respect to an asset or Property of a Controlled JV Subsidiary or, after the Reorganization, the Borrower, reasonable and customary obligations, encumbrances or restrictions contained in agreements not constituting Indebtedness entered into with limited partners, members or other equity holders of a Controlled JV Subsidiary (or, after the Reorganization, the Borrower) imposing obligations in respect of contingent obligations to make any tax "make whole" or similar tax payment arising out of the sale or other transfer of assets reasonably related to such limited partners', members' or other equity holders' interest in the Borrower or such Subsidiary pursuant to "tax protection" or other similar agreements.

"**Person**" means any natural person, corporation, limited partnership, general partnership, joint stock company, limited liability company, limited liability partnership, joint venture, association, company, trust, bank, trust company, land trust, business trust or other organization, whether or not a legal entity, or any other nongovernmental entity, or any Governmental Authority.

"**Plan**" means at any time an employee pension benefit plan (other than a Multiemployer Plan) which is covered by Title IV of ERISA or subject to the minimum funding standards under Section 412 of the Internal Revenue Code and either (a) is maintained, or contributed to, by any member of the ERISA Group for employees of any member of the ERISA Group or (b) has at any time within the preceding six years been maintained, or contributed to, by any Person which was at such time a member of the ERISA Group for employees of any Person which was at such time a member of the ERISA Group.

"**Post-Default Rate**" means, in respect of any principal of any Loan or any Reimbursement Obligation, the rate otherwise applicable plus an additional two percent 2.0% per annum and with respect to any other Obligation, a rate per annum equal to the Base Rate as in effect from time to time plus the Applicable Margin for Revolving Loans that are Base Rate Loans plus two percent (2.0%).

"**Preferred Dividends**" means, for any period and without duplication, all Restricted Payments paid during such period on Preferred Equity Interests issued by the Borrower or any Subsidiary. Preferred Dividends shall not include dividends or distributions (a) paid or payable solely in Equity Interests (other than Mandatorily Redeemable Stock) payable to holders of such class of Equity Interests,

(b) paid or payable to the Borrower or a Subsidiary, or (c) constituting unscheduled partial redemptions or balloon, bullet or similar redemptions in full of Preferred Equity Interests.

"**Preferred Equity Interests**" means, with respect to any Person, Equity Interests in such Person which are entitled to preference or priority over any other Equity Interest in such Person in respect of the payment of dividends or distribution of assets upon liquidation or both.

"**Prime Rate**" means, at any time, the rate of interest per annum publicly announced from time to time by the Lender then acting as the Administrative Agent as its prime rate. Each change in the Prime Rate shall be effective as of the opening of business on the day such change in such prime rate occurs. The parties hereto acknowledge that the rate announced publicly by the Lender acting as Administrative Agent as its prime rate is an index or base rate and shall not necessarily be its lowest or best rate charged to its customers or other banks.

"**Principal Office**" means the office of the Administrative Agent located at 600 South 4th St., ~~9th~~10th Floor, Minneapolis, Minnesota 55415, or any other subsequent office that the Administrative Agent shall have specified as the Principal Office by written notice to the Borrower and the Lenders.

"**Pro Rata Share**" means, as to each Lender, the ratio, expressed as a percentage of (a)(i) the amount of such Lender's Revolving Commitment, if any, plus (ii) the aggregate amount of such Lender's outstanding Term Loans, if any, to (b)(i) the aggregate amount of the Revolving Commitments of all Lenders plus (ii) the aggregate amount of all outstanding Term Loans; provided, however, that if at the time of determination the Revolving Commitments have terminated or been reduced to zero, the "Pro Rata Share" of each Lender shall be the ratio, expressed as a percentage of (A) the sum of the aggregate unpaid principal amount of all outstanding Loans and Letter of Credit Liabilities owing to such Lender as of such date to (B) the sum of the aggregate unpaid principal amount of all outstanding Loans and Letter of Credit Liabilities of all Lenders as of such date. If at the time of determination the Commitments have terminated and there are no outstanding Loans or Letter of Credit Liabilities, then the Pro Rata Shares of the Lenders shall be determined as of the most recent date on which Commitments were in effect or Loans or Letters of Credit Liabilities were outstanding. For purposes of this definition, a Revolving Lender shall be deemed to hold a ~~Swingline Loan or a~~ Letter of Credit Liability to the extent such Revolving Lender has acquired a participation therein under the terms of this Agreement and has not failed to perform its obligations in respect of such participation.

"**Property**" means, with respect to a Person, any parcel of real property (whether owned in fee or subject to a lease), together with any building, facility, structure, equipment or other asset located on such parcel of real property, in each case owned or leased by such Person.

"**QI**" has the meaning given that term in the definition of 1031 Property.

"**Qualified ECP Guarantor**" means, in respect of any Swap Obligation, each Loan Party that has total assets exceeding $10,000,000 at the time the relevant Guarantee or grant of the relevant security interest becomes effective with respect to such Swap Obligation or such other person as constitutes an "eligible contract participant" under the Commodity Exchange Act or any regulations promulgated thereunder and can cause another person to qualify as an "eligible contract participant" at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

"**Qualified Plan**" means a Benefit Arrangement that is intended to be tax-qualified under Section 401(a) of the Internal Revenue Code.

"**Rating Agency**" means S&P, Moody's or Fitch.

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

"**Recourse Indebtedness**" means any Indebtedness of a Person that is not Nonrecourse Indebtedness.

"**Reference Time**" with respect to any setting of the then-current Benchmark means (1) if such Benchmark is USD LIBOR, 11:00 a.m. (London time) on the day that is two (2) London Banking Days preceding the date of such setting, and (2) if such Benchmark is not USD LIBOR, the time determined by the Administrative Agent in its reasonable discretion.

"**Reference Year**" has the meaning given that term in the definition of Applicable Sustainability Adjustment.

"**Register**" has the meaning given that term in Section 12.5.(c).

"**Regulatory Change**" means, with respect to any Lender, any change effective after the Agreement Date in Applicable Law (including without limitation, Regulation D of the Board of Governors of the Federal Reserve System) or the adoption or making after such date of any interpretation, directive or request applying to a class of banks, including such Lender, of or under any Applicable Law (whether or not having the force of law and whether or not failure to comply therewith would be unlawful) by any Governmental Authority or monetary authority charged with the interpretation or administration thereof or compliance by any Lender with any request or directive regarding capital adequacy or liquidity. Notwithstanding anything herein to the contrary, (a) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (b) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Regulatory Change", regardless of the date enacted, adopted or issued.

"**Reimbursement Obligation**" means the absolute, unconditional and irrevocable obligation of the Borrower to reimburse an Issuing Bank for any drawing honored by such Issuing Bank under a Letter of Credit issued by such Issuing Bank.

"**REIT**" means a Person qualifying for treatment as a "real estate investment trust" under the Internal Revenue Code.

"**REIT Entity**" has the meaning given that term in Section 12.20.

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

"**Relevant Governmental Body**" means the FRB or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the FRB or the Federal Reserve Bank of New York, or any successor thereto.

"**Reorganization**" has the meaning given that term in Section 12.20.

"**Required Joinder Date**" the date on which the Compliance Certificate is required to be delivered with respect to any fiscal quarter (or fiscal year in the case of the fourth fiscal quarter) during which any of the conditions described in subsection (a) of Section 7.13. first applies to a Subsidiary.

"**Requisite Class Lenders**" means, with respect to any Class of Lenders on any date of determination, Lenders of such Class (a) having more than 50.0% of the aggregate amount of the Commitments of such Class, or (b) if the Commitments of such Class have terminated, holding more than 50.0% of the aggregate principal amount of the outstanding Loans of such Class, and in the case of Revolving Lenders, outstanding Letter of Credit Liabilities, Swingline Loans and Bid Rate Loans; provided that in determining such percentage at any given time, all then existing Defaulting Lenders of such Class will be disregarded and excluded. For purposes of this definition, a Revolving Lender shall be deemed to hold a Swingline Loan or a Letter of Credit Liability to the extent such Revolving Lender has acquired a participation therein under the terms of this Agreement and has not failed to perform its obligations in respect of such participation.

"**Requisite Lenders**" means, as of any date, Lenders having more than 50.0% of the aggregate amount of (a) the Revolving Commitments (or if the Revolving Commitments have been terminated or

reduced to zero, the aggregate principal amount of the outstanding Revolving Loans, Bid Rate Loans~~, Swingline Loans~~ and Letter of Credit Liabilities) and (b) the aggregate principal amount of the outstanding Term Loans; provided that in determining such percentage at any given time, all then existing Defaulting Lenders will be disregarded and excluded. For purposes of this definition, a Revolving Lender shall be deemed to hold a ~~Swingline Loan or a~~ Letter of Credit Liability to the extent such Lender has acquired a participation therein under the terms of this Agreement and has not failed to perform its obligations in respect of such participation.

"**Resolution Authority**" means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority

"**Responsible Officer**" means with respect to the Borrower or any Subsidiary, the chief executive officer, the chief financial officer, chief accounting officer or vice president, finance of the Borrower or such Subsidiary.

"**Restricted Payment**" means (a) any dividend or other distribution, direct or indirect, on account of any Equity Interests of the Borrower or any of its Subsidiaries now or hereafter outstanding, except a dividend payable solely in Equity Interests to the holders of such Equity Interests; (b) any redemption, conversion, exchange, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any Equity Interest of the Borrower or any of its Subsidiaries now or hereafter outstanding; and (c) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire any Equity Interests of the Borrower or any of its Subsidiaries now or hereafter outstanding.

"**Revolving Commitment**" means, as to each Revolving Lender ~~(other than the Swingline Lenders)~~, such Revolving Lender's obligation to make Revolving Loans pursuant to Section 2.1.~~,~~ and to issue (in the case of an Issuing Bank) and to participate (in the case of the other Revolving Lenders) in Letters of Credit pursuant to Section 2.3.(i~~), and to participate in Swingline Loans pursuant to Section 2.4.(e~~), in an amount up to, but not exceeding the amount set forth for such Lender on Schedule I as such Lender's "Revolving Commitment Amount" or as set forth in any applicable Assignment and Assumption, or agreement executed by a Person becoming a Revolving Lender in accordance with Section 2.17., as the same may be reduced from time to time pursuant to Section 2.13. or increased or reduced as appropriate to reflect any assignments to or by such Lender effected in accordance with Section 12.5. or increased as appropriate to reflect any increase effected in accordance with Section 2.17.

"**Revolving Credit Exposure**" means, as to any Revolving Lender at any time, the aggregate principal amount at such time of its outstanding Revolving Loans and such Revolving Lender's participation in Letter of Credit Liabilities ~~and Swingline Loans~~ at such time.

"**Revolving Lender**" means a Lender in its capacity as the holder of a Revolving Commitment, or if the Revolving Commitments have terminated, in its capacity as the holder of any Revolving Loans.

"**Revolving Loan**" means a loan made by a Revolving Lender to the Borrower pursuant to Section 2.1.(a).

"**Revolving Note**" means a promissory note of the Borrower substantially in the form of Exhibit J, payable to the order of a Revolving Lender in a principal amount equal to the amount of such Lender's Revolving Commitment as originally in effect and otherwise duly completed and in any event shall include any new Revolving Note that may be issued from time to time pursuant to Section 2.17.

"**Revolving Termination Date**" means August 26, 2025, or such later date to which the Revolving Termination Date may be extended in accordance with Section 2.14.

"**Sanctioned Country**" means, at any time, a country, region or territory which itself is, or whose government is, the subject or target of any Sanctions.

"**Sanctioned Person**" means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by any Governmental Authority of the United States of America, including without limitation, OFAC or the U.S. Department of State, or by the United Nations Security

Council, the European Union or any other Governmental Authority, (b) any Person located, operating, organized or resident in a Sanctioned Country, (c) an agency of the government of a Sanctioned Country or (d) any Person Controlled by any Person or agency described in any of the preceding clauses (a) through (c).

"**Sanctions**" means any sanctions or trade embargoes imposed, administered or enforced by any Governmental Authority of the United States of America, including without limitation, OFAC or the U.S. Department of State, or by the United Nations Security Council, the European Union or any other Governmental Authority.

"**SEC**" means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

"**Securities Act**" means the Securities Act of 1933, as amended from time to time, together with all rules and regulations issued thereunder.

"**Simple SOFR Adjustment**" a percentage equal to 0.10% per annum.

"**Simple SOFR Determination Day**" has the meaning specified in the definition of "Adjusted Daily Simple SOFR."

"**Simple SOFR Rate Day**" has the meaning given that term in the definition of the term "Adjusted Daily Simple SOFR."

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

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

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

"**SOFR Auction**" means a solicitation of Bid Rate Quotes setting forth SOFR Margin Loans based on Adjusted Term SOFR pursuant to Section 2.2.

"**SOFR Loan**" means any Daily Simple SOFR Loan or Term SOFR Loan.

"**SOFR Margin**" has the meaning given that term in Section 2.2.(c)(ii)(D).

"**SOFR Margin Loan**" means a Bid Rate Loan the interest rate on which is determined on the basis of Adjusted Term SOFR pursuant to a SOFR Auction.

"**Solvent**" means, when used with respect to any Person, that (a) the fair value and the fair salable value of its assets on a going concern basis (excluding any Indebtedness due from any Affiliate of such Person that does not have an Investment Grade Rating and the accounts of which are not consolidated with such Person) are each in excess of the fair valuation of its total liabilities (including all contingent liabilities computed at the amount which, in light of all facts and circumstances existing at such time, represents the amount that could reasonably be expected to become an actual and matured liability); (b) such Person is able to pay its debts or other obligations in the ordinary course as they mature; and (c) such Person has capital not unreasonably small to carry on its business and all business in which it proposes to be engaged.

"**Specified Derivatives Contract**" means any Derivatives Contract that is made or entered into at any time, or in effect at any time now or hereafter, whether as a result of an assignment or transfer or otherwise, between or among any Loan Party and any Specified Derivatives Provider.

“**Specified Derivatives Provider**” means any Person that (a) at the time it enters into a Specified Derivatives Contract with a Loan Party, is a Lender or an Affiliate of a Lender or (b) at the time it (or its Affiliate) becomes a Lender (including on the Effective Date), is a party to a Specified Derivatives Contract with a Loan Party, in each case in its capacity as a party to such Specified Derivatives Contract.

“**S&P**” means Standard & Poor’s Ratings Services, a Standard & Poor’s Financial Services LLC business, or any successor.

“**Stated Amount**” means the amount available to be drawn by a beneficiary under a Letter of Credit from time to time, as such amount may be increased or reduced from time to time in accordance with the terms of such Letter of Credit.

“**Subsidiary**” means, for any Person, any corporation, partnership, limited liability company, trust or other entity of which at least a majority of the Equity Interests having by the terms thereof ordinary voting power to elect a majority of the board of directors, trustees or other individuals performing similar functions of such corporation, partnership, limited liability company, trust or other entity (without regard to the occurrence of any contingency) is, at the time of determination thereof, directly or indirectly owned or controlled by such Person or one or more Subsidiaries of such Person and shall include all Persons the accounts of which are consolidated with those of such Person pursuant to GAAP. Unless explicitly set forth to the contrary, a reference to “Subsidiary” means a Subsidiary of the Borrower.

“**Subsidiary Secured Indebtedness**” has the meaning given to that term in the definition of “Excluded Subsidiary”.

“**Substantial Amount**” means, at the time of determination thereof, an amount in excess of 30.0% of total consolidated assets (exclusive of depreciation) at such time of the Borrower and its Subsidiaries determined on a consolidated basis.

“**Sustainability Adjustment Date**” means the Business Day immediately following the date on which the Borrower provides to the Administrative Agent a Compliance Certificate referencing the Applicable Sustainability Adjustment for the applicable Reference Year pursuant to Section 8.3.

“**Sustainability Adjustment Period**” means, (a) in the case of the initial Sustainability Adjustment Period, the period commencing on the first Sustainability Adjustment Date following the Effective Date and ending on (but excluding) the next Sustainability Adjustment Date and (b) in the case of each other Sustainability Adjustment Period, the period commencing on the last day of the immediately preceding Sustainability Adjustment Period and ending on (but excluding) the next Sustainability Adjustment Date.

“**Sustainability Rating**” means, with respect to any Reference Year, the “GRESB Score”, as calculated and assigned to the Borrower from time to time by GRESB and published in the most recently released GRESB Real Estate Assessment thereof. It is understood and agreed that the first Sustainability Rating is expected to be for the Reference Year ending December 31, 2021, which is expected to be available and reported in the Compliance Certificate to be delivered for the fiscal quarter ending September 30, 2022, and the Sustainability Rating is expected to be updated and reported for each subsequent Reference Year in September of the calendar year immediately following such Reference Year.

“**Sustainability Rating Change**” means, for any Reference Year, the percentage change of the Sustainability Rating over the Sustainability Rating for the immediately preceding Reference Year.

“**Swap Obligation**” means, with respect to any Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of Section 1a(47) of the Commodity Exchange Act.

~~“**Swingline Lenders**” means Wells Fargo Bank and KeyBank, together with their respective successors and assigns.~~

"**Swingline Loan**" means a loan made by a Swingline Lender to the Borrower pursuant to Section 2.4.
"**Swingline Note**" means a promissory note of the Borrower substantially in the form of Exhibit K, payable to the order of each Swingline Lender in a principal amount equal to the amount set forth in Section 2.4.(a)(i) and otherwise duly completed.
"**Swingline Termination Date**" means the date which is 7 Business Days prior to the Revolving Termination Date.
"**Taxes**" means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"**Term Loan**" means a Tranche B Term Loan, and a loan made by a Term Loan Lender to the Borrower pursuant to Section 2.9. or Section 2.17.

"**Term Loan Commitment**" means as to each Term Loan Lender of a Class of Term Loans, such Term Loan Lender's obligation to make Term Loans pursuant to the Loan Documents establishing such Class of Loans.

"**Term Loan Lender**" means a Tranche B Term Loan Lender and a Lender in its capacity as the holder of a Term Loan Commitment of a Class, or if the Term Loan Commitments of such Class have terminated, a Lender in its capacity as the holder of a Term Loan of such Class.

"**Term SOFR**" means, for any calculation, the Term SOFR Reference Rate for a tenor comparable to the applicable Interest Period on the day (such day, the "Term SOFR Determination Day") that is two (2) U.S. Government Securities Business Days prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (Eastern time) on any Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Term SOFR Determination Day.

"**Term SOFR Adjustment**" means a percentage equal to 0.10% per annum.

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

"**Term SOFR Determination Day**" has the meaning assigned thereto in the definition of "Term SOFR".

"**Term SOFR Loan**" means any Term Loan or Revolving Loan bearing interest at a rate based on Adjusted Term SOFR.

"**Term SOFR**" means, for the applicable Corresponding Tenor as of the applicable Reference Time, **Reference Rate**" means the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

"**Term SOFR Notice**" means a notification by the Administrative Agent to the Lenders and the Borrower of the occurrence of a Term SOFR Transition Event.
"**Term SOFR Transition Event**" means the determination by the Administrative Agent that (a) Term SOFR has been recommended for use by the Relevant Governmental Body, (b) the administration of Term SOFR is administratively feasible for the Administrative Agent and (c) a Benchmark Transition Event, an Early Opt-in Election or an Other Benchmark Rate Election, as applicable, has previously occurred resulting in the replacement of the then-current Benchmark for all purposes hereunder and under

any Loan Document in accordance with Section 4.2(b) with a Benchmark Replacement the Unadjusted Benchmark Replacement component of which is not Term SOFR.

"**Termination Date**" means (a) with respect to the Revolving Loans and the Revolving Commitments, the Revolving Termination Date, (b) with respect to the Tranche B Term Loans made pursuant to Section 2.9., July 21, 2023, and (c) with respect to any other Class of Term Loans, the "Termination Date" specified for such Class of Term Loans in the Loan Documents establishing such Class of Term Loans.

"**Titled Agent**" has the meaning given that term in Section 11.9.

"**Tranche B Term Loan**" means a term loan made by a Tranche B Term Loan Lender to the Borrower under the Existing Credit Agreement as described in Section 2.9.

"**Tranche B Term Loan Lender**" means a Lender holding a Tranche B Term Loan.

"**Tranche B Term Note**" means a promissory note of the Borrower substantially in the form of Exhibit R, payable to the order of a Tranche B Term Loan Lender in a principal amount equal to the amount of such Lender's Tranche B Term Loan as originally in effect and otherwise duly completed.

"**Type**" with respect to any Revolving Loan or Term Loan, refers to whether such Loan is a LIBORDaily Simple SOFR Loan, Term SOFR Loan or a Base Rate Loan, or in the case of a Bid Rate Loan only, an Absolute Rate Loan or a LIBORSOFR Margin Loan.

"**UCC**" means the Uniform Commercial Code as in effect in any applicable jurisdiction.

"**UK Financial Institution**" means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

"**UK Resolution Authority**" means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution

"**Unadjusted Benchmark Replacement**" means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

"**Unconsolidated Affiliate**" means, with respect to any Person, any other Person in whom such Person holds an Investment, which Investment is accounted for in the financial statements of such Person on an equity basis of accounting and whose financial results would not be consolidated under GAAP with the financial results of such Person on the consolidated financial statements of such Person.

"**Unencumbered NOI**" means, for any period, the aggregate Net Operating Income for such period of all Eligible Properties the Net Operating Income of which the Borrower has elected pursuant to clause (i) of the second sentence of Section 8.3. to include for purposes of calculating Unencumbered Pool Value.

"**Unencumbered Pool Value**" means, without duplication (a) the (x) Unencumbered NOI (excluding Unencumbered NOI from any Property the value of which is included in the determination of Unencumbered Pool Value under any of the immediately following clauses (b), (d) or (e)), for the fiscal quarter most recently ended (y) multiplied by 4, (z) divided by the applicable Capitalization Rate; plus (b) the acquisition cost of all Eligible Properties (including Eligible Properties that are Other Commercial Properties) acquired during the period of six fiscal quarters most recently ended; provided that the Borrower may irrevocably elect that the value of a recently acquired Eligible Property not yet owned for six quarters be determined in accordance with the preceding clause (a); plus (c) all Construction-in-Process for all Eligible Properties that are Development Properties; plus (d) the aggregate Major Redevelopment Property Values of all Eligible Properties that are Major Redevelopment Properties; plus (e) the GAAP book value of each parcel of Unimproved Land that satisfies all of the requirements of the

definition of "Eligible Property" other than clause (a) of such definition; plus (f) Unrestricted Cash. Eligible Properties disposed of during the fiscal quarter most recently ended shall not be included in the calculation of Unencumbered Pool Value. Other Commercial Properties may only contribute to Unencumbered Pool Value to the extent applicable under clause (b) above. In addition, to the extent the amount of Unencumbered Pool Value attributable to Development Properties, Major Redevelopment Properties, Unimproved Land, assets held by Controlled JV Subsidiaries, Properties subject to a ground lease and Other Commercial Properties would exceed 35.0% of Unencumbered Pool Value, such excess shall be excluded from Unencumbered Pool Value; provided, however that to the extent the amount of Unencumbered Pool Value attributable to (u) Development Properties exceeds 20.0% of the Unencumbered Pool Value, (v) Major Redevelopment Properties exceeds 20.0% of the Unencumbered Pool Value, (w) Unimproved Land exceeds 5.0% of the Unencumbered Pool Value, (x) assets held by Controlled JV Subsidiaries exceeds 20.0% of the Unencumbered Pool Value, (y) Properties subject to a ground lease exceed 10.0% of the Unencumbered Pool Value and (z) Other Commercial Properties exceed 5.0% of the Unencumbered Pool Value, such excesses shall be excluded from Unencumbered Pool Value.

"**Unimproved Land**" means land on which no development (other than improvements that are not material and are temporary in nature) has occurred.

"**Unrestricted Cash**" means cash and Cash Equivalents held by the Borrower and its Subsidiaries (other than tenant deposits and other cash and Cash Equivalents that are subject to a Lien or a Negative Pledge or the disposition of which is restricted, it being understood by the parties that cash and Cash Equivalents representing proceeds from the sale of an asset, which proceeds have been escrowed in anticipation of a like-kind exchange, will not be considered restricted).

~~"**USD LIBOR**" means the London interbank offered rate for Dollars.~~
"**U.S. Government Securities Business Day**" means any day except for (a) a Saturday, (b) a Sunday or (c) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities; provided, that for purposes of notice requirements in Sections 2.1(b), 2.2(b), 2.8(a), 2.10 and 2.11, in each case, such day is also a Business Day.

"**U.S. Person**" means any Person that is a "United States Person" as defined in Section 7701(a)(30) of the Internal Revenue Code.

"**U.S. Tax Compliance Certificate**" has the meaning assigned to such term in Section 3.10.(g)(ii)(B)(III).

"**Wells Fargo**" means Wells Fargo Bank, National Association, and its successors and assigns.

"**Wholly Owned Subsidiary**" means any Subsidiary of a Person in respect of which all of the Equity Interests (other than, in the case of a corporation, directors' or trustees' qualifying shares) are at the time directly or indirectly owned or controlled by such Person or one or more other Subsidiaries of such Person or by such Person and one or more other Subsidiaries of such Person. In addition, the term "Wholly Owned Subsidiary" means a Subsidiary of the Borrower that has elected to be treated as a "real estate investment trust" in accordance with Section 856 through 860 of the Internal Revenue Code and in which either the Borrower or a Subsidiary of the Borrower described in clause (a) of this definition owns 100% of the outstanding common Equity Interests and has management control.

"**Withdrawal Liability**" means any liability as a result of a complete or partial withdrawal from a Multiemployer Plan as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

"**Withholding Agent**" means (a) the Borrower, (b) any other Loan Party and (c) the Administrative Agent, as applicable.

"**Write-Down and Conversion Powers**" means (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time

under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

Section 1.2. General; References to Eastern Time.

All references to the Borrower, for purposes of the financial covenants set forth in Section 9.1. shall mean the Borrower, or, following the Reorganization, the REIT Entity, and its Subsidiaries on a consolidated basis. Unless otherwise indicated, all accounting terms, ratios and measurements shall be interpreted or determined in accordance with GAAP from time to time; provided that, if at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower or the Requisite Lenders shall so request, the Administrative Agent, the Lenders and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the appropriate Lenders pursuant to Section 12.6.); provided further that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrower shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. References in this Agreement to "Sections", "Articles", "Exhibits" and "Schedules" are to sections, articles, exhibits and schedules herein and hereto unless otherwise indicated. References in this Agreement to any document, instrument or agreement (a) shall include all exhibits, schedules and other attachments thereto, (b) except as expressly provided otherwise in any Loan Document, shall include all documents, instruments or agreements issued or executed in replacement thereof, to the extent permitted hereby and (c) shall mean such document, instrument or agreement, or replacement or predecessor thereto, as amended, supplemented, restated or otherwise modified from time to time to the extent not otherwise stated herein or prohibited hereby and in effect at any given time. Wherever from the context it appears appropriate, each term stated in either the singular or plural shall include the singular and plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, the feminine and the neuter. Unless otherwise expressly provided herein, references to any Applicable Law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Applicable Law. Unless explicitly set forth to the contrary, a reference to "Subsidiary" means a Subsidiary of the Borrower or a Subsidiary of a Subsidiary and a reference to an "Affiliate" means a reference to an Affiliate of the Borrower. Titles and captions of Articles, Sections, subsections and clauses in this Agreement are for convenience only, and neither limit nor amplify the provisions of this Agreement. Unless otherwise indicated, (a) all references to time are references to Eastern time daylight or standard, as applicable and (b) when any date specified herein as the due date for a payment, notice or other deliverable is not a Business Day, such due date shall be extended to the next following Business Day.

Section 1.3. Financial Attributes of Unconsolidated Affiliates.

When determining compliance by the Borrower with any financial covenant contained in any of the Loan Documents only the Ownership Share of the Borrower of the financial attributes (assets, liabilities, income or expenses) of Unconsolidated Affiliates shall be included.

Section 1.4. Divisions.

For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and

(b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time.

Section 1.5. Rates.

The ~~interest rate on LIBOR Loans and Base Rate Loans (when determined by reference to clause (c) of the definition of Base Rate) may be determined by reference to LIBOR, which is derived from the London interbank offered rate. The London interbank offered rate is intended to represent the rate at which contributing banks may obtain short-term borrowings from each other in the London interbank market. On March 5, 2021, ICE Benchmark Administration ("IBA"), the administrator of the London interbank offered rate, and the Financial Conduct Authority (the "FCA"), the regulatory supervisor of IBA, announced in public statements (the "Announcements") that the final publication or representativeness date for the London interbank offered rate for Dollars for: (a) 1-week and 2-month tenor settings will be December 31, 2021 and (b) overnight, 1-month, 3-month, 6-month and 12-month tenor settings will be June 30, 2023. No successor administrator for IBA was identified in such Announcements. As a result, it is possible that commencing immediately after such dates, the London interbank offered rate for such tenors may no longer be available or may no longer be deemed a representative reference rate upon which to determine the interest rate on LIBOR Loans or Base Rate Loans (when determined by reference to clause (c) of the definition of Base Rate). There is no assurance that the dates set forth in the Announcements will not change or that IBA or the FCA will not take further action that could impact the availability, composition or characteristics of any London interbank offered rate. Public and private sector industry initiatives have been and continue, as of the date hereof, to be underway to implement new or alternative reference rates to be used in place of the London interbank offered rate. In the event that the London interbank offered rate or any other then-current Benchmark is no longer available or in certain other circumstances set forth in Section 4.2(b), such Section 4.2(b) provides a mechanism for determining an alternative rate of interest. The Administrative Agent will notify the Borrower, pursuant to Section 4.2(b), of any change to the reference rate upon which the interest rate on LIBOR Loans and Base Rate Loans (when determined by reference to clause (c) of the definition of Base Rate) is based. However, the~~ Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, (~~i~~a) the continuation of, administration of, submission of, calculation of or any other matter related to ~~the London interbank offered rate or other~~SOFR, the Term SOFR Reference Rate, Adjusted Term SOFR, Adjusted Daily Simple SOFR or Term SOFR, or any component definition thereof or rates referred to in the definition ~~of "LIBOR"~~thereof, or with respect to any alternative, successor or replacement rate thereto (including ~~any then-current Benchmark or~~ any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement), as it may or may not be adjusted pursuant to Section 4.2(b), will be similar to, or produce the same value or economic equivalence of, ~~LIBOR or any other Benchmark,~~ or have the same volume or liquidity as ~~did the London interbank offered rate or any other~~, SOFR, the Term SOFR Reference Rate, Adjusted Term SOFR, Adjusted Daily Simple SOFR, Term SOFR or any other Benchmark prior to its discontinuance or unavailability, or (~~ii~~b) the effect, implementation or composition of any ~~Benchmark Replacement~~ Conforming Changes. The Administrative Agent and its Affiliates or other related entities may engage in transactions that affect the calculation of ~~a Benchmark~~SOFR, the Term SOFR Reference Rate, Adjusted Term SOFR, Adjusted Daily Simple SOFR, Term SOFR, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto and such transactions may be adverse to the Borrower. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain ~~any~~SOFR, the Term SOFR Reference Rate, Adjusted Term SOFR, Adjusted Daily Simple SOFR or Term SOFR, or any other Benchmark, any component definition thereof or rates ~~referenced~~referred to in the definition thereof, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

Article II. Credit Facility

Section 2.1. Revolving Loans.

(a) Making of Revolving Loans. Subject to the terms and conditions set forth in this Agreement, including without limitation, Section 2.16., each Revolving Lender severally and not jointly agrees to make Revolving Loans to the Borrower in Dollars during the period from and including the Effective Date to but excluding the Revolving Termination Date, in an aggregate principal amount at any one time outstanding up to, but not exceeding, the amount of such Lender's Revolving Commitment. Each borrowing of Revolving Loans that are to be (i) Base Rate Loans shall be in an aggregate minimum amount of $1,000,000 and integral multiples of $500,000 in excess thereof and (ii) ~~LIBOR~~SOFR Loans shall be in an aggregate minimum amount of $1,000,000 and integral multiples of $500,000 in excess thereof. Notwithstanding the immediately preceding two sentences but subject to Section 2.16., a borrowing of Revolving Loans may be in the aggregate amount of the unused Revolving Commitments. Within the foregoing limits and subject to the terms and conditions of this Agreement, the Borrower may borrow, repay and reborrow Revolving Loans.

(b) Requests for Revolving Loans. Not later than (x) 11:00 a.m. Eastern time on the proposed date of a borrowing of Revolving Loans that are to be Base Rate Loans ~~and not later than~~(y) 1:00 p.m. Eastern time at least 3 U.S. Government Securities Business Days prior to a borrowing of Revolving Loans that are to be ~~LIBOR~~Term SOFR Loans and (z) 11:00 a.m. Eastern time on the U.S. Government Securities Business Day that is the proposed date of a borrowing of Revolving Loans that are to be Daily Simple SOFR Loans, the Borrower shall deliver to the Administrative Agent a Notice of Borrowing. Each Notice of Borrowing shall specify the aggregate principal amount of the Revolving Loans to be borrowed, the date such Revolving Loans are to be borrowed (which must be a Business Day), the Type of the requested Revolving Loans, and if such Revolving Loans are to be ~~LIBOR~~Term SOFR Loans, the initial Interest Period for such Revolving Loans. Each Notice of Borrowing shall be irrevocable once given and binding on the Borrower. Prior to delivering a Notice of Borrowing, the Borrower may (without specifying whether a Revolving Loan will be a Base Rate Loan or a ~~LIBOR~~SOFR Loan) request that the Administrative Agent provide the Borrower with the most recent ~~LIBOR~~Adjusted Term SOFR or Adjusted Daily Simple SOFR available to the Administrative Agent. The Administrative Agent shall provide such quoted rate to the Borrower on the date of such request or as soon as possible thereafter.

(c) Funding of Revolving Loans. Promptly after receipt of a Notice of Borrowing under the immediately preceding subsection (b), the Administrative Agent shall notify each Revolving Lender of the proposed borrowing. Each Revolving Lender shall deposit an amount equal to the Revolving Loan to be made by such Lender to the Borrower with the Administrative Agent at the Principal Office, in immediately available funds not later than 11:00 a.m. Eastern Time, in the case of ~~LIBOR~~Term SOFR Loans, and 12:00 p.m. Eastern time, in the case of Daily Simple SOFR Loans and Base Rate Loans, on the date of such proposed Revolving Loans. Subject to fulfillment of all applicable conditions set forth herein, the Administrative Agent shall make available to the Borrower in the account specified in the Disbursement Instruction Agreement, not later than (i) 1:00 p.m. Eastern time, in the case of ~~LIBOR~~Term SOFR Loans, on the date of the requested borrowing of Revolving Loans and (ii) 2:00 p.m. Eastern time, in the case of Daily Simple SOFR Loans and Base Rate Loans, on the date of the requested borrowing of Revolving Loans, the proceeds of such amounts received by the Administrative Agent~~; provided, however, if at the time of the making of any Revolving Loans any Swingline Loans shall be outstanding, the proceeds of such Revolving Loans shall first be applied to repay the outstanding Swingline Loans pro rata among the Swingline Lenders and then shall be applied as otherwise requested by the Borrower.~~.

(d) Assumptions Regarding Funding by Revolving Lenders. With respect to Revolving Loans to be made after the Effective Date, unless the Administrative Agent shall have been notified by any Revolving Lender that such Lender will not make available to the Administrative Agent a Revolving Loan to be made by such Lender in connection with any borrowing, the Administrative Agent may assume that such Lender will make the proceeds of such Revolving Loan available to the Administrative Agent in accordance with this Section, and the Administrative Agent may (but shall not be obligated to), in reliance upon such assumption, make available to the Borrower the amount of such Revolving Loan to be provided by such Lender. In such event, if such Lender does not make available to the Administrative Agent the proceeds of such Revolving Loan, then such Lender and the Borrower severally agree to pay to

the Administrative Agent on demand the amount of such Revolving Loan with interest thereon, for each day from and including the date such Revolving Loan is made available to the Borrower but excluding the date of payment to the Administrative Agent, at (i) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation and (ii) in the case of a payment to be made by the Borrower, the interest rate applicable to Base Rate Loans that are Revolving Loans. If the Borrower and such Lender shall pay the amount of such interest to the Administrative Agent for the same or overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays to the Administrative Agent the amount of such Revolving Loan, the amount so paid shall constitute such Lender's Revolving Loan included in the borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Revolving Lender that shall have failed to make available the proceeds of a Revolving Loan to be made by such Lender.

Section 2.2. Bid Rate Loans.

(a) Bid Rate Loans. In addition to borrowings of Revolving Loans, at any time during the period from the Effective Date to but excluding the Revolving Termination Date, and so long as the Borrower continues to maintain an Investment Grade Rating from any two of S&P, Moody's and Fitch, the Borrower may, as set forth in this Section, request the Revolving Lenders to make offers to make Bid Rate Loans to the Borrower in Dollars. The Revolving Lenders may, but shall have no obligation to, make such offers and the Borrower may, but shall have no obligation to, accept any such offers in the manner set forth in this Section.

(b) Requests for Bid Rate Loans. When the Borrower wishes to request from the Revolving Lenders offers to make Bid Rate Loans, it shall give the Administrative Agent notice (a "Bid Rate Quote Request") so as to be received no later than 11:00 a.m. Eastern time on (x) the Business Day immediately preceding the date of borrowing proposed therein, in the case of an Absolute Rate Auction and (y) the date 4 U.S. Government Securities Business Days prior to the proposed date of borrowing, in the case of a ~~LIBOR~~SOFR Auction. The Administrative Agent shall deliver to each Revolving Lender a copy of each Bid Rate Quote Request promptly upon receipt thereof by the Administrative Agent. The Borrower may request offers to make Bid Rate Loans for up to 3 different Interest Periods in any one Bid Rate Quote Request; provided that if granted each separate Interest Period shall be deemed to be a separate borrowing (a "Bid Rate Borrowing"). Each Bid Rate Quote Request shall be substantially in the form of Exhibit L and shall specify as to each Bid Rate Borrowing all of the following:

(i) the proposed date of such Bid Rate Borrowing, which shall be a Business Day;

(ii) the aggregate amount of such Bid Rate Borrowing which shall be in a minimum amount of $5,000,000 and integral multiples of $1,000,000 in excess thereof which shall not cause any of the limits specified in Section 2.16. to be violated;

(iii) whether the Bid Rate Quote Request is for ~~LIBOR~~SOFR Margin Loans or Absolute Rate Loans; and

(iv) the duration of the Interest Period applicable thereto, which shall not extend beyond the Revolving Termination Date.

The Borrower shall not deliver any Bid Rate Quote Request within five Business Days of the giving of any other Bid Rate Quote Request and the Borrower shall not deliver more than 4 Bid Rate Quote Requests in any calendar month. The Borrower shall pay any fees due pursuant to Section 3.5.(d) at the time any Bid Rate Quote Request is delivered to the Administrative Agent. Such fees shall be due and payable whether or not any Bid Rate Quotes are submitted or any Bid Rate Quotes are accepted.

(c) Bid Rate Quotes.

(i) Each Revolving Lender may submit one or more Bid Rate Quotes, each containing an offer to make a Bid Rate Loan in response to any Bid Rate Quote Request;

provided that, if the Borrower's request under Section 2.2.(b) specified more than one Interest Period, such Revolving Lender may make a single submission containing only one Bid Rate Quote for each such Interest Period. Each Bid Rate Quote must be submitted to the Administrative Agent not later than 9:30 a.m. Eastern time (x) on the proposed date of borrowing, in the case of an Absolute Rate Auction and (y) on the date 3 U.S. Government Securities Business Days prior to the proposed date of borrowing, in the case of a ~~LIBOR~~SOFR Auction, and in either case the Administrative Agent shall disregard any Bid Rate Quote received after such time; provided that the Revolving Lender then acting as the Administrative Agent may submit a Bid Rate Quote only if it notifies the Borrower of the terms of the offer contained therein not later than 30 minutes prior to the latest time by which the Revolving Lenders must submit applicable Bid Rate Quotes. Any Bid Rate Quote so made shall be irrevocable except with the consent of the Administrative Agent given at the request of the Borrower. Such Bid Rate Loans may be funded by a Revolving Lender's Designated Lender (if any) as provided in Section 12.5.(g); however, such Revolving Lender shall not be required to specify in its Bid Rate Quote whether such Bid Rate Loan will be funded by such Designated Lender.

(ii) Each Bid Rate Quote shall be substantially in the form of Exhibit M and shall specify:

(A) the proposed date of borrowing and the Interest Period therefor;

(B) the principal amount of the Bid Rate Loan for which each such offer is being made; provided that the aggregate principal amount of all Bid Rate Loans for which a Revolving Lender submits Bid Rate Quotes (x) may be greater or less than the Revolving Commitment of such Revolving Lender but (y) shall not exceed the principal amount of the Bid Rate Borrowing for a particular Interest Period for which offers were requested; provided further that any Bid Rate Quote shall be in a minimum amount of $5,000,000 and integral multiples of $1,000,000 in excess thereof;

(C) in the case of an Absolute Rate Auction, the rate of interest per annum (rounded upwards, if necessary, to the nearest one-hundredth of one percent (0.01%)) offered for each such Absolute Rate Loan (the "Absolute Rate");

(D) in the case of a ~~LIBOR~~SOFR Auction, the margin above or below applicable ~~LIBOR~~Adjusted Term SOFR (the "~~LIBOR~~SOFR Margin") offered for each such ~~LIBOR~~SOFR Margin Loan, expressed as a percentage (rounded upwards, if necessary, to the nearest one-hundredth of one percent (0.01%)) to be added to (or subtracted from) the applicable ~~LIBOR~~Adjusted Term SOFR; and

(E) the identity of the quoting Revolving Lender.

Unless otherwise agreed by the Administrative Agent and the Borrower, no Bid Rate Quote shall contain qualifying, conditional or similar language or propose terms other than or in addition to those set forth in the applicable Bid Rate Quote Request and, in particular, no Bid Rate Quote may be conditioned upon acceptance by the Borrower of all (or some specified minimum) of the principal amount of the Bid Rate Loan for which such Bid Rate Quote is being made.

(d) Notification by Administrative Agent. The Administrative Agent shall, as promptly as practicable after the Bid Rate Quotes are submitted (but in any event not later than 10:30 a.m. Eastern time (x) on the proposed date of borrowing, in the case of an Absolute Rate Auction or (y) on the date 3 U.S. Government Securities Business Days prior to the proposed date of borrowing, in the case of a ~~LIBOR~~SOFR Auction), notify the Borrower of the terms (i) of any Bid Rate Quote submitted by a Revolving Lender that is in accordance with Section 2.2.(c) and (ii) of any Bid Rate Quote that amends, modifies or is otherwise inconsistent with a previous Bid Rate Quote submitted by such Revolving Lender with respect to the same Bid Rate Quote Request. Any such subsequent Bid Rate Quote shall be disregarded by the Administrative Agent unless such subsequent Bid Rate Quote is submitted solely to correct a manifest error in such former Bid Rate Quote. The Administrative Agent's notice to the Borrower shall specify (A) the aggregate principal amount of the Bid Rate Borrowing for which offers have been received and (B) the principal amounts and Absolute Rates or ~~LIBOR~~SOFR Margins, as

applicable, so offered by each Revolving Lender (identifying the Revolving Lender that made such Bid Rate Quote).

(e) Acceptance by Borrower.

(i) Not later than 11:30 a.m. Eastern time (x) on the proposed date of borrowing, in the case of an Absolute Rate Auction and (y) on the date 3 U.S. Government Securities Business Days prior to the proposed date of borrowing, in the case of a ~~LIBOR~~SOFR Auction, the Borrower shall notify the Administrative Agent of its acceptance or nonacceptance of the Bid Rate Quotes so notified to it pursuant to Section 2.2.(d). which notice shall be in the form of Exhibit N. In the case of acceptance, such notice shall specify the aggregate principal amount of Bid Rate Quotes for each Interest Period that are accepted. The failure of the Borrower to give such notice by such time shall constitute nonacceptance. The Borrower may accept any Bid Rate Quote in whole or in part; provided that:

(A) the aggregate principal amount of each Bid Rate Borrowing may not exceed the applicable amount set forth in the related Bid Rate Quote Request;

(B) the aggregate principal amount of each Bid Rate Borrowing shall comply with the provisions of Section 2.2.(b)(ii) and together with all other Bid Rate Loans then outstanding shall not cause the limits specified in Section 2.16. to be violated;

(C) acceptance of Bid Rate Quotes may be made only in ascending order of Absolute Rates or ~~LIBOR~~SOFR Margins, as applicable, in each case beginning with the lowest rate so offered;

(D) any acceptance in part by the Borrower shall be in a minimum amount of $5,000,000 and integral multiples of $1,000,000 in excess thereof; and

(E) the Borrower may not accept any Bid Rate Quote that fails to comply with Section 2.2.(c) or otherwise fails to comply with the requirements of this Agreement.

(ii) If Bid Rate Quotes are made by two or more Revolving Lenders with the same Absolute Rates or ~~LIBOR~~SOFR Margins, as applicable, for a greater aggregate principal amount than the amount in respect of which Bid Rate Quotes are permitted to be accepted for the related Interest Period, the principal amount of Bid Rate Loans in respect of which such Bid Rate Quotes are accepted shall be allocated by the Administrative Agent among such Revolving Lenders in proportion to the aggregate principal amount of such Bid Rate Quotes. Determinations by the Administrative Agent of the amounts of Bid Rate Loans shall be conclusive in the absence of manifest error.

(f) Obligation to Make Bid Rate Loans. The Administrative Agent shall promptly (and in any event not later than (x) 12:00 noon Eastern time on the proposed date of borrowing of Absolute Rate Loans and (y) on the date 3 U.S. Government Securities Business Days prior to the proposed date of borrowing of ~~LIBOR~~SOFR Margin Loans) notify each Revolving Lender that submitted a Bid Rate Quote as to whose Bid Rate Quote has been accepted and the amount and rate thereof. A Revolving Lender who is notified that it has been selected to make a Bid Rate Loan may designate its Designated Lender (if any) to fund such Bid Rate Loan on its behalf, as described in Section 12.5.(g). Any Designated Lender which funds a Bid Rate Loan shall on and after the time of such funding become the obligee in respect of such Bid Rate Loan and be entitled to receive payment thereof when due. No Revolving Lender shall be relieved of its obligation to fund a Bid Rate Loan, and no Designated Lender shall assume such obligation, prior to the time the applicable Bid Rate Loan is funded. Any Revolving Lender whose offer to make any Bid Rate Loan has been accepted shall, not later than 11:00 a.m. Eastern time on the date specified for the making of such Loan, make the amount of such Loan available to the Administrative Agent at its Principal Office in immediately available funds, for the account of the Borrower. The amount so received by the Administrative Agent shall, subject to the terms and conditions of this Agreement, be made available to the Borrower not later than 12:00 noon Eastern time on such date by

depositing the same, in immediately available funds, in an account of the Borrower designated by the Borrower.

(g) No Effect on Revolving Commitment. Except for the purpose and to the extent expressly stated in Section 2.13. and 2.16., the amount of any Bid Rate Loan made by any Revolving Lender shall not constitute a utilization of such Lender's Revolving Commitment.

Section 2.3. Letters of Credit.

(a) Letters of Credit. Subject to the terms and conditions of this Agreement, including without limitation, Section 2.16., the Issuing Banks, on behalf of the Revolving Lenders, agree to issue for the account of the Borrower during the period from and including the Effective Date to, but excluding, the date 30 days prior to the Revolving Termination Date, one or more standby letters of credit in Dollars (each a "Letter of Credit") up to a maximum aggregate Stated Amount at any one time outstanding not to exceed $60,000,000 as such amount may be reduced from time to time in accordance with the terms hereof (the "L/C Commitment Amount"); provided, however, that an Issuing Bank shall not be obligated to issue any Letter of Credit if after giving effect to such issuance, the aggregate Stated Amounts of Letters of Credit issued by such Issuing Bank and then outstanding would exceed one-third of the L/C Commitment Amount.

(b) Terms of Letters of Credit. At the time of issuance, the amount, form, terms and conditions of each Letter of Credit, and of any drafts or acceptances thereunder, shall be subject to the reasonable approval of the applicable Issuing Bank and the Borrower. Notwithstanding the foregoing, in no event may (i) the expiration date of any Letter of Credit extend beyond the Revolving Termination Date, or (ii) any Letter of Credit have a duration in excess of one year; provided, however, a Letter of Credit may contain a provision providing for the automatic extension of the expiration date in the absence of a notice of non-renewal from the applicable Issuing Bank but in no event shall any such provision permit the extension of the current expiration date of such Letter of Credit beyond the earlier of (x) the Revolving Termination Date and (y) the date one year after the then current expiration date. Notwithstanding the foregoing, a Letter of Credit may, as a result of its express terms or as the result of the effect of an automatic extension provision, have an expiration date of not more than one year beyond the Revolving Termination Date (any such Letter of Credit being referred to as an "Extended Letter of Credit"), so long as the Borrower delivers to the Administrative Agent for its benefit and the benefit of the applicable Issuing Bank and the Revolving Lenders no later than 30 days prior to the Revolving Termination Date, Cash Collateral for such Letter of Credit for deposit into the Letter of Credit Collateral Account in an amount equal to the Stated Amount of such Letter of Credit; provided, that the obligations of the Borrower under this Section in respect of such Extended Letters of Credit shall survive the termination of this Agreement and shall remain in effect until no such Extended Letters of Credit remain outstanding. If the Borrower fails to provide Cash Collateral with respect to any Extended Letter of Credit by the date 30 days prior to the Revolving Termination Date, such failure shall be treated as a drawing under such Extended Letter of Credit (in an amount equal to the maximum Stated Amount of such Letter of Credit), which shall be reimbursed (or participations therein funded) by the Revolving Lenders in accordance with the immediately following subsections (i) and (j), with the proceeds being utilized to provide Cash Collateral for such Letter of Credit. The initial Stated Amount of each Letter of Credit shall be at least $25,000 (or such lesser amount as may be acceptable to the applicable Issuing Bank, the Administrative Agent and the Borrower).

(c) Requests for Issuance of Letters of Credit. The Borrower shall give the Issuing Bank it desires to issue a Letter of Credit and the Administrative Agent written notice at least 5 Business Days prior to the requested date of issuance of such Letter of Credit, such notice to describe in reasonable detail the proposed terms of such Letter of Credit and the nature of the transactions or obligations proposed to be supported by such Letter of Credit, and in any event shall set forth with respect to such Letter of Credit the proposed (i) initial Stated Amount, (ii) beneficiary, and (iii) expiration date. The Borrower shall also execute and deliver such customary applications and agreements for standby letters of credit, and other forms as requested from time to time by the applicable Issuing Bank. Provided the Borrower has given the notice prescribed by the first sentence of this subsection and delivered such applications and agreements referred to in the preceding sentence, subject to the other terms and conditions of this Agreement, including the satisfaction of any applicable conditions precedent set forth in Section 5.2., the

applicable Issuing Bank shall issue the requested Letter of Credit on the requested date of issuance for the benefit of the stipulated beneficiary but in no event prior to the date 5 Business Days following the date after which such Issuing Bank has received all of the items required to be delivered to it under this subsection. An Issuing Bank shall not at any time be obligated to issue any Letter of Credit if such issuance would conflict with, or cause such Issuing Bank or any Revolving Lender to exceed any limits imposed by, any Applicable Law. References herein to "issue" and derivations thereof with respect to Letters of Credit shall also include extensions or modifications of any outstanding Letters of Credit, unless the context otherwise requires and except for reductions of the Stated Amount of any outstanding Letters of Credit. Upon the written request of the Borrower, an Issuing Bank shall deliver to the Borrower a copy of (i) any Letter of Credit proposed to be issued hereunder prior to the issuance thereof and (ii) each issued Letter of Credit issued by such Issuing Bank within a reasonable time after the date of issuance thereof. To the extent any term of a Letter of Credit Document (excluding any certificate or other document presented by a beneficiary in connection with a drawing under such Letter of Credit) is inconsistent with a term of any Loan Document, the term of such Loan Document shall control. The Borrower shall examine the copy of any Letter of Credit or any amendment to a Letter of Credit that is delivered to it by the applicable Issuing Bank and, in the event of any claim of noncompliance with the Borrower's instructions or other irregularity, the Borrower will promptly (but in any event, within 5 Business Days after the later of (x) receipt by the beneficiary of such Letter of Credit of the original of, or amendment to, such Letter of Credit, as applicable and (y) receipt by the Borrower of a copy of such Letter of Credit or amendment, as applicable) notify such Issuing Bank. The Borrower shall be conclusively deemed to have waived any such claim against the Issuing Bank and its correspondents unless such notice is given as aforesaid.

(d) Reimbursement Obligations. Upon receipt by an Issuing Bank from the beneficiary of a Letter of Credit issued by such Issuing Bank of any demand for payment under such Letter of Credit and such Issuing Bank's determination that such demand for payment complies with the requirements of such Letter of Credit, such Issuing Bank shall promptly notify the Borrower and the Administrative Agent of the amount to be paid by such Issuing Bank as a result of such demand and the date on which payment is to be made by such Issuing Bank to such beneficiary in respect of such demand; provided, however, that an Issuing Bank's failure to give, or delay in giving, such notice shall not discharge the Borrower in any respect from the applicable Reimbursement Obligation. The Borrower hereby absolutely, unconditionally and irrevocably agrees to pay and reimburse each Issuing Bank for the amount of each demand for payment under each Letter of Credit issued by such Issuing Bank at or prior to the date on which payment is to be made by such Issuing Bank to the beneficiary thereunder, without presentment, demand, protest or other formalities of any kind. Upon receipt by an Issuing Bank of any payment in respect of any Reimbursement Obligation owing with respect to a Letter of Credit issued by such Issuing Bank, such Issuing Bank shall promptly pay to the Administrative Agent for the account of each Revolving Lender that has acquired a participation therein under the second sentence of subsection (i) of this Section such Lender's Commitment Percentage of such payment.

(e) Manner of Reimbursement. Upon its receipt of a notice referred to in the immediately preceding subsection (d), the Borrower shall advise the Administrative Agent and the applicable Issuing Bank whether or not the Borrower intends to borrow hereunder to finance its obligation to reimburse such Issuing Bank for the amount of the related demand for payment and, if it does, the Borrower shall submit a timely request for such borrowing as provided in the applicable provisions of this Agreement. If the Borrower fails to so advise the Administrative Agent and the applicable Issuing Bank, or if the Borrower fails to reimburse the applicable Issuing Bank for a demand for payment under a Letter of Credit by the date of such payment, the failure of which the applicable Issuing Bank shall promptly notify the Administrative Agent, then (i) if the applicable conditions contained in Article V. would permit the making of Revolving Loans, the Borrower shall be deemed to have requested a borrowing of Revolving Loans (which shall be Base Rate Loans) in an amount equal to the unpaid Reimbursement Obligation and the Administrative Agent shall give each Revolving Lender prompt notice of the amount of the Revolving Loan to be made available to the Administrative Agent not later than 1:00 p.m. Eastern time and (ii) if such conditions would not permit the making of Revolving Loans, the provisions of subsection (j) of this Section shall apply. The limitations set forth in the second sentence of Section 2.1.(a) shall not apply to any borrowing of Base Rate Loans under this subsection.

(f) Effect of Letters of Credit on Revolving Commitments. Upon the issuance by an Issuing Bank of a Letter of Credit and until such Letter of Credit shall have expired or been terminated or

cancelled, the Revolving Commitment of each Revolving Lender shall be deemed to be utilized for all purposes of this Agreement in an amount equal to the product of (i) such Lender's Commitment Percentage and (ii) (A) the Stated Amount of such Letter of Credit plus, without duplication, (B) any related Reimbursement Obligations then outstanding.

(g) Issuing Banks' Duties Regarding Letters of Credit; Unconditional Nature of Reimbursement Obligations. In examining documents presented in connection with drawings under Letters of Credit and making payments under Letters of Credit issued by an Issuing Bank against such documents, such Issuing Bank shall only be required to use the same standard of care as it uses in connection with examining documents presented in connection with drawings under letters of credit in which it has not sold participations and making payments under such letters of credit. The Borrower assumes all risks of the acts and omissions of, or misuse of the Letters of Credit by, the respective beneficiaries of such Letters of Credit. In furtherance and not in limitation of the foregoing, none of the Administrative Agent, the Issuing Banks or any of the Lenders shall be responsible (unless resulting from bad faith, gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final, non-appealable judgment) for, and the Borrower's obligations in respect of Letters of Credit shall not be affected in any manner by, (i) the form, validity, sufficiency, accuracy, genuineness or legal effects of any document submitted by any party in connection with the application for and issuance of or any drawing honored under any Letter of Credit even if such document should in fact prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent or forged; (ii) the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign any Letter of Credit, or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason; (iii) failure of the beneficiary of any Letter of Credit to comply fully with conditions required in order to draw upon such Letter of Credit; (iv) errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, telex, telecopy, electronic mail or otherwise, whether or not they be in cipher; (v) errors in interpretation of technical terms; (vi) any loss or delay in the transmission or otherwise of any document required in order to make a drawing under any Letter of Credit, or of the proceeds thereof; (vii) the misapplication by the beneficiary of any Letter of Credit or of the proceeds of any drawing under any Letter of Credit; or (viii) any consequences arising from causes beyond the control of the Issuing Banks, the Administrative Agent or the Lenders. None of the above shall affect, impair or prevent the vesting of any of the Issuing Bank's, the Administrative Agent's or any Lender's rights or powers hereunder. Any action taken or omitted to be taken by an Issuing Bank under or in connection with any Letter of Credit issued by such Issuing Bank, if taken or omitted in the absence of bad faith, gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final, non-appealable judgment), shall not create against such Issuing Bank any liability to the Borrower, the Administrative Agent or any Lender. In this connection, the obligation of the Borrower to reimburse an Issuing Bank for any drawing made under any Letter of Credit issued by such Issuing Bank, and to repay any Revolving Loan made pursuant to the second sentence of subsection (e), of this Section, shall be absolute, unconditional and irrevocable and shall be paid strictly in accordance with the terms of this Agreement and any other applicable Letter of Credit Document under all circumstances whatsoever, including without limitation, the following circumstances: (A) any lack of validity or enforceability of any Letter of Credit Document or any term or provisions therein; (B) any amendment or waiver of or any consent to departure from all or any of the Letter of Credit Documents; (C) the existence of any claim, setoff, defense or other right which the Borrower may have at any time against such Issuing Bank, any other Issuing Bank, the Administrative Agent, any Lender, any beneficiary of a Letter of Credit or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or in the Letter of Credit Documents or any unrelated transaction; (D) any breach of contract or dispute between the Borrower, the Issuing Bank, the Administrative Agent, any Lender or any other Person; (E) any demand, statement or any other document presented under a Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein or made in connection therewith being untrue or inaccurate in any respect whatsoever; (F) any non-application or misapplication by the beneficiary of a Letter of Credit or of the proceeds of any drawing under such Letter of Credit; (G) payment by such Issuing Bank under any Letter of Credit against presentation of a draft or certificate which does not strictly comply with the terms of such Letter of Credit; and (H) any other act, omission to act, delay or circumstance whatsoever that might, but for the provisions of this Section, constitute a legal or equitable defense to or discharge of the Borrower's Reimbursement Obligations. Notwithstanding anything to the contrary contained in this Section or Section 12.9., but not in limitation of the Borrower's unconditional obligation to reimburse an Issuing Bank for any drawing made under a Letter of Credit as provided in this Section and to repay any Revolving Loan made pursuant

to the second sentence of subsection (e), of this Section, the Borrower shall have no obligation to indemnify the Administrative Agent, any Issuing Bank or any Lender in respect of any liability incurred by the Administrative Agent, such Issuing Bank or such Lender arising solely out of the bad faith, gross negligence or willful misconduct of the Administrative Agent, such Issuing Bank or such Lender in respect of a Letter of Credit as determined by a court of competent jurisdiction in a final, non-appealable judgment. Except as otherwise provided in this Section, nothing in this Section shall affect any rights the Borrower may have with respect to the bad faith, gross negligence or willful misconduct of the Administrative Agent, any Issuing Bank or any Lender with respect to any Letter of Credit.

(h) Amendments, Etc. The issuance by an Issuing Bank of any amendment, supplement or other modification to any Letter of Credit issued by such Issuing Bank shall be subject to the same conditions applicable under this Agreement to the issuance of new Letters of Credit (including, without limitation, that the request therefor be made through the applicable Issuing Bank and the Administrative Agent), and no such amendment, supplement or other modification shall be issued unless either (i) the respective Letter of Credit affected thereby would have complied with such conditions had it originally been issued hereunder in such amended, supplemented or modified form or (ii) the Administrative Agent and the Revolving Lenders, if any, required by Section 12.6. shall have consented thereto. In connection with any such amendment, supplement or other modification, the Borrower shall pay the fees, if any, payable under the last sentence of Section 3.5.(c).

(i) Revolving Lenders' Participation in Letters of Credit. Immediately upon (i) the Effective Date with respect to all Existing Letters of Credit and (ii) the issuance by an Issuing Bank of any Letter of Credit, each Revolving Lender shall be deemed to have absolutely, irrevocably and unconditionally purchased and received from such Issuing Bank, without recourse or warranty, an undivided interest and participation to the extent of such Lender's Commitment Percentage of the liability of such Issuing Bank with respect to such Letter of Credit and each Revolving Lender thereby shall absolutely, unconditionally and irrevocably assume, as primary obligor and not as surety, and shall be unconditionally obligated to such Issuing Bank to pay and discharge when due, such Lender's Commitment Percentage of such Issuing Bank's liability under such Letter of Credit. In addition, upon the making of each payment by a Revolving Lender to the Administrative Agent for the account of an Issuing Bank in respect of any Letter of Credit issued by it pursuant to the immediately following subsection (j), such Lender shall, automatically and without any further action on the part of such Issuing Bank, the Administrative Agent or such Lender, acquire (i) a participation in an amount equal to such payment in the Reimbursement Obligation owing to such Issuing Bank by the Borrower in respect of such Letter of Credit and (ii) a participation in a percentage equal to such Lender's Commitment Percentage in any interest or other amounts payable by the Borrower in respect of such Reimbursement Obligation (other than the Fees payable to such Issuing Bank pursuant to the second and the last sentences of Section 3.5.(c)).

(j) Payment Obligation of Revolving Lenders. Each Revolving Lender severally agrees to pay to the Administrative Agent, for the account of an Issuing Bank, on demand in immediately available funds in Dollars the amount of such Lender's Commitment Percentage of each drawing paid by such Issuing Bank under each Letter of Credit issued by it to the extent such amount is not reimbursed by the Borrower pursuant to subsection (d) of this Section; provided, however, that in respect of any drawing under any Letter of Credit, the maximum amount that any Revolving Lender shall be required to fund, whether as a Revolving Loan or as a participation, shall not exceed such Lender's Commitment Percentage of such drawing except as otherwise provided in Section 3.9.(d). If the notice referenced in the second sentence of Section 2.3.(e) is received by a Revolving Lender not later than 12:00 noon Eastern time, then such Lender shall make such payment available to the Administrative Agent not later than 3:00 p.m. Eastern time on the date of demand therefor; otherwise, such payment shall be made available to the Administrative Agent not later than 2:00 p.m. Eastern time on the next succeeding Business Day. Each Revolving Lender's obligation to make such payments to the Administrative Agent under this subsection, and the Administrative Agent's right to receive the same for the account of the applicable Issuing Bank, shall be absolute, irrevocable and unconditional and shall not be affected in any way by any circumstance whatsoever, including without limitation, (i) the failure of any other Revolving Lender to make its payment under this subsection, (ii) the financial condition of the Borrower or any other Loan Party, (iii) the existence of any Default or Event of Default, including any Event of Default described in Section 10.1.(e) or (f), (iv) the termination of the Revolving Commitments or (v) the delivery of Cash Collateral in respect of any Extended Letter of Credit. Each such payment to the Administrative

Agent for the account of the applicable Issuing Bank shall be made without any offset, abatement, withholding or deduction whatsoever.

(k) Information to Lenders. Promptly following any change in Letters of Credit outstanding issued by an Issuing Bank, such Issuing Bank shall deliver to the Administrative Agent, which shall promptly provide the same to each Revolving Lender and the Borrower, a notice describing the aggregate amount of all Letters of Credit issued by such Issuing Bank outstanding at such time. Upon the request of the Administrative Agent from time to time, an Issuing Bank shall deliver any other information reasonably requested by the Administrative Agent (or a Revolving Lender through the Administrative Agent) with respect to such Letter of Credit that is the subject of the request. Other than as set forth in this subsection, the Issuing Banks and the Administrative Agent shall have no duty to notify the Lenders regarding the issuance or other matters regarding Letters of Credit issued hereunder. The failure of any Issuing Bank or the Administrative Agent to perform its requirements under this subsection shall not relieve any Lender from its obligations under the immediately preceding subsection (j).

(l) Existing Letters of Credit. The parties agree that each Existing Letter of Credit shall, from and after the Effective Date, be deemed to be a Letter of Credit issued under this Agreement and shall be subject to and governed by the terms and conditions of this Agreement and the other Loan Documents.

(m) Extended Letters of Credit. Each Revolving Lender confirms that its obligations under the immediately preceding subsections (i) and (j) shall be reinstated in full and apply if the delivery of any Cash Collateral in respect of an Extended Letter of Credit is subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise.

Section 2.4. Swingline Loans[Reserved].

(a) Swingline Loans. Subject to the terms and conditions hereof, including without limitation Section 2.16., the Swingline Lenders may, each in its sole discretion, make Swingline Loans to the Borrower in Dollars, during the period from the Effective Date to but excluding the Swingline Termination Date, in an aggregate principal amount at any one time outstanding up to, but not exceeding, $75,000,000 (the "Swingline Availability"), as such amount may be reduced from time to time in accordance with the terms hereof; provided, however, that in no event shall the aggregate amount of Swingline Loans owing to a Swingline Lender exceed the commitment of such Swingline Lender in its capacity as a Revolving Lender minus the aggregate outstanding principal amount of Revolving Loans made by such Swingline Lender. If at any time the aggregate principal amount of the Swingline Loans outstanding at such time exceeds the Swingline Availability of such Swingline Lender in effect at such time, the Borrower shall immediately pay the Administrative Agent for the account of such Swingline Lender the amount of such excess. Subject to the terms and conditions of this Agreement, the Borrower may borrow, repay and reborrow Swingline Loans hereunder. For the avoidance of doubt, without limiting Section 2.04.(c), more than one Swingline Loan may be requested or be outstanding at any one time.

(b) Procedure for Borrowing Swingline Loans. The Borrower shall give the Administrative Agent and the Swingline Lender selected by the Borrower to make a Swingline Loan notice pursuant to a Notice of Swingline Borrowing or telephonic notice of each borrowing of a Swingline Loan. Each Notice of Swingline Borrowing shall be delivered to the applicable Swingline Lender no later than 11:00 a.m. Eastern time on the proposed date of such borrowing. Any telephonic notice shall include all information to be specified in a written Notice of Swingline Borrowing and shall be promptly confirmed in writing by the Borrower pursuant to a Notice of Swingline Borrowing sent to the applicable Swingline Lender and the Administrative Agent on the same day of the giving of such telephonic notice. Not later than 1:00 p.m. Eastern time on the date of the requested Swingline Loan and subject to satisfaction of the applicable conditions set forth in Section 5.2. for such borrowing and the Swingline Lender's determination in its sole discretion to make such Swingline Loan, the applicable Swingline Lender will make the proceeds of such Swingline Loan available to the Borrower in Dollars, in immediately available funds, at the account specified by the Borrower in the Disbursement Instruction Agreement.

(c) Interest. Swingline Loans shall bear interest at a per annum rate equal to the LIBOR Market Index Rate as in effect from time to time plus the Applicable Margin for Revolving Loans that are

LIBOR Loans or at such other rate or rates as the Borrower and the applicable Swingline Lender may agree from time to time in writing. Interest on a Swingline Loan is solely for the account of the Swingline Lender that made such Swingline Loan (except to the extent a Revolving Lender acquires a participating interest in such Swingline Loan pursuant to subsection (e) of this Section). All accrued and unpaid interest on Swingline Loans shall be payable on the dates and in the manner provided in Section 2.5. with respect to interest on Revolving Loans that are Base Rate Loans (except as the applicable Swingline Lender and the Borrower may otherwise agree in writing in connection with any particular Swingline Loan made by such Swingline Lender).

(d) Swingline Loan Amounts, Etc. Each Swingline Loan shall be in the minimum amount of $1,000,000 and integral multiples of $500,000 in excess thereof, or such other minimum amounts agreed to by a Swingline Lender and the Borrower. Any voluntary prepayment of a Swingline Loan must be in integral multiples of $500,000 or the aggregate principal amount of all outstanding Swingline Loans (or such other minimum amounts upon which the Swingline Lender that made such Swingline Loan and the Borrower may agree) and in connection with any such prepayment, the Borrower must give such Swingline Lender and the Administrative Agent prior written notice thereof no later than 12:00 noon Eastern time on the date of such prepayment. The Swingline Loans owing to a Swingline Lender shall, in addition to this Agreement, be evidenced by a Swingline Note in favor of such Swingline Lender.

(e) Repayment and Participations of Swingline Loans. The Borrower agrees to repay each Swingline Loan within one Business Day of demand therefor by the Swingline Lender that made such Swingline Loan and, in any event, within six (6) Business Days after the date such Swingline Loan was made; provided, that the proceeds of a Swingline Loan may not be used to pay a Swingline Loan. Notwithstanding the foregoing, the Borrower shall repay the entire outstanding principal amount of, and all accrued but unpaid interest on, the Swingline Loans on the Swingline Termination Date (or such earlier date as a Swingline Lender and the Borrower may agree in writing with respect to Swingline Loans made by such Swingline Lender). In lieu of demanding repayment of any outstanding Swingline Loan from the Borrower, the Swingline Lender that made such Swingline Loan may, on behalf of the Borrower (which hereby irrevocably directs each applicable Swingline Lender to act on its behalf), request a borrowing of Revolving Loans that are Base Rate Loans from the Revolving Lenders in an amount equal to the principal balance of such Swingline Loan. The amount limitations contained in the second sentence of Section 2.1.(a) shall not apply to any borrowing of such Revolving Loans made pursuant to this subsection. Such Swingline Lender shall give notice to the Administrative Agent of any such borrowing of Revolving Loans not later than 11:00 a.m. Eastern time on the proposed date of such borrowing. Promptly after receipt of such notice of borrowing of Revolving Loans from a Swingline Lender under the immediately preceding sentence, the Administrative Agent shall notify each Revolving Lender of the proposed borrowing. Not later than 11:00 a.m. Eastern time on the proposed date of such borrowing, each Revolving Lender will make available to the Administrative Agent at the Principal Office for the account of the applicable Swingline Lender, in immediately available funds, the proceeds of the Revolving Loan to be made by such Lender. The Administrative Agent shall pay the proceeds of such Revolving Loans to the applicable Swingline Lender, which shall apply such proceeds to repay such Swingline Loan. If the Revolving Lenders are prohibited from making Revolving Loans required to be made under this subsection for any reason whatsoever, including without limitation, the existence of any of the Defaults or Events of Default described in Sections 10.1.(e) or (f), each Revolving Lender shall purchase from the applicable Swingline Lender, without recourse or warranty, an undivided interest and participation to the extent of such Lender's Commitment Percentage of such Swingline Loan, by directly purchasing a participation in such Swingline Loan in such amount and paying the proceeds thereof to the Administrative Agent for the account of the applicable Swingline Lender in Dollars and in immediately available funds. A Revolving Lender's obligation to purchase such a participation in a Swingline Loan shall be absolute and unconditional and shall not be affected by any circumstance whatsoever, including without limitation, (i) any claim of setoff, counterclaim, recoupment, defense or other right which such Lender or any other Person may have or claim against the Administrative Agent, any Swingline Lender or any other Person whatsoever, (ii) the existence of a Default or Event of Default (including without limitation, any of the Defaults or Events of Default described in Sections 10.1. (e) or (f)), or the termination of any Lender's Revolving Commitment, (iii) the existence (or alleged existence) of an event or condition which has had or could have a Material Adverse Effect, (iv) any breach of any Loan Document by the Administrative Agent, any Lender, the Borrower or any other Loan Party, or (v) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing; provided, however, that in respect of any Swingline Loan, the maximum amount that any Revolving Lender shall be required to fund, whether as a Revolving Loan or as a participation, shall not exceed such Lender's Commitment Percentage of such Swingline Loan except as otherwise provided in Section 3.9.

~~(d). If such amount is not in fact made available to the applicable Swingline Lender by any Revolving Lender, such Swingline Lender shall be entitled to recover such amount on demand from such Lender, together with accrued interest thereon for each day from the date of demand thereof, at the Federal Funds Rate. If such Lender does not pay such amount forthwith upon the applicable Swingline Lender's demand therefor, and until such time as such Lender makes the required payment, the applicable Swingline Lender shall be deemed to continue to have outstanding Swingline Loans in the amount of such unpaid participation obligation for all purposes of the Loan Documents (other than those provisions requiring the other Lenders to purchase a participation therein). Further, such Lender shall be deemed to have assigned any and all payments made of principal and interest on its Revolving Loans, and any other amounts due it hereunder, to the applicable Swingline Lender to fund Swingline Loans in the amount of the participation in Swingline Loans that such Lender failed to purchase pursuant to this Section until such amount has been purchased (as a result of such assignment or otherwise).~~

Section 2.5. Rates and Payment of Interest on Loans.

(a) Rates. The Borrower promises to pay to the Administrative Agent for the account of each Lender interest on the unpaid principal amount of each Loan made by such Lender for the period from and including the date of the making of such Loan to but excluding the date such Loan shall be paid in full, at the following per annum rates:

(i) during such periods as such Loan is a Base Rate Loan, at the Base Rate (as in effect from time to time), plus the Applicable Margin for Base Rate Loans of the applicable Class of such Loan;

(ii) during such periods as such Loan is a Daily Simple SOFR Loan, at Adjusted Daily Simple SOFR (as in effect form time to time), plus the Applicable Margin for SOFR Loans of the applicable Class of such Loan;

(~~ii~~iii) during such periods as such Loan is a ~~LIBOR~~Term SOFR Loan, at ~~LIBOR~~Adjusted Term SOFR for such Loan for the Interest Period therefor, plus the Applicable Margin for ~~LIBOR~~SOFR Loans of the applicable Class of such Loan;

(iii) if such Loan is an Absolute Rate Loan, at the Absolute Rate for such Loan, as applicable, for the Interest Period therefor quoted by the Lender making such Loan in accordance with Section 2.2.; and

(iv) if such Loan is a ~~LIBOR~~SOFR Margin Loan, at ~~LIBOR~~Adjusted Term SOFR for such Loan for the Interest Period therefor plus (or minus) the ~~LIBOR~~SOFR Margin quoted by the Lender making such Loan in accordance with Section 2.2.

Notwithstanding the foregoing, all Obligations which are not paid when due shall bear interest at the Post-Default Rate (including, without limitation, accrued but unpaid interest to the extent permitted under Applicable Law).

(b) Payment of Interest. All accrued and unpaid interest on the outstanding principal amount of each Loan shall be payable (i) for Loans that are not ~~LIBOR~~Term SOFR Loans, monthly in arrears on the first Business Day of each month, commencing with the first full calendar month occurring after the Effective Date, (ii) for ~~LIBOR~~Term SOFR Loans, on the last day of each Interest Period therefor and, if such Interest Period is longer than three months, at three-month intervals following the first day of such Interest Period and (iii) on any date on which the principal balance of such Loan is due and payable in full (whether at maturity, due to acceleration or otherwise). Interest payable at the Post-Default Rate shall be payable from time to time on demand. All determinations by the Administrative Agent of an interest rate hereunder shall be conclusive and binding on the Lenders and the Borrower for all purposes, absent manifest error.

Section 2.6. Number of Interest Periods.

There may be no more than (a) 10 different Interest Periods for Revolving Loans and Bid Rate Loans, collectively outstanding at the same time and (b) 5 different Interest Periods for each Class of Term Loans.

Section 2.7. Repayment of Loans.

(a) Revolving Loans and Term Loans. The Borrower shall repay the entire outstanding principal amount of, and all accrued but unpaid interest on, a Class of Loans on the Termination Date for such Class of Loans.

(b) Bid Rate Loans. The Borrower shall repay the entire outstanding principal amount of, and all accrued interest on, each Bid Rate Loan on the last day of the Interest Period of such Bid Rate Loan.

Section 2.8. Prepayments.

(a) Optional. Subject to Section 4.4., the Borrower may prepay any Class of Loans (other than a Bid Rate Loan) at any time without premium or penalty. A Bid Rate Loan may only be prepaid with the prior written consent of the Lender holding such Bid Rate Loan. The Borrower shall give the Administrative Agent (i) with respect to the prepayment of any ~~LIBOR~~SOFR Loan, at least 3 U.S. Government Securities Business Days prior written notice of such prepayment and (ii) with respect to the prepayment of any Base Rate Loan, written notice not later than 12:00 pm noon Eastern time on the date of such prepayment. Each voluntary prepayment of a Class of Loans shall be in an aggregate minimum amount of $1,000,000 and integral multiples of $500,000 in excess thereof.

(b) Mandatory.

(i) Revolving Commitment Overadvance. If at any time the aggregate principal amount of all outstanding Revolving Loans~~, Swingline Loans~~ and Bid Rate Loans, together with the aggregate amount of all Letter of Credit Liabilities, exceeds the aggregate amount of the Revolving Commitments, the Borrower shall immediately upon demand pay to the Administrative Agent for the account of the Revolving Lenders, the amount of such excess.

(ii) Bid Rate Facility Overadvance. If at any time the aggregate principal amount of all outstanding Bid Rate Loans exceeds one-half of the aggregate amount of all Revolving Commitments at such time, then the Borrower shall immediately pay to the Administrative Agent for the accounts of the applicable Lenders the amount of such excess.

(iii) Application of Mandatory Prepayments. Amounts paid under the preceding subsection (b)(i) shall be applied to pay all amounts of principal outstanding on the Revolving Loans and any Reimbursement Obligations pro rata in accordance with Section 3.2.; provided, however that if no Default or Event of Default exists at the time such prepayment is made, and such prepayment would result in the Borrower being required to compensate the Lenders pursuant to Section 4.4., then such prepayment shall be applied first to Base Rate Loans, then to Daily Simple SOFR Loans and then to ~~LIBOR~~Term SOFR Loans, and if any Letters of Credit are outstanding at such time, the remainder, if any, shall be deposited into the Letter of Credit Collateral Account for application to any Reimbursement Obligations. Amounts paid under the preceding subsection (b)(ii) shall be applied in accordance with Section 3.2.(e). If the Borrower is required to pay any outstanding ~~LIBOR~~Term SOFR Loans or Bid Rate Loans by reason of this Section prior to the end of the applicable Interest Period therefor, the Borrower shall pay all amounts due under Section 4.4.

(c) No Effect on Derivatives Contracts. No repayment or prepayment of the Loans pursuant to this Section shall affect any of the Borrower's obligations under any Derivatives Contracts entered into with respect to the Loans.

Section 2.9. Tranche B Term Loans.

Pursuant to the Existing Credit Agreement, certain of the Tranche B Term Loan Lenders made a Tranche B Term Loan denominated in Dollars to the Borrower. The Borrower hereby agrees and acknowledges that as of the Effective Date, the outstanding principal balance of the Tranche B Term Loans is $250,000,000 and shall for all purposes hereunder constitute and be referred to as the Tranche B Term Loans hereunder, without constituting a novation, but in all cases subject to the terms and conditions applicable to Tranche B Term Loans hereunder. The Borrower and the Lenders acknowledge and agree that the principal amount of such Tranche B Term Loan held by each Tranche B Term Lender as of the Agreement Date (after giving effect to this Agreement) is set forth on Schedule I opposite the name of such Tranche B Term Lender. Any portion of a Tranche B Term Loan that is repaid or prepaid may not be reborrowed.

Section 2.10. Continuation.

So long as no Event of Default exists and, without the prior written consent of the Administrative Agent, so long as no Default exists, the Borrower may on any Business Day, with respect to any ~~LIBOR~~Term SOFR Loan, elect to maintain such ~~LIBOR~~Term SOFR Loan or any portion thereof as a ~~LIBOR~~Term SOFR Loan by selecting a new Interest Period for such ~~LIBOR~~Term SOFR Loan. Each Continuation of a ~~LIBOR~~Term SOFR Loan shall be in an aggregate minimum amount of $1,000,000 and integral multiples of $500,000 in excess of that amount, and each new Interest Period selected under this Section shall commence on the last day of the immediately preceding Interest Period. Each selection of a new Interest Period shall be made by the Borrower giving to the Administrative Agent a Notice of Continuation not later than 11:00 a.m. Eastern time on the third U.S. Government Securities Business Day prior to the date of any such Continuation. Such notice by the Borrower of a Continuation shall be by telecopy, electronic mail or other similar form of communication in the form of a Notice of Continuation, specifying (a) the proposed date of such Continuation, (b) the ~~LIBOR~~Term SOFR Loans, Class and portions thereof subject to such Continuation, (c) the duration of the selected Interest Period, all of which shall be specified in such manner as is necessary to comply with all limitations on Loans outstanding hereunder and (d) the amount of such ~~LIBOR~~Term SOFR Loans, if any, that the Borrower has elected to have subject to a Specified Derivatives Contract that provides a hedge against interest rate risks and the Specified Derivatives Contract(s) to which such amount is subject. Each Notice of Continuation shall be irrevocable by and binding on the Borrower once given. Promptly after receipt of a Notice of Continuation, the Administrative Agent shall notify each Lender holding Loans being Continued of the proposed Continuation. If the Borrower shall fail to select in a timely manner a new Interest Period for any ~~LIBOR~~Term SOFR Loan in accordance with this Section, such Loan will automatically, on the last day of the current Interest Period therefor, continue as a ~~LIBOR~~Term SOFR Loan with an Interest Period of one month; provided, however that if a Default or Event of Default exists, such Loan will automatically, on the last day of the current Interest Period therefor, Convert into a Base Rate Loan notwithstanding the first sentence of Section 2.11. or the Borrower's failure to comply with any of the terms of such Section.

Section 2.11. Conversion.

The Borrower may on any Business Day, upon the Borrower's giving of a Notice of Conversion to the Administrative Agent by telecopy, electronic mail or other similar form of communication, Convert all or a portion of a Loan of one Type into a Loan of another Type but of the same Class; provided, however, a Base Rate Loan may not be Converted into a ~~LIBOR~~SOFR Loan if a Default or Event of Default exists. Each Conversion of Base Rate Loans of a Class into ~~LIBOR~~SOFR Loans of such Class, shall be in an aggregate minimum amount of $1,000,000 and integral multiples of $500,000 in excess of that amount. Each such Notice of Conversion shall be given not later than 11:00 a.m. Eastern time (x) with respect to Loans that are to be Converted to Base Rate Loans, 3 Business Days, (y) with respect to Loans that are to be Converted into Term SOFR Loans, 3 U.S. Government Securities Business Days and (z) with respect to Loans that are to be Converted into Daily Simple SOFR Loans, 1 U.S. Government Securities Business Day, in each case, prior to the date of any proposed Conversion. Promptly after receipt of a Notice of Conversion, the Administrative Agent shall notify each Lender holding Loans being Converted of the proposed Conversion. Subject to the restrictions specified above, each Notice of

Conversion shall be by telecopy, electronic mail or other similar form of communication in the form of a Notice of Conversion specifying (a) the requested date of such Conversion, (b) the Type and Class of Loan to be Converted, (c) the portion of such Type of Loan to be Converted, (d) the Type of Loan such Loan is to be Converted into, (e) if such Conversion is into a ~~LIBOR~~Term SOFR Loan, the requested duration of the Interest Period of such Loan and (f) the amount of such ~~LIBOR~~SOFR Loans, if any, that the Borrower has elected to have subject to a Specified Derivatives Contract that provides a hedge against interest rate risks and the Specified Derivatives Contract(s) to which such amount is subject. Each Notice of Conversion shall be irrevocable by and binding on the Borrower once given.

Section 2.12. Notes.

(a) Notes. If requested by any Lender by notification to the Administrative Agent in writing that it elects to receive (i) a Revolving Note, the Revolving Loans made by each Revolving Lender shall, in addition to this Agreement, also be evidenced by a Revolving Note, payable to the order of such Lender in a principal amount equal to the amount of its Revolving Commitment as originally in effect and otherwise duly completed, (ii) a Tranche B Term Note, the Tranche B Term Loans made by each Tranche B Term Loan Lender shall, in addition to this Agreement, also be evidenced by a Tranche B Term Note, payable to the order of such Lender in a principal amount equal to the amount of its Tranche B Term Loan and otherwise duly completed and (iii) a Bid Rate Note, the Bid Rate Loans made by a Revolving Lender to the Borrower shall, in addition to this Agreement, also be evidenced by a Bid Rate Note payable to the order of such Revolving Lender. ~~The Swingline Loans made by a Swingline Lender to the Borrower shall, in addition to this Agreement, if requested by a Swingline Lender also be evidenced by a Swingline Note payable to the order of such Swingline Lender.~~

(b) Records. The date, amount, interest rate, Class, Type and duration of Interest Periods (if applicable) of each Loan made by each Lender to the Borrower, and each payment made on account of the principal thereof, shall be recorded by such Lender on its books and such entries shall be binding on the Borrower absent manifest error; provided, however, that (i) the failure of a Lender to make any such record shall not affect the obligations of the Borrower under any of the Loan Documents and (ii) if there is a discrepancy between such records of a Lender and the statements of accounts maintained by the Administrative Agent pursuant to Section 3.8., in the absence of manifest error, the statements of account maintained by the Administrative Agent pursuant to Section 3.8. shall be controlling.

(c) Lost, Stolen, Destroyed or Mutilated Notes. Upon receipt by the Borrower of (i) written notice from a Lender that a Note of such Lender has been lost, stolen, destroyed or mutilated, and (ii)(A) in the case of loss, theft or destruction, an unsecured agreement of indemnity from such Lender in form reasonably satisfactory to the Borrower, or (B) in the case of mutilation, upon surrender and cancellation of such Note, the Borrower shall at its own expense execute and deliver to such Lender a new Note dated the date of such lost, stolen, destroyed or mutilated Note.

Section 2.13. Voluntary Reductions of the Revolving Commitments.

The Borrower shall have the right to terminate or reduce the aggregate unused amount of the Revolving Commitments (for which purpose use of the Revolving Commitments shall be deemed to include the aggregate amount of all Letter of Credit Liabilities and the aggregate principal amount of all outstanding Bid Rate Loans~~ and Swingline Loans~~) at any time and from time to time without penalty or premium upon not less than 5 Business Days prior written notice to the Administrative Agent of each such termination or reduction, which notice shall specify the effective date thereof and the amount of any such reduction (which in the case of any partial reduction of the Revolving Commitments shall not be less than $1,000,000 and integral multiples of $500,000 in excess of that amount in the aggregate) and shall be irrevocable once given and effective only upon receipt by the Administrative Agent ("Reduction Notice"); provided, however, the Borrower may not reduce the aggregate amount of the Revolving Commitments below $50,000,000 unless the Borrower is terminating the Revolving Commitments in full. Promptly after receipt of a Reduction Notice the Administrative Agent shall notify each Revolving Lender of the proposed termination or Commitment reduction. The Revolving Commitments, once reduced or terminated pursuant to this Section, may not be increased or reinstated, except as provided pursuant to Section 2.17. The Borrower shall pay all interest and fees on the Revolving Loans accrued to the date of such reduction or termination of the Revolving Commitments to the Administrative Agent for

the account of the Revolving Lenders, including but not limited to any applicable compensation due to each Revolving Lender in accordance with Section 4.4.

Section 2.14. Extension of Revolving Termination Date.

The Borrower shall have the right, exercisable two times, to extend the Revolving Termination Date by six-months in the case of each such extension. The Borrower may exercise such right only by executing and delivering to the Administrative Agent at least 30 days but not more than 90 days prior to the current Revolving Termination Date, a written request for such extension (an "Extension Request"). The Administrative Agent shall notify the Revolving Lenders if it receives an Extension Request promptly upon receipt thereof. The Revolving Termination Date shall be extended for six-months effective upon receipt by the Administrative Agent of the Extension Request and the satisfaction of the following conditions: (x) immediately prior to such extension and immediately after giving effect thereto, (A) no Default or Event of Default shall exist and (B) the representations and warranties made or deemed made by the Borrower and each other Loan Party in the Loan Documents to which any of them is a party, shall be true and correct in all material respects (except in the case of a representation or warranty qualified by materiality, in which case such representation or warranty shall be true and correct in all respects) on and as of the date of such extension with the same force and effect as if made on and as of such date except to the extent that such representations and warranties expressly relate solely to an earlier date (in which case such representations and warranties shall have been true and correct in all material respects (except in the case of a representation or warranty qualified by materiality, in which case such representation or warranty shall be true and correct in all respects) on and as of such earlier date) and except for changes in factual circumstances not prohibited under the Loan Documents and (y) before the then current Revolving Termination Date, the Borrower shall have paid the Fees payable under Section 3.5.(e). At any time prior to the effectiveness of any such extension, upon the Administrative Agent's request, the Borrower shall deliver to the Administrative Agent a certificate from the chief executive officer or chief financial officer certifying the matters referred to in the immediately preceding sub-clauses (x)(A) and (x)(B).

Section 2.15. Expiration Date of Letters of Credit Past Revolving Commitment Termination.

If on the date the Revolving Commitments are terminated or reduced to zero (whether voluntarily, by reason of the occurrence of an Event of Default or otherwise) there are any Letters of Credit outstanding hereunder and the aggregate Stated Amount of such Letters of Credit exceeds the balance of available funds on deposit in the Letter of Credit Collateral Account, then the Borrower shall, on such date, pay to the Administrative Agent, for its benefit and the benefit of the Issuing Bank and the Revolving Lenders, for deposit into the Letter of Credit Collateral Account, an amount of money equal to the amount of such excess.

Section 2.16. Amount Limitations.

Notwithstanding any other term of this Agreement or any other Loan Document, no Revolving Lender shall be required to make a Revolving Loan, no Revolving Lender shall make any Bid Rate Loan, the Issuing Banks shall not be required to issue a Letter of Credit and no reduction of the Revolving Commitments pursuant to Section 2.13. shall take effect, if immediately after the making of such Loan, the issuance of such Letter of Credit or such reduction in the Revolving Commitments:

(a) the aggregate principal amount of all outstanding Revolving Loans~~,~~ and Bid Rate ~~Loans and Swingline~~ Loans, together with the aggregate amount of all Letter of Credit Liabilities, would exceed the aggregate amount of the Revolving Commitments at such time; or

(b) the aggregate principal amount of all outstanding Bid Rate Loans would exceed 50.0% of the aggregate amount of the Revolving Commitments at such time.

Section 2.17. Increase in Revolving Commitments; Additional Term Loans.

(a) The Borrower shall have the right (i) during the period beginning on the Effective Date to but excluding the Revolving Termination Date to request increases in the aggregate amount of the Revolving Commitments or (ii) during the period beginning on the Effective Date to but excluding the latest Termination Date of any Loans then in effect hereunder (or, in the case of any request related to a Class of Term Loans, the Termination Date for such Class of Term Loans), to request the making of additional Term Loans of such Class or the making of additional term loans under a new tranche of term loans (collectively, the "Additional Term Loans"), in each case by providing written notice to the Administrative Agent, which notice shall be irrevocable once given; provided, however, that after giving effect to any such increases of the Revolving Commitments and the making of the Additional Term Loans, the aggregate amount of the Revolving Commitments and the aggregate outstanding principal balance of the Term Loans shall not exceed $1,500,000,000. Each such increase in the Commitments or borrowing of Term Loans must be an aggregate minimum amount of $20,000,000 and integral multiples of $500,000 in excess thereof. No Lender shall be obligated in any way whatsoever to increase its Revolving Commitment, to provide a new Revolving Commitment or to make an Additional Term Loan, and any new Lender becoming a party to this Agreement in connection with any such requested increase of the Revolving Commitments or making of Additional Term Loans must be an Eligible Assignee. If a Person becomes a new Lender having a Commitment under this Agreement, or if any existing Revolving Lender is increasing its Revolving Commitment, such Lender shall on the date it becomes a Revolving Lender hereunder (or in the case of an existing Revolving Lender, increases its Revolving Commitment) (and as a condition thereto) purchase from the other Revolving Lenders its Commitment Percentage (determined with respect to the Revolving Lenders' respective Revolving Commitments and after giving effect to the increase of Revolving Commitments) of any outstanding Revolving Loans, by making available to the Administrative Agent for the account of such other Revolving Lenders, in same day funds, an amount equal to (A) the portion of the outstanding principal amount of such Revolving Loans to be purchased by such Lender, plus (B) the aggregate amount of payments previously made by the other Revolving Lenders under Section 2.3.(j) that have not been repaid, plus (C) interest accrued and unpaid to and as of such date on such portion of the outstanding principal amount of such Revolving Loans. The Borrower shall pay to the Revolving Lenders amounts payable, if any, to such Revolving Lenders under Section 4.4. as a result of the prepayment of any such Revolving Loans. Effecting any increase of the Revolving Commitments or the making of Additional Term Loans under this Section is subject to the following conditions precedent: (x) no Default or Event of Default shall be in existence on the effective date of such increase of the Revolving Commitments or the making of such Additional Term Loans, (y) the Continuing Representations made or deemed made by the Borrower and any other Loan Party in any Loan Document to which such Loan Party is a party shall be true and correct in all material respects (except in the case of a representation or warranty qualified by materiality, in which case such representation or warranty shall be true and correct in all respects) on the effective date of any such increase in the Revolving Commitments or making of Additional Term Loans except to the extent that such representations and warranties expressly related solely to an earlier date (in which case such representations and warranties shall have been true and correct in all material respects (except in the case of a representation or warranty qualified by materiality, in which case such representation or warranty shall have been true and correct in all respects) on and as of such earlier date) and except for changes in factual circumstances not prohibited hereunder and (z) the Administrative Agent shall have received each of the following, in form and substance satisfactory to the Administrative Agent: (i) if not previously delivered to the Administrative Agent, copies certified by the Secretary or Assistant Secretary of (A) all corporate, partnership, member or other necessary action taken by the Borrower to authorize such increase of the Revolving Commitments or borrowing of such Additional Term Loans and (B) all corporate, partnership, member or other necessary action taken by each Guarantor authorizing the guaranty of such increase of the Revolving Commitments or such Additional Term Loans; (ii) if requested by the Administrative Agent, an opinion of counsel to the Borrower and the Guarantors, and addressed to the Administrative Agent, the Issuing Banks and the Lenders covering such matters as reasonably requested by the Administrative Agent; and (iii) (A) in the case of an increase in the Revolving Commitments, new Revolving Notes executed by the Borrower, payable to any new Revolving Lenders providing Revolving Commitments and replacement Revolving Notes executed by the Borrower, payable to any existing Revolving Lenders increasing their respective Revolving Commitments, in each case, in the amount of such Lender's Revolving Commitment at the time of the effectiveness of the applicable increase in the aggregate amount of the Revolving Commitments (and if such Revolving Note

is in replacement of an existing Revolving Note, such Revolving Lender shall promptly return any existing Revolving Notes held by such Revolving Lender to the Borrower (or, if lost, destroyed or mutilated, if requested by the Borrower a lost note affidavit including a customary indemnity)) and (B) in the case of making of Additional Term Loans, new Tranche B Term Notes of the applicable Class of Term Loans executed by the Borrower, payable to any new Term Loan Lenders making such Additional Term Loans of such Class, and replacement Tranche B Term Notes (and if any such Tranche B Term Note is in replacement of an existing Tranche B Term Note, such Term Loan Lender shall promptly return any existing Tranche B Term Notes held by such Term Loan Lender to the Borrower (or, if lost, destroyed or mutilated, if requested by the Borrower, a lost note affidavit including a customary indemnity)) of the applicable Class executed by the Borrower payable to such existing Term Loan Lenders making such Additional Term Loans of such Class, in each case, in the aggregate principal amount of such Lender's outstanding Term Loan of the applicable Class at the time of the making of such Additional Term Loans (and in the case of the preceding clauses (A) and (B), only to the extent any applicable Lender has requested to receive Notes). In connection with any increase in the aggregate amount of the Revolving Commitments or the making of Additional Term Loans pursuant to this Section 2.17. any Lender becoming a party hereto shall (1) execute such documents and agreements as the Administrative Agent may reasonably request and (2) in the case of any Lender that is organized under the laws of a jurisdiction outside of the United States of America, provide to the Administrative Agent, its name, address, tax identification number and/or such other information as shall be necessary for the Administrative Agent to comply with "know your customer" and anti-money laundering rules and regulations, including without limitation, the Patriot Act.

(b) This Section 2.17. shall supersede any provisions in Section 3.2. or Section 12.6. to the contrary.

Section 2.18. Funds Transfer Disbursements.

The Borrower hereby authorizes the Administrative Agent to disburse the proceeds of any Loan made by the Lenders or any of their Affiliates pursuant to the Loan Documents as requested by an authorized representative of the Borrower to any of the accounts designated in the Disbursement Instruction Agreement.

Section 2.19. Reallocations on Effective Date.

Simultaneously with the effectiveness of this Agreement, the Revolving Commitments of each of the Revolving Lenders as existing immediately prior to the Effective Date, shall be reallocated among the Revolving Lenders so that the Revolving Commitments are held by the Revolving Lenders as set forth on Schedule I attached hereto. To effect such reallocations each Revolving Lender who either had no Revolving Commitment prior to the effectiveness of this Agreement or whose Revolving Commitment upon the effectiveness of this Agreement exceeds its Revolving Commitment immediately prior to the effectiveness of this Agreement (each an "Assignee Revolving Lender") shall be deemed to have purchased all right, title and interest in, and all obligations in respect of, the Revolving Commitments from the Revolving Lenders whose Revolving Commitments upon the effectiveness of this Agreement are less than their respective Revolving Commitment immediately prior to the effectiveness of this Agreement (each an "Assignor Revolving Lender"), so that the Revolving Commitments of the Revolving Lenders will be held by the Revolving Lenders as set forth on Schedule I. Such purchases shall be deemed to have been effected by way of, and subject to the terms and conditions of, an Assignment and Assumption without the payment of any related assignment fee, and, except for Notes to be provided to the Assignor Lenders and Assignee Lenders in the principal amount of their respective Revolving Commitments, no other documents or instruments shall be, or shall be required to be, executed in connection with such assignments (all of which are hereby waived). The Assignor Lenders, the Assignee Lenders and the other Lenders shall make such cash settlements among themselves, through the Administrative Agent, as the Administrative Agent may direct (after giving effect to the making of any Loans to be made on the Effective Date and any netting transactions effected by the Administrative Agent) with respect to such reallocations and assignments so that the aggregate outstanding principal amount of Revolving Loans shall be held by the Revolving Lenders pro rata in accordance with the amount of the Revolving Commitments set forth on Schedule I.

Section 2.20. Initial Benchmark Conforming Changes.

In connection with the use or administration of any Benchmark, the Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document. The Administrative Agent will promptly notify the Borrower and the Lenders of the effectiveness of any Conforming Changes in connection with the use or administration of any Benchmark.

Article III. Payments, Fees and Other General Provisions

Section 3.1. Payments.

(a) Payments by Borrower. Except to the extent otherwise provided herein, all payments of principal, interest, Fees and other amounts to be made by the Borrower under this Agreement, the Notes or any other Loan Document shall be made in Dollars, in immediately available funds, without setoff, deduction or counterclaim (excluding Taxes required to be withheld pursuant to Section 3.10.), to the Administrative Agent at the Principal Office, not later than 2:00 p.m. Eastern time on the date on which such payment shall become due (each such payment made after such time on such due date to be deemed to have been made on the next succeeding Business Day). Subject to Section 10.5., the Borrower shall, at the time of making each payment under this Agreement or any other Loan Document, specify to the Administrative Agent the amounts payable by the Borrower hereunder to which such payment is to be applied. Each payment received by the Administrative Agent for the account of a Lender under this Agreement or any Note shall be paid to such Lender by wire transfer of immediately available funds in accordance with the wiring instructions provided by such Lender to the Administrative Agent from time to time, for the account of such Lender at the applicable Lending Office of such Lender. Each payment received by the Administrative Agent for the account of an Issuing Bank under this Agreement shall be paid to such Issuing Bank by wire transfer of immediately available funds in accordance with the wiring instructions provided by such Issuing Bank to the Administrative Agent from time to time, for the account of such Issuing Bank. In the event the Administrative Agent fails to pay such amounts to such Lender or such Issuing Bank, as the case may be, within one Business Day of receipt of such amounts, the Administrative Agent shall pay interest on such amount until paid at a rate per annum equal to the Federal Funds Rate from time to time in effect. If the due date of any payment under this Agreement or any other Loan Document would otherwise fall on a day which is not a Business Day such date shall be extended to the next succeeding Business Day and interest shall continue to accrue at the rate, if any, applicable to such payment for the period of such extension.

(b) Presumptions Regarding Payments by Borrower. Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or an Issuing Bank hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may (but shall not be obligated to), in reliance upon such assumption, distribute to the Lenders or the Issuing Banks, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders or the Issuing Banks, as the case may be, severally agrees to repay to the Administrative Agent on demand that amount so distributed to such Lender or such Issuing Bank, with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

Section 3.2. Pro Rata Treatment.

Except to the extent otherwise provided herein: (a) each borrowing from the Revolving Lenders under Sections 2.1.(a)~~,~~ and 2.3.~~(c) and 2.4.~~(e) shall be made from the Revolving Lenders, each payment of the fees under Section 3.5.(b), the first sentence of Section 3.5.(c), and Section 3.5.(e) shall be made for the account of the Revolving Lenders, and each termination or reduction of the amount of the Revolving

Commitments under Section 2.13. or otherwise pursuant to this Agreement shall be applied to the respective Revolving Commitments of the Revolving Lenders, pro rata according to the amounts of their respective Revolving Commitments; (b) the making of Term Loans under Section 2.9. shall be made from the applicable Class of Term Loan Lenders, pro rata according to the amounts of their respective Term Loan Commitments of such Class; (c) each payment or prepayment of principal of a Class of Loans shall be made for the account of the Lenders of such Class pro rata in accordance with the respective unpaid principal amounts of the Loans of such Class held by them, provided that, subject to Section 3.9., if immediately prior to giving effect to any such payment in respect of any Revolving Loans the outstanding principal amount of the Revolving Loans shall not be held by the Revolving Lenders pro rata in accordance with their respective Revolving Commitments in effect at the time such Revolving Loans were made, then such payment shall be applied to the Revolving Loans in such manner as shall result, as nearly as is practicable, in the outstanding principal amount of the Revolving Loans being held by the Revolving Lenders pro rata in accordance with such respective Revolving Commitments; (d) each payment of interest on a Class of Loans shall be made for the account of the Lenders of such Class pro rata in accordance with the amounts of interest on such Loans then due and payable to the respective Lenders of such Class; (e) the Conversion and Continuation of Loans of a particular Class and Type (other than Conversions provided for by Sections 4.1.(c) and 4.5.) shall be made pro rata among the Lenders of such Class according to the amounts of their respective Loans of such Class and the then current Interest Period for each Lender's portion of each such Loan of such Type shall be coterminous; (f) each prepayment of principal of Bid Rate Loans pursuant to Section 2.8.(b)(ii) shall be made for account of the Lenders then owed Bid Rate Loans pro rata in accordance with the respective unpaid principal amounts of the Bid Rate Loans then owing to each such Lender; (g) ~~the Revolving Lenders' participation in, and payment obligations in respect of, Swingline Loans under Section 2.4., shall be in accordance with their respective Commitment Percentages~~ [reserved]; and (h) the Revolving Lenders' participation in, and payment obligations in respect of, Letters of Credit under Section 2.3., shall be in accordance with their respective Commitment Percentages. ~~All payments of principal, interest, fees and other amounts in respect of the Swingline Loans shall be for the account of the applicable Swingline Lender only (except to the extent any Revolving Lender shall have acquired a participating interest in any such Swingline Loan pursuant to Section 2.4.(e), in which case such payments shall be pro rata in accordance with such participating interests).~~

Section 3.3. Sharing of Payments, Etc.

If a Lender shall obtain payment of any principal of, or interest on, any Loan of a Class made by it to the Borrower under this Agreement or shall obtain payment on any other Obligation owing by the Borrower or any other Loan Party through the exercise of any right of set-off, banker's lien, counterclaim or similar right or otherwise or through voluntary prepayments directly to a Lender or other payments made by or on behalf of the Borrower or any other Loan Party to a Lender not in accordance with the terms of this Agreement and such payment should be distributed to the Lenders of the same Class as such Lender in accordance with Section 3.2. or Section 10.5., as applicable, such Lender shall promptly purchase from the other Lenders of such Class participations in (or, if and to the extent specified by such Lender, direct interests in) the Loans of such Class made by the other Lenders of such Class or other Obligations owed to such other Lenders in such amounts, and make such other adjustments from time to time as shall be equitable, to the end that all the Lenders of such Class shall share the benefit of such payment (net of any reasonable expenses which may actually be incurred by such Lender in obtaining or preserving such benefit) in accordance with the requirements of Section 3.2. or Section 10.5., as applicable. To such end, all the Lenders of such Class shall make appropriate adjustments among themselves (by the resale of participations sold or otherwise) if such payment is rescinded or must otherwise be restored. The Borrower agrees that any Lender of a Class so purchasing a participation (or direct interest) in the Loans or other Obligations owed to the other Lenders of such Class may exercise all rights of set-off, banker's lien, counterclaim or similar rights with respect to such participation as fully as if such Lender were a direct holder of Loans of such Class in the amount of such participation so long as such Participant has agreed to be subject to this Section. Nothing contained herein shall require any Lender to exercise any such right or shall affect the right of any Lender to exercise and retain the benefits of exercising, any such right with respect to any other indebtedness or obligation of the Borrower.

Section 3.4. Several Obligations.

No Lender shall be responsible for the failure of any other Lender to make a Loan or to perform any other obligation to be made or performed by such other Lender hereunder, and the failure of any Lender to make a Loan or to perform any other obligation to be made or performed by it hereunder shall not relieve the obligation of any other Lender to make any Loan or to perform any other obligation to be made or performed by such other Lender.

Section 3.5. Fees.

(a) Closing Fee. On the Effective Date, the Borrower agrees to pay to the Administrative Agent and each Lender all loan fees then due as have been agreed to herein or in any Fee Letter in writing by the Borrower and the Administrative Agent or each Lender, as applicable.

(b) Revolving Facility Fees. During the period from the Effective Date to but excluding the Revolving Termination Date, the Borrower agrees to pay to the Administrative Agent for the account of the Revolving Lenders a facility fee equal to the daily aggregate amount of the Revolving Commitments (whether or not utilized) times a rate per annum equal to the Applicable Facility Fee. Such fee shall be payable quarterly in arrears on the first day of each January, April, July and October during the term of this Agreement and on the Revolving Termination Date or any earlier date of termination of the Revolving Commitments or reduction of the Revolving Commitments to zero. The Borrower acknowledges that the fee payable hereunder is a bona fide commitment fee and is intended as reasonable compensation to the Revolving Lenders for committing to make funds available to the Borrower as described herein and for no other purposes.

(c) Letter of Credit Fees. The Borrower agrees to pay to the Administrative Agent for the account of each Revolving Lender a letter of credit fee at a rate per annum equal to the Applicable Margin for Revolving Loans that are ~~LIBOR~~SOFR Loans times the daily average Stated Amount of each Letter of Credit for the period from and including the date of issuance of such Letter of Credit (x) to and including the date such Letter of Credit expires or is cancelled or terminated or (y) to but excluding the date such Letter of Credit is drawn in full; provided, however, notwithstanding anything to the contrary contained herein, during any period that interest is payable at the Post-Default Rate pursuant to Section 2.5.(a), such letter of credit fees shall accrue at the Post-Default Rate. In addition to such fees, the Borrower shall pay to each Issuing Bank solely for its own account, a one-time fronting fee in respect of each Letter of Credit issued by such Issuing Bank equal to one-eighth of one percent (0.125%) of the initial Stated Amount of such Letter of Credit; provided, however, in no event shall the aggregate amount of such fee in respect of any Letter of Credit be less than $500. The fees provided for in the immediately preceding two sentences shall be nonrefundable and payable, (A) in the case of the fee provided for in the first sentence, in arrears (i) quarterly on the first day of January, April, July and October, (ii) on the Revolving Termination Date, (iii) on the date the Revolving Commitments are terminated or reduced to zero and (iv) thereafter from time to time on demand of the Administrative Agent, and (B) in the case of the fee provided for in the second sentence, at the time of issuance of such Letter of Credit. The Borrower shall pay directly to each Issuing Bank from time to time on demand all commissions, charges, costs and expenses in the amounts customarily charged or incurred by such Issuing Bank from time to time in like circumstances with respect to the issuance, amendment, renewal or extension of any Letter of Credit or any other transaction relating thereto.

(d) Bid Rate Loan Fees. The Borrower agrees to pay to the Administrative Agent such fees payable in connection with the Bid Rate Loans as set forth in the Fee Letter from Wells Fargo.

(e) Revolving Credit Extension Fee. If the Borrower exercises its right to extend the Revolving Termination Date in accordance with Section 2.14., the Borrower agrees to pay to the Administrative Agent for the account of each Revolving Lender in connection with each request to extend the Revolving Termination Date by six months, a fee equal to 0.0625% of the amount of such Lender's Revolving Commitment (whether or not utilized) at the time of the payment of such fee.

(f) Administrative and Other Fees. The Borrower agrees to pay the administrative and other fees of the Administrative Agent as set forth in the Fee Letter from Wells Fargo and as may be otherwise agreed to in writing from time to time by the Borrower and the Administrative Agent.

Section 3.6. Computations.

Unless otherwise expressly set forth herein, any accrued interest on any Loan, any Fees or any other Obligations due hereunder shall be computed on the basis of a year of 360 days and the actual number of days elapsed, except that interest on Base Rate Loans shall be computed on the basis of a year of 365 or 366 days, as applicable, and the actual number of days elapsed.

Section 3.7. Usury.

In no event shall the amount of interest due or payable on the Loans or other Obligations exceed the maximum rate of interest allowed by Applicable Law and, if any such payment is paid by the Borrower or any other Loan Party or received by any Lender, then such excess sum shall be credited as a payment of principal, unless the Borrower shall notify the respective Lender in writing that the Borrower elects to have such excess sum returned to it forthwith. It is the express intent of the parties hereto that the Borrower not pay and the Lenders not receive, directly or indirectly, in any manner whatsoever, interest in excess of that which may be lawfully paid by the Borrower under Applicable Law. The parties hereto hereby agree and stipulate that the only charge imposed upon the Borrower for the use of money in connection with this Agreement is and shall be the interest specifically described in Section 2.5.(a)(i) through (iv) and, with respect to Swingline Loans, in Section 2.4.(c). Notwithstanding the foregoing, the parties hereto further agree and stipulate that all agency fees, syndication fees, facility fees, closing fees, letter of credit fees, underwriting fees, default charges, late charges, funding or “breakage” charges, increased cost charges, attorneys’ fees and reimbursement for costs and expenses paid by the Administrative Agent or any Lender to third parties or for damages incurred by the Administrative Agent or any Lender, in each case, in connection with the transactions contemplated by this Agreement and the other Loan Documents, are charges made to compensate the Administrative Agent or any such Lender for underwriting or administrative services and costs or losses performed or incurred, and to be performed or incurred, by the Administrative Agent and the Lenders in connection with this Agreement and shall under no circumstances be deemed to be charges for the use of money. All charges other than charges for the use of money shall be fully earned when due and nonrefundable when paid.

Section 3.8. Statements of Account.

The Administrative Agent will account to the Borrower monthly with a statement of Loans, accrued interest and Fees, charges and payments made pursuant to this Agreement and the other Loan Documents, and such account rendered by the Administrative Agent shall be deemed conclusive upon the Borrower absent manifest error. The failure of the Administrative Agent to deliver such a statement of accounts shall not relieve or discharge the Borrower from any of its obligations hereunder.

Section 3.9. Defaulting Lenders.

Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by Applicable Law:

(a) Waivers and Amendments . Such Defaulting Lender’s right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definitions of Requisite Lenders and Requisite Class Lenders and in Section 12.6.

(b) Defaulting Lender Waterfall. Any payment of principal, interest, Fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article X. or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 12.3. shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by such Defaulting

Lender to the Administrative Agent hereunder; second, in the case of a Defaulting Lender that is a Revolving Lender, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to any Issuing Bank ~~or any Swingline Lender~~ hereunder; third, in the case of a Defaulting Lender that is a Revolving Lender, to Cash Collateralize the Issuing Banks' Fronting Exposures with respect to such Defaulting Lender in accordance with subsection (e) below; fourth, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; fifth, in the case of a Defaulting Lender that is a Revolving Lender, if so determined by the Administrative Agent and the Borrower, to be held in a deposit account and released pro rata in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) Cash Collateralize the Issuing Banks' future Fronting Exposures with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with subsection (e) below; sixth, to the payment of any amounts owing to the Lenders~~,~~ or the Issuing Banks ~~or the Swingline Lenders~~ as a result of any judgment of a court of competent jurisdiction obtained by any Lender~~,~~ or any Issuing Bank ~~or any Swingline Lender~~ against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; seventh, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and eighth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans of a Class (other than Bid Rate Loans) or amounts owing by such Defaulting Lender under Section 2.3.(j) in respect of Letters of Credit (such amounts "L/C Disbursements"), in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans (other than Bid Rate Loans) were made or the related Letters of Credit were issued at a time when the conditions set forth in Article V. were satisfied or waived, such payment shall be applied solely to pay the Loans of such Class (other than Bid Rate Loans) of, and L/C Disbursements owed to, all Non-Defaulting Lenders of the applicable Class on a pro rata basis prior to being applied to the payment of any Loans (other than Bid Rate Loans) of, or L/C Disbursements owed to, such Defaulting Lender until such time as all Loans of such Class (other than Bid Rate Loans) and funded and unfunded participations in Letter of Credit Liabilities ~~and Swingline Loans~~ are held by the Revolving Lenders pro rata in accordance with their respective Commitment Percentages (determined without giving effect to subsection (d) of this Section) and all Term Loans of each Class are held by the Term Loan Lenders of such Class pro rata as if there had been no Defaulting Lenders of such Class. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this subsection shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents thereto.

(c) Certain Fees.

(i) No Defaulting Lender that is a Revolving Lender shall be entitled to receive any Fee payable under Section 3.5.(b) for any period during which that Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(ii) Each Defaulting Lender that is a Revolving Lender shall be entitled to receive Fees payable under the first sentence of Section 3.5.(c) for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Commitment Percentage of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to the immediately following subsection (e).

(iii) With respect to any Fee not required to be paid to any Defaulting Lender pursuant to the immediately preceding clause (ii), the Borrower shall (x) pay to each Non-Defaulting Lender that is a Revolving Lender that portion of any such Fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in Letter of Credit Liabilities ~~or Swingline Loans~~ that has been reallocated to such Non-Defaulting Lender pursuant to the immediately following subsection (d), (y) pay to the Issuing Banks ~~and each Swingline Lender, as applicable,~~ the amount of any such Fee otherwise payable to such Defaulting Lender

to the extent allocable to such Issuing Bank's ~~or such Swingline Lender's~~ Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such Fee.

(d) Reallocation of Participations to Reduce Fronting Exposure. In the case of a Defaulting Lender that is a Revolving Lender, all or any part of such Defaulting Lender's participation in Letter of Credit Liabilities ~~and Swingline Loans~~ shall be reallocated among the Non-Defaulting Lenders that are Revolving Lenders in accordance with their respective Commitment Percentages (determined without regard to such Defaulting Lender's Revolving Commitment) but only to the extent that such reallocation does not cause the aggregate Revolving Credit Exposure of any such Non-Defaulting Lender to exceed such Non-Defaulting Lender's Revolving Commitment. No reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(e) Cash Collateral~~; Repayment of Swingline Loans~~.

(i) If the reallocation described in the immediately preceding subsection (d) above cannot, or can only partially, be effected, the Borrower shall, without prejudice to any right or remedy available to it hereunder or under law, ~~(x) first, prepay Swingline Loans in an amount equal to the Swingline Lenders' Fronting Exposure and (y) second,~~ Cash Collateralize the Issuing Banks' Fronting Exposures in accordance with the procedures set forth in this subsection.

(ii) At any time that there shall exist a Defaulting Lender that is a Revolving Lender, within 2 Business Days following the written request of the Administrative Agent or the applicable Issuing Bank (with a copy to the Administrative Agent), the Borrower shall Cash Collateralize such Issuing Bank's Fronting Exposure with respect to such Defaulting Lender (determined after giving effect to the immediately preceding subsection (d) and any Cash Collateral provided by such Defaulting Lender) in an amount not less than the aggregate Fronting Exposure of such Issuing Bank with respect to Letters of Credit issued and outstanding at such time.

(iii) The Borrower, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grant to the Administrative Agent, for the benefit of the Issuing Banks, and agree to maintain, a first priority security interest in all such Cash Collateral as security for the obligations of Defaulting Lenders that are Revolving Lenders to fund participations in respect of Letter of Credit Liabilities, to be applied pursuant to the immediately following clause (iv). If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent and the Issuing Banks as herein provided, or that the total amount of such Cash Collateral is less than the aggregate Fronting Exposures of the Issuing Banks with respect to Letters of Credit issued and outstanding at such time, the Borrower will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency (after giving effect to any Cash Collateral provided by the Defaulting Lender).

(iv) Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under this Section in respect of Letters of Credit shall be applied to the satisfaction of the obligations of Defaulting Lenders that are Revolving Lenders to fund participations in respect of Letter of Credit Liabilities (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.

(v) Cash Collateral (or the appropriate portion thereof) provided to reduce an Issuing Bank's Fronting Exposures shall no longer be required to be held as Cash Collateral pursuant to this subsection following (x) the elimination of the applicable Fronting Exposure (including by the termination of Defaulting Lender status of the applicable Revolving Lender), or (y) the determination by the Administrative Agent and the applicable Issuing Bank that there exists excess Cash Collateral; provided that, subject to the immediately preceding subsection (b), the Person providing Cash Collateral and the applicable Issuing Bank may (but shall not be obligated

to) agree that Cash Collateral shall be held to support future anticipated Fronting Exposure or other obligations and provided further that to the extent that such Cash Collateral was provided by the Borrower, such Cash Collateral shall remain subject to the security interest granted pursuant to the Loan Documents.

(f) Defaulting Lender Cure. If the Borrower and the Administrative Agent (and solely in the case of a Defaulting Lender that is a Revolving Lender, the ~~Swingline Lenders and the~~ Issuing Banks) agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which, in the case of a Defaulting Lender that is a Revolving Lender, may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause, as applicable, (i) the Revolving Loans and funded and unfunded participations in Letters of Credit ~~and Swingline Loans~~ to be held pro rata by the Revolving Lenders in accordance with their respective Commitment Percentages (determined without giving effect to the immediately preceding subsection (d)), and (ii) the Term Loans of each Class to be held by the Term Loan Lenders of such Class pro rata as if there had been no Defaulting Lenders of such Class, whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to Fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

(g) New ~~Swingline Loans/~~Letters of Credit. So long as any Revolving Lender is a Defaulting Lender, ~~(i) each Swingline Lender shall not be required to fund any Swingline Loans unless it is satisfied that it will have no Fronting Exposure after giving effect to such Swingline Loan and (ii)~~ each Issuing Bank shall not be required to issue, extend, renew or increase any Letter of Credit unless they are satisfied that they will have no Fronting Exposure after giving effect thereto.

(h) Purchase of Defaulting Lender's Commitment/Loans. During any period that a Lender is a Defaulting Lender, the Borrower may, by the Borrower giving written notice thereof to the Administrative Agent, such Defaulting Lender and the other Lenders, demand that such Defaulting Lender assign its Revolving Commitment, if any, and Loans to an Eligible Assignee subject to and in accordance with the provisions of Section 12.5.(b). No party hereto shall have any obligation whatsoever to initiate any such replacement or to assist in finding an Eligible Assignee. In addition, any Lender who is not a Defaulting Lender may, but shall not be obligated, in its sole discretion, to acquire the face amount of all or a portion of such Defaulting Lender's Revolving Commitment and Loans via an assignment subject to and in accordance with the provisions of Section 12.5.(b). In connection with any such assignment, such Defaulting Lender shall promptly execute all documents reasonably requested to effect such assignment, including an appropriate Assignment and Assumption and shall pay to the Administrative Agent the assignment fee payable under Section 12.5.(b). The exercise by the Borrower of its rights under this Section shall be at the Borrower's sole cost and expense and at no cost or expense to the Administrative Agent or any of the Lenders. In the event that a Defaulting Lender does not execute an Assignment and Assumption pursuant to Section 12.5.(b) within 5 Business Days after receipt by such Defaulting Lender of notice under this Section 3.9.(h) and presentation to such Defaulting Lender of an Assignment and Assumption evidencing an assignment pursuant to Section 12.5.(b), the Administrative Agent may elect, in its sole and absolute discretion, to execute such an Assignment and Assumption on behalf of such Defaulting Lender, and any such Assignment and Assumption so executed by the Administrative Agent, the Eligible Assignee and the Borrower, shall be effective for purposes of Section 12.5.(b). Each Defaulting Lender hereby grants to the Administrative Agent a limited power of attorney to execute any such Assignment and Assumption on behalf of such Defaulting Lender shall it fail to do so as required by this subsection. The Borrower confirms that is obligations under Section 12.9. apply to any and all actions taken or not taken by the Administrative Agent under this subsection.

Section 3.10. Taxes.

(a) Issuing Bank. For purposes of this Section, the term "Lender" includes the Issuing Banks and the term "Applicable Law" includes FATCA.

(b) Payments Free of Taxes. Any and all payments by or on account of any obligation of the Borrower or any other Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by Applicable Law. If any Applicable Law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with Applicable Law and, if such Tax is an Indemnified Tax, then the sum payable by the Borrower or other applicable Loan 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 Recipient 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 the Borrower. The Borrower and the other Loan Parties 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.

(d) Indemnification by the Borrower. The Borrower and the other Loan Parties shall jointly and severally indemnify each Recipient, within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error; provided that the determinations in such statement are made on a reasonable basis and in good faith.

(e) Indemnification by the Lenders. Each Lender shall severally indemnify the Administrative Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that the Borrower or another Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Borrower and the other Loan Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 12.5. relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, 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 any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this subsection. The provisions of this subsection shall continue to inure to the benefit of an Administrative Agent following its resignation or removal as Administrative Agent.

(f) Evidence of Payments. As soon as practicable after any payment of Taxes by the Borrower or any other Loan Party to a Governmental Authority pursuant to this Section, the Borrower or such other Loan Party shall deliver to the Administrative Agent 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 the Administrative Agent.

(g) Status of Lenders.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender 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 the immediately following clauses (ii)(A), (ii)(B) and (ii)(D)) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that the Borrower is a U.S. Person:

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), an electronic copy (or an original if requested by the Borrower or the Administrative Agent) of an executed IRS Form W-9 (or any successor form) certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

(I) in the case of a Foreign Lender 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 Loan Document, an electronic copy (or an original if requested by the Borrower or the Administrative Agent) of an executed IRS Form W-8BEN, or W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(II) an electronic copy (or an original if requested by the Borrower or the Administrative Agent) of an executed IRS Form W-8ECI;

(III) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Internal Revenue Code, (x) a certificate substantially in the form of Exhibit O-1 to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Internal Revenue Code, a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Internal Revenue Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Internal Revenue Code (a "U.S. Tax Compliance Certificate") and (y) an electronic copy

(or an original if requested by the Borrower or the Administrative Agent) of IRS Form W-8BEN or W-8BEN-E, as applicable,; or

(IV) to the extent a Foreign Lender is not the beneficial owner, an electronic copy (or an original if requested by the Borrower or the Administrative Agent) of an executed IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or W-8BEN-E, as applicable, a U.S. Tax Compliance Certificate substantially in the form of Exhibit O-2 or Exhibit O-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit O-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), an electronic copy (or an original if requested by the Borrower or the Administrative Agent) 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 Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

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

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.

(h) 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 subsection (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 subsection, in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this subsection 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 subsection 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.

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

(j) FATCA Determination. For purposes of determining withholding Taxes imposed under FATCA, from and after June 23, 2015, the Borrower and the Administrative Agent shall treat (and the Lenders hereby authorize the Administrative Agent to treat) the Agreement as not qualifying as a "grandfathered obligation" within the meaning of Treasury Regulation Section 1.1471-2(b)(2)(i).

Article IV. Yield Protection, Etc.

Section 4.1. Additional Costs; Capital Adequacy.

(a) Capital Adequacy. If any Lender determines that any Regulatory Change 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, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit ~~or Swingline Loans~~ held by, such Lender, to a level below that which such Lender or such Lender's holding company could have achieved but for such Regulatory Change (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 shall compensate such Lender or such Lender's holding company for any such reduction suffered.

(b) Additional Costs. In addition to, and not in limitation of the immediately preceding subsection (a), the Borrower shall promptly pay to the Administrative Agent for the account of a Lender from time to time such amounts as such Lender may determine to be necessary to compensate such Lender for any costs incurred by such Lender that it reasonably determines are attributable to its making or maintaining of any ~~LIBOR~~SOFR Loans or ~~LIBOR~~SOFR Margin Loans or its obligation to make any ~~LIBOR~~SOFR Loans hereunder, any reduction in any amount receivable by such Lender under this Agreement or any of the other Loan Documents in respect of any of such ~~LIBOR~~SOFR Loans or ~~LIBOR~~SOFR Margin Loans or such obligation or the maintenance by such Lender of capital in respect of its ~~LIBOR~~SOFR Loans or ~~LIBOR~~SOFR Margin Loans or its Commitments (such increases in costs and reductions in amounts receivable being herein called "Additional Costs"), resulting from any Regulatory Change that:

(i) changes the basis of taxation of any amounts payable to such Lender under this Agreement or any of the other Loan Documents in respect of any of such ~~LIBOR~~SOFR Loans or ~~LIBOR~~SOFR Margin Loans or its Commitments (other than Indemnified Taxes, Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and Connection Income Taxes);

(ii) imposes or modifies any reserve, special deposit, compulsory loan, insurance charge or similar requirements (other than Regulation D of the Board of Governors of the Federal Reserve System or other similar reserve requirement applicable to any other category of liabilities or category of extensions of credit or other assets by reference to which the interest rate on ~~LIBOR~~SOFR Loans or ~~LIBOR~~SOFR Margin Loans is determined to the extent utilized when determining ~~LIBOR~~SOFR for such Loans) relating to any extensions of credit or other assets of, or any deposits with or other liabilities of, or other credit extended by, or any other acquisition of funds by such Lender (or its parent corporation), or any commitment of such Lender (including, without limitation, the Commitments of such Lender hereunder); or

(iii) imposes on any Lender or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or the Loans made by such Lender.

(c) Lender's Suspension of LIBORSOFR Loans and LIBORSOFR Margin Loans. Without limiting the effect of the provisions of the immediately preceding subsections (a) and (b), if by reason of any Regulatory Change, any Lender either (i) incurs Additional Costs based on or measured by the excess above a specified level of the amount of a category of deposits or other liabilities of such Lender that includes deposits by reference to which the interest rate on LIBORSOFR Loans or LIBORSOFR Margin Loans is determined as provided in this Agreement or a category of extensions of credit or other assets of such Lender that includes LIBORSOFR Loans or LIBORSOFR Margin Loans or (ii) becomes subject to restrictions on the amount of such a category of liabilities or assets that it may hold, then, if such Lender so elects by notice to the Borrower (with a copy to the Administrative Agent), the obligation of such Lender to make or Continue, or to Convert Base Rate Loans into, LIBORSOFR Loans and/or the obligation of a Lender that has outstanding a Bid Rate Quote to make LIBORSOFR Margin Loans hereunder shall be suspended until such Regulatory Change ceases to be in effect (in which case the provisions of Section 4.5. shall apply).

(d) Additional Costs in Respect of Letters of Credit. Without limiting the obligations of the Borrower under the preceding subsections of this Section (but without duplication), if as a result of any Regulatory Change or any risk-based capital guideline or other requirement heretofore or hereafter issued by any Governmental Authority there shall be imposed, modified or deemed applicable any Tax (other than Indemnified Taxes, Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and Connection Income Taxes), reserve, special deposit, capital adequacy or similar requirement against or with respect to or measured by reference to Letters of Credit and the result shall be to increase the cost to an Issuing Bank of issuing (or any Revolving Lender of purchasing participations in) or maintaining its obligation hereunder to issue (or purchase participations in) any Letter of Credit or reduce any amount receivable by an Issuing Bank or any Revolving Lender hereunder in respect of any Letter of Credit, then, upon demand by such Issuing Bank or such Lender, the Borrower shall pay to such Issuing Bank or, in the case of such Lender, to the Administrative Agent for the account of such Lender, from time to time as specified by such Issuing Bank or such Lender, such additional amounts as shall be sufficient to compensate such Issuing Bank or such Lender for such increased costs or reductions in amount.

(e) Notification and Determination of Additional Costs. Each of the Administrative Agent, each Issuing Bank and each Lender, as the case may be, agrees to notify the Borrower (and in the case of an Issuing Bank or a Lender, to notify the Administrative Agent) of any event occurring after the Agreement Date entitling the Administrative Agent, such Issuing Bank or such Lender to compensation under any of the preceding subsections of this Section as promptly as practicable; provided, however, that the failure of the Administrative Agent, any Issuing Bank or any Lender to give such notice shall not release the Borrower from any of its obligations hereunder; provided, further, that the Borrower shall not be required to compensate a Lender or an Issuing Bank pursuant to this Section for any increased costs incurred or reductions suffered more than six months prior to the date that such Lender or such Issuing Bank, as the case may be, notifies the Borrower of the Regulatory Change giving rise to such increased costs or reductions, and of such Lender's or such Issuing Bank's intention to claim compensation therefor (except that, if the Regulatory Change giving rise to such increased costs or reductions is retroactive, then the six-month period referred to above shall be extended to include the period of retroactive effect thereof). The Administrative Agent, each Issuing Bank and each Lender, as the case may be, agrees to furnish to the Borrower (and in the case of an Issuing Bank or a Lender to the Administrative Agent as well) a certificate setting forth in reasonable detail the basis and amount of each request for compensation under this Section. Determinations by the Administrative Agent, such Issuing Bank or such Lender, as the case may be, of the effect of any Regulatory Change shall be conclusive and binding for all purposes, absent manifest error. The Borrower shall pay the Administrative Agent, any such Issuing Bank and or any such Lender, as the case may be, the amount shown as due on any such certificate within 10 days after receipt thereof, provided that such determinations are made on a reasonable basis and in good faith; provided, however, that a Lender shall not be entitled to submit a claim for compensation based upon a Regulatory Change pursuant to any subsection of this Section 4.1. unless the making of such claim is consistent with such Lender's general practices under similar circumstances in respect of similarly situated borrowers with credit agreements entitling it to make such claims (it being agreed that a Lender shall not be required to disclose any confidential or proprietary information in connection with such determination or the making of such claim).

Section 4.2. ~~Suspension of LIBOR Loans and LIBOR Margin Loans~~Changed Circumstances.

~~(a) Anything herein to the contrary notwithstanding and unless and until a Benchmark Replacement is implemented in accordance with Section 4.2.(b) below, if, on or prior to the determination of LIBOR for any Interest Period:~~

(a) Circumstances Affecting Benchmark Availability. Subject to clause (b) below, in connection with any request for a SOFR Loan, a Conversion to or Continuation thereof, a Bid Rate Quote in respect of a SOFR Margin Loan or otherwise, if for any reason (i) the Administrative Agent shall determine (which determination shall be conclusive and binding absent manifest error) that reasonable and adequate means do not exist for ascertaining ~~LIBOR for~~Adjusted Daily Simple SOFR pursuant to the definition thereof or Adjusted Term SOFR with respect to a proposed Term SOFR Loan on or prior to the first day of the applicable Interest Period, (ii) the Requisite Lenders shall determine (which determination shall be conclusive and binding absent manifest error) that Adjusted Daily Simple SOFR or Adjusted Term SOFR, as applicable, does not adequately and fairly reflect the cost to such Lenders of making or maintaining any such Loan during, with respect to Adjusted Term SOFR, such Interest Period~~;~~

and, in the case of clause (ii), the Requisite Lenders have provided notice of such determination to the Administrative Agent or ~~(ii) the Administrative Agent reasonably determines (which determination shall be conclusive) that quotations of interest rates for the relevant deposits referred to in the definition of LIBOR are not being provided in the relevant amounts or for the relevant maturities for purposes of determining rates of interest for LIBOR Loans as provided herein;~~

~~(iii) the Administrative Agent reasonably determines (which determination shall be conclusive) that the relevant rates of interest referred to in the definition of LIBOR upon the basis of which the rate of interest for LIBOR Loans for such Interest Period is to be determined are not likely to adequately cover the cost to any Lender of making or maintaining LIBOR Loans for such Interest Period; or~~

(~~iv~~iii) any Revolving Lender that has outstanding a Bid Rate Quote with respect to a ~~LIBOR~~SOFR Margin Loan ~~reasonably determines~~shall determine (which determination shall be conclusive and binding absent manifest error) that ~~LIBOR will~~Adjusted Term SOFR does not adequately and fairly reflect the cost to such Revolving ~~Lender~~Lenders of making or maintaining such ~~LIBOR~~SOFR Margin Loan~~;~~

, then, in each case, the Administrative Agent shall promptly give ~~the Borrower and each Lender prompt~~ notice thereof ~~and, so long as such condition remains in effect, (x) the Lenders shall be under no obligation to, and shall not, make additional LIBOR Loans, Continue LIBOR Loans or Convert Loans into LIBOR Loans and the Borrower shall, on the last day of each current Interest Period for each outstanding LIBOR Loan, either prepay such Loan or Convert such Loan into a Base Rate Loan and (y) in the case of clause (iv) above, no Revolving Lender that has outstanding a Bid Rate Quote with respect to a LIBOR Margin Loan shall be under any obligation to make such Loan.~~to the Borrower. Upon notice thereof by the Administrative Agent to the Borrower, any obligation of the Lenders to make SOFR Loans, any obligation of the Revolving Lenders to make SOFR Margin Loans in respect of an outstanding Bid Rate Quote, and any right of the Borrower to convert any Loan to or continue any Loan as a SOFR Loan, shall be suspended (to the extent of the affected SOFR Loans, Bid Rate Loans or the affected Interest Periods) until the Administrative Agent (with respect to clause (ii), at the instruction of the Requisite Lenders) revokes such notice. Upon receipt of such notice, (A) the Borrower may revoke any pending request for a borrowing of, conversion to or continuation of SOFR Loans (to the extent of the affected SOFR Loans or the affected Interest Periods) or, failing that, the Borrower will be deemed to have converted any such request into a request for a borrowing of or conversion to (x) Daily Simple SOFR Loans so long as Adjusted Daily Simple SOFR is not the subject of clauses (i) or (ii) above, or (y) Base Rate Loans if Adjusted Daily Simple SOFR is the subject of clauses (i) or (ii) above, in each case, in the amount specified therein, (B) the Borrower may revoke any pending Bid Rate Quote in respect of a SOFR Margin Loan and (C) any outstanding affected SOFR Loans will be deemed to have been converted into (I) in the case of Term SOFR Loans, (x) Daily Simple SOFR Loans so long as Adjusted Daily Simple SOFR is not the subject of clauses (i) or (ii) above, or (y) Base Rate Loans if Adjusted Daily Simple SOFR is the subject of clauses (i) or (ii) above, in each case, at the end of the applicable Interest Period and (II) in the case of Daily Simple SOFR Loans or SOFR Margin Loans, Base Rate Loans immediately.

Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted, together with any additional amounts required pursuant to Section 4.4.

(b) Benchmark Replacement Setting.

(i) (A) Benchmark Replacement. Notwithstanding anything to the contrary herein or in any other Loan Document ~~(and any Derivatives Contract shall be deemed not to be a "Loan Document" for purposes of this Section 4.2(b)) if~~, upon the occurrence of a Benchmark Transition Event ~~, an Early Opt-in Election or an Other Benchmark Rate Election, as applicable, and its related Benchmark Replacement Date have occurred prior to the Reference Time in~~ with respect ~~of~~to any ~~setting of the then-current~~ Benchmark, ~~then (x) if~~the Administrative Agent and the Borrower may amend this Agreement to replace such Benchmark with a Benchmark Replacement ~~is determined in accordance with clause (a)(1) or (a)(2) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (y) if a Benchmark Replacement is determined in accordance with clause (a)(3) or clause (c) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time)~~. Any such amendment with respect to a Benchmark Transition Event will become effective at 5:00 p.m. on the fifth (5th) Business Day after the ~~date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document~~Administrative Agent has posted such proposed amendment to all affected Lenders and the Borrower so long as the Administrative Agent has not received, by such time, written notice of objection to such ~~Benchmark Replacement~~amendment from Lenders comprising the Requisite Class Lenders. ~~If an Unadjusted~~No replacement of a Benchmark with a Benchmark Replacement ~~is Daily Simple SOFR, all interest payments will be payable on a monthly basis~~pursuant to this Section 4.2(b)(i)(A) will occur prior to the applicable Benchmark Transition Start Date.

~~(B) Notwithstanding anything to the contrary herein or in any other Loan Document, if a Term SOFR Transition Event and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then the applicable Benchmark Replacement will replace the then-current Benchmark for all purposes hereunder or under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings, without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document; provided that this clause (B) shall not be effective unless the Administrative Agent has delivered to the Lenders and the Borrower a Term SOFR Notice. For the avoidance of doubt, the Administrative Agent shall not be required to deliver a Term SOFR Notice after a Term SOFR Transition Event and may elect or not elect to do so in its sole discretion.~~

(B) No Derivatives Contract shall be deemed to be a "Loan Document" for purposes of this Section 4.2(b).

(ii) Benchmark Replacement Conforming Changes. In connection with the use, administration, adoption or implementation of a Benchmark Replacement, the Administrative Agent will have the right to make ~~Benchmark Replacement~~ Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such ~~Benchmark Replacement~~ Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(iii) Notices; Standards for Decisions and Determinations. The Administrative Agent will promptly notify the Borrower and the Lenders of (A) ~~any occurrence of a Benchmark Transition Event, a Term SOFR Transition Event, an Early Opt-in Election or an Other Benchmark Rate Election, as applicable, and its related Benchmark Replacement Date, (B) the~~the implementation of any Benchmark Replacement~~,~~ and (~~C~~B) the effectiveness of any ~~Benchmark~~

~~Replacement~~ Conforming Changes~~, (D)~~ in connection with the use, administration, adoption or implementation of a Benchmark Replacement. The Administrative Agent will promptly notify the Borrower of the removal or reinstatement of any tenor of a Benchmark pursuant to Section 4.2(b)(iv)~~ below and (E) the commencement or conclusion of any Benchmark Unavailability Period~~. Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 4.2(b), including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 4.2(b).

(iv) Unavailability of Tenor of Benchmark. Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (A) if ~~the~~any then-current Benchmark is a term rate (including the Term SOFR ~~or USD LIBOR~~Reference Rate) and either (1) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (2) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will ~~be no longer~~not be representative, then the Administrative Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (B) if a tenor that was removed pursuant to clause (A) above either (1) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (2) is not, or is no longer, subject to an announcement that it is not or will ~~no longer~~not be representative for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(v) Benchmark Unavailability Period. Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period~~,~~ with respect to a given Benchmark, (A) the Borrower may revoke any pending request for a borrowing of, conversion to or continuation of ~~LIBOR~~any affected SOFR Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for a borrowing of or conversion to ~~Base Rate Loans~~(x) Daily Simple SOFR Loans so long as Adjusted Daily Simple SOFR is not the subject of such unavailability, or (y) Base Rate Loans if Adjusted Daily Simple SOFR is the subject of such unavailability, and (B) any outstanding affected SOFR Loans will be deemed to have been converted to, (I) with respect to any Daily Simple SOFR Loans, Base Rate Loans immediately and (II) with respect to any Term SOFR Loans, (x) Daily Simple SOFR Loans so long as Adjusted Daily Simple SOFR is not the subject of such unavailability, or (y) Base Rate Loans if Adjusted Daily Simple SOFR is the subject of such availability, in each case, at the end of the applicable Interest Period. During any Benchmark Unavailability Period with respect to any Benchmark or at any time that a tenor for ~~the~~any then-current Benchmark is not an Available Tenor, the component of the Base Rate based upon the then-current Benchmark that is the subject of such Benchmark Unavailability Period or such tenor for such Benchmark, as applicable, will not be used in any determination of the Base Rate.

~~(vi) London Interbank Offered Rate Benchmark Transition Event. On March 5, 2021, the IBA, the administrator of the London interbank offered rate, and the FCA, the regulatory supervisor of the IBA, made the Announcements that the final publication or representativeness date for Dollars for (I) 1-week and 2-month London interbank offered rate tenor settings will be December 31, 2021 and (II) overnight, 1-month, 3-month, 6-month and 12-month London interbank offered rate tenor settings will be June 30, 2023. No successor administrator for the IBA was identified in such Announcements. The parties hereto agree and acknowledge (x) that the Announcements resulted in the occurrence of a Benchmark Transition Event with respect to the London interbank offered rate pursuant to the terms of this Agreement and that any obligation of the Administrative Agent to notify any parties of such Benchmark~~

Transition Event pursuant to clause (iii) of this Section 4.2(b) shall be deemed satisfied and (y) for the avoidance of doubt, an Interest Period having a duration of 7 days shall not be available after December 31, 2021 unless and until either such tenor (A) is displayed on a screen or information services for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer subject to an announcement that it is or will no longer be representative for a Benchmark (including a Benchmark Replacement).

Section 4.3. Illegality.

Notwithstanding any other provision of this Agreement, (a) if any Lender shall determine (which determination shall be conclusive and binding) that it is unlawful for such Lender to honor its obligation to make or maintain LIBORTerm SOFR Loans or Daily Simple SOFR Loans hereunder and/or (b) if any Lender that has an outstanding Bid Rate Quote shall determine (which determination shall be conclusive and binding) that it is unlawful for such Lender to honor its obligation to make or maintain LIBORSOFR Margin Loans hereunder, then such Lender shall promptly notify the Borrower thereof (with a copy of such notice to the Administrative Agent) and such Lender's obligation to make or Continue, or to Convert Loans of any other Type into, LIBORsuch affected SOFR Loans shall be suspended and/or such Lender's obligation to make LIBORSOFR Margin Loans shall be suspended, in each case, until such time as such Lender may again make and maintain LIBORsuch affected SOFR Loans or LIBORSOFR Margin Loans (in which case the provisions of Section 4.5. shall be applicable).

Section 4.4. Compensation.

The Borrower shall pay to the Administrative Agent for the account of each Lender, upon the request of the Administrative Agent, such amount or amounts as the Administrative Agent shall determine in its sole discretion shall be sufficient to compensate such Lender for any loss, cost or expense attributable to:

(a) any payment or prepayment (whether mandatory or optional) of a LIBORTerm SOFR Loan or a Bid Rate Loan, or Conversion of a LIBORTerm SOFR Loan, made by such Lender for any reason (including, without limitation, acceleration) on a date other than the last day of the Interest Period for such Term SOFR Loan; or

(b) any failure by the Borrower for any reason (including, without limitation, the failure of any of the applicable conditions precedent specified in Section 5.2. to be satisfied) to borrow a LIBORSOFR Loan or a Bid Rate Loan from such Lender on the date for such borrowing, or to Convert a Base Rate Loan into a LIBORSOFR Loan or Continue a LIBORSOFR Loan on the requested date of such Conversion or Continuation.

Not in limitation of the foregoing, such compensation shall include, without limitation, (i) in the case of a LIBORTerm SOFR Loan, an amount equal to the then present value of (A) the amount of interest that would have accrued on such LIBORSOFR Loan for the remainder of the Interest Period at the rate applicable to such LIBORTerm SOFR Loan, less (B) the amount of interest that would accrue on the same LIBORTerm SOFR Loan for the same period if LIBORSOFR were set on the date on which such LIBORTerm SOFR Loan was repaid, prepaid or Converted or the date on which the Borrower failed to borrow, Convert or Continue such LIBORTerm SOFR Loan, as applicable, calculating present value by using as a discount rate LIBORSOFR quoted on such date and (ii) in the case of a Bid Rate Loan, the sum of such losses and expenses as the Lender or Designated Lender who made such Bid Rate Loan may reasonably incur by reason of such prepayment, including without limitation any losses or expenses incurred in obtaining, liquidating or employing deposits from third parties; provided that in no event shall such compensation include any loss of anticipated profits. Upon the Borrower's request, the Administrative Agent shall provide the Borrower with a statement setting forth the basis for requesting compensation under this Section and the method for determining the amount thereof. Any such statement shall be conclusive absent manifest error.

Section 4.5. Treatment of Affected Loans.

(a) If the obligation of any Lender to make ~~LIBOR~~Term SOFR Loans or Daily Simple SOFR Loans or to Continue, or to Convert Base Rate Loans into, ~~LIBOR~~Term SOFR Loans or Daily Simple Loans shall be suspended pursuant to Section 4.1.(c), Section 4.2. or Section 4.3. then, to the extent affected, such Lender's ~~LIBOR~~(x) Daily Simple SOFR Loans shall be automatically Converted into Base Rate Loans as of such date or (y) Term SOFR Loans shall be automatically Converted into (x) Daily Simple SOFR Loans so long as Adjusted Daily Simple SOFR is not affected, or (y) Base Rate Loans if Adjusted Daily Simple SOFR is affected, in each case, on the last day(s) of the then current Interest Period(s) for ~~LIBOR~~Term SOFR Loans (or, in the case of a Conversion required by Section 4.1.(c), Section 4.2., or Section 4.3. on such earlier date as such Lender or the Administrative Agent, as applicable, may specify to the Borrower (with a copy to the Administrative Agent, as applicable)) and, unless and until such Lender or the Administrative Agent, as applicable, gives notice as provided below that the circumstances specified in Section 4.1., Section 4.2. or Section 4.3. that gave rise to such Conversion no longer exist:

(i) to the extent that such Lender's ~~LIBOR~~Term SOFR Loans or Daily Simple SOFR Loans have been so Converted, all payments and prepayments of principal that would otherwise be applied to such Lender's ~~LIBOR~~Term SOFR Loans or Daily Simple SOFR Loans shall be applied instead to its Base Rate Loans (or to its Daily Simple SOFR Loans bearing interest at the converted rate); and

(ii) all Loans that would otherwise be made or Continued by such Lender as ~~LIBOR~~Term SOFR Loans or Daily Simple SOFR Loans shall be made or Continued instead as (x) Daily Simple SOFR Loans so long as Adjusted Daily Simple SOFR is not the subject of such unavailability, or (y) Base Rate Loans if Adjusted Daily Simple SOFR is the subject of such unavailability, and all Base Rate Loans of such Lender that would otherwise be Converted into ~~LIBOR~~SOFR Loans shall remain as Base Rate Loans.

If such Lender or the Administrative Agent, as applicable, gives notice to the Borrower (with a copy to the Administrative Agent, as applicable) that the circumstances specified in Section 4.1.(c), 4.2. or 4.3. that gave rise to the Conversion of such Lender's ~~LIBOR~~SOFR Loans pursuant to this Section no longer exist (which such Lender or the Administrative Agent, as applicable, agrees to do promptly upon such circumstances ceasing to exist) at a time when ~~LIBOR~~SOFR Loans made by other Lenders are outstanding, then such Lender's Base Rate Loans shall be automatically Converted, on the first day(s) of the next succeeding (x) interest payment date for such outstanding Daily Simple SOFR Loans and (y) Interest Period(s) for such outstanding ~~LIBOR~~Term SOFR Loans, to the extent necessary so that, after giving effect thereto, all Loans of the applicable Class held by the Lenders holding ~~LIBOR Loans~~Daily Simple SOFR Loans and/or Term SOFR Loans, as applicable, and by such Lender are held pro rata (as to principal amounts, Types and Interest Periods) in accordance with their respective Commitments.

(b) If the obligation of a Revolving Lender to make ~~LIBOR~~SOFR Margin Loans shall be suspended pursuant to Section 4.1.(c) or 4.2., then the ~~LIBOR~~SOFR Margin Loans of such Lender shall be automatically due and payable on such date as such Lender may specify to the Borrower by written notice with a copy to the Administrative Agent; provided that if such notice is delivered after 10:00 a.m. Eastern time, then such ~~LIBOR~~SOFR Margin Loan shall be due and payable no earlier than the first Business Day following the date such notice is delivered.

Section 4.6. Affected Lenders.

If (a) a Lender requests compensation pursuant to Section 3.10. or 4.1., and the Requisite Lenders are not also doing the same, or (b) the obligation of any Lender to make ~~LIBOR~~SOFR Loans or to Continue, or to Convert Base Rate Loans into, ~~LIBOR~~SOFR Loans shall be suspended pursuant to Section 4.1.(c) or 4.3. but the obligation of the Requisite Lenders shall not have been suspended under such Sections, the Borrower may demand that such Lender (the "Affected Lender"), and upon such demand the Affected Lender shall promptly, assign its Commitment to an Eligible Assignee subject to and in accordance with the provisions of Section 12.5.(b) for a purchase price equal to (x) the aggregate principal balance of all Loans then owing to the Affected Lender, plus (y) the aggregate amount of

payments previously made by the Affected Lender under Section 2.3.(j) that have not been repaid, plus (z) any accrued but unpaid interest thereon and accrued but unpaid fees owing to the Affected Lender, or any other amount as may be mutually agreed upon by such Affected Lender and Eligible Assignee. Each of the Administrative Agent and the Affected Lender shall reasonably cooperate in effectuating the replacement of such Affected Lender under this Section and the Affected Lender shall promptly execute all documents reasonably requested to surrender and transfer such interest to the purchaser or assignee thereof, including an appropriate Assignment and Assumption, but at no time shall the Administrative Agent, such Affected Lender, any other Lender or any Titled Agent be obligated in any way whatsoever to initiate any such replacement or to assist in finding an Eligible Assignee. The exercise by the Borrower of its rights under this Section shall be at the Borrower's sole cost and expense and at no cost or expense to the Administrative Agent, the Affected Lender or any of the other Lenders. The terms of this Section shall not in any way limit the Borrower's obligation to pay to any Affected Lender compensation owing to such Affected Lender pursuant to this Agreement (including, without limitation, pursuant to Sections 3.10., 4.1. or 4.4.) with respect to any period up to the date of replacement.

Section 4.7. Change of Lending Office.

Each Lender agrees that it will use reasonable efforts (consistent with its internal policy and legal and regulatory restrictions) to designate an alternate Lending Office with respect to any of its Loans affected by the matters or circumstances described in Sections 3.10., 4.1. or 4.3. to eliminate or reduce the liability of the Borrower or avoid the results provided thereunder, so long as such designation is not disadvantageous to such Lender as determined by such Lender in its sole discretion, except that such Lender shall have no obligation to designate a Lending Office located in the United States of America.

~~**Section 4.8. Assumptions Concerning Funding of LIBOR Loans.**~~

~~Calculation of all amounts payable to a Lender under this Article shall be made as though such Lender had actually funded LIBOR Loans through the purchase of deposits in the relevant market bearing interest at the rate applicable to such LIBOR Loans in an amount equal to the amount of the LIBOR Loans and having a maturity comparable to the relevant Interest Period; provided, however, that each Lender may fund each of its LIBOR Loans in any manner it sees fit and the foregoing assumption shall be used only for calculation of amounts payable under this Article.~~

Article V. Conditions Precedent

Section 5.1. Initial Conditions Precedent.

The obligation of the Lenders to effect or permit the occurrence of the first Credit Event hereunder, whether as the making of a Loan or the issuance of a Letter of Credit, is subject to the satisfaction or waiver of the following conditions precedent:

(a) The Administrative Agent shall have received each of the following, in form and substance satisfactory to the Administrative Agent:

(i) counterparts of this Agreement executed by each of the parties hereto;

(ii) Revolving Notes, Tranche B Term Notes and Bid Rate Notes executed by the Borrower, payable to each applicable Lender (including any Designated Lender, if applicable, and to the extent such Lender has required to receive Notes) and complying with the terms of Section 2.12.(a) ~~and the Swingline Notes executed by the Borrower~~;

(iii) [reserved];

(iv) an opinion of counsel to the Borrower and the other Loan Parties, addressed to the Administrative Agent and the Lenders and covering such matters as the Administrative Agent may reasonably request;

(v) the certificate or articles of incorporation or formation, articles of organization, certificate of limited partnership, declaration of trust or other comparable organizational instrument (if any) of each Loan Party certified as of a recent date by the Secretary of State of the state of formation of such Loan Party;

(vi) a certificate of good standing (or certificate of similar meaning) with respect to each Loan Party issued as of a recent date by the Secretary of State of the state of formation of each such Loan Party and certificates of qualification to transact business or other comparable certificates issued as of a recent date by each Secretary of State (and any state department of taxation, as applicable) of each state in which such Loan Party is required to be so qualified and where failure to be so qualified could reasonably be expected to have a Material Adverse Effect;

(vii) a certificate of incumbency signed by the Secretary or Assistant Secretary (or other individual performing similar functions) of each Loan Party with respect to each of the officers of such Loan Party authorized to execute and deliver the Loan Documents to which such Loan Party is a party, and in the case of the Borrower, authorized to execute and deliver on behalf of the Borrower Notices of Borrowing, ~~Notices of Swingline Borrowing,~~ requests for Letters of Credit, Notices of Conversion, Notices of Continuation and Bid Rate Quote Requests;

(viii) copies certified by the Secretary or Assistant Secretary (or other individual performing similar functions) of each Loan Party of (A) the by-laws of such Loan Party, if a corporation, the operating agreement, if a limited liability company, the partnership agreement, if a limited or general partnership, or other comparable document in the case of any other form of legal entity and (B) all corporate, partnership, member or other necessary action taken by such Loan Party to authorize the execution, delivery and performance of the Loan Documents to which it is a party;

(ix) a Compliance Certificate calculated on a pro forma basis for the four (4) quarter fiscal period ending June 30, 2021;

(x) a Disbursement Instruction Agreement effective as of the Agreement Date;

(xi) [reserved];

(xii) evidence that the Fees, if any, then due and payable under Section 3.5., together with, to the extent a reasonably detailed invoice has been delivered to the Borrower prior to the date hereof, all other fees, expenses and reimbursement amounts due and payable to the Administrative Agent and any of the Lenders, including without limitation, the reasonable and documented out-of-pocket fees and expenses of counsel to the Administrative Agent, have been paid; and

(xiii) such other documents, agreements and instruments as the Administrative Agent, or any Lender through the Administrative Agent, may reasonably request;

(b) there shall not have occurred or become known to the Administrative Agent or any of the Lenders any event, condition, situation or status since the date of the information contained in the financial and business projections, budgets, pro forma data and forecasts concerning the Borrower and its Subsidiaries delivered to the Administrative Agent and the Lenders prior to the Agreement Date that has had or could reasonably be expected to result in a Material Adverse Effect;

(c) no litigation, action, suit, investigation or other arbitral, administrative or judicial proceeding shall be pending or threatened in writing which could reasonably be expected to (A) result in a Material Adverse Effect or (B) restrain or enjoin, impose materially burdensome conditions on, or otherwise materially and adversely affect, the ability of the Borrower or any other Loan Party to fulfill its obligations under the Loan Documents to which it is a party;

(d) the Borrower, the other Loan Parties and the other Subsidiaries shall have received all approvals, consents and waivers, and shall have made or given all necessary filings and notices as shall be required to consummate the transactions contemplated hereby without the occurrence of any default

under, conflict with or violation of (A) any Applicable Law or (B) any agreement, document or instrument to which any Loan Party is a party or by which any of them or their respective properties is bound, except for such approvals, consents, waivers, filings and notices the receipt, making or giving of which, or the failure to make, give or receive which, would not reasonably be likely to (A) have a Material Adverse Effect, or (B) restrain or enjoin or impose materially burdensome conditions on, or otherwise materially and adversely affect the ability of the Borrower or any other Loan Party to fulfill its obligations under the Loan Documents to which it is a party; and

(e) the Borrower and each other Loan Party shall have provided all information requested by the Administrative Agent and each Lender in order to comply with applicable "know your customer" and anti-money laundering rules and regulations, including without limitation, the Patriot Act.

Section 5.2. Conditions Precedent to All Loans and Letters of Credit.

In addition to satisfaction or waiver of the conditions precedent to the first Credit Event contained in Section 5.1., the obligations of (i) Lenders to make any Loans and (ii) the Issuing Banks to issue Letters of Credit are each subject to the further conditions precedent that: (a) no Default or Event of Default shall exist as of the date of the making of such Loan or date of issuance of such Letter of Credit or would exist immediately after giving effect thereto, and no violation of the limits described in Section 2.16. would occur after giving effect thereto; (b) the Continuing Representations shall be true and correct in all material respects (except in the case of a representation or warranty qualified by materiality, in which case such representation or warranty shall be true and correct in all respects) on and as of the date of the making of such Loan or date of issuance of such Letter of Credit with the same force and effect as if made on and as of such date except to the extent that such representations and warranties expressly relate solely to an earlier date (in which case such representations and warranties shall have been true and correct in all material respects (except in the case of a representation or warranty qualified by materiality, in which case such representation or warranty shall have been true and correct in all respects) on and as of such earlier date) and except for changes in factual circumstances not prohibited hereunder and (c) in the case of the borrowing of Loans~~ (other than Swingline Loans)~~, the Administrative Agent shall have received a timely Notice of ~~Borrowing, in the case of a Swingline Loan, the Administrative Agent and the applicable Swingline Lender shall have received a timely Notice of Swingline~~ Borrowing, and in the case of the issuance of a Letter of Credit the applicable Issuing Bank and the Administrative Agent shall have received a timely request for the issuance of such Letter of Credit. Each Credit Event shall constitute a certification by the Borrower to the effect set forth in the preceding sentence (both as of the date of the giving of notice relating to such Credit Event and, unless the Borrower otherwise notifies the Administrative Agent prior to the date of such Credit Event, as of the date of the occurrence of such Credit Event). In addition, the Borrower shall be deemed to have represented to the Administrative Agent and the Lenders at the time any Loan is made or any Letter of Credit is issued that all conditions to the making of such Loan or issuing of such Letter of Credit contained in this Article V. have been satisfied. Unless set forth in writing to the contrary, the making of its initial Loan by a Lender shall constitute a certification by such Lender to the Administrative Agent for the benefit of the Administrative Agent and the Lenders that the conditions precedent for initial Loans set forth in Sections 5.1. and 5.2. that have not previously been waived by the Lenders in accordance with the terms of this Agreement have been satisfied.

Article VI. Representations and Warranties

Section 6.1. Representations and Warranties.

In order to induce the Administrative Agent and each Lender to enter into this Agreement and to make Loans and, in the case of the Issuing Banks, to issue Letters of Credit, and, in the case of the Lenders, to acquire participations in Letters of Credit, the Borrower represents and warrants to the Administrative Agent, each Issuing Bank and each Lender as follows:

(a) <u>Organization; Power; Qualification</u>. Each of the Borrower, the other Loan Parties and the other Subsidiaries is a corporation, partnership or other legal entity, duly organized or formed, validly existing and in good standing under the jurisdiction of its incorporation or formation, has the power and

authority to own or lease its respective properties and to carry on its respective business as now being and hereafter proposed to be conducted and is duly qualified and is in good standing as a foreign corporation, partnership or other legal entity, and authorized to do business, in each jurisdiction in which the character of its properties or the nature of its business requires such qualification or authorization and where the failure to be so qualified or authorized could reasonably be expected to have, in each instance, a Material Adverse Effect.

(b) Ownership Structure. Part I of Schedule 6.1.(b) is, as of the Agreement Date, a complete and correct list of all Subsidiaries setting forth for each such Subsidiary, whether or not such Subsidiary is a Wholly Owned Subsidiary. Except as disclosed in such Schedule, as of the Agreement Date (A) each of the Borrower and its Subsidiaries owns, free and clear of all Liens (other than Permitted Liens), and has the unencumbered right to vote, all outstanding Equity Interests in each Person held by it, (B) all of the issued and outstanding capital stock of each such Person organized as a corporation is validly issued, fully paid and nonassessable and (C) there are no outstanding subscriptions, options, warrants, commitments, preemptive rights or agreements of any kind (including, without limitation, any stockholders' or voting trust agreements) for the issuance, sale, registration or voting of, or outstanding securities convertible into, any additional shares of capital stock of any class, or partnership or other ownership interests of any type in, any such Person. As of the Agreement Date, Part II of Schedule 6.1.(b) correctly sets forth all Unconsolidated Affiliates of the Borrower, including the correct legal name of such Person, the type of legal entity which each such Person is, and all Equity Interests in such Person held directly or indirectly by the Borrower.

(c) Authorization of Loan Documents and Borrowings. The Borrower has the right and power, and has taken all necessary action to authorize it, to borrow and obtain other extensions of credit hereunder. Each of the Borrower and the other Loan Parties has the right and power, and has taken all necessary action to authorize it, to execute, deliver and perform each of the Loan Documents to which it is a party in accordance with their respective terms and to consummate the transactions contemplated hereby and thereby. The Loan Documents to which the Borrower or any other Loan Party is a party have been duly executed and delivered by the duly authorized officers of such Person and each is a legal, valid and binding obligation of such Person enforceable against such Person in accordance with its respective terms, except as the same may be limited by bankruptcy, insolvency, and other similar laws affecting the rights of creditors generally and the availability of equitable remedies for the enforcement of certain obligations (other than the payment of principal) contained herein or therein and as may be limited by equitable principles generally.

(d) Compliance of Loan Documents with Laws. The execution, delivery and performance of this Agreement and the other Loan Documents to which any Loan Party is a party in accordance with their respective terms and the borrowings and other extensions of credit hereunder do not and will not, by the passage of time, the giving of notice, or both: (i) require any Loan Party to obtain a Governmental Approval (other than any required filing with the SEC) or violate any Applicable Law (including all Environmental Laws) relating to or any Loan Party; (ii) conflict with, result in a breach of or constitute a default under the organizational documents of the Borrower or any other Loan Party, or any indenture, agreement or other instrument to which the Borrower or any other Loan Party is a party or by which it or any of its respective properties may be bound; or (iii) result in or require the creation or imposition of any Lien upon or with respect to any property now owned or hereafter acquired by any Loan Party.

(e) Compliance with Law; Governmental Approvals. Each of the Borrower, the other Loan Parties and the other Subsidiaries is in compliance with each Governmental Approval and all other Applicable Laws relating to it except for noncompliances which, and Governmental Approvals the failure to possess which, could not, individually or in the aggregate, reasonably be expected to cause a Default or Event of Default or have a Material Adverse Effect.

(f) Title to Properties; Liens. Schedule 6.1.(f) is, as of the Agreement Date, a complete and correct listing of all real estate assets of the Borrower, each other Loan Party and each other Subsidiary, setting forth, for each such Property, whether such Property is a Development Property or Major Redevelopment Property. Each of the Borrower, each other Loan Party and each other Subsidiary owns, or has a valid leasehold interest in, its respective Properties. As of the Agreement Date, there are no Liens against any Eligible Properties included in the calculation of Unencumbered Pool Value or the income of which is included in the calculation of Unencumbered NOI other than Permitted Liens.

(g) Existing Indebtedness; Liens. Schedule 6.1.(g) is, as of the Agreement Date, a complete and correct listing of all Indebtedness (including all Guarantees) in respect of borrowed money of each of the Borrower, the other Loan Parties and the other Subsidiaries. As of the Agreement Date, no event of default, (after giving effect to notice, grace and cure periods) exists with respect to any such Indebtedness.

(h) Litigation. Except as set forth on Schedule 6.1.(h), there are no actions, suits or proceedings pending (or, to the knowledge of any Loan Party, are there any actions, suits or proceedings threatened, nor is there any basis therefor) against or in any other way relating adversely to or affecting the Borrower, any other Loan Party, any other Subsidiary or any of their respective property in any court or before any arbitrator of any kind or before or by any other Governmental Authority which, (i) could reasonably be expected to have a Material Adverse Effect or (ii) in any manner draws into question the validity or enforceability of any Loan Document.

(i) Taxes. All federal and state income and other material tax returns of the Borrower, each other Loan Party and each other Subsidiary required by Applicable Law to be filed have been duly filed, and all federal and state income and other material taxes, assessments and other governmental charges or levies upon, each Loan Party, each other Subsidiary and their respective properties, income, profits and assets which are due and payable have been paid, except any such nonpayment or non-filing which is at the time permitted under Section 7.6. As of the Agreement Date, none of the United States income tax returns of the Borrower, any other Loan Party or any other Subsidiary is under audit.

(j) Financial Statements. The Borrower has furnished to each Lender copies of (i) the audited consolidated balance sheet of the Borrower and its consolidated Subsidiaries for the fiscal years ended December 31, 2019 and December 31, 2020, and the related audited consolidated statements of income, shareholders' equity and cash flows for the fiscal years ended on such dates, with the opinion thereon of Ernst & Young LLP and (ii) the unaudited consolidated balance sheet of the Borrower and its consolidated Subsidiaries for the fiscal quarter ended June 30, 2021, and the related unaudited consolidated statements of operations, and cash flow of the Borrower and its consolidated Subsidiaries for the fiscal quarter period ended on such date. Such financial statements (including in each case related schedules and notes) are complete and correct in all material respects and present fairly, in accordance with GAAP consistently applied throughout the periods involved and in all material respects, the consolidated financial position of the Borrower and its consolidated Subsidiaries as at their respective dates and the results of operations and the cash flow for such periods (subject, as to interim statements, to the absence of footnotes and to changes resulting from normal year-end audit adjustments). Neither the Borrower nor any of its Subsidiaries has on the Agreement Date any material contingent liabilities, material liabilities, material liabilities for taxes, material unusual or long-term commitments or material unrealized or forward anticipated losses from any unfavorable commitments, in each case, that would be required to be set forth in its financial statements or notes thereto, except as referred to or reflected or provided for in said financial statements.

(k) No Material Adverse Change. Since December 31, 2020, there have been no changes, events, acts, conditions or occurrences of any nature, singly or in the aggregate, that have had or could reasonably be expected to have a Material Adverse Effect. The Borrower, the other Loan Parties and the other Subsidiaries, taken as a whole, are Solvent.

(l) ERISA.

(i) Except as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, each Benefit Arrangement is in compliance with the applicable provisions of ERISA, the Internal Revenue Code and other Applicable Laws. Except with respect to Multiemployer Plans, each Qualified Plan (A) has received a favorable determination from the Internal Revenue Service applicable to such Qualified Plan's current remedial amendment cycle (as defined in Revenue Procedure 2007-44 or "2007-44" for short), (B) has timely filed for a favorable determination letter from the Internal Revenue Service during its staggered remedial amendment cycle (as defined in 2007-44) and such application is currently being processed by the Internal Revenue Service, (C) had filed for a determination letter prior to its "GUST remedial amendment period" (as defined in 2007-44) and received such determination letter and the

staggered remedial amendment cycle first following the GUST remedial amendment period for such Qualified Plan has not yet expired, or (D) is maintained under a prototype plan and may rely upon a favorable opinion letter issued by the Internal Revenue Service with respect to such prototype plan. To the best knowledge of the Borrower, nothing has occurred which would cause the loss of its reliance on each Qualified Plan's favorable determination letter or opinion letter.

(ii) With respect to any Benefit Arrangement that is a retiree welfare benefit arrangement, all amounts have been accrued on the applicable ERISA Group's financial statements in accordance with FASB ASC 715.

(iii) Except as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect: (i) no ERISA Event has occurred or is expected to occur; (ii) there are no pending, or to the knowledge of a Responsible Officer of the Borrower, threatened, claims, actions or lawsuits or other action by any Governmental Authority, plan participant or beneficiary with respect to a Benefit Arrangement; (iii) there are no violations of the fiduciary responsibility rules with respect to any Benefit Arrangement; and (iv) no member of the ERISA Group has engaged in a non-exempt "prohibited transaction," as defined in Section 406 of ERISA and Section 4975 of the Internal Revenue Code, in connection with any Plan, that would subject any member of the ERISA Group to a tax on prohibited transactions imposed by Section 502(i) of ERISA or Section 4975 of the Internal Revenue Code.

(m) Absence of Defaults. None of the Loan Parties or any of the other Subsidiaries is in material default under its certificate or articles of incorporation or formation, bylaws, partnership agreement or other similar organizational documents.

(n) Environmental Laws. Each of the Borrower, each other Loan Party and each other Subsidiary: (i) is in compliance with all Environmental Laws applicable to its business, operations and the Properties, (ii) has obtained all Governmental Approvals which are required under Environmental Laws, and each such Governmental Approval is in full force and effect, and (iii) is in compliance with all terms and conditions of such Governmental Approvals, where with respect to each of the immediately preceding clauses (i) through (iii) the failure to obtain or to comply with could reasonably be expected to have a Material Adverse Effect. Except for any of the matters set forth on Schedule 6.1.(n) or that could not reasonably be expected to have a Material Adverse Effect, no Loan Party has any knowledge of, nor has it received notice of, any past, present, or pending releases, events, conditions, circumstances, activities, practices, incidents, facts, occurrences, actions, or plans that, with respect to any Loan Party or any other Subsidiary, could reasonably be expected to interfere with or prevent compliance or continued compliance with Environmental Laws, or could reasonably be expected to give rise to any other potential common-law or legal claim or other liability, based on or related to the on-site or off-site manufacture, generation, processing, distribution, use, treatment, storage, disposal, transport, removal, clean up or handling, or the emission, discharge, release or threatened release of any Hazardous Material, or any other requirement under Environmental Law. There is no civil, criminal, or administrative action, suit, demand, claim, hearing, notice, or demand letter, mandate, order, lien, request, investigation, or proceeding pending or, to the Borrower's knowledge after due inquiry, threatened, against the Borrower, any other Loan Party or any other Subsidiary relating in any way to Environmental Laws which, could reasonably be expected to have a Material Adverse Effect. None of the Properties is listed on or proposed for listing on the National Priority List promulgated pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 and its implementing regulations, or any state or local priority list promulgated pursuant to any analogous state or local law. To the Borrower's knowledge, no Hazardous Materials generated at or transported from the Properties are or have been transported to, or disposed of at, any location that is listed or proposed for listing on the National Priority List or any analogous state or local priority list, or any other location that is or has been the subject of a clean-up, removal or remedial action pursuant to any Environmental Law, except to the extent that such transportation or disposal could not reasonably be expected to result in a Material Adverse Effect.

(o) Investment Company. None of the Borrower, any other Loan Party or any other Subsidiary is (i) an "investment company" or a company "controlled" by an "investment company" within the meaning of the Investment Company Act of 1940, as amended, or (ii) subject to any other Applicable Law which purports to regulate or restrict its ability to borrow money or obtain other

extensions of credit or to consummate the transactions contemplated by this Agreement or to perform its obligations under any Loan Document to which it is a party.

(p) Margin Stock. None of the Borrower, any other Loan Party or any other Subsidiary is engaged principally, or as one of its important activities, in the business of extending credit for the purpose, whether immediate, incidental or ultimate, of buying or carrying "margin stock" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System.

(q) Affiliate Transactions. Except as set forth on Schedule 6.1.(q), and except as permitted by Section 9.8., none of the Borrower, any other Loan Party or any other Subsidiary is a party to or bound by any agreement or arrangement (whether oral or written) with any Affiliate.

(r) Business. As of the Agreement Date, the Borrower, the other Loan Parties and the other Subsidiaries are engaged in the business of acquiring, developing, owning and operating income-producing properties and such business activities and investments incidental or reasonably related thereto.

(s) Broker's Fees. No broker's or finder's fee, commission or similar compensation will be payable with respect to the transactions contemplated hereby. No other similar fees or commissions will be payable by any Loan Party for any other services rendered to the Borrower, any other Loan Party or any other Subsidiary ancillary to the transactions contemplated hereby.

(t) Accuracy and Completeness of Information. All written information, reports and other papers and data (other than financial projections and other forward looking statements and information of a general economic or general industry nature, including, without limitation, any projections furnished pursuant to Section 8.4.(n) and Section 8.4.(o)) furnished to the Administrative Agent or any Lender by, on behalf of, or at the direction of, the Borrower, any other Loan Party or any other Subsidiary were, at the time the same were so furnished, when taken as a whole, complete and correct in all material respects, and did not contain any untrue statement of a material fact, or omit to state a material fact necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not materially misleading. All financial projections and other forward looking statements prepared by or on behalf of the Borrower, any other Loan Party or any other Subsidiary that have been or may hereafter be made available to the Administrative Agent or any Lender were or will be prepared in good faith based on assumptions believed to be reasonable at the time made, it being understood that actual result may vary materially from such projections and statements.

(u) Not Plan Assets; No Prohibited Transactions. None of the assets of the Borrower, any other Loan Party or any other Subsidiary constitutes "plan assets" within the meaning of ERISA, the Internal Revenue Code and the respective regulations promulgated thereunder, of any Plan. Assuming that no Lender funds any amount payable by it hereunder with "plan assets," as that term is defined in 29 C.F.R. 2510.3-101, the execution, delivery and performance of this Agreement and the other Loan Documents, and the extensions of credit and repayment of amounts hereunder, do not and will not constitute "prohibited transactions" under ERISA or the Internal Revenue Code.

(v) Anti-Corruption Laws and Sanctions; Anti-Terrorism Laws. None of the Borrower, any Subsidiary or, to the knowledge of the Borrower, any of their respective directors, officers, employees and agents (in their capacities as such) (i) is an "enemy" or an "ally of the enemy" within the meaning of Section 2 of the Trading with the Enemy Act of the United States, 50 U.S.C. App. §§ 1 et seq., as amended (the "Trading with the Enemy Act") or (ii) is in violation of (A) the Trading with the Enemy Act, (B) any of the foreign assets control regulations of the United States Treasury Department or any enabling legislation or executive order relating thereto, including without limitation, Executive Order No. 13224, effective as of September 24, 2001 relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit or Support Terrorism (66 Fed. Reg. 49079 (2001)) or (C) the Patriot Act (collectively, the "Anti-Terrorism Laws"). The Borrower has implemented and maintains in effect policies and procedures reasonably designed to confirm compliance by the Borrower, its Subsidiaries and their respective directors, officers, employees and agents (in their capacities as such) with Anti-Corruption Laws, Anti-Terrorism Laws and applicable Sanctions. The Borrower, its Subsidiaries and, to the knowledge of the Borrower, their respective directors, officers, employees and agents (in their capacities as such) are in compliance with Anti-Corruption Laws, Anti-Terrorism Laws and applicable Sanctions in all material respects. None of the Borrower or any Subsidiary is, or derives

any of its assets or operating income from investments in or transactions with, a Sanctioned Person and, to the knowledge of the Borrower, none of the respective directors, officers, employees or agents of the Borrower or any of its Subsidiaries is a Sanctioned Person.

(w) REIT Status. The Borrower qualifies as, and has elected to be treated as, a REIT and is in compliance with all requirements and conditions imposed under the Internal Revenue Code to allow the Borrower to maintain its status as a REIT.

(x) Unencumbered Properties. Each Property included in any calculation of Unencumbered NOI satisfied, at the time of such calculation, all of the requirements contained in the definition of "Eligible Property". Each Property included in any calculation of Unencumbered Pool Value satisfied, at the time of such calculation, all of the requirements contained in the definition of "Eligible Property".

(y) Affected Financial Institution. No Loan Party nor any Subsidiary thereof is an Affected Financial Institution.

Section 6.2. Survival of Representations and Warranties, Etc.

All statements contained in any certificate, financial statement or other instrument delivered by or on behalf of any Loan Party or any other Subsidiary to the Administrative Agent or any Lender pursuant to or in connection with this Agreement or any of the other Loan Documents (including, but not limited to, any such statement made in or in connection with any amendment thereto or any statement contained in any certificate, financial statement or other instrument delivered by or on behalf of any Loan Party prior to the Agreement Date and delivered to the Administrative Agent or any Lender in connection with the underwriting or closing the transactions contemplated hereby) shall constitute representations and warranties made by the Borrower under this Agreement. All such representations and warranties shall survive the effectiveness of this Agreement, the execution and delivery of the Loan Documents and the making of the Loans and the issuance of the Letters of Credit.

Article VII. Affirmative Covenants

For so long as this Agreement is in effect, the Borrower shall comply with the following covenants:

Section 7.1. Preservation of Existence and Similar Matters.

Except as otherwise permitted under Section 9.4., the Borrower shall, and shall cause each other Loan Party and each other Subsidiary to, (i) preserve and maintain its respective existence in the jurisdiction of its incorporation or formation, (ii) preserve and maintain its respective rights, franchises, licenses and privileges in the jurisdiction of its incorporation or formation, and (iii) qualify and remain qualified and authorized to do business in each jurisdiction in which the character of its properties or the nature of its business requires such qualification and authorization, except, in the case of clauses (i) (solely with respect to Subsidiaries other than Loan Parties), (ii) and (iii), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

Section 7.2. Compliance with Applicable Law.

The Borrower shall comply, and shall cause each other Loan Party and each other Subsidiary to comply, with all Applicable Law, including the obtaining of all Governmental Approvals, the failure with which to comply could reasonably be expected to have a Material Adverse Effect. The Borrower will maintain in effect and enforce policies and procedures reasonably designed to confirm compliance by the Borrower, its Subsidiaries and their respective directors, officers, employees and agents (in their capacities as such) with Anti-Corruption Laws, Anti-Terrorism Laws and applicable Sanctions.

Section 7.3. Maintenance of Property.

In addition to the requirements of any of the other Loan Documents, the Borrower shall, and shall cause each other Loan Party and each other Subsidiary to, protect and preserve all of its respective material properties and maintain (other than Development Properties and Major Redevelopment Properties) in good repair, working order and condition all tangible properties, ordinary wear and tear and condemnation and casualty events excepted, except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

Section 7.4. Conduct of Business.

The Borrower shall, and shall cause each other Loan Party and each other Subsidiary to, carry on its respective businesses as described in Section 6.1.(r) and not enter into any line of business not otherwise engaged in or permitted to be engaged in pursuant to Section 6.1.(r) by such Person as of the Agreement Date.

Section 7.5. Insurance.

The Borrower shall, and shall cause each other Loan Party and each other Subsidiary to, maintain insurance (on a replacement cost basis) with financially sound and reputable insurance companies against such risks and in such amounts as is customarily maintained by Persons engaged in similar businesses and at similar localities or as may be required by Applicable Law. The Borrower shall from time to time deliver to the Administrative Agent upon request a detailed list, together with copies of all policies of the insurance then in effect, stating the names of the insurance companies, the amounts and rates of the insurance, the dates of the expiration thereof and the properties and risks covered thereby.

Section 7.6. Payment of Taxes and Claims.

The Borrower shall, and shall cause each other Loan Party and each other Subsidiary to, pay and discharge (a) prior to delinquency, all federal and state income taxes and all other material taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits or upon any properties belonging to it, and (b) by not later than 30 days past the due date therefor, all lawful claims of materialmen, mechanics, carriers, warehousemen and landlords for labor, materials, supplies and rentals which, if unpaid, would without further passage of time become a Lien on any Eligible Property of such Person that is included in the calculation of Unencumbered Pool Value or the income of which is included in the calculation of Unencumbered NOI; provided, however, that this Section shall not require the payment or discharge of any such tax, assessment, charge, levy or claim which is being contested in good faith by appropriate proceedings which operate to suspend the collection thereof and for which adequate reserves have been established on the books of such Person in accordance with GAAP.

Section 7.7. Books and Records; Inspections.

The Borrower will, and will cause each other Loan Party and each other Subsidiary to, keep proper books of record and account in order to permit the preparation of financial statements accordance with GAAP. Subject to limitations, if any, imposed under regulatory or confidentiality requirements and agreements (other than confidentiality provisions entered into in contemplation of this Agreement) to which the Borrower or one of its Subsidiaries is subject or could otherwise reasonably be expected to contravene attorney-client privilege or constitute attorney work product, the Borrower will, and will cause each other Loan Party and each other Subsidiary to, permit representatives of the Administrative Agent or any Lender to visit and inspect any of their respective properties, to examine and make abstracts from any of their respective books and records and to discuss their respective affairs, finances and accounts with their respective officers, employees and independent public accountants (in the presence of an officer of the Borrower if an Event of Default does not then exist), all at such reasonable times during business hours and as often as may reasonably be requested and so long as no Event of Default exists, with reasonable prior notice. The Borrower shall be obligated to reimburse the Administrative Agent and the Lenders for their reasonable and documented out-of-pocket costs and expenses incurred in connection with the exercise of their rights under this Section only if such exercise occurs while a Default or Event of

Default exists. The Borrower hereby authorizes and instructs its accountants to discuss the financial affairs of the Borrower, any other Loan Party or any other Subsidiary with the Administrative Agent.

Section 7.8. Use of Proceeds.

The Borrower will use the proceeds of Loans only (a) for the payment of pre-development, development and redevelopment costs incurred in connection with Properties owned by the Borrower or any Subsidiary; (b) to finance acquisitions permitted under this Agreement; (c) to finance capital expenditures and the repayment of Indebtedness of the Borrower and its Subsidiaries; (d) to finance Investments in the Indebtedness or Equity Interests of any Person, in each case as permitted under this Agreement; (e) to provide for the general working capital needs of the Borrower and its Subsidiaries and for other general corporate purposes of the Borrower and its Subsidiaries (including dividend distributions and stock repurchases otherwise permitted under this Agreement); and (f) to pay fees and expenses incurred in connection with the closing of this facility. The Borrower shall only use Letters of Credit for the same purposes for which it may use the proceeds of Loans. The Borrower shall not, and shall not permit any other Loan Party or any other Subsidiary to, use any part of such proceeds to purchase or carry, or to reduce or retire or refinance any credit incurred to purchase or carry, any margin stock (within the meaning of Regulation U or Regulation X of the Board of Governors of the Federal Reserve System) or to extend credit to others for the purpose of purchasing or carrying any such margin stock. The Borrower shall not, and shall not permit any other Loan Party or any other Subsidiary to, use the proceeds of any Loan or any Letter of Credit in any manner which would violate Anti-Corruption Laws, Anti-Terrorism Laws or applicable Sanctions.

Section 7.9. Environmental Matters.

The Borrower shall, and shall cause each other Loan Party and each other Subsidiary to and the Borrower shall use, and shall cause each other Loan Party and each other Subsidiary to use, commercially reasonable efforts to cause all other Persons occupying, using or present on the Properties, to comply with all Environmental Laws the failure with which to comply could reasonably be expected to have a Material Adverse Effect. Except as could not reasonably be expected to result in a Material Adverse Effect, the Borrower shall, and shall cause each other Loan Party and each other Subsidiary to, promptly take all actions necessary to prevent the imposition of any Liens on any of their respective properties arising out of or related to any Environmental Laws. Nothing in this Section shall impose any obligation or liability whatsoever on the Administrative Agent, any Issuing Bank or any Lender.

Section 7.10. Further Assurances.

At the Borrower's cost and expense and upon request of the Administrative Agent, the Borrower shall, and shall cause each other Loan Party and each other Subsidiary to, duly execute and deliver or cause to be duly executed and delivered, to the Administrative Agent such further instruments, documents and certificates, and do and cause to be done such further acts that may be reasonably requested by the Administrative Agent to carry out more effectively the provisions and purposes of this Agreement and the other Loan Documents.

Section 7.11. REIT Status.

Prior to the Reorganization, the Borrower shall maintain its status as, and election to be treated as, a REIT. On and after the Reorganization, the REIT Entity shall maintain its status as, and election to be treated as, a REIT.

Section 7.12. Exchange Listing.

Prior to the Reorganization, the Borrower shall maintain at least one class of common shares of the Borrower having trading privileges on the New York Stock Exchange or NYSE Amex Equities or which is subject to price quotations on The NASDAQ Stock Market's National Market System. On and after the Reorganization, the REIT Entity shall maintain at least one class of common shares of the REIT

Entity having trading privileges on the New York Stock Exchange or NYSE Amex Equities or which is subject to price quotations on The NASDAQ Stock Market's National Market System.

Section 7.13. Guarantors.

(a) Not later than the applicable Required Joinder Date following the date on which any of the following conditions first applies to any Subsidiary that is not a Guarantor, the Borrower shall cause such Subsidiary to execute and deliver an Accession Agreement (or if at such time a Guaranty is not in effect, a Guaranty substantially in the form of the Exhibit E) and the items specified in subsection (b) below:

(i) such Subsidiary Guarantees, or otherwise becomes obligated in respect of, any Indebtedness of the Borrower or any other Subsidiary of the Borrower (or, from and after the Reorganization, the REIT Entity or any Subsidiary of the REIT Entity) (other than (A) Guarantees of, and other obligations in respect of, Indebtedness relating to construction loans in an aggregate amount for such Guarantees and other obligations not in excess of $200,000,000 at any time, (B) Nonrecourse Indebtedness Guarantees and Guarantees of the type described in clause (b) of the definition of Excluded Subsidiary, (C) obligations in respect of Indebtedness of a Subsidiary in respect of which recourse is limited to pledges of Equity Interests in the Subsidiary that is the primary obligor under such Indebtedness, (D) any Guaranty of Indebtedness of any Subsidiary acquired or assumed in connection with an acquisition of such Subsidiary (so long as such Guaranty was in existence prior to the consummation of such acquisition and not incurred in contemplation thereof) and (E) intercompany Indebtedness of a Subsidiary (1) owing to a Loan Party or (2) owing to another Subsidiary so long as such Indebtedness is subordinated to the Obligations); or

(ii) (A) such Subsidiary owns an Eligible Property or other asset the value of which is included in the determination of Unencumbered Pool Value and (B) such Subsidiary, or any other Subsidiary that directly or indirectly owns any Equity Interests in such Subsidiary, incurs or suffers to exist (whether as a borrower, co-borrower, guarantor or otherwise) any Recourse Indebtedness (other than intercompany Indebtedness of a Subsidiary (1) owing to a Loan Party or (2) owing to another Subsidiary so long as such Indebtedness is subordinated to the Obligations).

(b) On the date that any Accession Agreement or Guaranty is required to be delivered pursuant to subsection (a) above, the Borrower shall cause each Subsidiary that is required to become a Guarantor to deliver, in addition to the Accession Agreement or Guaranty to which it is a party, each of the following in form and substance reasonably satisfactory to the Administrative Agent:

(i) if requested by the Administrative Agent, an opinion of counsel to such Subsidiary, addressed to the Administrative Agent and the Lenders;

(ii) the certificate or articles of incorporation or formation, articles of organization, certificate of limited partnership, declaration of trust or other comparable organizational instrument (if any) of each such Subsidiary certified as of a recent date by the Secretary of State of the state of formation of such Subsidiary;

(iii) a certificate of good standing (or certificate of similar meaning) with respect to each such Subsidiary issued as of a recent date by the Secretary of State of the state of formation of each such Subsidiary and certificates of qualification to transact business or other comparable certificates issued as of a recent date by each Secretary of State (and any state department of taxation, as applicable) of each state in which each such Subsidiary is required to be so qualified and where failure to be so qualified could reasonably be expected to have a Material Adverse Effect;

(iv) a certificate of incumbency signed by the Secretary or Assistant Secretary (or other individual performing similar functions) of each such Subsidiary with respect to each of the officers of such Subsidiary authorized to execute and deliver the Loan Documents to which such Subsidiary is a party;

(v) copies certified by the Secretary or Assistant Secretary (or other individual performing similar functions) of each such Subsidiary of (A) the by-laws of such Subsidiary, if a corporation, the operating agreement, if a limited liability company, the partnership agreement, if a limited or general partnership, or other comparable document in the case of any other form of legal entity and (B) all corporate, partnership, member or other necessary action taken by such Subsidiary to authorize the execution, delivery and performance of the Loan Documents to which it is a party; and

(vi) such other documents, agreements and instruments as the Administrative Agent or any Lender through the Administrative Agent, may reasonably request.

Until a Subsidiary that is required to become a Guarantor under clause (ii) of the immediately preceding subsection (a) becomes a Guarantor, and delivers to the Administrative Agent the items required to be delivered pursuant to this subsection (b), (i) no Eligible Property owned or leased by such Subsidiary shall be included in calculations of Unencumbered Pool Value and (ii) no income attributable to any Eligible Property owned or leased by such Subsidiary shall be included in calculations of Unencumbered NOI.

(c) Release of Guarantor. The Borrower may request in writing that the Administrative Agent release, and upon receipt of such request the Administrative Agent shall release on the date requested for such release, a Guarantor from the Guaranty so long as: (i) such Guarantor is not (or simultaneously upon its release will not be) otherwise required to be a party to the Guaranty under the immediately preceding subsection (a), (ii) no Default or Event of Default shall then be in existence or would occur as a result of such release and (iii) the Administrative Agent shall have received such written request at least ten (10) Business Days (or such shorter period as may be acceptable to the Administrative Agent) prior to the requested date of release. Delivery by the Borrower to the Administrative Agent of any such request shall constitute a representation by the Borrower that the matters set forth in clauses (i) and (ii) of the preceding sentence (both as of the date of the giving of such request and as of the date of the effectiveness of such requested release) are true and correct with respect to such requested release and that the Guarantor being released from the Guaranty has been (or simultaneously upon its release will be) released from all obligations in respect of any Indebtedness giving rise to the requirement that such Guarantor be a party to the Guaranty under subsection (a) above.

Article VIII. Information

For so long as this Agreement is in effect, the Borrower shall furnish (including by electronic means as provided in Section 8.5.) to the Administrative Agent for distribution to each of the Lenders:

Section 8.1. Quarterly Financial Statements.

As soon as available and in any event within 10 days after the same is filed with the SEC for the first, second and third fiscal quarters of the Borrower (but in no event later than the date 45 days after the end of any such fiscal quarter, commencing with the fiscal quarter ending September 30, 2021), the unaudited consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such period and the related unaudited consolidated statements of income, stockholders' equity and cash flows of the Borrower and its Subsidiaries for such period, setting forth in each case in comparative form the figures as of the end of and for the corresponding periods of the previous fiscal year, all of which shall be certified by the chief financial officer of the Borrower, in his or her opinion, to present fairly, in accordance with GAAP and in all material respects, the consolidated financial position of the Borrower and its Subsidiaries as at the date thereof and the results of operations for such period (subject to normal year-end audit adjustments).

Section 8.2. Year-End Statements.

As soon as available and in any event within 10 days after the same is filed with the SEC for each fiscal year of the Borrower (but in no event later than the date 90 days after the end of any such fiscal

year, commencing with the fiscal year ending December 31, 2021), the audited consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal year and the related audited consolidated statements of income, stockholders' equity and cash flows of the Borrower and its Subsidiaries for such fiscal year, setting forth in comparative form the figures as at the end of and for the previous fiscal year, all of which shall be (a) certified by the chief executive officer, the chief financial officer, or executive vice president of the Borrower, in his or her opinion, to present fairly, in accordance with GAAP and in all material respects, the financial position of the Borrower and its Subsidiaries as at the date thereof and the result of operations for such period and (b) accompanied by the report thereon of Ernst & Young LLP or any other independent certified public accountants of recognized national standing reasonably acceptable to the Administrative Agent, whose report shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit.

Notwithstanding anything to the contrary in this Article VIII, following the consummation of the Reorganization, the Borrower will be permitted to satisfy its obligations with respect to financial information relating to the Borrower described in Section 8.1. and this Section 8.2. above by furnishing financial information relating to the REIT Entity; provided that the same is accompanied by consolidating information that explains in reasonable detail the differences between the information relating to the REIT Entity and its Subsidiaries, on the one hand, and the information relating to the Borrower and its Subsidiaries on a standalone basis, on the other hand, with respect to the consolidated balance sheet and income statement.

Section 8.3. Compliance Certificate.

At the time the financial statements are furnished pursuant to the immediately preceding Sections 8.1. and 8.2., a certificate substantially in the form of Exhibit P (a "Compliance Certificate") executed on behalf of the Borrower by the chief financial officer or the chief accounting officer or vice president, finance of the Borrower (a) setting forth in reasonable detail as of the end of such quarterly accounting period or fiscal year, as the case may be, the calculations required to establish whether the Borrower was in compliance with the covenants contained in Section 9.1.; and (b) stating that to his or her knowledge, no Default or Event of Default exists, or, if such is not the case, specifying such Default or Event of Default and its nature, when it occurred and the steps being taken by the Borrower with respect to such event, condition or failure. Each Compliance Certificate shall include (i) a reasonably detailed list of all Properties which the Borrower has elected to include in calculations of Unencumbered NOI and Unencumbered Pool Value for the fiscal period covered by such Compliance Certificate (it being understood that so long as no Default or Event of Default exists or would occur as a result of such election, the Borrower shall be free to include or exclude from such calculations any Property that would otherwise be eligible for inclusion), (ii) a summary with respect to each Property then included in calculations of Unencumbered NOI and Unencumbered Pool Value, including without limitation, a quarterly and year-to-date statement of Net Operating Income, (iii) a statement of Funds From Operations, and (iv) a report listing Properties acquired in the most recently ended fiscal quarter setting forth for each such Property the purchase price and Net Operating Income for such Property and indicating whether such Property is collateral for any Indebtedness of the owner of such Property that is secured in any manner by any Lien and, if so, a description of such Indebtedness.

Section 8.4. Other Information.

(a) Within 10 days of the filing thereof, copies of all registration statements (excluding the exhibits thereto (unless requested by the Administrative Agent) and any registration statements on Form S-8 or its equivalent), reports on Forms 10-K, 10-Q and 8-K (or their equivalents) and all other periodic reports which any Loan Party or any other Subsidiary shall file with the SEC or any national securities exchange (which information may be delivered by electronic means as provided in Section 8.5.);

(b) Promptly upon the mailing thereof to the shareholders of the Borrower generally, copies of all financial statements, reports and proxy statements so mailed and promptly upon the issuance thereof copies of all press releases issued by the Borrower, any other Loan Party or any other Subsidiary (which information may be delivered by electronic means as provided in Section 8.5.);

(c) Promptly, upon any change in the Borrower's Credit Rating, a certificate stating that the Borrower's Credit Rating has changed and the new Credit Rating that is in effect;

(d) If any ERISA Event shall occur that individually, or together with any other ERISA Event that has occurred, could reasonably be expected to have a Material Adverse Effect, a certificate of the chief executive officer or chief financial officer of the Borrower setting forth details as to such occurrence and the action, if any, which the Borrower or applicable member of the ERISA Group is required or proposes to take;

(e) To the extent any Loan Party or any other Subsidiary is aware of the same, prompt notice of the commencement of any proceeding or investigation by or before any Governmental Authority and any action or proceeding in any court or other tribunal or before any arbitrator against or in any other way relating adversely to, or adversely affecting, any Loan Party or any other Subsidiary or any of their respective properties, assets or businesses which could reasonably be expected to have a Material Adverse Effect;

(f) Prompt notice of (i) any change in the executive management of the Borrower, any other Loan Party or any other Subsidiary (which notice may be delivered by electronic means as provided in Section 8.5.) and (ii) any matter which has had, or could reasonably be expected to have, a Material Adverse Effect (which notice may be delivered by electronic means as provided in Section 8.5.);

(g) Prompt notice of the occurrence of any Default or Event of Default;

(h) Prompt notice of any order, judgment or decree in excess of $5,000,000 having been entered against any Loan Party or any other Subsidiary or any of their respective properties or assets;

(i) Promptly upon the request of the Administrative Agent, evidence of the Borrower's calculation of the Ownership Share with respect to a Subsidiary or an Unconsolidated Affiliate, such evidence to be in form and detail reasonably satisfactory to the Administrative Agent;

(j) Promptly, upon each request, information identifying the Borrower or any other Loan Party as a Lender may request in order to comply with applicable "know your customer" and anti-money laundering rules and regulations, including without limitation, the Patriot Act;

(k) Simultaneously with the year-end financial statements furnished pursuant to Section 8.2., profit and loss projections of the Borrower and its Subsidiaries on a consolidated basis for each quarter of the next succeeding fiscal year, all itemized in reasonable detail. The foregoing shall be accompanied by pro forma determinations of the ratios or amounts specified in each of the covenants contained in Section 9.1. at the end of each fiscal quarter of the next succeeding fiscal year, it being understood and agreed that the projections and pro forma determinations provided under this subsection (k) shall be furnished for informational purposes only and shall not be a basis for determining or declaring the occurrence, existence or continuation of any Default or Event of Default;

(l) Simultaneously with the year-end financial statements furnished pursuant to Section 8.2., a report in form and content satisfactory to the Administrative Agent detailing the Borrower's, together with its Subsidiaries', projected sources and uses of cash for each quarter of the next succeeding fiscal year. Such sources and uses shall be furnished for informational purposes only and shall not be a basis for determining or declaring the occurrence, existence or continuation of any Default or Event of Default and shall include but not be limited to excess operating cash flow, projected borrowings under existing credit facilities or debt issuances, availability under this Agreement, unused availability under committed development loans, unfunded committed equity and any other committed sources of funds. Such uses shall include but not be limited to cash obligations for binding acquisitions, unfunded development costs, capital expenditures, debt service, overhead, dividends, maturing Property loans, hedge settlements and other anticipated uses of cash;

(m) Within 10 Business Days of the Administrative Agent's written request, a current rent roll for any one or more Properties then included in the calculations of Unencumbered NOI and Unencumbered Pool Value;

(n) From time to time and promptly upon each request, such data, certificates, reports, statements, documents or further information regarding any Property or the business, assets, liabilities, financial condition, results of operations or business prospects of the Borrower or any of its Subsidiaries as the Administrative Agent or any Lender may reasonably request (subject to limitations, if any, imposed under regulatory or confidentiality requirements and agreements (other than confidentiality provisions entered into in contemplation of this Agreement) to which the Borrower or one of its Subsidiaries is subject or could otherwise reasonably be expected to contravene attorney-client privilege or constitute attorney work product);

(o) Following the Reorganization, while any Event of Default exists, the Borrower shall give the Administrative Agent at least 5 Business Days' prior notice of (i) any redemption of any Equity Interests of the OP for cash as permitted under Section 9.1.(f)(ii) and (ii) any Restricted Payment by the Borrower to the REIT Entity to fund administrative and operating expenses as permitted under Section 9.1.(f)(iii); and

(p) Prompt notice of any discontinuation of the Sustainability Rating after a Responsible Officer becomes aware of such event.

Section 8.5. Electronic Delivery of Certain Information.

(a) Documents required to be delivered by or on behalf of the Borrower pursuant to the Loan Documents may be delivered by electronic communication and delivery, including, the Internet, e-mail or intranet websites to which the Administrative Agent and each Lender have access (including a commercial, third-party website (such as www.sec.gov) or a website sponsored or hosted by the Administrative Agent or the Borrower) provided that the foregoing shall not apply to notices to any Lender (or the Issuing Banks) pursuant to Article II. Notices and other communications to the Administrative Agent, Lenders and the Issuing Banks hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices to any Lender or Issuing Bank pursuant to Article II if such Lender or Issuing Bank, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) documents or notices delivered electronically shall be deemed to have been delivered on the date and at the time on which the Administrative Agent or the Borrower posts such documents or the documents become available on a commercial website and the Administrative Agent or Borrower notifies each Lender of said posting and provides a link thereto; provided that, for both clauses (i) and (ii) above, if such notice or other communication is not sent or posted during the normal business hours of the recipient, said posting date and time shall be deemed to have commenced as of 11:00 a.m. Central time on the opening of business on the next business day for the recipient; provided, however, documents required to be delivered pursuant to Sections 8.4.(a), 8.4.(b), and 8.4.(f)(i) shall be deemed to have been delivered on the date on which such documents are filed for public availability on the SEC's Electronic Data Gathering and Retrieval System (it being understood that the Borrower shall not be required to provide notice to the Administrative Agent or any Lender of such electronic filing of information). The Administrative Agent shall have no obligation to request the delivery of or to maintain paper copies of the documents delivered electronically, and in any event shall have no responsibility to monitor compliance by the Borrower with any such request for delivery. Each Lender shall be solely responsible for requesting delivery to it of paper copies and maintaining its paper or electronic documents.

(b) Documents required to be delivered pursuant to Article II. may be delivered electronically to a website provided for such purpose by the Administrative Agent pursuant to the procedures provided to the Borrower by the Administrative Agent.

Section 8.6. Public/Private Information.

The Borrower shall cooperate with the Administrative Agent in connection with the publication of certain materials and/or information provided by or on behalf of the Borrower. Documents required to be delivered pursuant to the Loan Documents shall be delivered by or on behalf of the Borrower to the Administrative Agent and the Lenders (collectively, "Information Materials") pursuant to this Article and, if requested by the Administrative Agent, the Borrower shall designate Information Materials (a) that are either available to the public or not material with respect to the Borrower and its Subsidiaries or any of their respective securities for purposes of United States federal and state securities laws, as "Public Information" and (b) that are not Public Information as "Private Information". All Information Materials that are neither identified as "Public Information" nor included in public filings made by the Borrower or any of its Subsidiaries with the SEC shall be deemed to be private and confidential. Notwithstanding the foregoing, each Lender who does not wish to receive Private Information agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the "Private Side Information" or similar designation on the content declaration screen of any website provided pursuant to Section 8.5. in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and Applicable Law, including United States federal and state securities laws, to make reference to Information Materials that are not made available through the "Public Side Information" portion of such website provided pursuant to Section 8.5. and that may contain material non-public information with respect to the Borrower or its securities for purposes of United States federal and state securities laws.

Section 8.7. USA Patriot Act Notice; Compliance.

The Patriot Act and federal regulations issued with respect thereto require all financial institutions to obtain, verify and record certain information that identifies individuals or business entities which open an "account" with such financial institution. Consequently, a Lender (for itself and/or as agent for all Lenders hereunder) may from time-to-time request, and the Borrower shall, and shall cause the other Loan Parties to, provide promptly upon any such request to such Lender, such Loan Party's name, address, tax identification number and/or such other identification information as shall be necessary for such Lender to comply with federal law. An "account" for this purpose may include, without limitation, a deposit account, a cash management service, a transaction or asset account, a credit account, a loan or other extension of credit, and/or other financial services product.

Article IX. Negative Covenants

For so long as this Agreement is in effect, the Borrower shall comply with the following covenants:

Section 9.1. Financial Covenants.

The Borrower shall comply with following financial covenants at all times specified below but shall in any event only report on compliance as required pursuant to Section 8.3. or any other applicable provision of this Agreement:

(a) Ratio of Consolidated Total Indebtedness to Consolidated Total Asset Value. The Borrower shall not permit the ratio of (i) Consolidated Total Indebtedness to (ii) Consolidated Total Asset Value to exceed 0.60 to 1.00 at any time; provided, however, that if such ratio is greater than 0.60 to 1.00 but is not greater than 0.65 to 1.00, then the Borrower shall be deemed to be in compliance with this subsection (a) so long as (i) the Borrower or any of its Subsidiaries completed an acquisition which resulted in such ratio (after giving effect to such acquisition) exceeding 0.60 to 1.00 at any time during the fiscal quarter in which such acquisition took place and for the three subsequent consecutive fiscal quarters, (ii) the Borrower has not maintained compliance with this subsection (a) in reliance on this proviso more than twice during the term of this Agreement and (iii) such ratio (after giving effect to such acquisition) is not greater than 0.65 to 1.00 at any time. For the purpose of calculating such ratio, (a) Consolidated Total Indebtedness shall be adjusted by deducting an amount equal to the lesser of the amount of (i) Unrestricted Cash on the date of determination and (ii) Consolidated Total Indebtedness and

(b) Consolidated Total Asset Value shall be adjusted by deducting therefrom the amount by which Consolidated Total Indebtedness is adjusted under the immediately preceding clause (a).

(b) Ratio of Consolidated Secured Indebtedness to Consolidated Total Asset Value. The Borrower shall not permit the ratio of (i) Consolidated Secured Indebtedness to (ii) Consolidated Total Asset Value, to exceed 0.40 to 1.00 at any time.

(c) Ratio of Consolidated Adjusted EBITDA to Consolidated Fixed Charges. The Borrower shall not permit the ratio of (i) Consolidated Adjusted EBITDA for any fiscal quarter to (ii) Consolidated Fixed Charges for such fiscal quarter, to be less than 1.50 to 1.00 at the end of such fiscal quarter.

(d) [Reserved].

(e) Ratio of Consolidated Unsecured Indebtedness to Unencumbered Pool Value. The Borrower shall not permit the ratio of (i) Consolidated Unsecured Indebtedness to (ii) Unencumbered Pool Value to exceed 0.60 to 1.00 at any time; provided, however, that if such ratio is greater than 0.60 to 1.00 but is not greater than 0.65 to 1.00, then the Borrower shall be deemed to be in compliance with this subsection (e) so long as (i) the Borrower or any of its Subsidiaries completed an acquisition which resulted in such ratio (after giving effect to such acquisition) exceeding 0.60 to 1.00 at any time during the fiscal quarter in which such acquisition took place and for the three subsequent consecutive fiscal quarters, (ii) the Borrower has not maintained compliance with this subsection (e) in reliance on this proviso more than twice during the term of this Agreement and (iii) such ratio (after giving effect to such acquisition) is not greater than 0.65 to 1.00 at any time. For the purpose of calculating such ratio, (a) Consolidated Unsecured Indebtedness shall be adjusted by deducting an amount equal to the lesser of the amount of (i) Unrestricted Cash on the date of determination and (ii) Consolidated Unsecured Indebtedness and (b) Unencumbered Pool Value shall be adjusted by deducting therefrom the amount by which Consolidated Unsecured Indebtedness is adjusted under the immediately preceding clause (a).

(f) Dividends and Other Restricted Payments. If (i) an Event of Default under Section 10.1.(a), Section 10.1.(e) or Section 10.1.(f) shall exist, or (ii) as a result of the occurrence of any other Event of Default any of the Obligations have been accelerated pursuant to Section 10.2.(a), neither the Borrower nor any Subsidiary shall directly or indirectly declare or make, or incur any liability to make any Restricted Payments. If any Event of Default other than those specified in clauses (i) and (ii) of the immediately preceding sentence exists and the Obligations have not been accelerated pursuant to Section 10.2.(a), the Borrower may only declare or make, or incur any liability to make, cash distributions to its shareholders during any fiscal year in an aggregate amount not to exceed the minimum amount necessary for the Borrower (or following the Reorganization, the REIT Entity) to maintain compliance with Section 7.11 and to avoid payment of any income or excise taxes imposed under Section 857(b)(1), 857(b)(3) or 4981 of the Internal Revenue Code; provided that there shall not be any implied requirement that the Borrower (or following the Reorganization, the REIT Entity) utilize the dividend deferral options in Section 857(b)(9) or Section 858(a) of the Internal Revenue Code. Notwithstanding anything to the contrary in this Section, (i) Subsidiaries may make Restricted Payments to the Borrower and to other Subsidiaries and to any Person owning Equity Interests in such Subsidiary ratably in accordance with the interest held by such Person, (ii) following the consummation of the Reorganization, the OP or any other Subsidiary of the REIT Entity may redeem for cash limited partnership interests or membership interests in the OP pursuant to customary redemption rights granted to the applicable limited partner or member, but only to the extent that, in the good faith determination of the Borrower, issuing shares of the REIT Entity in redemption of such partnership or membership interests reasonably could be considered to impair its ability to maintain its status as a REIT, (iii) following the consummation of the Reorganization, to the extent constituting a Restricted Payment, payments may be made by the Borrower to the REIT Entity to the extent required to fund administrative and operating expenses of the REIT Entity to the extent attributable to any activity of or with respect to the REIT Entity that is not otherwise prohibited by this Agreement, (iv) the Borrower and any of its Subsidiaries may make repurchases, retirement or other acquisitions of Equity Interests in the Borrower or any Subsidiary (or following the Reorganization, the REIT Entity or any other parent entity of the Borrower) pursuant to any employee or director equity or stock option plan entered into in the ordinary course of business and (v) the Borrower (or following the Reorganization, including the REIT Entity) or any of its Subsidiaries may issue Equity Interests in

connection with a conversion request by a holder of convertible Indebtedness and make cash payments in lieu of fractional shares in connection with any such conversion.

Section 9.2. Reciprocal Lien.

If any Eligible Property included in the calculation of Unencumbered Pool Value or the income of which is included in the calculation of Unencumbered NOI becomes subject to a Lien causing such Property to no longer satisfy the definition of Eligible Property, and, as a result, a Default or Event of Default occurs, then the Borrower or the applicable Subsidiary will make or cause to be made a provision whereby the Obligations will be secured equally and ratably with all other obligations secured by such Lien, and in any case the Lenders shall have the benefit, to the full extent that and with such priority as, the Lenders may be entitled under Applicable Law, of an equitable Lien on such Property securing the Obligations. The grant of a Lien pursuant to this Section 9.2. shall not be deemed to cure any Default or Event of Default occurring as a result of such Eligible Property becoming subject to such Lien.

Section 9.3. Restrictions on Intercompany Transfers.

The Borrower shall not, and shall not permit any other Loan Party or any other Subsidiary (other than an Excluded Subsidiary) to, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind on the ability of any Subsidiary to: (a) pay dividends or make any other distribution on any of such Subsidiary's capital stock or other Equity Interests owned by the Borrower or any Subsidiary; (b) pay any Indebtedness owed to the Borrower or any Subsidiary; (c) make loans or advances to the Borrower or any Subsidiary; or (d) transfer any of its property or assets to the Borrower or any other Subsidiary; provided that this Section shall not apply to: (i) with respect to clause (d), (A) restrictions contained in any agreement relating to the sale of assets pending sale, or relating to Indebtedness secured by a Lien on assets which Indebtedness the Borrower or a Subsidiary, as applicable, is not prohibited from creating, incurring, assuming, or permitting or suffering to exist by the Loan Documents; provided that in any such case, the restrictions apply only to the assets that are the subject of such sale or Lien, as the case may be or (B) customary provisions restricting assignment of any agreement entered into by the Borrower, any other Loan Party or any other Subsidiary in the ordinary course of business and (ii) with respect to clauses (a) through (d), those encumbrances or restrictions (A) contained in any Loan Document, (B) contained in any other agreement that evidences unsecured Indebtedness containing encumbrances or restrictions on the actions described above that are substantially similar to, or no more restrictive than, those contained in the Loan Documents, (C) contained in organizational documents of, or other agreements governing an Investment in, or Indebtedness incurred by, any Excluded Subsidiary, Unconsolidated Affiliate or any Subsidiary that is not a Wholly Owned Subsidiary (but only to the extent applicable to the Equity Interest in such Subsidiary or Unconsolidated Affiliate or the assets of such Subsidiary or Unconsolidated Affiliate) or (D) obligations restricting the sale or other transfer of assets pursuant to "tax protection" (or similar) agreements entered into with limited partners or members of the OP or of any other Subsidiary of the REIT Entity.

Section 9.4. Merger, Consolidation, Sales of Assets and Other Arrangements.

The Borrower shall not, and shall not permit any other Loan Party or any other Subsidiary to, (a) enter into any transaction of merger or consolidation; (b) liquidate, windup or dissolve itself (or suffer any liquidation or dissolution); (c) convey, sell, lease, sublease, transfer or otherwise dispose of, in one transaction or a series of transactions, assets, or the capital stock of or other Equity Interests in any of its Subsidiaries, whether now owned or hereafter acquired, having a fair market value in excess of the Substantial Amount; or (d) engage in a transaction or a series of related transactions in which it acquires assets having a fair market value in excess of the Substantial Amount or make an Investment in any other Person in excess of the Substantial Amount; provided, however, that:

(i) the Borrower or any Subsidiary may merge with or into any other Subsidiary or any other Person so long as no Default or Event of Default is or would be in existence immediately thereafter; provided, however, that in the case of any merger involving (x) the Borrower, the Borrower shall be the surviving entity or (y) any Loan Party (other than the

Borrower), the surviving entity shall be a Loan Party or shall become a Loan Party in accordance with the applicable terms of this Agreement;

(ii) the Borrower or any Subsidiary may sell, lease or otherwise transfer or dispose of its assets to the Borrower or any other Subsidiary so long as no Default or Event of Default is or would be in existence immediately thereafter;

(iii) any Loan Party and any other Subsidiary may, directly or indirectly, sell, lease or otherwise transfer, whether by one or a series of transactions, assets having a fair market value in excess of the Substantial Amount (including capital stock or other securities of Subsidiaries) to any other Person, so long as (1) the Borrower shall have given the Administrative Agent and the Lenders at least 15 days prior written notice (or such shorter period as may be acceptable to the Administrative Agent) of such sale, lease or other transfer; (2) immediately prior thereto, and immediately thereafter and after giving effect thereto, no Default or Event of Default is or would be in existence; provided, however, that if, prior to the occurrence of a Default (or, during the existence of a Default, so long as the relevant agreement expressly states that sale of the Property subject to the agreement is conditioned on the approval of the Lenders), such Loan Party or Subsidiary has entered into an agreement to sell a Property which agreement requires that such Property be sold at a time during which a Default exists, such Loan Party or Subsidiary shall be permitted to sell such Property if a Default (but not an Event of Default) exists to the extent necessary for such Loan Party or Subsidiary to comply with the terms of such agreement, subject to such Loan Party or Subsidiary having received the approval of the Lenders required pursuant to the terms of any agreement entered into during the existence of a Default; and (3) at the time the Borrower gives notice pursuant to clause (1) of this subsection, the Borrower shall have delivered to the Administrative Agent and the Lenders a Compliance Certificate, calculated on a pro forma basis, evidencing the continued compliance by the Loan Parties with the financial covenants contained in Section 9.1., after giving effect to such consolidation, merger, sale, lease or other transfer;

(iv) any Loan Party and any other Subsidiary may, directly or indirectly, acquire (whether by purchase, acquisition of Equity Interests of a Person, or as a result of a merger or consolidation) assets, in a single transaction or series of related transactions, having a fair market value in excess of the Substantial Amount, or make an Investment in any other Person in an amount in excess of the Substantial Amount, so long as (1) the Borrower shall have given the Administrative Agent and the Lenders at least 15 days prior written notice (or such shorter period as may be acceptable to the Administrative Agent) of such purchase, acquisition, merger, consolidation or Investment (collectively, "acquisition"); (2) immediately prior thereto, and immediately thereafter and after giving effect thereto, no Default or Event of Default is or would be in existence; provided, however, that if, prior to the occurrence of a Default (or, during the existence of a Default, so long as the relevant agreement expressly states that acquisition of the Property subject to the agreement is conditioned on the approval of the Lenders), such Loan Party or Subsidiary has entered into an agreement to acquire a Property which agreement requires that such Property be acquired at a time during which a Default (but not an Event of Default) exists, such Loan Party or Subsidiary shall be permitted to acquire such Property to the extent necessary for such Loan Party or Subsidiary to comply with the terms of such agreement, subject to such Loan Party or Subsidiary having received the approval of the Lenders required pursuant to the terms of any agreement entered into during the existence of a Default; (3) in the case of a consolidation or merger involving (x) the Borrower, the Borrower shall be the survivor thereof or (y) any Loan Party (other than the Borrower), the survivor thereof shall be a Loan Party or shall become a Loan Party in accordance with the applicable terms of this Agreement; and (4) at the time the Borrower gives notice pursuant to clause (1) of this subsection, the Borrower shall have delivered to the Administrative Agent and the Lenders a Compliance Certificate, calculated on a pro forma basis, evidencing the continued compliance by the Loan Parties with the financial covenants contained in Section 9.1., after giving effect to such acquisition;

(v) the Loan Parties and the other Subsidiaries may lease and sublease their respective assets, as lessor or sublessor (as the case may be), in the ordinary course of their business;

(vi) any Subsidiary that is not a Material Subsidiary may liquidate and dissolve itself (or suffer its liquidation or dissolution) so long as immediately prior to the taking of such action, and immediately thereafter and after giving effect thereto, no Default or Event of Default is or would be in existence; and

(vii) Borrower and its Subsidiaries may effect the transactions described in clauses (a) through (d) of this Section 9.4. to the extent necessary or convenient to consummate the Reorganization in accordance with the requirements of Section 12.20.

Section 9.5. Plans.

The Borrower shall not, and shall not permit any Subsidiary to, permit any of its respective assets to become or be deemed to be "plan assets" within the meaning of ERISA, the Internal Revenue Code and the respective regulations promulgated thereunder.

Section 9.6. Fiscal Year.

The Borrower shall not, and shall not permit any other Loan Party or other Subsidiary to, change its fiscal year from that in effect as of the Agreement Date.

Section 9.7. Modifications of Organizational Documents.

The Borrower shall not enter into, and shall not permit any Loan Party or any other Subsidiary to enter into any amendment, supplement, restatement or other modification of its certificate or articles of incorporation, articles of organization or formation, certificate of limited partnership, declaration of trust or other comparable organizational instrument (if any) that could reasonably be expected to have a Material Adverse Effect or that would be adverse to the rights and remedies of the Administrative Agent and Lenders in any material respect.

Section 9.8. Transactions with Affiliates.

The Borrower shall not permit to exist or enter into, and will not permit any other Loan Party or other Subsidiary to permit to exist or enter into, any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any Affiliate of the Borrower except (a) as set forth on Schedule 6.1.(q), (b) transactions in the ordinary course of and pursuant to the reasonable requirements of the business of the Borrower or any of its Subsidiaries and upon fair and reasonable terms, (c) transactions which are no less favorable to the Borrower or such Subsidiary than would be obtained in a comparable arm's length transaction with a Person that is not an Affiliate, (d) transactions entirely by and among Loan Parties and Subsidiaries, (e) following the Reorganization, payments by the Borrower to the REIT Entity to the extent required to fund administrative and operating expenses of the REIT Entity and which are not prohibited by the Loan Documents, (f) transactions by and among Subsidiaries and Unconsolidated Affiliates not otherwise prohibited under the Loan Documents, (g) transactions not prohibited by Section 9.1.(f) or 9.4. and (h) transactions necessary or convenient to consummate the Reorganization in accordance with Section 12.20.

Section 9.9. Derivatives Contracts.

The Borrower shall not, and shall not permit any other Loan Party or any other Subsidiary to, enter into or become obligated in respect of Derivatives Contracts, other than Derivatives Contracts entered into by the Borrower, any such other Loan Party or any such other Subsidiary in the ordinary course of business and which, when entered into, were intended to establish an effective hedge either (i) in respect of existing or permitted Indebtedness or (ii) in respect of liabilities, commitments or assets held or reasonably anticipated to be held by the Borrower, such other Loan Party or such other Subsidiary.

Article X. Default

Section 10.1. Events of Default.

Each of the following shall constitute an Event of Default, whatever the reason for such event and whether it shall be voluntary or involuntary or be effected by operation of Applicable Law or pursuant to any judgment or order of any Governmental Authority:

(a) Default in Payment. (i) The Borrower shall fail to pay when due under this Agreement or any other Loan Document (whether upon demand, at maturity, by reason of acceleration or otherwise) (A) the principal of any of the Loans or any Reimbursement Obligation, or (B) interest on any of the Loans or any of the other payment Obligations owing by the Borrower under this Agreement or any other Loan Document in the case of this clause (B) only, within 10 Business Days after becoming due, or (ii) any other Loan Party shall fail to pay within 10 Business Days after becoming due any payment obligation owing by such Loan Party under any Loan Document to which it is a party.

(b) Default in Performance.

(i) Any Loan Party shall fail to perform or observe any term, covenant or agreement on its part to be performed or observed and contained in Section 7.1.(i) (solely with respect to the existence of the Borrower) or Article IX. (other than Section 9.7. or Section 9.9.); or

(ii) Any Loan Party shall fail to perform or observe any term, covenant or agreement contained in this Agreement or any other Loan Document to which it is a party and not otherwise mentioned in this Section, and in the case of this subsection (b)(ii) only, such failure shall continue for a period of 30 calendar days after the earlier of (x) the date upon which a Responsible Officer of the Borrower or such other Loan Party obtains knowledge of such failure or (y) the date upon which the Borrower has received written notice of such failure from the Administrative Agent.

(c) Misrepresentations. Any written statement, representation or warranty made or deemed made by or on behalf of any Loan Party under this Agreement or under any other Loan Document, or any amendment hereto or thereto, or in any other writing or statement at any time furnished by, or at the direction of, any Loan Party to the Administrative Agent, any Issuing Bank or any Lender, shall at any time prove to have been incorrect or misleading in any material respect when furnished or made or deemed made, it being understood that no projections furnished pursuant to Section 8.4.(k) and Section 8.4.(l) or otherwise shall be a basis for determining or declaring the occurrence, existence or continuation of any Default or Event of Default.

(d) Indebtedness Cross-Default.

(i) The Borrower, any other Loan Party or any other Subsidiary shall fail to make any payment when due and payable in respect of any Indebtedness (other than the Loans, the Reimbursement Obligations, and any Nonrecourse Indebtedness) having an aggregate outstanding principal amount (or, in the case of any Derivatives Contract, having, without regard to the effect of any close-out netting provision, a Derivatives Termination Value), in each case individually or in the aggregate with all other such Indebtedness as to which such a failure exists, equal to or exceeding the greater of (x) $75,000,000 or (y) 2.5% of Consolidated Total Asset Value ("Material Recourse Indebtedness"); or

(ii) (x) The maturity of any Material Recourse Indebtedness shall have been accelerated in accordance with the provisions of any indenture, contract or instrument evidencing, providing for the creation of or otherwise concerning such Material Recourse Indebtedness or (y) any Material Recourse Indebtedness shall have been required to be prepaid, repurchased, redeemed or defeased prior to the stated maturity thereof (other than as a result of (A) customary non-default mandatory prepayment requirements associated with asset sales, casualty events, debt or equity issuances, extraordinary receipts or borrowing base limitations and (B) any Indebtedness constituting convertible debt becoming due as a result of the exercise by any holder

thereof of conversion, exchange or similar rights related to the value of the Borrower's equity securities shall not be subject to this clause (ii) as long as such Indebtedness is converted into or exchanged for Equity Interests (other than Mandatorily Redeemable Stock) of the Borrower pursuant to the terms of such Indebtedness); or

(iii) Any other event shall have occurred and be continuing (after giving to notice, grace and cure periods) as a result of which any holder or holders of any Material Recourse Indebtedness, any trustee or agent acting on behalf of such holder or holders or any other Person, is then permitted to accelerate the maturity of any such Material Recourse Indebtedness or is then permitted to require any such Material Recourse Indebtedness to be prepaid, repurchased, redeemed or defeased prior to its stated maturity and all applicable grace or cure periods shall have expired (other than as a result of (A) customary non-default mandatory prepayment requirements associated with asset sales, casualty events, debt or equity issuances, extraordinary receipts or borrowing base limitations and (B) any Indebtedness constituting convertible debt becoming due as a result of the exercise by any holder thereof of conversion, exchange or similar rights related to the value of the Borrower's equity securities shall not be subject to this clause (iii) as long as such Indebtedness is converted into or exchanged for Equity Interests (other than Mandatorily Redeemable Stock) of the Borrower pursuant to the terms of such Indebtedness).

(e) Voluntary Bankruptcy Proceeding. The Borrower, any other Loan Party, any Material Subsidiary or any Subsidiary to which more than 10.0% of Consolidated Total Asset Value is attributable in the aggregate shall: (i) commence a voluntary case under the Bankruptcy Code or other federal bankruptcy laws (as now or hereafter in effect); (ii) file a petition seeking to take advantage of any other Applicable Laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts; (iii) consent to, or fail to contest in a timely and appropriate manner, any petition filed against it in an involuntary case under such bankruptcy laws or other Applicable Laws or consent to any proceeding or action described in the immediately following subsection (f); (iv) apply for or consent to, or fail to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or of a substantial part of its property, domestic or foreign; (v) admit in writing its inability to pay its debts as they become due; (vi) make a general assignment for the benefit of creditors; (vii) make a conveyance fraudulent as to creditors under any Applicable Law; or (viii) take any corporate or partnership action for the purpose of effecting any of the foregoing.

(f) Involuntary Bankruptcy Proceeding. A case or other proceeding shall be commenced against the Borrower, any other Loan Party, any Material Subsidiary or any Subsidiary to which more than 10.0% of Consolidated Total Asset Value is attributable in the aggregate in any court of competent jurisdiction seeking: (i) relief under the Bankruptcy Code or other federal bankruptcy laws (as now or hereafter in effect) or under any other Applicable Laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts; or (ii) the appointment of a trustee, receiver, custodian, liquidator or the like of such Person, or of all or any substantial part of the assets, domestic or foreign, of such Person, and in the case of either clause (i) or (ii) such case or proceeding shall continue undismissed or unstayed for a period of 90 consecutive calendar days, or an order granting the remedy or other relief requested in such case or proceeding (including, but not limited to, an order for relief under such Bankruptcy Code or such other federal bankruptcy laws) shall be entered.

(g) Revocation of Loan Documents. Any Loan Party shall (or shall attempt to) disavow, revoke or terminate any Loan Document to which it is a party or shall otherwise challenge or contest in any action, suit or proceeding in any court or before any Governmental Authority the validity or enforceability of any Loan Document or any Loan Document shall cease to be in full force and effect (except as a result of the express terms thereof).

(h) Judgment. A judgment or order for the payment of money or for an injunction or other non-monetary relief shall be entered against the Borrower, any other Loan Party, or any other Subsidiary by any court or other tribunal and (i) such judgment or order shall continue for a period of 60 days without being paid, stayed or dismissed through appropriate appellate proceedings and (ii) either (A) the amount of such judgment or order (excluding any amount for which insurance coverage has not been denied in writing by the applicable insurance carrier) exceeds, individually or together with all other such

unsatisfied judgments or orders entered against the Borrower, any other Loan Party or any other Subsidiary (other than any judgment entered against a Subsidiary in relation to Nonrecourse Indebtedness where recourse with respect to such judgment remains limited to the assets securing such Nonrecourse Indebtedness), $75,000,000 or (B) in the case of an injunction or other non-monetary relief, such injunction or judgment or order could reasonably be expected to have a Material Adverse Effect.

(i) Attachment. A warrant, writ of attachment, execution or similar process shall be issued against any property of the Borrower, any other Loan Party or any other Subsidiary (other than any warrant, writ of attachment, execution or similar process issued against the property of a Subsidiary in relation to Nonrecourse Indebtedness where such warrant, writ of attachment, execution or similar process attaches only to the assets securing such Nonrecourse Indebtedness), which exceeds, individually or together with all other such warrants, writs, executions and processes, $75,000,000 in amount and such warrant, writ, execution or process shall not be paid, discharged, vacated, stayed or bonded for a period of 60 days; provided, however, that if a bond has been issued in favor of the claimant or other Person obtaining such warrant, writ, execution or process, the issuer of such bond shall execute a waiver or subordination agreement in form and substance satisfactory to the Administrative Agent pursuant to which the issuer of such bond subordinates its right of reimbursement, contribution or subrogation to the Obligations and waives or subordinates any Lien it may have on the assets of the Borrower, any other Loan Party or any other Subsidiary.

(j) ERISA.

(i) Any ERISA Event shall have occurred that results or could reasonably be expected to result in liability to any member of the ERISA Group aggregating in excess of $75,000,000; or

(ii) The "benefit obligation" of all Plans exceeds the "fair market value of plan assets" for such Plans by more than $75,000,000, all as determined, and with such terms defined, in accordance with FASB ASC 715.

(k) Change of Control/Change in Management.

(i) 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 more than 50.0% of the total voting power of the then outstanding voting stock of the Borrower; or

(ii) During any period of 12 consecutive months ending after the Agreement Date, individuals who at the beginning of any such 12-month period constituted the Board of Trustees of the Borrower (together with any new trustees whose election by such Board or whose nomination for election by the shareholders of the Borrower was approved by a vote of a majority of the trustees then still in office who were either trustees at the beginning of such period or whose election or nomination for election was previously so approved) cease for any reason to constitute a majority of the Board of Trustees of the Borrower then in office.

Notwithstanding the foregoing provisions of this Section 10.1., if a Default or Event of Default shall occur solely as a result of a Property being treated as an Eligible Property that is not in fact an Eligible Property, such Default or Event of Default shall be deemed to not have occurred so long as the Borrower delivers to the Administrative Agent not later than 15 days from (x) the date on which a Responsible Officer of the Borrower obtains knowledge of the occurrence of such Default or Event of Default and (y) the date on which the Borrower has received written notice of such Default or Event of Default from the Administrative Agent, each of the following: (1) written notice thereof and (2) a Compliance Certificate, prepared as of the last day of the most recent fiscal quarter, evidencing compliance with the covenants set forth in Section 9.1. excluding such Property as an Eligible Property, as applicable.

Section 10.2. Remedies Upon Event of Default.

Upon the occurrence of an Event of Default the following provisions shall apply:

(a) Acceleration; Termination of Facilities.

(i) Automatic. Upon the occurrence of an Event of Default specified in Sections 10.1.(e) or 10.1.(f), (1)(A) the principal of, and all accrued interest on, the Loans and the Notes at the time outstanding, (B) an amount equal to the Stated Amount of all Letters of Credit outstanding as of the date of the occurrence of such Event of Default for deposit into the Letter of Credit Collateral Account and (C) all of the other Obligations, including, but not limited to, the other amounts owed to the Lenders and the Administrative Agent under this Agreement, the Notes or any of the other Loan Documents shall become immediately and automatically due and payable without presentment, demand, protest, or other notice of any kind, all of which are expressly waived by the Borrower on behalf of itself and the other Loan Parties, and (2) the Commitments and the obligation of the Issuing Banks to issue Letters of Credit hereunder, shall all immediately and automatically terminate.

(ii) Optional. If any other Event of Default shall exist, the Administrative Agent may, and at the direction of the Requisite Lenders shall: (1) declare (A) the principal of, and accrued interest on, the Loans and the Notes at the time outstanding, (B) an amount equal to the Stated Amount of all Letters of Credit outstanding as of the date of the occurrence of such Event of Default for deposit into the Letter of Credit Collateral Account and (C) all of the other Obligations, including, but not limited to, the other amounts owed to the Lenders and the Administrative Agent under this Agreement, the Notes or any of the other Loan Documents to be forthwith due and payable, whereupon the same shall immediately become due and payable without presentment, demand, protest or other notice of any kind, all of which are expressly waived by the Borrower on behalf of itself and the other Loan Parties, and (2) terminate the Commitments and the obligation of the Issuing Banks to issue Letters of Credit hereunder.

(b) Loan Documents. The Requisite Lenders may direct the Administrative Agent to, and the Administrative Agent if so directed shall, exercise any and all of its rights under any and all of the other Loan Documents.

(c) Applicable Law. The Requisite Lenders may direct the Administrative Agent to, and the Administrative Agent if so directed shall, exercise all other rights and remedies it may have under any Applicable Law.

(d) Appointment of Receiver. To the extent permitted by Applicable Law, the Administrative Agent and the Lenders shall be entitled to the appointment of a receiver for the assets and properties of the Borrower and its Subsidiaries, without notice of any kind whatsoever and without regard to the adequacy of any security for the Obligations or the solvency of any party bound for its payment, to take possession of all or any portion of the Eligible Property and/or the business operations of the Borrower and its Subsidiaries and to exercise such power as the court shall confer upon such receiver.

(e) Remedies in Respect of Specified Derivatives Contracts. Notwithstanding any other provision of this Agreement or other Loan Document, each Specified Derivatives Provider shall have the right, with prompt notice to the Administrative Agent, but without the approval or consent of or other action by the Administrative Agent, the Issuing Banks or the Lenders, to take any action or avail itself of any remedies available to such Specified Derivatives Provider under any Specified Derivatives Contract.

Section 10.3. Remedies Upon Default.

Upon the occurrence of a Default specified in Section 10.1.(f), the Commitments and the obligation of the Issuing Banks to issue Letters of Credit shall immediately and automatically terminate.

Section 10.4. Marshaling; Payments Set Aside.

No Lender Party shall be under any obligation to marshal any assets in favor of any Loan Party or any other party or against or in payment of any or all of the Guaranteed Obligations. To the extent that any Loan Party makes a payment or payments to a Lender Party, or a Lender Party enforces its security interest or exercises its right of setoff, and such payment or payments or the proceeds of such enforcement or setoff or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then to the extent of such recovery, the Guaranteed Obligations, or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor, shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or setoff had not occurred.

Section 10.5. Allocation of Proceeds.

If an Event of Default exists, all payments received by the Administrative Agent (or any Lender as a result of its exercise of remedies permitted under Section 12.3.) under any of the Loan Documents in respect of any Guaranteed Obligations shall be applied in the following order and priority:

(a) to payment of that portion of the Guaranteed Obligations constituting fees, indemnities, expenses and other amounts, including attorney fees, payable to the Administrative Agent in its capacity as such, the Issuing Banks in their capacity as such ~~and each Swingline Lender in its capacity as such~~, ratably among the Administrative Agent ~~,~~ and the Issuing Banks ~~and Swingline Lenders~~ in proportion to the respective amounts described in this clause (a) payable to them;

(b) to payment of that portion of the Guaranteed Obligations constituting fees, indemnities and other amounts (other than principal and interest) payable to the Lenders under the Loan Documents, including attorney fees, ratably among the Lenders in proportion to the respective amounts described in this clause (b) payable to them;

(c) ~~to payment of that portion of the Guaranteed Obligations constituting accrued and unpaid interest on the Swingline Loans~~ [reserved];

(d) to payment of that portion of the Guaranteed Obligations constituting accrued and unpaid interest on the Loans and Reimbursement Obligations, ratably among the Lenders and the Issuing Banks in proportion to the respective amounts described in this clause (d) payable to them;

(e) ~~to payment of that portion of the Guaranteed Obligations constituting unpaid principal of the Swingline Loans~~ [reserved];

(f) to payment of that portion of the Guaranteed Obligations constituting unpaid principal of the Loans, Reimbursement Obligations, other Letter of Credit Liabilities and payment obligations then owing under Specified Derivatives Contracts, ratably among the Lenders, the Issuing Banks and the Specified Derivatives Providers in proportion to the respective amounts described in this clause (f) payable to them; provided, however, to the extent that any amounts available for distribution pursuant to this clause are attributable to the issued but undrawn amount of an outstanding Letter of Credit, such amounts shall be paid to the Administrative Agent for deposit into the Letter of Credit Collateral Account; and

(g) the balance, if any, after all of the Guaranteed Obligations have been indefeasibly paid in full, to the Borrower or as otherwise required by Applicable Law.

Notwithstanding the foregoing, Guaranteed Obligations arising under Specified Derivatives Contracts shall be excluded from the application described above if the Administrative Agent has not received written notice thereof, together with such supporting documentation as the Administrative Agent may request, from the Specified Derivatives Provider. Each Specified Derivatives Provider not a party to this

Agreement that has given the notice contemplated by the preceding sentence shall, by such notice, be deemed to have acknowledged and accepted the appointment of the Administrative Agent pursuant to the terms of Article XI. for itself and its Affiliates as if a "Lender" party hereto.

Section 10.6. Letter of Credit Collateral Account.

(a) As collateral security for the prompt payment in full when due of all Letter of Credit Liabilities and the other Obligations, the Borrower hereby pledges and grants to the Administrative Agent, for the ratable benefit of the Administrative Agent, the Issuing Banks and the Revolving Lenders as provided herein, a security interest in all of its right, title and interest in and to the Letter of Credit Collateral Account and the balances from time to time in the Letter of Credit Collateral Account (including the investments and reinvestments therein provided for below). The balances from time to time in the Letter of Credit Collateral Account shall not constitute payment of any Letter of Credit Liabilities until applied by the Issuing Banks as provided herein. Anything in this Agreement to the contrary notwithstanding, funds held in the Letter of Credit Collateral Account shall be subject to withdrawal only as provided in this Section.

(b) Amounts on deposit in the Letter of Credit Collateral Account shall be invested and reinvested by the Administrative Agent in such Cash Equivalents as the Administrative Agent shall determine in its sole discretion. All such investments and reinvestments shall be held in the name of and be under the sole dominion and control of the Administrative Agent for the ratable benefit of the Administrative Agent, the Issuing Banks and the Revolving Lenders; provided, that all earnings on such investments will be credited to and retained in the Letter of Credit Collateral Account. The Administrative Agent shall exercise reasonable care in the custody and preservation of any funds held in the Letter of Credit Collateral Account and shall be deemed to have exercised such care if such funds are accorded treatment substantially equivalent to that which the Administrative Agent accords other funds deposited with the Administrative Agent, it being understood that the Administrative Agent shall not have any responsibility for taking any necessary steps to preserve rights against any parties with respect to any funds held in the Letter of Credit Collateral Account.

(c) If a drawing pursuant to any Letter of Credit occurs on or prior to the expiration date of such Letter of Credit, the Borrower and the Revolving Lenders authorize the Administrative Agent to use the monies deposited in the Letter of Credit Collateral Account to reimburse such Issuing Bank for the payment made by such Issuing Bank to the beneficiary with respect to such drawing.

(d) If an Event of Default exists, the Administrative Agent may (and, if instructed by the Requisite Class Lenders of the Revolving Lenders, shall) in its (or their) discretion at any time and from time to time elect to liquidate any such investments and reinvestments and apply the proceeds thereof to the Obligations in accordance with Section 10.5. Notwithstanding the foregoing, the Administrative Agent shall not be required to liquidate and release any such amounts if such liquidation or release would result in the amount available in the Letter of Credit Collateral Account to be less than the Stated Amount of all Extended Letters of Credit that remain outstanding.

(e) So long as no Default or Event of Default exists, and to the extent amounts on deposit in or credited to the Letter of Credit Collateral Account exceed the aggregate amount of the Letter of Credit Liabilities then due and owing, the Administrative Agent shall, from time to time, at the request of the Borrower, deliver to the Borrower within 10 Business Days after the Administrative Agent's receipt of such request from the Borrower, against receipt but without any recourse, warranty or representation whatsoever, such amount of the credit balances in the Letter of Credit Collateral Account as exceeds the aggregate amount of Letter of Credit Liabilities at such time. Upon the expiration, termination or cancellation of an Extended Letter of Credit for which the Revolving Lenders reimbursed (or funded participations in) a drawing deemed to have occurred under the fourth sentence of Section 2.3.(b) for deposit into the Letter of Credit Collateral Account but in respect of which the Revolving Lenders have not otherwise received payment for the amount so reimbursed or funded, the Administrative Agent shall promptly remit to such Lenders the amount so reimbursed or funded for such Extended Letter of Credit that remains in the Letter of Credit Collateral Account, pro rata in accordance with the respective unpaid reimbursements or funded participations of such Lenders in respect of such Extended Letter of Credit, against receipt but without any recourse, warranty or representation whatsoever. When all of the

Obligations shall have been indefeasibly paid in full and no Letters of Credit remain outstanding, the Administrative Agent shall promptly deliver to the Borrower, against receipt but without any recourse, warranty or representation whatsoever, the balances remaining in the Letter of Credit Collateral Account.

(f) The Borrower shall pay to the Administrative Agent from time to time such fees as the Administrative Agent normally charges for similar services in connection with the Administrative Agent's administration of the Letter of Credit Collateral Account and investments and reinvestments of funds therein.

Section 10.7. Rescission of Acceleration by Requisite Lenders.

If at any time after acceleration of the maturity of the Loans and the other Obligations, the Borrower shall pay all arrears of interest and all payments on account of principal of the Obligations which shall have become due otherwise than by acceleration (with interest on principal and, to the extent permitted by Applicable Law, on overdue interest, at the rates specified in this Agreement) and all Events of Default and Defaults (other than nonpayment of principal of and accrued interest on the Obligations due and payable solely by virtue of acceleration) shall become remedied or waived to the satisfaction of the Requisite Lenders, then by written notice to the Borrower, the Requisite Lenders may elect, in the sole discretion of such Requisite Lenders, to rescind and annul the acceleration and its consequences. The provisions of the preceding sentence are intended merely to bind all of the Lenders to a decision which may be made at the election of the Requisite Lenders, and are not intended to benefit the Borrower and do not give the Borrower the right to require the Lenders to rescind or annul any acceleration hereunder, even if the conditions set forth herein are satisfied.

Section 10.8. Performance by Administrative Agent.

If the Borrower or any other Loan Party shall fail to perform any covenant, duty or agreement contained in any of the Loan Documents, the Administrative Agent may, after notice to the Borrower, perform or attempt to perform such covenant, duty or agreement on behalf of the Borrower or such other Loan Party after the expiration of any cure or grace periods set forth herein. In such event, the Borrower shall, at the request of the Administrative Agent, promptly pay any amount reasonably expended by the Administrative Agent in such performance or attempted performance to the Administrative Agent, together with interest thereon at the applicable Post-Default Rate from the date of such expenditure until paid. Notwithstanding the foregoing, neither the Administrative Agent nor any Lender shall have any liability or responsibility whatsoever for the performance of any obligation of the Borrower under this Agreement or any other Loan Document.

Section 10.9. Rights Cumulative.

(a) Generally. The rights and remedies of the Administrative Agent, the Issuing Banks and the Lenders under this Agreement and each of the other Loan Documents and of the Specified Derivatives Providers under the Specified Derivatives Contracts shall be cumulative and not exclusive of any rights or remedies which any of them may otherwise have under Applicable Law. In exercising their respective rights and remedies the Administrative Agent, the Issuing Banks, the Lenders and the Specified Derivatives Providers may be selective and no failure or delay by any such Lender Party in exercising any right shall operate as a waiver of it, nor shall any single or partial exercise of any power or right preclude its other or further exercise or the exercise of any other power or right.

(b) Enforcement by Administrative Agent. Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Article X. for the benefit of all the Lenders and the Issuing Banks; provided that the foregoing shall not prohibit (i) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (ii) any Issuing Bank ~~or Swingline Lender~~ from exercising the rights and remedies that inure to their benefit (solely in their

capacity as an Issuing Bank ~~or as a Swingline Lender, as the case may be)~~) hereunder or under the other Loan Documents, (iii) any Specified Derivatives Provider from exercising the rights and remedies that inure to its benefit under any Specified Derivatives Contract, (iv) any Lender from exercising setoff rights in accordance with Section 12.3. (subject to the terms of Section 3.3.), or (v) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and provided, further, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (x) the Requisite Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Article X. and (y) in addition to the matters set forth in clauses (ii), (iv) and (v) of the preceding proviso and subject to Section 3.3., any Lender may, with the consent of the Requisite Lenders, enforce any rights and remedies available to it and as authorized by the Requisite Lenders.

Article XI. The Administrative Agent

Section 11.1. Appointment and Authorization.

Each Lender hereby irrevocably appoints and authorizes the Administrative Agent to take such action as contractual representative on such Lender's behalf and to exercise such powers under this Agreement and the other Loan Documents as are specifically delegated to the Administrative Agent by the terms hereof and thereof, together with such powers as are reasonably incidental thereto. Not in limitation of the foregoing, each Lender authorizes and directs the Administrative Agent to enter into the Loan Documents for the benefit of the Lenders. Each Lender hereby agrees that, except as otherwise set forth herein, any action taken by the Requisite Lenders in accordance with the provisions of this Agreement or the Loan Documents, and the exercise by the Requisite Lenders of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all of the Lenders. Nothing herein shall be construed to deem the Administrative Agent a trustee or fiduciary for any Lender or to impose on the Administrative Agent duties or obligations other than those expressly provided for herein. Without limiting the generality of the foregoing, the use of the terms "Agent", "Administrative Agent", "agent" and similar terms in the Loan Documents 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, use of such terms is merely a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties. The Administrative Agent shall deliver or otherwise make available to each Lender, promptly upon receipt thereof by the Administrative Agent, copies of each of the financial statements, certificates, notices and other documents delivered to the Administrative Agent pursuant to Article VIII. that the Borrower is not otherwise required to deliver directly to the Lenders. The Administrative Agent will furnish to any Lender, upon the request of such Lender, a copy (or, where appropriate, an original) of any document, instrument, agreement, certificate or notice furnished to the Administrative Agent by the Borrower, any other Loan Party or any other Affiliate of the Borrower, pursuant to this Agreement or any other Loan Document not already delivered or otherwise made available to such Lender pursuant to the terms of this Agreement or any such other Loan Document. As to any matters not expressly provided for by the Loan Documents (including, without limitation, enforcement or collection of any of the Obligations), the Administrative Agent shall not be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the instructions of the Requisite Lenders (or all of the Lenders if explicitly required under any other provision of this Agreement), and such instructions shall be binding upon all Lenders and all holders of any of the Obligations; provided, however, that, notwithstanding anything in this Agreement to the contrary, the Administrative Agent shall not be required to take any action which exposes the Administrative Agent to personal liability or which is contrary to this Agreement or any other Loan Document or Applicable Law. Not in limitation of the foregoing, the Administrative Agent may exercise any right or remedy it or the Lenders may have under any Loan Document upon the occurrence of a Default or an Event of Default unless the Requisite Lenders have directed the Administrative Agent otherwise. Without limiting the foregoing, no Lender shall have any right of action whatsoever against the Administrative Agent as a result of the Administrative Agent acting or refraining from acting under this Agreement or any of the other Loan Documents in accordance with the instructions of the Requisite Lenders, or where applicable, all the Lenders.

Section 11.2. Administrative Agent as Lender.

The Lender acting as Administrative Agent shall have the same rights and powers as a Lender or a Specified Derivatives Provider, as the case may be, under this Agreement, any other Loan Document or any Specified Derivatives Contract, as the case may be, as any other Lender or any Specified Derivatives Provider and may exercise the same as though it were not the Administrative Agent; and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated, include the Lender acting as Administrative Agent in each case in its individual capacity. Such Lender and its Affiliates may each accept deposits from, maintain deposits or credit balances for, invest in, lend money to, act as trustee under indentures of, serve as financial advisor to, and generally engage in any kind of business with the Borrower, any other Loan Party or any other Affiliate thereof as if it were any other bank and without any duty to account therefor to the Issuing Banks, the other Lenders or any Specified Derivatives Providers. Further, the Administrative Agent and any Affiliate may accept fees and other consideration from the Borrower for services in connection with this Agreement or any Specified Derivatives Contract, or otherwise without having to account for the same to the Issuing Banks, the other Lenders, any Specified Derivatives Providers. The Issuing Banks and the Lenders acknowledge that, pursuant to such activities, the Lender acting as Administrative Agent or its Affiliates may receive information regarding the Borrower, other Loan Parties, other Subsidiaries and other Affiliates (including information that may be subject to confidentiality obligations in favor of such Person) and acknowledge that the Administrative Agent shall be under no obligation to provide such information to them.

Section 11.3. Approvals of Lenders.

All communications from the Administrative Agent to any Lender requesting such Lender's determination, consent or approval (a) shall be given in the form of a written notice to such Lender, (b) shall be accompanied by a description of the matter or issue as to which such determination, consent or approval is requested, or shall advise such Lender where information, if any, regarding such matter or issue may be inspected, or shall otherwise describe the matter or issue to be resolved and (c) shall include, if reasonably requested by such Lender and to the extent not previously provided to such Lender, written materials provided to the Administrative Agent by the Borrower in respect of the matter or issue to be resolved. Unless a Lender shall give written notice to the Administrative Agent that it specifically objects to the requested determination, consent or approval within 10 Business Days (or such lesser or greater period as may be specifically required under the express terms of the Loan Documents) of receipt of such communication, such Lender shall be deemed to have conclusively approved or consented to such requested determination, consent or approval. The provisions of this Section shall not apply to any amendment, waiver or consent regarding any of the matters described in Section 12.6.(b).

Section 11.4. Notice of Events of Default.

The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of a Default or Event of Default unless the Administrative Agent has received notice from a Lender or the Borrower referring to this Agreement, describing with reasonable specificity such Default or Event of Default and stating that such notice is a "notice of default." If any Lender (excluding the Lender which is also serving as the Administrative Agent) becomes aware of any Default or Event of Default, it shall promptly send to the Administrative Agent such a "notice of default"; provided, a Lender's failure to provide such a "notice of default" to the Administrative Agent shall not result in any liability of such Lender to any other party to any of the Loan Documents. Further, if the Administrative Agent receives such a "notice of default," the Administrative Agent shall give prompt notice thereof to the Lenders.

Section 11.5. Administrative Agent's Reliance.

Notwithstanding any other provisions of this Agreement or any other Loan Documents, neither the Administrative Agent nor any of its Related Parties shall be liable for any action taken or not taken by it under or in connection with this Agreement or any other Loan Document, except for its or their own bad faith, gross negligence or willful misconduct in connection with its duties expressly set forth herein or therein as determined by a court of competent jurisdiction in a final non-appealable judgment. Without limiting the generality of the foregoing, the Administrative Agent may consult with legal counsel

(including its own counsel or counsel for the Borrower or any other Loan Party), 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. Neither the Administrative Agent nor any of its Related Parties: (a) makes any warranty or representation to any Lender, any Issuing Bank or any other Person, or shall be responsible to any Lender, any Issuing Bank or any other Person for any statement, warranty or representation made or deemed made by the Borrower, any other Loan Party or any other Person in or in connection with this Agreement or any other Loan Document; (b) shall have any duty to ascertain or to inquire as to the performance or observance of any of the terms, covenants or conditions of this Agreement or any other Loan Document or the satisfaction of any conditions precedent under this Agreement or any Loan Document on the part of the Borrower or other Persons, or to inspect the property, books or records of the Borrower or any other Person; (c) shall be responsible to any Lender or any Issuing Bank for the due execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or any other Loan Document, any other instrument or document furnished pursuant thereto or any collateral covered thereby or the perfection or priority of any Lien in favor of the Administrative Agent on behalf of the Lenders Parties in any such collateral; (d) shall have any liability in respect of any recitals, statements, certifications, representations or warranties contained in any of the Loan Documents or any other document, instrument, agreement, certificate or statement delivered in connection therewith; and (e) shall incur any liability under or in respect of this Agreement or any other Loan Document by acting upon any notice, consent, certificate or other instrument or writing (which may be by telephone, telecopy or electronic mail) believed by it to be genuine and signed, sent or given by the proper party or parties. The Administrative Agent may execute any of its duties under the Loan Documents by or through agents, employees or attorneys-in-fact and shall not be responsible for the negligence or misconduct of any agent or attorney-in-fact that it selects in the absence of bad faith, gross negligence or willful misconduct in the selection of such agent or attorney-in-fact as determined by a court of competent jurisdiction in a final non-appealable judgment.

Section 11.6. Indemnification of Administrative Agent.

Each Lender agrees to indemnify the Administrative Agent (to the extent not reimbursed by the Borrower and without limiting the obligation of the Borrower to do so) pro rata in accordance with such Lender's respective Pro Rata Share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, reasonable out-of-pocket costs and expenses of any kind or nature whatsoever which may at any time be imposed on, incurred by, or asserted against the Administrative Agent (in its capacity as Administrative Agent but not as a Lender) in any way relating to or arising out of the Loan Documents, any transaction contemplated hereby or thereby or any action taken or omitted by the Administrative Agent under the Loan Documents (collectively, "Indemnifiable Amounts"); provided, however, that no Lender shall be liable for any portion of such Indemnifiable Amounts to the extent resulting from the Administrative Agent's gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final, non-appealable judgment; provided, further, that no action taken in accordance with the directions of the Requisite Lenders (or all of the Lenders, if expressly required hereunder) shall be deemed to constitute gross negligence or willful misconduct for purposes of this Section. Without limiting the generality of the foregoing, each Lender agrees to reimburse the Administrative Agent (to the extent not reimbursed by the Borrower and without limiting the obligation of the Borrower to do so) promptly upon demand for its Pro Rata Share (determined as of the time that the applicable reimbursement is sought) of any out-of-pocket expenses (including the reasonable fees and expenses of the counsel to the Administrative Agent) incurred by the Administrative Agent in connection with the preparation, negotiation, execution, administration, or enforcement (whether through negotiations, legal proceedings, or otherwise) of, or legal advice with respect to the rights or responsibilities of the parties under, the Loan Documents, any suit or action brought by the Administrative Agent to enforce the terms of the Loan Documents and/or collect any Obligations, any "lender liability" suit or claim brought against the Administrative Agent and/or the Lenders, and any claim or suit brought against the Administrative Agent and/or the Lenders arising under any Environmental Laws. Such out-of-pocket expenses (including counsel fees) shall be advanced by the Lenders on the request of the Administrative Agent notwithstanding any claim or assertion that the Administrative Agent is not entitled to indemnification hereunder upon receipt of an undertaking by the Administrative Agent that the Administrative Agent will reimburse the Lenders if it is actually and finally determined by a court of competent jurisdiction that the Administrative Agent is not so entitled to

indemnification. The agreements in this Section shall survive the payment of the Loans and all other Obligations and the termination of this Agreement. If the Borrower shall reimburse the Administrative Agent for any Indemnifiable Amount following payment by any Lender to the Administrative Agent in respect of such Indemnifiable Amount pursuant to this Section, the Administrative Agent shall promptly share such reimbursement on a ratable basis with each Lender making any such payment.

Section 11.7. Lender Credit Decision, Etc.

Each of the Lenders and the Issuing Banks expressly acknowledges and agrees that neither the Administrative Agent nor any of its Related Parties has made any representations or warranties to such Issuing Bank or such Lender and that no act by the Administrative Agent hereafter taken, including any review of the affairs of the Borrower, any other Loan Party or any other Subsidiary or Affiliate, shall be deemed to constitute any such representation or warranty by the Administrative Agent to any Issuing Bank or any Lender. Each of the Lenders and Issuing Banks acknowledges that it has made its own credit and legal analysis and decision to enter into this Agreement and the transactions contemplated hereby, independently and without reliance upon the Administrative Agent, any other Lender or counsel to the Administrative Agent, or any of their respective Related Parties, and based on the financial statements of the Borrower, the other Loan Parties, the other Subsidiaries and other Affiliates, and inquiries of such Persons, its independent due diligence of the business and affairs of the Borrower, the other Loan Parties, the other Subsidiaries and other Persons, its review of the Loan Documents, the legal opinions required to be delivered to it hereunder, the advice of its own counsel and such other documents and information as it has deemed appropriate. Each of the Lenders and the Issuing Banks also acknowledges that it will, independently and without reliance upon the Administrative Agent, any other Lender or counsel to the Administrative Agent or any of their respective Related Parties, and based on such review, advice, documents and information as it shall deem appropriate at the time, continue to make its own decisions in taking or not taking action under the Loan Documents. The Administrative Agent shall not be required to keep itself informed as to the performance or observance by the Borrower or any other Loan Party of the Loan Documents or any other document referred to or provided for therein or to inspect the properties or books of, or make any other investigation of, the Borrower, any other Loan Party or any other Subsidiary. Except for notices, reports and other documents and information expressly required to be furnished to the Lenders and the Issuing Banks by the Administrative Agent under this Agreement or any of the other Loan Documents, the Administrative Agent shall have no duty or responsibility to provide any Lender or any Issuing Bank with any credit or other information concerning the business, operations, property, financial and other condition or creditworthiness of the Borrower, any other Loan Party or any other Affiliate thereof which may come into possession of the Administrative Agent or any of its Related Parties. The Administrative Agent shall not be responsible or have any liability for, or have any duty to ascertain, inquire into or monitor compliance with, the provisions hereof relating to the Sustainability Rating. Each of the Lenders and the Issuing Banks acknowledges that the Administrative Agent's legal counsel in connection with the transactions contemplated by this Agreement is only acting as counsel to the Administrative Agent and is not acting as counsel to any Lender or any Issuing Bank.

Section 11.8. Successor Administrative Agent.

The Administrative Agent (a) may resign at any time as Administrative Agent under the Loan Documents by giving written notice thereof to the Lenders and the Borrower or (b) may be removed as Administrative Agent by the Requisite Lenders (excluding the Lender then acting as Administrative Agent) if the Administrative Agent (i) is found by a court of competent jurisdiction in a final, non-appealable judgment to have committed gross negligence, bad faith or willful misconduct in the course of performing its duties hereunder or (ii) has become a Defaulting Lender under clause (d) of the definition of such term. Upon any such resignation or removal, the Requisite Lenders shall have the right to appoint a successor Administrative Agent which appointment shall, provided no Event of Default exists, be subject to the Borrower's approval, which approval shall not be unreasonably withheld or delayed. If no successor Administrative Agent shall have been so appointed in accordance with the immediately preceding sentence, and shall have accepted such appointment, within 30 days after the current Administrative Agent's giving of notice of resignation or upon the removal of the current Administrative Agent, then, in the case of resignation by the Administrative Agent, the current Administrative Agent may, or in the case of removal of the Administrative Agent, the Requisite Lenders may, on behalf of the Lenders and the Issuing Banks, appoint a successor Administrative Agent, which shall be a Lender, if any

Lender shall be willing to serve, and otherwise shall be an Eligible Assignee; provided that if no Lender has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) the Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents and (2) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made to each Lender and Issuing Bank directly, until such time as a successor Administrative Agent has been appointed as provided for above in this Section; provided, further that such Lenders and such Issuing Banks so acting directly shall be and be deemed to be protected by all indemnities and other provisions herein for the benefit and protection of the Administrative Agent as if each such Lender or Issuing Bank were itself the Administrative Agent. Upon the acceptance of any appointment as Administrative Agent hereunder by a successor Administrative Agent, such successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the current Administrative Agent, and the current Administrative Agent shall be discharged from its duties and obligations under the Loan Documents. Any resignation by, or removal of, an Administrative Agent shall also constitute the resignation or removal as an Issuing Bank ~~and as a Swingline Lender~~ by the Lender then acting as Administrative Agent (the "Resigning Lender"), except that such Lender, in its capacity as an Issuing Bank, shall continue to have obligations hereunder with respect to Letters of Credit until the appointment of a successor Administrative Agent has become effective. Upon the acceptance of a successor's appointment as Administrative Agent hereunder (i) the Resigning Lender shall be discharged from all duties and obligations of an Issuing Bank ~~and a Swingline Lender~~ hereunder and under the other Loan Documents and (ii) if reasonably practicable and acceptable to beneficiaries under then outstanding Letters of Credit, any successor Issuing Bank shall issue letters of credit in substitution for all Letters of Credit issued by the Resigning Lender as an Issuing Bank outstanding at the time of such succession (which letters of credit issued in substitutions shall be deemed to be Letters of Credit issued hereunder) or make other arrangements satisfactory to the Resigning Lender to effectively assume the obligations of the Resigning Lender with respect to such Letters of Credit. After any Administrative Agent's resignation or removal hereunder as Administrative Agent, the provisions of this Article XI. shall continue to inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent under the Loan Documents. Notwithstanding anything contained herein to the contrary, the Administrative Agent may assign its rights and duties under the Loan Documents to any of its Affiliates by giving the Borrower and each Lender prior written notice.

Section 11.9. Titled Agents.

Each of the Joint Lead Arranger, Joint Bookrunners, Syndication Agents and Documentation Agents (each a "Titled Agent") in each such respective capacity, assumes no responsibility or obligation hereunder, including, without limitation, for servicing, enforcement or collection of any of the Loans, nor any duties as an agent hereunder for the Lenders. The titles given to the Titled Agents are solely honorific and imply no fiduciary responsibility on the part of the Titled Agents to the Administrative Agent, any Lender, any Issuing Bank, the Borrower or any other Loan Party and the use of such titles does not impose on the Titled Agents any duties or obligations greater than those of any other Lender or entitle the Titled Agents to any rights other than those to which any other Lender is entitled.

Section 11.10. Specified Derivatives Contracts.

No Specified Derivatives Provider that obtains the benefits of Section 10.5. by virtue of the provisions hereof or of any Loan Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of any Loan Document other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this Article to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Specified Derivatives Contracts unless the Administrative Agent has received written notice of such Specified Derivatives Contracts, together with such supporting documentation as the Administrative Agent may request, from the applicable Specified Derivatives Provider.

Section 11.11. Erroneous Payments.

(a) Each Lender, each Issuing Bank and any other party hereto hereby severally agrees that if (i) the Administrative Agent notifies (which such notice shall be conclusive absent manifest error) such Lender or Issuing Bank or any other Person that has received funds from the Administrative Agent or any of its Affiliates, either for its own account or on behalf of a Lender or Issuing Bank (each such recipient, a "Payment Recipient") that the Administrative Agent has determined in its sole discretion that any funds received by such Payment Recipient were erroneously transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Payment Recipient) or (ii) any Payment Recipient receives any payment from the Administrative Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, as applicable, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, as applicable, or (z) that such Payment Recipient otherwise becomes aware was transmitted or received in error or by mistake (in whole or in part) then, in each case, an error in payment shall be presumed to have been made (any such amounts specified in clauses (i) or (ii) of this Section 11.11(a), whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise; individually and collectively, an "Erroneous Payment"), then, in each case, such Payment Recipient is deemed to have knowledge of such error at the time of its receipt of such Erroneous Payment; provided that nothing in this Section 11.11 shall require the Administrative Agent to provide any of the notices specified in clauses (i) or (ii) above. Each Payment Recipient agrees that it shall not assert any right or claim to any Erroneous Payment, and hereby waives any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Erroneous Payments, including without limitation waiver of any defense based on "discharge for value" or any similar doctrine.

(b) Without limiting the immediately preceding clause (a), each Payment Recipient agrees that, in the case of clause (a)(ii) above, it shall promptly notify the Administrative Agent in writing of such occurrence.

(c) In the case of either clause (a)(i) or (a)(ii) above, such Erroneous Payment shall at all times remain the property of the Administrative Agent and shall be segregated by the Payment Recipient and held in trust for the benefit of the Administrative Agent, and upon demand from the Administrative Agent such Payment Recipient shall (or, shall cause any Person who received any portion of an Erroneous Payment on its behalf to), promptly, but in all events no later than one Business Day thereafter, return to the Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made in same day funds and in the currency so received, together with interest thereon in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Administrative Agent at the Federal Funds Rate.

(d) In the event that an Erroneous Payment (or portion thereof) is not recovered by the Administrative Agent for any reason, after demand therefor by the Administrative Agent in accordance with immediately preceding clause (c), from any Lender that is a Payment Recipient or an Affiliate of a Payment Recipient (such unrecovered amount as to such Lender, an "Erroneous Payment Return Deficiency"), then at the sole discretion of the Administrative Agent and upon the Administrative Agent's written notice to such Lender (i) such Lender shall be deemed to have made a cashless assignment of the full face amount of the portion of its Loans (but not its Commitments) of the relevant Class with respect to which such Erroneous Payment was made (the "Erroneous Payment Impacted Class") to the Administrative Agent or, at the option of the Administrative Agent, the Administrative Agent's applicable lending affiliate in an amount that is equal to the Erroneous Payment Return Deficiency (or such lesser amount as the Administrative Agent may specify) (such assignment of the Loans (but not Commitments) of the Erroneous Payment Impacted Class, the "Erroneous Payment Deficiency Assignment") plus any accrued and unpaid interest on such assigned amount, without further consent or approval of any party hereto and without any payment by the Administrative Agent or its applicable lending affiliate as the assignee of such Erroneous Payment Deficiency Assignment. Without limitation of its rights hereunder, the Administrative Agent may cancel any Erroneous Payment Deficiency Assignment at any time by

written notice to the applicable assigning Lender and upon such revocation all of the Loans assigned pursuant to such Erroneous Payment Deficiency Assignment shall be reassigned to such Lender without any requirement for payment or other consideration. The parties hereto acknowledge and agree that (1) any assignment contemplated in this clause (d) shall be made without any requirement for any payment or other consideration paid by the applicable assignee or received by the assignor, (2) the provisions of this clause (d) shall govern in the event of any conflict with the terms and conditions of Section 12.5 and (3) the Administrative Agent may reflect such assignments in the Register without further consent or action by any other Person.

(e) Each party hereto hereby agrees that (x) in the event an Erroneous Payment (or portion thereof) is not recovered from any Payment Recipient that has received such Erroneous Payment (or portion thereof) for any reason, the Administrative Agent (1) shall be subrogated to all the rights of such Payment Recipient with respect to such amount and (2) is authorized to set off, net and apply any and all amounts at any time owing to such Payment Recipient under any Loan Document, or otherwise payable or distributable by the Administrative Agent to such Payment Recipient from any source, against any amount due to the Administrative Agent under this Section 11.11 or under the indemnification provisions of this Agreement, (y) the receipt of an Erroneous Payment by a Payment Recipient shall not for the purpose of this Agreement be treated as a payment, prepayment, repayment, discharge or other satisfaction of any Obligations owed by the Borrower or any other Loan Party, except, in each case, to the extent such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Administrative Agent from the Borrower or any other Loan Party for the purpose of making for a payment on the Obligations and (z) to the extent that an Erroneous Payment was in any way or at any time credited as payment or satisfaction of any of the Obligations, the Obligations or any part thereof that were so credited, and all rights of the Payment Recipient, as the case may be, shall be reinstated and continue in full force and effect as if such payment or satisfaction had never been received.

(f) Each party's obligations under this Section 11.11 shall survive the resignation or replacement of the Administrative Agent or any transfer of right or obligations by, or the replacement of, a Lender, the termination of the Commitments or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

(g) Nothing in this Section 11.11 will constitute a waiver or release of any claim of any party hereunder arising from any Payment Recipient's receipt of an Erroneous Payment.

Article XII. Miscellaneous

Section 12.1. Notices.

Unless otherwise provided herein (including without limitation as provided in Section 8.5.), communications provided for hereunder shall be in writing and shall be mailed, electronically mailed, telecopied, or delivered as follows:

If to the Borrower:

~~Washington Real Estate Investment Trust~~
Elme Communities
1775 Eye Street, NW, Suite 1000
Washington, D.C. 20006
Attention: Chief Financial Officer; Vice President, Finance
Telecopier: (202) 379-3554
Telephone: (202) 774-3200
Email: sriffee@~~washreit~~elmecommunities.com; sfreishtat@elmecommunities.com

with a copy to:

Washington Real Estate Investment Trust
Elme Communities
1775 Eye Street, NW, Suite 1000
Washington, D.C. 20006
Attention: Vice President, FinanceChief Accounting Officer
Telecopier: (202) 379-3554
Telephone: (202) 774-3200
Email: sfreishtat@washreitdhammond@elmecommunities.com

Washington Real Estate Investment Trust
1775 Eye Street, NW, Suite 1000
Washington, D.C. 20006
Attention: General Counsel
Telecopier: (202) 379-3554
Telephone: (202) 774-3200
Email: tfielder@washreit.com

If to the Administrative Agent:

Wells Fargo Bank, National Association
10 South Wacker Drive, 32nd floor
Chicago, Illinois 60606
Attention: Scott Solis
Telecopier: (312) 782-0969
Telephone: (312) 269-4818
Email: scott.s.solis@wellsfargo.com

with a copy to

Wells Fargo Bank, National Association
550 S Tryon Street, 6th Floor
Charlotte, North Carolina 28202-6000
Mail code D1086-061
Attn: Douglas Frazer
Telecopier: (704) 715-1289
Telephone: (704) 715-5747
Email: doug.e.frazer@wellsfargo.com

If to the Administrative Agent under Article II.

Wells Fargo Bank, National Association
Minneapolis Loan Center
MAC N9303 110
600 South 4th St., 9th10th Floor
Minneapolis, Minnesota 55415
Attn: David DeAngelis
Telecopier: (866) 595-7861
Telephone: (612) 667-4773
Email: david.r.deangelis@wellsfargo.com

If to Wells Fargo, as an Issuing Bank:

Wells Fargo Bank, National Association
10 South Wacker Drive, 32nd floor
Chicago, Illinois 60606
Attention: Scott Solis
Telecopier: (312) 782-0969
Telephone: (312) 269-4818
Email: scott.s.solis@wellsfargo.com

If to KeyBank, as an Issuing Bank:

KeyBank National Association
127 Public Square
Mailcode: OH-01-27-0844
Cleveland, OH 44114
Attn: Sara Jo Smith
Email: sara_jo_smith@keybank.com

with a copy to:

KeyBank National Association
4910 Tiedeman Road
Brooklyn, OH 44144
~~1675 Broadway NEW Suite #1400~~
~~Denver, CO 80202~~
Attn: ~~Victoria Diez~~Wanda Groden
Email: ~~victoria_e_diaz@keybank~~Wanda_S_Groden@KeyBank.com

If to Capital One, as an Issuing Bank:

Capital One, National Association
802 Delaware Ave
Wilmington, DE 19801
Attn: Trade Finance Services
Email: trade.services@capitalone.com
Telephone: (877) 225-7309

with a copy to:

Capital One, National Association
1680 Capital One Drive
McLean, VA 22102
Email: jessica.phillips@capitalone.com
Telephone: (703) 720-6526

If to any other Lender:

To such Lender's address, telecopy number or electronic mail address as set forth in the applicable Administrative Questionnaire

or, as to each party at such other address as shall be designated by such party in a written notice to the other parties delivered in compliance with this Section; provided, a Lender or an Issuing Bank shall only be required to give notice of any such other address to the Administrative Agent and the Borrower. All such notices and other communications shall be effective (i) if mailed, when received; (ii) if telecopied, when transmitted; (iii) if hand delivered or sent by overnight courier, when delivered; or (iv) if delivered in accordance with Section 8.5. to the extent applicable; provided, however, that, in the case of the immediately preceding clauses (i), (ii) and (iii), non-receipt of any communication as of the result of any change of address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication. None of the Administrative Agent, any Issuing Bank or any Lender shall incur any liability to any Loan Party (nor shall the Administrative Agent incur any liability to any Issuing Bank or the Lenders) for acting upon any telephonic notice referred to in this Agreement which the Administrative Agent, such Issuing Bank or such Lender, as the case may be, believes in good faith to have been given by a Person authorized to deliver such notice or for otherwise acting in good faith hereunder. Failure of a Person designated to get a copy of a notice to receive such copy shall not affect the validity of notice properly given to another Person.

Section 12.2. Expenses.

The Borrower agrees (a) to pay or reimburse the Administrative Agent for all of its reasonable and documented out-of-pocket costs and reasonable and documented expenses incurred in connection with the preparation, negotiation and execution of, and any amendment, supplement or modification to, any of the Loan Documents (including due diligence expenses and reasonable travel expenses related to closing), and the consummation of the transactions contemplated hereby and thereby, including the reasonable and documented out-of-pocket fees and disbursements of counsel to the Administrative Agent and all reasonable and documented out-of-pocket costs and expenses of the Administrative Agent in connection with the use of IntraLinks, SyndTrak or other similar information transmission systems in connection with the Loan Documents, (b) to pay or reimburse the Administrative Agent, the Issuing Banks and the Lenders for all their reasonable and documented out-of-pocket costs and expenses incurred in connection with the enforcement or preservation of any rights under the Loan Documents, including the reasonable and documented fees and disbursements of their respective counsel and any payments in indemnification or otherwise payable by the Lenders to the Administrative Agent pursuant to the Loan Documents, (c) to pay, and indemnify and hold harmless the Administrative Agent, the Issuing Banks and the Lenders from, any and all recording and filing fees and any and all liabilities with respect to, or resulting from any failure to pay or delay in paying, documentary, stamp, excise and other similar taxes, if any, which may be payable or determined to be payable in connection with the execution and delivery of any of the Loan Documents, or consummation of any amendment, supplement or modification of, or any waiver or consent under or in respect of, any Loan Document and (d) to the extent not already covered by any of the preceding subsections, to pay or reimburse the reasonable and documented out-of-pocket fees and disbursements of counsel to the Administrative Agent, any Issuing Banks and any Lender incurred in connection with the representation of the Administrative Agent, such Issuing Bank or such Lender in any matter relating to or arising out of any bankruptcy or other proceeding of the type described in Sections 10.1.(e) or 10.1.(f), including, without limitation (i) any motion for relief from any stay or similar order, (ii) the negotiation, preparation, execution and delivery of any document relating to the Obligations and (iii) the negotiation and preparation of any debtor-in-possession financing or any plan of reorganization of the Borrower or any other Loan Party, whether proposed by the Borrower, such Loan Party, the Lenders or any other Person, and whether such fees and expenses are incurred prior to, during or after the commencement of such proceeding or the confirmation or conclusion of any such proceeding. If the Borrower shall fail to pay any amounts required to be paid by it pursuant to this Section, the Administrative Agent and/or the Lenders may pay such amounts on behalf of the Borrower and such amounts shall be deemed to be Obligations owing hereunder. Notwithstanding the foregoing, the obligation to reimburse the Lender Parties for fees and expenses in connection with the matters described in items (b) and (d) shall be limited to the reasonable and documented out-of-pocket fees, disbursements and other charges of one counsel to the Lender Parties and, if reasonably necessary, a single local counsel for the Lender Parties in each relevant jurisdiction and with respect to each relevant specialty, and in the case of an actual or perceived conflict of interest, one additional counsel in each relevant jurisdiction to the affected Lender Parties similarly situated. All amounts payable pursuant to this Section 12.2. shall be due and payable 15 days after receipt of a reasonably detailed invoice therefor.

Section 12.3. Setoff.

Subject to Section 3.3. and in addition to any rights now or hereafter granted under Applicable Law and not by way of limitation of any such rights, the Borrower hereby authorizes the Administrative Agent, each Issuing Bank, each Lender, each Affiliate of the Administrative Agent, any Issuing Bank or any Lender, and each Participant, at any time or from time to time while an Event of Default exists, without notice to the Borrower or to any other Person, any such notice being hereby expressly waived, but in the case of an Issuing Bank, a Lender, an Affiliate of an Issuing Bank or a Lender, or a Participant, subject to receipt of the prior written consent of the Requisite Lenders exercised in their sole discretion, to set off and to appropriate and to apply any and all deposits (general or special, including, but not limited to, indebtedness evidenced by certificates of deposit, whether matured or unmatured) and any other indebtedness at any time held or owing by the Administrative Agent, such Issuing Bank, such Lender, any Affiliate of the Administrative Agent, such Issuing Bank or such Lender, or such Participant, to or for the credit or the account of the Borrower against and on account of any of the Obligations, irrespective of whether or not any or all of the Loans and all other Obligations have been declared to be, or have otherwise become, due and payable as permitted by Section 10.2., and although such Obligations shall be

contingent or unmatured. Notwithstanding anything to the contrary in this Section, if any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 3.9. and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the Issuing Banks and the Lenders and (y) such Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff.

Section 12.4. Litigation; Jurisdiction; Other Matters; Waivers.

(a) EACH PARTY HERETO ACKNOWLEDGES THAT ANY DISPUTE OR CONTROVERSY BETWEEN OR AMONG THE BORROWER, THE ADMINISTRATIVE AGENT, ANY ISSUING BANK OR ANY OF THE LENDERS WOULD BE BASED ON DIFFICULT AND COMPLEX ISSUES OF LAW AND FACT AND WOULD RESULT IN DELAY AND EXPENSE TO THE PARTIES. ACCORDINGLY, TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF THE LENDERS, THE ADMINISTRATIVE AGENT, THE ISSUING BANKS AND THE BORROWER HEREBY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING OF ANY KIND OR NATURE IN ANY COURT OR TRIBUNAL IN WHICH AN ACTION MAY BE COMMENCED BY OR AGAINST ANY PARTY HERETO ARISING OUT OF THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR BY REASON OF ANY OTHER SUIT, CAUSE OF ACTION OR DISPUTE WHATSOEVER BETWEEN OR AMONG THE BORROWER, THE ADMINISTRATIVE AGENT, ANY ISSUING BANK OR ANY OF THE LENDERS OF ANY KIND OR NATURE RELATING TO ANY OF THE LOAN DOCUMENTS.

(b) THE BORROWER IRREVOCABLY AND UNCONDITIONALLY AGREES THAT IT WILL NOT COMMENCE ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST THE ADMINISTRATIVE AGENT, ANY LENDER, ANY ISSUING BANK, OR ANY RELATED PARTY OF THE FOREGOING IN ANY WAY RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS RELATING HERETO OR THERETO, IN ANY FORUM OTHER THAN THE COURTS OF THE STATE OF NEW YORK SITTING IN THE BOROUGH OF MANHATTAN, NEW YORK, NEW YORK, AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION, LITIGATION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION, LITIGATION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT, ANY LENDER OR ANY ISSUING BANK MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE BORROWER OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION. EACH PARTY FURTHER WAIVES ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH ACTION OR PROCEEDING IN ANY SUCH COURT OR THAT SUCH ACTION OR PROCEEDING WAS BROUGHT IN AN INCONVENIENT FORUM AND EACH AGREES NOT TO PLEAD OR CLAIM THE SAME. THE CHOICE OF FORUM SET FORTH IN THIS SECTION SHALL NOT BE DEEMED TO PRECLUDE THE BRINGING OF ANY ACTION BY THE ADMINISTRATIVE AGENT, ANY ISSUING BANK OR ANY LENDER OR THE ENFORCEMENT BY THE ADMINISTRATIVE AGENT, ANY ISSUING BANK OR ANY LENDER OF ANY JUDGMENT OBTAINED IN SUCH FORUM IN ANY OTHER APPROPRIATE JURISDICTION.

(c) THE BORROWER HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS AND COMPLAINT, OR OTHER PROCESS OR PAPERS ISSUED THEREIN, AND AGREES THAT SERVICE OF SUCH SUMMONS AND COMPLAINT, OR OTHER PROCESS OR PAPERS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO THE BORROWER AT ITS ADDRESS FOR NOTICES PROVIDED IN SECTION 12.1. SHOULD THE BORROWER FAIL TO APPEAR OR ANSWER ANY SUMMONS, COMPLAINT, PROCESS OR PAPERS SO SERVED WITHIN 30 DAYS AFTER THE MAILING THEREOF, THE BORROWER SHALL BE DEEMED IN DEFAULT AND AN ORDER AND/OR JUDGMENT MAY BE ENTERED AGAINST IT AS DEMANDED OR PRAYED FOR IN SUCH SUMMONS, COMPLAINT, PROCESS OR PAPERS.

(d) THE PROVISIONS OF THIS SECTION HAVE BEEN CONSIDERED BY EACH PARTY WITH THE ADVICE OF COUNSEL AND WITH A FULL UNDERSTANDING OF THE LEGAL CONSEQUENCES THEREOF, AND SHALL SURVIVE THE PAYMENT OF THE LOANS AND ALL OTHER AMOUNTS PAYABLE HEREUNDER OR UNDER THE OTHER LOAN DOCUMENTS, THE TERMINATION OR EXPIRATION OF ALL LETTERS OF CREDIT AND THE TERMINATION OF THIS AGREEMENT.

Section 12.5. Successors and Assigns.

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that the Borrower (other than as permitted pursuant to Section 12.20.) may not assign or otherwise transfer any of its rights or obligations hereunder or under any other Loan Document without the prior written consent of the Administrative Agent and each Lender, and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of the immediately following subsection (b), (ii) by way of participation in accordance with the provisions of the immediately following subsection (d) or (iii) by way of pledge or assignment of a security interest subject to the restrictions of the immediately following subsection (e) (and, subject to the last sentence of the immediately following subsection (b), any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in the immediately following subsection (d) and, to the extent expressly contemplated hereby, the Related Parties of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitments and the Loans at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of (w) an assignment of the entire remaining amount of an assigning Lender's Revolving Commitment and/or the Revolving Loans at the time owing to it, (x) contemporaneous assignments to related Approved Funds that equal at least the amount specified in the immediately following clause (B) in the aggregate, (y) an assignment of the entire remaining amount of an assigning Term Loan Lender's Term Loan Commitment or Term Loans of a Class at the time owing to it, or (z) an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in the immediately preceding subsection (A), the aggregate amount of the Commitment of a Class (which for this purpose includes Loans outstanding thereunder) or, if the applicable Class of Commitments is not then in effect, the principal outstanding balance of the applicable Class of Loans of the assigning Lender subject to each such assignment (in each case, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the

Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date) shall not be less than $5,000,000 in the case of any assignment of a Commitment or Loan, unless each of the Administrative Agent and, so long as no Default or Event of Default shall exist, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed); provided, however, that if, after giving effect to such assignment, the amount of the Commitment of the applicable Class held by such assigning Lender or the outstanding principal balance of the Loans of the applicable Class of such assigning Lender, as applicable, would be less than $5,000,000, then such assigning Lender shall assign the entire amount of its Commitment and the Loans at the time owing to it.

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Commitment assigned, except that this clause (ii) shall not (x) apply to rights in respect of a Bid Rate Loan or (y) prohibit any Lender from assigning all or a portion of its rights and obligations with respect to separate Classes of Loans and Commitments on a non-rata basis.

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by clause (i)(B) of this subsection (b) and, in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (x) an Event of Default shall exist at the time of such assignment or (y) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; provided that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within 5 Business Days after having received notice thereof;

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of (x) a Commitment of a Class if such assignment is to a Person that is not already a Lender with a Commitment of such Class, an Affiliate of such a Lender or an Approved Fund with respect to such a Lender or (y) a Term Loan to a Person who is not a Lender, an Affiliate of a Lender or an Approved Fund; and

(C) the consent of the Issuing Banks ~~and the Swingline Lenders~~ (such consent not to be unreasonably withheld or delayed) shall be required for any assignment in respect of a Revolving Commitment.

(iv) Assignment and Assumption; Notes. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of $4,500 for each assignment (which fee the Administrative Agent may, in its sole discretion, elect to waive), and the assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire. If requested by the transferor Lender or the assignee, upon the consummation of any assignment, the transferor Lender, the Administrative Agent and the Borrower shall make appropriate arrangements so that new Notes are issued to the assignee and such transferor Lender, as appropriate, and such transferor Lender shall promptly return any existing Notes held by such Lender to the Borrower (or, if lost, destroyed or mutilated, if requested by the Borrower a lost note affidavit including a customary indemnity).

(v) No Assignment to Certain Persons. No such assignment shall be made to (A) the Borrower or any of the Borrower's Affiliates or Subsidiaries or (B) to any Defaulting Lender or any of its Subsidiaries, or to any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B).

(vi) No Assignment to Natural Persons. No such assignment shall be made to a natural person.

(vii) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent, each Issuing Bank~~, the Swingline Lenders~~ and each other Lender hereunder (and interest accrued thereon), and (y) acquire (and fund as appropriate) its full pro rata share of all Revolving Loans and participations in Letters of Credit ~~and Swingline Loans~~ in accordance with its Commitment Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under Applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to the immediately following subsection (c), from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 4.4., 12.2. and 12.9. and the other provisions of this Agreement and the other Loan Documents as provided in Section 12.10. with respect to facts and circumstances occurring prior to the effective date of such assignment; provided, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender having been a Defaulting Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with the immediately following subsection (d).

(c) Register. The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain at the Principal Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower, the Administrative Agent ~~, any Swingline Lender~~ or any Issuing Bank, sell participations to any Person (other than a natural Person, any Defaulting Lender or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Revolving Commitment and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Administrative Agent, the Issuing Banks and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. 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 (w) increase such Lender's Commitment, (x) extend the date fixed for the payment of principal on the Loans or portions thereof owing to such Lender, (y) reduce the rate at which interest is payable thereon or (z) release any Guarantor from its Obligations under the Guaranty except as contemplated by Section 7.13.(c), in each case, as applicable to that portion of such Lender's rights and/or obligations that are subject to the participation. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.10., 4.1., 4.4. (subject to the requirements and limitations therein, including the requirements under Section 3.10.(g) (it being understood that the documentation required under Section 3.10.(g) shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section; provided that such Participant (A) agrees to be subject to the provisions of Section 4.6. as if it were an assignee under subsection (b) of this Section; and (B) shall not be entitled to receive any greater payment under Sections 4.1. or 3.10., with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Regulatory Change that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Section 4.6. with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 12.3. as though it were a Lender; provided that such Participant agrees to be subject to Section 3.3. as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(f) No Registration. Each Lender agrees that, without the prior written consent of the Borrower and the Administrative Agent, it will not make any assignment hereunder in any manner or under any circumstances that would require registration or qualification of, or filings in respect of, any Loan or Note under the Securities Act or any other securities laws of the United States of America or of any other jurisdiction.

(g) Designated Lenders. Any Revolving Lender (each, a "Designating Lender") may at any time while the Borrower has been assigned an Investment Grade Rating from either S&P or Moody's designate one Designated Lender to fund Bid Rate Loans on behalf of such Designating Lender subject to the terms of this subsection, and the provisions in the immediately preceding subsections (b) and (d) shall not apply to such designation. No Lender may designate more than one Designated Lender. The parties to each such designation shall execute and deliver to the Administrative Agent for its acceptance a Designation Agreement. Upon such receipt of an appropriately completed Designation Agreement executed by a Designating Lender and a designee representing that it is a Designated Lender, the Administrative Agent will accept such Designation Agreement and give prompt notice thereof to the Borrower, whereupon (i) the Borrower shall, upon the request of such Designated Lender, execute and deliver to the Designating Lender a Bid Rate Note payable to the order of the Designated Lender, (ii) from and after the effective date specified in the Designation Agreement, the Designated Lender shall become a party to this Agreement with a right to make Bid Rate Loans on behalf of its Designating Lender pursuant to Section 2.2. after the Borrower has accepted a Bid Rate Loan (or portion thereof) of

the Designating Lender, and (iii) the Designated Lender shall not be required to make payments with respect to any obligations in this Agreement except to the extent of excess cash flow of such Designated Lender which is not otherwise required to repay obligations of such Designated Lender which are then due and payable; provided, however, that regardless of such designation and assumption by the Designated Lender, the Designating Lender shall be and remain obligated to the Borrower, the Administrative Agent and the Lenders for each and every of the obligations of the Designating Lender and its related Designated Lender with respect to this Agreement, including, without limitation, any indemnification obligations under Section 11.6. and any sums otherwise payable to the Borrower by the Designated Lender. Each Designating Lender shall serve as the agent of the Designated Lender and shall on behalf of, and to the exclusion of, the Designated Lender: (i) receive any and all payments made for the benefit of the Designated Lender and (ii) give and receive all communications and notices and take all actions hereunder, including, without limitation, votes, approvals, waivers, consents and amendments under or relating to this Agreement and the other Loan Documents. Any such notice, communication, vote, approval, waiver, consent or amendment shall be signed by the Designating Lender as agent for the Designated Lender and shall not be signed by the Designated Lender on its own behalf and shall be binding on the Designated Lender to the same extent as if signed by the Designated Lender on its own behalf. The Borrower, the Administrative Agent and the Lenders may rely thereon without any requirement that the Designated Lender sign or acknowledge the same. No Designated Lender may assign or transfer all or any portion of its interest hereunder or under any other Loan Document, other than assignments to the Designating Lender which originally designated such Designated Lender. The Borrower, the Lenders and the Administrative Agent each hereby agrees that it will not institute against any Designated Lender or join any other Person in instituting against any Designated Lender any bankruptcy, reorganization, arrangement, insolvency or liquidation proceeding under any federal or state bankruptcy or similar law, until the later to occur of (x) one year and one day after the payment in full of the latest maturing commercial paper note issued by such Designated Lender and (y) the Revolving Termination Date. In connection with any such designation, the Designating Lender shall pay to the Administrative Agent an administrative fee for processing such designation in the amount of $2,000.

(h) USA Patriot Act Notice; Compliance . In order for the Administrative Agent to comply with "know your customer" and anti-money laundering rules and regulations, including without limitation, the Patriot Act, prior to any Lender that is organized under the laws of a jurisdiction outside of the United States of America becoming a party hereto, the Administrative Agent may request, and such Lender shall provide to the Administrative Agent, its name, address, tax identification number and/or such other identification information as shall be necessary for the Administrative Agent to comply with federal law.

Section 12.6. Amendments and Waivers.

(a) Generally. Except as otherwise expressly provided in this Agreement, (i) any consent or approval required or permitted by this Agreement or any other Loan Document to be given by the Lenders may be given, (ii) any term of this Agreement or of any other Loan Document may be amended, (iii) the performance or observance by the Borrower, any other Loan Party or any other Subsidiary of any terms of this Agreement or such other Loan Document may be waived, and (iv) the continuance of any Default or Event of Default may be waived (either generally or in a particular instance and either retroactively or prospectively) with, but only with, the written consent of the Requisite Lenders (or the Administrative Agent at the written direction of the Requisite Lenders), and, in the case of an amendment to any Loan Document, the written consent of each Loan Party which is party thereto. Subject to the immediately following subsection (b), any term of this Agreement or of any other Loan Document relating to the rights or obligations of the Lenders of a particular Class, and not Lenders of any other Class, may be amended, and the performance or observance by the Borrower or any other Loan Party or any Subsidiary of any such terms may be waived (either generally or in a particular instance and either retroactively or prospectively) with, and only with, the written consent of the Requisite Class Lenders for such Class of Lenders (and, in the case of an amendment to any Loan Document, the written consent of each Loan Party which is a party thereto). Notwithstanding anything to the contrary contained in this Section, any Fee Letter may only be amended, and the performance or observance by any Loan Party thereunder may only be waived, in a writing executed by the parties thereto.

(b) Additional Lender Consents. In addition to the foregoing requirements, no amendment, waiver or consent shall:

(i) increase (or reinstate) or extend (except in accordance with Section 2.14.) the Commitments of a Lender or subject a Lender to any additional obligations without the written consent of such Lender (it being understood and agreed that a waiver of any condition precedent set forth in Section 5.1. or 5.2. or of any Default or Event of Default is not considered an increase in the Commitments of any Lender);

(ii) reduce the principal of, or interest that has accrued or the rates of interest that will be charged on the outstanding principal amount of, any Loans or other Obligations without the written consent of each Lender directly affected thereby; provided, however, only the written consent of the Requisite Lenders shall be required (x) for the waiver of interest payable at the Post-Default Rate, retraction of the imposition of interest at the Post-Default Rate and amendment of the definition of "Post-Default Rate" and (y) to amend any financial covenant hereunder (or any defined term used therein) even if the effect of such amendment would be to reduce the rate of interest on any Loan or to reduce any fee payable hereunder;

(iii) reduce the amount of any Fees payable to a Lender without the written consent of such Lender;

(iv) modify the definition of "Revolving Termination Date" (except in accordance with Section 2.14.), or extend the expiration date of any Letter of Credit beyond the Revolving Termination Date, in each case, without the written consent of each Revolving Lender directly affected thereby;

(v) modify the definition of "Termination Date" as it applies to a Class of Loans (except as set forth in clause (iv) above in relation to Revolving Commitments), otherwise postpone any date fixed for, or forgive, any payment of principal of, or interest on, any Loans of a Class or for the payment of Fees or any other Obligations owing to the Lenders of such Class, in each case, without the written consent of each Lender of such Class directly affected thereby;

(vi) while any Term Loans remain outstanding, amend, modify or waive ~~(A) the amount of the Swingline Availability or (B)~~ the L/C Commitment Amount~~, in each case,~~ without the prior written consent of the Requisite Class Lenders of the Revolving Lenders;

(vii) modify the definition of "Commitment Percentage" without the written consent of each Revolving Lender directly affected thereby;

(viii) modify the definition of "Pro Rata Share" or amend or otherwise modify the provisions of Section 3.2. without the written consent of each Lender directly and adversely affected thereby;

(ix) amend this Section, amend the definitions of the terms used in this Agreement or the other Loan Documents insofar as such definitions affect the substance of this Section, modify the definition of the term "Requisite Lenders" or (except as otherwise provided in the immediately following clause (x)), modify in any other manner the number or percentage of the Lenders required to make any determinations or waive any rights hereunder or to modify any provision hereof without the written consent of each Lender;

(x) modify the definition of the term "Requisite Class Lenders" as it relates to a Class of Lenders or modify in any other manner the number or percentage of a Class of Lenders required to make any determinations or waive any rights hereunder or to modify any provision hereof, in each case, solely with respect to such Class of Lenders, without the written consent of each Lender in such Class;

(xi) release any Guarantor from its obligations under the Guaranty (except as contemplated by Section 7.13.(b)) without the written consent of each Lender (it being understood and agreed that this clause (xi) shall not apply to any amendment to Section 7.13.

unless such amendment has the effect of releasing of any Person that has already become a Guarantor);

(xii) amend, or waive the Borrower's compliance with, Section 2.16. without the written consent of each Revolving Lender; or

(xiii) waive a Default or Event of Default under Section 10.1.(a), except as permitted in Section 10.7., without the written consent of each Lender directly and adversely affected thereby.

(c) Amendment of Administrative Agent's Duties, Etc. No amendment, waiver or consent unless in writing and signed by the Administrative Agent, in addition to the Lenders required hereinabove to take such action, shall affect the rights or duties of the Administrative Agent under this Agreement or any of the other Loan Documents. Any amendment, waiver or consent relating to Section 2.4. or the obligations of a Swingline Lender under this Agreement or any other Loan Document shall, in addition to the Lenders required hereinabove to take such action, require the written consent of such Swingline Lenders. Any amendment, waiver or consent relating to Section 2.3. or the obligations of an Issuing Banks under this Agreement or any other Loan Document shall, in addition to the Lenders required hereinabove to take such action, require the written consent of such Issuing Bank. The Administrative Agent and the Borrower may, without the consent of any Lender, enter into the amendments or modifications to this Agreement or any of the other Loan Documents or enter into additional Loan Documents as the Administrative Agent reasonably deems appropriate in order to implement any Benchmark Replacement or otherwise effectuate the terms of Section 4.2.(b) in accordance with the terms of Section 4.2.(b). Any amendment, waiver or consent with respect to any Loan Document that (i) diminishes the rights of a Specified Derivatives Provider in a manner or to an extent dissimilar to that affecting the Lenders or (ii) increases the liabilities or obligations of a Specified Derivatives Provider shall, in addition to the Lenders required hereinabove to take such action, require the consent of the Lender that is (or having an Affiliate that is) such Specified Derivatives Provider. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Commitments of any Defaulting Lender may not be increased, reinstated or extended without the written consent of such Defaulting Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender more adversely than other affected Lenders shall require the written consent of such Defaulting Lender. No waiver shall extend to or affect any obligation not expressly waived or impair any right consequent thereon and any amendment, waiver or consent shall be effective only in the specific instance and for the specific purpose set forth therein. No course of dealing or delay or omission on the part of the Administrative Agent or any Lender in exercising any right shall operate as a waiver thereof or otherwise be prejudicial thereto. Any Event of Default occurring hereunder shall continue to exist until such time as such Event of Default is waived in writing in accordance with the terms of this Section, notwithstanding any attempted cure or other action by the Borrower, any other Loan Party or any other Person subsequent to the occurrence of such Event of Default. Except as otherwise explicitly provided for herein or in any other Loan Document, no notice to or demand upon the Borrower shall entitle the Borrower to other or further notice or demand in similar or other circumstances.

(d) Technical Amendments. Notwithstanding anything to the contrary in this Section 12.6., if the Administrative Agent and the Borrower have jointly identified an ambiguity, omission, mistake or defect in any provision of this Agreement or an inconsistency between provisions of this Agreement, the Administrative Agent and the Borrower shall be permitted to amend such provision or provisions to cure such ambiguity, omission, mistake, defect or inconsistency so long as to do so would not adversely affect the interests of the Lenders and the Issuing Banks. Any such amendment shall become effective without any further action or consent of any of other party to this Agreement.

(e) Additional Term Loans. Notwithstanding the foregoing, this Agreement may be amended (or amended and restated) with only the written consent of Administrative Agent and the Borrower (a) to provide for the making of Additional Term Loans as contemplated by Section 2.17. and to permit the accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement

and the other Loan Documents with the Revolving Loans, the Term Loans and the accrued interest and fees in respect thereof and (b) to include appropriately the Lenders holding such Additional Term Loans in any determination of the Requisite Lenders. Furthermore, this Agreement may be amended to extend any Class of Commitments and/or Term Loans outstanding pursuant to clause (g) of this Section 12.6. below.

(f) Reorganization Amendments. Notwithstanding anything in this Section or any other provision of this Agreement and the Loan Documents to the contrary, each of the parties hereto hereby agrees that this Agreement and the other Loan Documents may be amended (or amended and restated), without the consent of any of the Lenders or the Issuing Banks, to the extent necessary or appropriate in the opinion of the Administrative Agent to (i) effect the OP's assumption of all of the Borrower's liabilities and obligations under, and the Borrower's transfer and assignment to the OP of all of the Borrower's rights and benefits under, this Agreement and the other Loan Documents to which the Borrower is a party as permitted under Section 12.20. and (ii) effect such other amendments to (or amendment and restatement of) this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrower, to effect the provisions of Section 12.20., including, without limitation, to amend representations, covenants and events of default as appropriate to permit consummation of the Reorganization and reflect the OP as the Borrower hereunder, and the Lenders and the Issuing Banks hereby expressly authorize the Administrative Agent to enter into any such amendments or amendment and restatement.

(g) Amend and Extend Transactions.

(i) The Borrower may, by written notice to the Administrative Agent from time to time, request an extension (each, an " Extension") of the maturity date of any Class of Loans and Commitments to the extended maturity date specified in such notice. Such notice shall (A) set forth the amount of the applicable Class of Commitments and/or Term Loans that will be subject to the Extension (which shall be in a minimum amount of $200,000,000 and minimum increments of $25,000,000 in excess thereof (or such other amounts as may be acceptable to the Borrower and the Administrative Agent)), (B) set forth the date on which such Extension is requested to become effective (which shall be not less than ten (10) Business Days nor more than sixty (60) days after the date of such Extension notice (or such longer or shorter periods as the Administrative Agent shall agree in its sole discretion)) and (C) identify the relevant Class of Commitments and/or Term Loans to which such Extension relates. Each Lender of the applicable Class shall be offered (an "Extension Offer") an opportunity to participate in such Extension on a pro rata basis and on the same terms and conditions as each other Lender of such Class pursuant to procedures established by, or reasonably acceptable to, the Administrative Agent and the Borrower. If the aggregate principal amount of Commitments or Term Loans in respect of which Lenders shall have accepted the relevant Extension Offer shall exceed the maximum aggregate principal amount of Commitments or Term Loans, as applicable, subject to the Extension Offer as set forth in the Extension notice, then the Commitments or Term Loans, as applicable, of Lenders of the applicable Class shall be extended ratably up to such maximum amount based on the respective principal amounts with respect to which such Lenders have accepted such Extension Offer.

(ii) The following shall be conditions precedent to the effectiveness of any Extension: (A) no Default or Event of Default shall have occurred and be continuing immediately prior to and immediately after giving effect to such Extension, (B) the representations and warranties set forth in Section 6.1. and in each other Loan Document shall be deemed to be made and shall be true and correct in all material respects (except in the case of a representation or warranty qualified by materiality, in which case such representation or warranty shall be true and correct in all respects) on and as of the effective date of such Extension except to the extent that such representations and warranties expressly relate solely to an earlier date (in which case such representations and warranties shall have been true and correct in all material respects (except in the case of a representation or warranty qualified by materiality, in which case such representation or warranty shall have been true and correct in all respects) on and as of such earlier date) and except for changes in factual circumstances not prohibited hereunder, (C) the Issuing Banks ~~and the Swingline Lenders~~ shall have consented to any Extension of the Revolving Commitments, to the extent that such Extension provides for the issuance or extension of Letters

of Credit ~~or making of Swingline Loans~~ at any time during the extended period and (D) the terms of such Extended Commitments and Extended Term Loans shall comply with subclause (iii) of this Section 12.6.(g). Notwithstanding any other provision of this Agreement to the contrary, in no event shall the Commitments or Loans of any Lender be extended pursuant to this Section 12.6.(g). unless such Lender affirmatively accepts in writing the applicable Extension Offer, it being understood and agreed that a failure by a Lender to respond to any such Extension Offer shall be deemed to be a rejection by such Lender of such Extension Offer.

(iii) The terms of each Extension shall be determined by the Borrower and the applicable extending Lenders and set forth in an Extension Amendment; provided that (A) the final maturity date of any Extended Commitment or Extended Term Loan shall be no earlier than the latest Termination Date then in effect for any Class of Loans, (B)(x) there shall be no scheduled amortization of the loans or reductions of commitments under any Extended Commitments and (y) the average life to maturity of the Extended Term Loans shall be no shorter than the remaining average life to maturity of the existing Term Loans, (C) the Extended Revolving Loans and the Extended Term Loans will rank pari passu in right of payment and with respect to security with the existing Revolving Loans and the existing Term Loans and the borrower and guarantors of the Extended Commitments or Extended Term Loans, as applicable, shall be the same as the Borrower and Guarantors with respect to the existing Revolving Loans or Term Loans, as applicable, (D) the interest rate margin, rate floors, fees, original issue discount and premium applicable to any Extended Commitment (and the Extended Revolving Loans thereunder) and Extended Term Loans shall be determined by the Borrower and the applicable extending Lenders, (E)(x) the Extended Term Loans may participate on a pro rata or less than pro rata (but not greater than pro rata) basis in voluntary or mandatory prepayments with the other Term Loans and (y) borrowing and prepayment of Extended Revolving Loans, or reductions of Extended Commitments, and participation in Letters of Credit ~~and Swingline Loans~~, shall be on a pro rata basis with the other Revolving Loans or Commitments (other than upon the maturity of the non-extended Revolving Loans and Commitments) and (F) the terms of the Extended Commitments or Extended Term Loans, as applicable, shall be substantially identical to the terms set forth herein (except as set forth in sub-clauses (A) through (E) above).

(iv) In connection with any Extension, the Borrower, the Administrative Agent and each applicable extending Lender shall execute and deliver to the Administrative Agent an Extension Amendment and such other documentation as the Administrative Agent shall reasonably specify to evidence the Extension. The Administrative Agent shall promptly notify each Lender as to the effectiveness of each Extension. Any Extension Amendment may, without the consent of any other Lender, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrower, to implement the terms of any such Extension, including any amendments necessary to establish Extended Commitments or Extended Term Loans as a new Class or tranche of Commitments or Term Loans, as applicable, and such other technical amendments as may be necessary or appropriate in the reasonable opinion of the Administrative Agent and the Borrower in connection with the establishment of such new Class or tranche (including to preserve the pro rata treatment of the extended and non-extended Classes or tranches and to provide for the reallocation of Revolving Credit Exposure upon the expiration or termination of the commitments under any Class or tranche), in each case on terms consistent with this Section 12.6.(g).

Section 12.7. Nonliability of Administrative Agent and Lenders.

The relationship between the Borrower, on the one hand, and the Lenders, the Issuing Banks and the Administrative Agent, on the other hand, shall be solely that of borrower and lender. None of the Administrative Agent, any Issuing Bank or any Lender shall have any fiduciary responsibilities to the Borrower and no provision in this Agreement or in any of the other Loan Documents, and no course of dealing between or among any of the parties hereto, shall be deemed to create any fiduciary duty owing by the Administrative Agent, any Issuing Bank or any Lender to any Lender, the Borrower, any Subsidiary or any other Loan Party. None of the Administrative Agent, any Issuing Bank or any Lender undertakes any responsibility to the Borrower to review or inform the Borrower of any matter in

connection with any phase of the Borrower's business or operations. The Borrower hereby acknowledges that each of the Administrative Agent, Lenders, Issuing Banks, Arrangers, Syndication Agents and Documentation Agents and each of their Affiliates may have economic interests that conflict with those of the Borrower.

Section 12.8. Confidentiality.

The Administrative Agent, each Issuing Bank and each Lender shall not disclose to any Person and shall maintain the confidentiality of all Information (as defined below) but in any event may make disclosure: (a) to its Affiliates and to its and its Affiliates' other respective Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential); (b) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any actual or proposed assignee, Participant or other transferee in connection with a potential transfer of any Commitment or participation therein as permitted hereunder, or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower and its obligations; provided that the disclosure of any such Information under clauses (i) or (ii) of this Section to such Persons shall be made subject to the acknowledgement and acceptance by any such Person that such information is being disseminated on a confidential basis (on substantially the terms set forth in this paragraph or as is otherwise reasonably acceptable to the Borrower and such disclosing Person, including, without limitation, as agreed in any confidential information memorandum or other marketing materials); (c) as required or requested by any Governmental Authority or representative thereof or pursuant to legal process or in connection with any legal proceedings, or as otherwise required by Applicable Law (in which case (other than in the case of requests from regulatory authorities), such Person shall, to the extent permitted by law, inform you promptly in advance thereof); (d) to the Administrative Agent's, such Issuing Banks' or such Lender's independent auditors and other professional advisors (provided they shall be notified of the confidential nature of the information and are or have been advised of their obligation to keep information of this type confidential); (e) in connection with the exercise of any remedies under any Loan Document (or any Specified Derivatives Contract) or any action or proceeding relating to any Loan Document (or any Specified Derivatives Contract) or the enforcement of rights hereunder or thereunder; (f) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section actually known by the Administrative Agent, such Issuing Bank or such Lender to be a breach of this Section or (ii) becomes available to the Administrative Agent, any Issuing Bank, any Lender or any Affiliate of the Administrative Agent, any Issuing Bank or any Lender on a nonconfidential basis from a source other than the Borrower or any Affiliate of the Borrower; (g) to the extent requested by, or required to be disclosed to, any nationally recognized rating agency or regulatory or similar authority (including any self-regulatory authority, such as the National Association of Insurance Commissioners) having or purporting to have jurisdiction over it; (h) to bank trade publications, such information to consist of deal terms and other information customarily found in such publications; (i) to any other party hereto; and (j) with the consent of the Borrower. Notwithstanding the foregoing, the Administrative Agent, each Issuing Bank and each Lender may disclose any such confidential information, without notice to the Borrower or any other Loan Party, to Governmental Authorities in connection with any regulatory examination of the Administrative Agent, such Issuing Bank or such Lender or in accordance with the regulatory compliance policy of the Administrative Agent, such Issuing Bank or such Lender. As used in this Section, the term "Information" means all information received from the Borrower, any other Loan Party, any other Subsidiary or Affiliate relating to any Loan Party or any of their respective businesses, other than any such information that is available to the Administrative Agent, any Lender or any Issuing Bank on a nonconfidential basis prior to disclosure by the Borrower, any other Loan Party, any other Subsidiary or any Affiliate. Any Person required to maintain the confidentiality of Information as provided in this Section 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 12.9. Indemnification.

(a) The Borrower shall indemnify the Administrative Agent (and any sub-agent thereof), each Issuing Bank, each Lender and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnified Party") against, and hold each Indemnified Party harmless from, and shall

pay or reimburse any such Indemnified Party for, any and all losses, claims (including without limitation, Environmental Claims), damages, liabilities and related expenses (including without limitation, the reasonable and documented out-of-pocket fees, charges and disbursements of any counsel for any Indemnified Party), incurred by any Indemnified Party or asserted against any Indemnified Party by any Person (including the Borrower, any other Loan Party or any other Subsidiary) other than such Indemnified Party and its Related Parties, arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto or thereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by any Issuing Bank to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the Borrower, any other Loan Party or any other Subsidiary, or any Environmental Claim related in any way to the Borrower, any other Loan Party or any other Subsidiary, (iv) any actual or prospective claim, litigation, investigation or proceeding (an "Indemnity Proceeding") relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower, any other Loan Party or any other Subsidiary, and regardless of whether any Indemnified Party is a party thereto, or (v) any claim (including without limitation, any Environmental Claims), investigation, litigation or other proceeding (whether or not the Administrative Agent, any Issuing Bank or any Lender is a party thereto) and the prosecution and defense thereof, arising out of or in any way connected with the Loans, this Agreement, any other Loan Document, or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby, including without limitation, reasonable and documented out-of-pocket attorneys and consultant's fees (in any case, limited to the reasonable and documented out-of-pocket fees, disbursements and other charges of one counsel to such Indemnified Parties and, if reasonably necessary, a single local counsel for the Indemnified Parties in each relevant jurisdiction and with respect to each relevant specialty, and in the case of an actual or perceived conflict of interest, one additional counsel in each relevant jurisdiction to the affected Indemnified Parties similarly situated); provided, however, that such indemnity shall not, as to any Indemnified Party, be available to the extent that such losses, claims, damages, liabilities or related expenses (A) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the bad faith, gross negligence or willful misconduct of such Indemnified Party or (B) arise from any dispute solely among Indemnified Parties (except in connection with claims or disputes (1) relating to whether the conditions to any Credit Event have been satisfied, (2) with respect to a Defaulting Lender or the determination of whether a Lender is a Defaulting Lender, (3) against the Administrative Agent or the Arrangers in their respective capacities as such, and (4) directly resulting from any act or omission on part of the Borrower, any other Loan Party or any other Subsidiary). This Section 12.9.(a) shall not apply with respect to Taxes addressed in Section 3.10. or yield maintenance obligations described in Section 4.1. and Section 4.4.

(b) If and to the extent that the obligations of the Borrower under this Section are unenforceable for any reason, the Borrower hereby agrees to make the maximum contribution to the payment and satisfaction of such obligations which is permissible under Applicable Law.

(c) The Borrower's obligations under this Section shall survive any termination of this Agreement and the other Loan Documents and the payment in full in cash of the Obligations, and are in addition to, and not in substitution of, any of the other obligations set forth in this Agreement or any other Loan Document to which it is a party.

Section 12.10. Termination; Survival.

This Agreement shall terminate at such time as (a) all of the Commitments have been terminated, (b) all Letters of Credit have terminated or expired or been canceled (other than Extended Letters of Credit in respect of which the Borrower has satisfied the requirements to provide Cash Collateral as required in Section 2.3.(b)), (c) none of the Lenders is obligated any longer under this Agreement to make any Loans and the Issuing Banks are no longer obligated under this Agreement to issue Letters of Credit and (d) all Obligations (other than obligations which survive as provided in the following sentence) have been paid and satisfied in full. Promptly following such termination, upon the Borrower's written

request, each Lender shall promptly return to the Borrower any Note issued to such Lender. The indemnities to which the Administrative Agent, the Issuing Banks and the Lenders are entitled under the provisions of Sections 3.10., 4.1., 4.4., 11.6., 12.2. and 12.9. and any other provision of this Agreement and the other Loan Documents, and the provisions of Section 12.4., shall continue in full force and effect and shall protect the Administrative Agent, the Issuing Banks and the Lenders (i) notwithstanding any termination of this Agreement, or of the other Loan Documents, against events arising after such termination as well as before and (ii) at all times after any such party ceases to be a party to this Agreement with respect to all matters and events existing on or prior to the date such party ceased to be a party to this Agreement. Upon the Borrower's request, the Administrative Agent agrees to deliver to the Borrower, at the Borrower's sole cost and expense, written confirmation of the foregoing termination.

Section 12.11. Severability of Provisions.

If any provision of this Agreement or the other Loan Documents shall be determined by a court of competent jurisdiction to be invalid or unenforceable, that provision shall be deemed severed from the Loan Documents, and the validity, legality and enforceability of the remaining provisions shall remain in full force as though the invalid, illegal, or unenforceable provision had never been part of the Loan Documents.

Section 12.12. GOVERNING LAW.

THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS EXECUTED, AND TO BE FULLY PERFORMED, IN SUCH STATE.

Section 12.13. Counterparts.

To facilitate execution, this Agreement and any amendments, waivers, consents or supplements may be executed in any number of counterparts as may be convenient or required (which may be effectively delivered by facsimile, in portable document format ("PDF") or other similar electronic means). It shall not be necessary that the signature of, or on behalf of, each party, or that the signature of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single document. It shall not be necessary in making proof of this document to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each of the parties hereto.

Section 12.14. Obligations with Respect to Loan Parties and Subsidiaries.

The obligations of the Borrower to direct or prohibit the taking of certain actions by the other Loan Parties and Subsidiaries as specified herein shall be absolute and not subject to any defense the Borrower may have that the Borrower does not control such Loan Parties or Subsidiaries.

Section 12.15. Independence of Covenants.

All covenants hereunder shall be given in any jurisdiction independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or be otherwise within the limitations of, another covenant shall not avoid the occurrence of a Default or an Event of Default if such action is taken or condition exists.

Section 12.16. Limitation of Liability.

None of the Administrative Agent, any Issuing Bank, any Lender, or any of their respective Related Parties shall have any liability with respect to, and the Borrower hereby waives, releases, and agrees not to sue any of them upon, any claim for any special, indirect, incidental, consequential or punitive damages suffered or incurred by the Borrower in connection with, arising out of, or in any way

related to, this Agreement, any of the other Loan Documents or any of the transactions contemplated by this Agreement or any of the other Loan Documents.

Section 12.17. Entire Agreement.

This Agreement and the other Loan Documents embody the final, entire agreement among the parties hereto and supersede any and all prior commitments, agreements, representations, and understandings, whether written or oral, relating to the subject matter hereof and thereof and may not be contradicted or varied by evidence of prior, contemporaneous, or subsequent oral agreements or discussions of the parties hereto. To the extent any term of this Agreement is inconsistent with a term of any other Loan Document to which the parties of this Agreement are party, the term of this Agreement shall control to the extent of such inconsistency. There are no oral agreements among the parties hereto.

Section 12.18. Construction.

The Administrative Agent, each Issuing Bank, the Borrower and each Lender acknowledge that each of them has had the benefit of legal counsel of its own choice and has been afforded an opportunity to review this Agreement and the other Loan Documents with its legal counsel and that this Agreement and the other Loan Documents shall be construed as if jointly drafted by the Administrative Agent, each Issuing Bank, the Borrower and each Lender.

Section 12.19. Headings.

The paragraph and section headings in this Agreement are provided for convenience of reference only and shall not affect its construction or interpretation.

Section 12.20. UPREIT Reorganization.

(a) If the Borrower elects to reorganize its corporate organizational structure to implement an "umbrella partnership" real estate investment trust structure by forming a limited partnership, limited liability company or other registered business organization (other than a general partnership) under the laws of any state of the United States or the District of Columbia (the "OP") of which the Borrower (or a Wholly Owned Subsidiary of the Borrower) is to be the general partner, manager, or managing member, as applicable (the "Reorganization"), the OP, subject to the satisfaction of the conditions set forth in this clause (a) below, may assume all of the Borrower's liabilities and obligations under, and the Borrower may transfer and assign to the OP all of the Borrower's rights and benefits under, this Agreement and the other Loan Documents to which the Borrower is a party (and the Borrower shall be released from all liabilities and obligations under this Agreement and the other Loan Documents to which the Borrower is a party except as expressly provided otherwise)(collectively, the "Assumption Transaction"):

(i) the Borrower shall have given the Administrative Agent and the Lenders prior written notice of the Borrower's intent to exercise its rights under this Section at least 30 days (or such shorter period as may be permitted by the Administrative Agent) prior to the proposed effective date of the Assumption Transaction (the "Assumption Date");

(ii) the Administrative Agent shall have received each of the following, in form and substance reasonably satisfactory to the Administrative Agent:

(A) an assignment and assumption agreement executed by the Borrower and the OP, acknowledged by the other Loan Parties, providing for the OP's assumption of all of the Borrower's liabilities and obligations under, and the Borrower's transfer and assignment to the OP of all of the Borrower's rights and benefits under, this Agreement and the other Loan Documents to which the Borrower is a party (and the term "REIT Entity" shall thereafter refer to ~~Washington Real Estate Investment Trust~~Elme Communities (including any successor entity thereto which becomes the general partner, manager, or managing member, as applicable, of the OP, or the ultimate parent thereof)

and, except as set forth in the first sentence of Section 1.2. hereof or as otherwise expressly set forth herein, the term "Borrower" shall thereafter refer to the OP);

(B) amendments to this Agreement and the other Loan Documents executed by the Borrower, the OP and the other Loan Parties, as appropriate, requested or approved by the Administrative Agent as permitted under Section 12.6.(f);

(C) Revolving Notes, Bid Rate Notes and Tranche B Term Notes executed by the OP, payable to each applicable Lender (including any Designated Lender, if applicable, and only to the extent such Lender has requested to receive Notes) and complying with the terms of Section 2.12.(a) ~~and the Swingline Notes executed by the OP~~ (it being understood that any previously issued notes shall be returned in exchange for such new replacement notes);

(D) an opinion of counsel to the OP and the other Loan Parties, addressed to the Administrative Agent and the Lenders and covering such matters as the Administrative Agent may reasonably request in relation to matters covered in opinions concerning the Borrower on the Effective Date;

(E) the certificate or articles of incorporation or formation, articles of organization, certificate of limited partnership, declaration of trust or other comparable organizational instrument (if any) of the OP certified as of a recent date by the Secretary of State of the state of formation of the OP;

(F) a certificate of good standing (or certificate of similar meaning) with respect to the OP issued as of a recent date by the Secretary of State of the state of formation of the OP and certificates of qualification to transact business or other comparable certificates issued as of a recent date by each Secretary of State (and any state department of taxation, as applicable) of each state in which the OP is required to be so qualified and where failure to be so qualified could reasonably be expected to have a Material Adverse Effect;

(G) a certificate of incumbency signed by the Secretary or Assistant Secretary (or other individual performing similar functions) of the OP with respect to each of the officers of the OP authorized to execute and deliver the Loan Documents to which the OP is to become a party, and authorized to execute and deliver on behalf of the OP Notices of Borrowing, ~~Notices of Swingline Borrowing,~~ requests for Letters of Credit, Notices of Conversion and Notices of Continuation;

(H) copies certified by the Secretary or Assistant Secretary (or other individual performing similar functions) of the OP of (A) the operating agreement of the OP, if a limited liability company, the partnership agreement, if a limited or general partnership, or other comparable document in the case of any other form of legal entity and (B) all corporate, partnership, member or other necessary action taken by or on behalf of the OP to authorize the Reorganization and the execution, delivery and performance of the Loan Documents to which it is, or is to become, a party in connection therewith;

(I) no Default or Event of Default shall exist as of the date the Reorganization, or will exist immediately after giving effect thereto;

(J) the representations and warranties made or deemed made by the Borrower, the OP or any other Loan Party in any Loan Document (as amended to incorporate any revisions associated with the Reorganization) to which such Loan Party is a party shall be true and correct in all material respects (except in the case of a representation or warranty qualified by materiality, in which case such representation or warranty shall be true and correct in all respects) on the Assumption Date except to the extent that such representations and warranties expressly relate solely to an earlier date (in which case such representations and warranties shall have been true and correct in all

material respects (except in the case of a representation or warranty qualified by materiality, in which case such representation or warranty shall have been true in all respects) on and as of such earlier date) and except for changes in factual circumstances not prohibited hereunder;

(K) the Administrative Agent shall have received an officer's certificate from the chief executive officer or chief financial officer of the OP certifying the matters referred to in the immediately preceding sub-clauses (I) and (J);

(L) a Disbursement Instruction Agreement executed by the OP effective as of the Assumption Date; and

(M) such other documents and instruments as the Administrative Agent, or any Lender through the Administrative Agent, may reasonably request; and

(iii) the OP shall have provided all information requested by the Administrative Agent and each Lender in order to comply with applicable "know your customer" and anti-money laundering rules and regulations, including without limitation, the Patriot Act; and

(iv) the Borrower shall have transferred all of its assets to the OP other than those assets the Borrower is permitted to retain in accordance with Section 12.20.(b).

(b) Immediately upon the effectiveness of the Assumption Transaction and for so long as this Agreement is in effect, and so long as the REIT Entity is not a Guarantor, (i) the REIT Entity's assets shall consist solely of Equity Interests in the OP or any Wholly Owned Subsidiaries whose assets consist solely of direct or indirect Equity Interests in the OP (provided, that the REIT Entity may (A) have cash and other assets of nominal value incidental to its ownership of such Equity Interests, (B) own certain other Equity Interests or such other assets in an aggregate amount not to exceed $50,000,000 (or such greater amount as may be approved by the Administrative Agent solely with respect to Equity Interests or assets held by the REIT Entity at the time of the Reorganization; provided such additional amount shall not exceed $50,000,000 for more than one year following the date of the Reorganization), (C) maintain assets on a temporary or pass-through basis that are held for subsequent payment of dividends or other Restricted Payments not prohibited by Section 9.1.(f) or for contribution to any Subsidiary and (D) contract rights related to the REIT Entity's status as a public company and (ii) neither the REIT Entity nor any Wholly Owned Subsidiaries whose assets consist solely of direct or indirect Equity Interests in the OP (each a "Parent Entity") shall have any liabilities other than liabilities that would be reflected in consolidated financial statements of the OP (provided, that any Parent Entity may have (1) other liabilities incidental to its status as a publicly traded REIT and not constituting liabilities in respect of Indebtedness for borrowed money, including liabilities associated with employment contracts, employee benefit matters, indemnification obligations pursuant to purchase and sale agreements, banker engagement letters in connection with transactions permitted under this Agreement, and other legacy liabilities arising pursuant to contracts entered into in the ordinary course of business prior to (and not in contemplation of) the Reorganization, (2) liabilities solely relating to the issuance of Equity Interests of the REIT Entity arising pursuant to any merger, purchase, acquisition or other similar agreements in connection with transactions permitted under Section 9.4, in each case other than liabilities constituting Indebtedness, (3) liabilities that are less than or substantially equivalent to any Parent Entity's liabilities under this Agreement (if any) that arise under any documentation evidencing Indebtedness (including any Unsecured Indebtedness or unsecured convertible Indebtedness permitted under this Agreement) of the Borrower or any of its Subsidiaries that is pari passu or junior to the Obligations, (4) liabilities constituting obligations to satisfy any unsecured convertible Indebtedness of the Borrower or any of its Subsidiaries that is permitted under this Agreement that can be satisfied solely by the issuance of Equity Interests of the REIT Entity not constituting Mandatorily Redeemable Stock (or, to the extent permitted under this Agreement, making cash payments in lieu of fractional shares in connection with any conversion request), (5) nonconsensual obligations imposed by operation of Applicable Law, (6) obligations (i) in the form of Nonrecourse Indebtedness Guarantees and (ii) contingent obligations in relation to ground leases, and (7) other immaterial obligations not exceeding $50,000,000 individually or in the aggregate, immaterial intercompany obligations or other intercompany obligations owing by any Parent Entity to the OP or any Subsidiary of the OP. If at any time the requirements set forth in this

Section 12.20.(b) are not satisfied, the REIT Entity shall be required become a Guarantor in accordance with Section 7.13. hereof.

Section 12.21. Acknowledgement and Consent to Bail-In of Affected Financial Institutions.

Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

Section 12.22. No Novation.

(a) Existing Credit Agreement. Upon satisfaction of the conditions precedent set forth in Sections 5.1. and 5.2. of this Agreement, this Agreement and the other Loan Documents shall exclusively control and govern the mutual rights and obligations of the parties hereto with respect to the Existing Credit Agreement, and the Existing Credit Agreement shall be superseded in all respects, in each case, on a prospective basis only.

(b) NO NOVATION . THE PARTIES HERETO HAVE ENTERED INTO THIS AGREEMENT SOLELY TO AMEND AND RESTATE THE TERMS OF, AND THE OBLIGATIONS OWING UNDER, THE EXISTING CREDIT AGREEMENT. THE PARTIES DO NOT INTEND THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY TO BE, AND THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL NOT BE CONSTRUED TO BE, A NOVATION OF ANY OF THE OBLIGATIONS OWING BY THE BORROWER UNDER OR IN CONNECTION WITH THE EXISTING CREDIT AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS (AS DEFINED IN THE EXISTING CREDIT AGREEMENT).

Section 12.23. Acknowledgement Regarding Any Supported QFCs.

To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Derivatives Contracts or any other agreement or instrument that is a QFC (such support, " QFC Credit Support" and, each such QFC, a "Supported QFC"), the parties acknowledge and agree as follows with respect to the resolution power of the FDIC under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a "Covered Party") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

(b) As used in this Section 12.23, the following terms have the following meanings:

"BHC Act Affiliate" of a party means an "affiliate" (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

"Covered Entity" means any of the following:

(i) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);

(ii) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or

(iii) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

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

"QFC" has the meaning assigned to the term "qualified financial contract" in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

[Signature Pages Intentionally Omitted]

EXHIBIT F

FORM OF NOTICE OF BORROWING

___________, 20__

Wells Fargo Bank, National Association, as Administrative Agent
Minneapolis Loan Center
MAC N9303 110
600 South 4th St., 10th Floor
Minneapolis, Minnesota 55415
Attn: David DeAngelis
Telecopier: (866) 595-7861
Telephone: (612) 667-4773

Ladies and Gentlemen:

Reference is made to that certain Second Amended and Restated Credit Agreement dated as of August 26, 2021 (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), by and among ELME COMMUNITIES (f/k/a Washington Real Estate Investment Trust), a real estate investment trust formed under the laws of the State of Maryland (the "Borrower"), the financial institutions party thereto and their assignees under Section 12.5. thereof (the "Lenders"), Wells Fargo Bank, National Association, as Administrative Agent (the "Administrative Agent"), and the other parties thereto. Capitalized terms used herein, and not otherwise defined herein, have their respective meanings given them in the Credit Agreement.

1. Pursuant to Section 2.1.(b) of the Credit Agreement, the Borrower hereby requests that the [Revolving Lenders][Tranche B Term Lenders] make [Revolving Loans][Tranche B Term Loans] to the Borrower in an aggregate amount equal to $___________________.

2. The Borrower requests that such Loans be made available to the Borrower on ____________, 20__.

3. The Borrower hereby requests that such Loans be of the following Class and Type:

[Check one box only]
Tranche B Term Loans
Revolving Loans

[Check one box only]
Base Rate Loan
Daily Simple SOFR Loan
Term SOFR Loan, with an initial Interest Period for a duration of:

[Check one box only]
one month
three months
six months

4. The principal amount of such Tranche B Term Loans subject to a Specified Derivatives Contract is $_________________________.

5. The Specified Derivatives Contract(s) to which such Tranche B Term Loans is/are subject: ____

The Borrower hereby certifies to the Administrative Agent and the Lenders that as of the date hereof, as of the date of the making of the requested Loans, and immediately after making such Loans, (a) no Default or Event of Default exists or would exist, and none of the limits specified in Section 2.16. of the Credit Agreement would be violated after giving effect thereto; and (b) the Continuing Representations are and shall be true and correct in all material respects (except in the case of a representation or warranty qualified by materiality, in which case such representation or warranty is and shall be true and correct in all respects) with the same force and effect as if made on and as of such date except to the extent that such representations and warranties expressly relate solely to an earlier date (in which case such representations and warranties were true and correct in all material respects (except in the case of a representation or warranty qualified by materiality, in which case such representation or warranty was true and correct in all respects) on and as of such earlier date) and except for changes in factual circumstances not prohibited under the Loan Documents. In addition, the Borrower certifies to the Administrative Agent and the Lenders that all conditions to the making of the requested Loans contained in Article V. of the Credit Agreement will have been satisfied at the time such Loans are made.

[Signatures on Following Page]

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Notice of Borrowing as of the date first written above.

ELME COMMUNITIES

By:
Name:
Title:

EXHIBIT G

FORM OF NOTICE OF CONTINUATION

____________, 20__

Wells Fargo Bank, National Association, as Administrative Agent
Minneapolis Loan Center
MAC N9303 110
600 South 4th St., 10th Floor
Minneapolis, Minnesota 55415
Attn: David DeAngelis
Telecopier: (866) 595-7861
Telephone: (612) 667-4773

Ladies and Gentlemen:

Reference is made to that certain Second Amended and Restated Credit Agreement dated as of August 26, 2021 (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), by and among ELME COMMUNITIES (f/k/a Washington Real Estate Investment Trust), a real estate investment trust formed under the laws of the State of Maryland (the "Borrower"), the financial institutions party thereto and their assignees under Section 12.5. thereof (the "Lenders"), Wells Fargo Bank, National Association, as Administrative Agent (the "Administrative Agent"), and the other parties thereto. Capitalized terms used herein, and not otherwise defined herein, have their respective meanings given them in the Credit Agreement.

Pursuant to Section 2.10. of the Credit Agreement, the Borrower hereby requests a Continuation of Term SOFR Loans under the Credit Agreement, and in that connection sets forth below the information relating to such Continuation as required by such Section of the Credit Agreement:

1. The requested date of such Continuation is ____________, 20__.

2. The Class of Loans subject to such Continuation is:

   Revolving Loans
   Tranche B Term Loans

3. The aggregate principal amount of the Class of Loans subject to such Continuation is $________________________ and the portion of such principal amount subject to such Continuation is $__________________________.

4. The current Interest Period of the Loans subject to such Continuation ends on ________________, 20__.

5. The duration of the Interest Period for the Loans or portion thereof subject to such Continuation is:

   Check one box only

   one month
   three months
   six months

6. The principal amount of such Tranche B Term Loans subject to a Specified Derivatives Contract is $__________________________.

7. The Specified Derivatives Contract(s) to which such Tranche B Term Loans is/are subject:

[Signatures on Following Page]

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Notice of Continuation as of the date first written above.

ELME COMMUNITIES

By:
Name:
Title:

EXHIBIT H

FORM OF NOTICE OF CONVERSION

____________, 20__

Wells Fargo Bank, National Association, as Administrative Agent
Minneapolis Loan Center
MAC N9303 110
600 South 4th St., 10th Floor
Minneapolis, Minnesota 55415
Attn: David DeAngelis
Telecopier: (866) 595-7861
Telephone: (612) 667-4773

Ladies and Gentlemen:

Reference is made to the Second Amended and Restated Credit Agreement dated as of August 26, 2021 (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), by and among ELME COMMUNITIES (f/k/a Washington Real Estate Investment Trust), a real estate investment trust formed under the laws of the State of Maryland (the "Borrower"), the financial institutions party thereto and their assignees under Section 12.5. thereof (the "Lenders"), Wells Fargo Bank, National Association, as Administrative Agent (the "Administrative Agent"), and the other parties thereto. Capitalized terms used herein, and not otherwise defined herein, have their respective meanings given them in the Credit Agreement.

Pursuant to Section 2.11. of the Credit Agreement, the Borrower hereby requests a Conversion of Loans of one Type into Loans of another Type under the Credit Agreement, and in that connection sets forth below the information relating to such Conversion as required by such Section of the Credit Agreement:

1. The requested date of such Conversion is ______________, 20__.

2. The Class of Loans to be Converted pursuant hereto are **currently**:
   [Check one box only] Revolving Loans
   Tranche B Term Loans

3. The Type of Loans to be Converted pursuant hereto is currently:

   [Check one box only]

   Base Rate Loan
   Daily Simple SOFR Loan
   Term SOFR Loan

4. The aggregate principal amount of the Class and Type of Loans subject to the requested Conversion is $_____________________ and the portion of such principal amount subject to such Conversion is $___________________.

5. The amount of such Class of Loans to be so Converted is to be converted into Loans of the following Type:

[Check one box only]

Base Rate Loan
Daily Simple SOFR Loan
Term SOFR Loan, with an initial Interest Period for a duration of:

[Check one box only]

one month
three months
six months

6. The principal amount of such Tranche B Term Loans subject to a Specified Derivatives Contract is $_________________________.

7. The Specified Derivatives Contract(s) to which such Tranche B Term Loans is/are subject:

[Signatures on Following Page]

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Notice of Conversion as of the date first written above.

ELME COMMUNITIES

By:
Name:
Title:

EXHIBIT L

FORM OF BID RATE QUOTE REQUEST

_____________, _____

Wells Fargo Bank, National Association, as Administrative Agent
Minneapolis Loan Center
MAC N9303 110
600 South 4th St., 10th Floor
Minneapolis, Minnesota 55415
Attn: David DeAngelis
Telecopier: (866) 595-7861
Telephone: (612) 667-4773

Ladies and Gentlemen:

Reference is made to the Second Amended and Restated Credit Agreement dated as of August 26, 2021 (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), by and among ELME COMMUNITIES (f/k/a Washington Real Estate Investment Trust), a real estate investment trust formed under the laws of the State of Maryland (the "Borrower"), the financial institutions party thereto and their assignees under Section 12.5. thereof (the "Lenders"), Wells Fargo Bank, National Association, as Administrative Agent (the "Administrative Agent"), and the other parties thereto. Capitalized terms used herein, and not otherwise defined herein, have their respective meanings given them in the Credit Agreement.

1. The Borrower hereby requests Bid Rate Quotes for the following proposed Bid Rate Borrowings:

Borrowing Date	Amount[1]	Type[2]	Interest Period [3]
_____________, 20___	$___________	___________	______ days

The Borrower hereby certifies to the Administrative Agent and the Lenders that as of the date hereof, as of the date of the making of the requested Bid Rate Loans, and after making such Bid Rate Loans, (a) no Default or Event of Default exists or would exist, and none of the limits specified in Section 2.16. of the Credit Agreement would be violated after giving effect thereto; and (b) the Continuing Representations are and shall be true and correct in all material respects (except in the case of a representation or warranty qualified by materiality, in which case such representation or warranty is and shall be true and correct in all respects) with the same force and effect as if made on and as of such date except to the extent that such representations and warranties expressly relate solely to an earlier date (in which case such representations and warranties were true and correct in all material respects (except in the case of a representation or warranty qualified by materiality, in which case such representation or warranty was true and correct in all respects) on and as of such earlier date) and except for changes in factual circumstances not prohibited under the Loan Documents. In addition, the Borrower certifies to the Administrative Agent and the Lenders that all conditions to the making of the requested Bid Rate Loans contained in Article V. of the Credit Agreement will have been satisfied at the time such Bid Rate Loans are made.

[Signatures on Following Page]

---

1 **Minimum amount of $5,000,000 and integral multiples of $1,000,000 in excess thereof.**

2 **Insert either Absolute Rate (for Absolute Rate Loan) or SOFR Margin (for SOFR Margin Loan).**

3 **Must be between 7 and 90 days.**

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Bid Rate Quote Request as of the date first written above.

ELME COMMUNITIES

By:
Name:
Title:

EXHIBIT M

FORM OF BID RATE QUOTE

_______________, ____

Wells Fargo Bank, National Association, as Administrative Agent
Minneapolis Loan Center
MAC N9303 110
600 South 4th St., 10th Floor
Minneapolis, Minnesota 55415
Attn: David DeAngelis
Telecopier: (866) 595-7861
Telephone: (612) 667-4773

Ladies and Gentlemen:

Reference is made to the Second Amended and Restated Credit Agreement dated as of August 26, 2021 (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), by and among ELME COMMUNITIES (f/k/a Washington Real Estate Investment Trust), a real estate investment trust formed under the laws of the State of Maryland (the "Borrower"), the financial institutions party thereto and their assignees under Section 12.5. thereof (the "Lenders"), Wells Fargo Bank, National Association, as Administrative Agent (the "Administrative Agent"), and the other parties thereto. Capitalized terms used herein, and not otherwise defined herein, have their respective meanings given them in the Credit Agreement.

In response to the Borrower's Bid Rate Quote Request dated _____________, 20__, the undersigned hereby makes the following Bid Rate Quote(s) on the following terms:

1. Quoting Lender:____________________________

2. Person to contact at quoting Lender:____________________________

3. The undersigned offers to make Bid Rate Loan(s) in the following principal amount(s), for the following Interest Period(s) and at the following Bid Rate(s):

Borrowing Date	Amount[4]	Type[5]	Interest Period[6]	Bid Rate
__________, 20__	$_____________	__________	______days	______%
__________, 20__	$_____________	__________	______days	______%
__________, 20__	$_____________	__________	______days	______%

The undersigned understands and agrees that the offer(s) set forth above, subject to satisfaction of the applicable conditions set forth in the Credit Agreement, irrevocably obligate[s] the undersigned to make the Bid Rate Loan(s) for which any offer(s) **[is/are]** accepted, in whole or in part.

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Bid Rate Quote as of the date first written above.

[4] **Minimum amount of $5,000,000 and integral multiples of $1,000,000 in excess thereof.**

[5] **Insert either Absolute Rate (for Absolute Rate Loan) or SOFR Margin (for SOFR Margin Loan).**

[6] **Must be between 7 and 90 days.**

[NAME OF QUOTING LENDER]

By:
Name:
Title:

Exhibit 21

Entity Name	State of Organization
650 N. Glebe, LLC	Delaware
Frederick Crossing Associates L.C.	Virginia
Frederick Crossing Retail Associates L.C.	Virginia
Real Estate Management, Inc. (REMI)	Maryland
Trade Rock Manager, Inc.	Delaware
Washington Metro, Inc.	Maryland
Washington Parking, Inc.	Maryland
WashREIT 1220 19th St Grantor Trust Ownership LLC	Delaware
WashREIT 1220 19th St Trustee LLC	Delaware
WashREIT 1776 G St Grantor Trust Ownership LLC	Delaware
WashREIT 1776 G St Trustee LLC	Delaware
WashREIT 1901 Pennsylvania Ave Grantor Trust Ownership LLC	Delaware
WashREIT 1901 Pennsylvania Ave Trustee LLC	Delaware
WashREIT 3801 Connecticut Ave Trust Ownership LLC	Delaware
WashREIT 3801 Connecticut Ave Trust Trustee LLC	Delaware
WashREIT 515 King St LLC	Delaware
WashREIT 860 South LLC	Delaware
WashREIT 900 Dwell LLC	Delaware
WashREIT Alder Park LLC	Delaware
WashREIT Alexandria LLC	Delaware
WashREIT Arlington Tower LLC	Delaware
WashREIT Bradlee Shopping Center LLC	Delaware
WashREIT Bull Run LLC	Delaware
WashREIT Carlyle LLC	Delaware
WashREIT Centre at Hagerstown LLC	Delaware
WashREIT Chevy Chase Metro Center Grantor Trust Ownership LLC	Delaware
WashREIT Chevy Chase Metro Center Trustee LLC	Delaware
WashREIT Courthouse Square LLC	Delaware
WashREIT Dulles LLC	Delaware
WashREIT Frederick County Square LLC	Delaware
WashREIT Germantown LLC	Delaware
WashREIT Landmark LLC	Delaware
WashREIT Laurel Hills LLC	Delaware
WashREIT Leesburg LLC	Delaware
WashREIT Marietta Crossing LLC	Delaware
WashREIT McNair Farms LLC	Delaware
WashREIT Monument II LLC	Delaware
WashREIT OP LLC	Delaware
WashREIT OP Sub DC LLC	Delaware
WashREIT Oxford LLC	Delaware
Elme Park Adams LLC f/k/a WashREIT Park Adams Apartments LLC	Delaware
WashREIT Randolph Shopping Center LLC	Delaware
WashREIT Riverside Apartments LLC	Delaware
WashREIT Riverside LLC	Delaware
WashREIT Roosevelt Towers LLC	Delaware
WashREIT Sheffield Square LLC	Delaware
WashREIT Shoppes at Foxchase LLC	Delaware
WashREIT Takoma Park Shopping Center LLC	Delaware

Entity Name	State of Organization
WashREIT Trove Apartments LLC	Delaware
WashREIT Virginia Lender LLC	Delaware
WashREIT Watergate 600 OP LP (f/k/a WashREIT HW LP)	Delaware
WashREIT Watkins Mill LLC	Delaware
WashREIT Wellington Apartments LLC	Delaware
WashREIT Wellington LLC	Delaware
WashREIT Westminster Shopping Center LLC	Delaware
WashREIT Wheaton Park Shopping Center LLC	Delaware
WashREIT Woodbridge Villas LLC	Delaware
WRIT - 2445 M LLC	Delaware
WRIT 1140 CT LLC	Delaware
WRIT 1227 25th Street LLC	Delaware
WRIT 1775 EYE STREET LLC	Delaware
WRIT 8283 Greensboro Drive LLC	Delaware
WRIT ANC LLC	Delaware
WRIT Crimson On Glebe Member LLC	Delaware
WRIT Fairgate LLC	Delaware
WRIT Frederick Crossing Associates, Inc.	Maryland
WRIT Frederick Crossing Land, LLC	Delaware
WRIT Frederick Crossing Lease, LLC	Delaware
WRIT GATEWAY OVERLOOK LLC	Delaware
WRIT Limited Partnership	Delaware
WRIT Olney Village Center LLC	Delaware
Elme Paramount LLC f/k/a WRIT Paramount LLC	Delaware
WRIT SPRING VALLEY LLC	Delaware
WRIT Yale West LLC	Delaware
WRIT-Kenmore, LLC	Delaware

Exhibit 23

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the following Registration Statements:

(1) Form S-3 No. 333-253229 of Washington Real Estate Investment Trust,
(2) Form S-3 No. 333-253164 of Washington Real Estate Investment Trust, and
(3) Form S-8 No. 333-211418 pertaining to the 2016 Omnibus Incentive Plan of Washington Real Estate Investment Trust;

of our reports dated February 17, 2023, with respect to the consolidated financial statements of Elme Communities and Subsidiaries and the effectiveness of internal control over financial reporting of Elme Communities and Subsidiaries included in this Annual Report (Form 10-K) of Elme Communities for the year ended December 31, 2022.

/s/ Ernst & Young LLP
Tysons, Virginia
February 17, 2023

Exhibit 24

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS THAT the undersigned trustees of Elme Communities, a Maryland real estate investment trust, do hereby constitute and appoint W. DREW HAMMOND, the undersigned's true and lawful attorney in fact to sign his or her name to the Annual Report on Form 10-K for the year ended December 31, 2022, under the Securities Exchange Act of 1934, as amended, and to any and all amendments, of said Company, and to cause the same to be filed with the SEC, granting unto said attorney in fact full power and authority to do and perform each and every act and thing necessary and proper to be done in the premises, as fully and to all intents, and purposes as the undersigned could do if personally present, and the undersigned hereby ratify and confirm all that said attorney in fact shall lawfully do or cause to be done by virtue hereof.

Dated: February 1, 2023

/s/ JENNIFER S. BANNER
JENNIFER S. BANNER

/s/ BENJAMIN S. BUTCHER
BENJAMIN S. BUTCHER

/s/ WILLIAM G. BYRNES
WILLIAM G. BYRNES

/s/ EDWARD S. CIVERA
EDWARD S. CIVERA

/s/ ELLEN M. GOITIA
ELLEN M. GOITIA

/s/ PAUL T. MCDERMOTT
PAUL T. MCDERMOTT

/s/ THOMAS H. NOLAN
THOMAS H. NOLAN

/s/ ANTHONY L. WINNS
ANTHONY L. WINNS

Exhibit 31.1

CERTIFICATION

I, Paul T. McDermott, certify that:

1. I have reviewed this annual report on Form 10-K of Elme Communities;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant’s other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
    a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
    b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
    c. Evaluated the effectiveness of the registrant’s disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
    d. Disclosed in this report any change in the registrant’s internal control over financial reporting that occurred during the registrant’s most recent fiscal quarter (the registrant’s fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant’s internal control over financial reporting; and
5. The registrant’s other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant’s auditors and the audit committee of the registrant’s board of directors (or persons performing the equivalent functions):
    a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant’s ability to record, process, summarize and report financial information; and
    b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant’s internal control over financial reporting.

DATE: February 17, 2023

/s/ Paul T. McDermott

Paul T. McDermott
Chief Executive Officer

Exhibit 31.2

CERTIFICATION

I, Stephen E. Riffee, certify that:

1. I have reviewed this annual report on Form 10-K of Elme Communities;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
   a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
   b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
   c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
   d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
   a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
   b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

DATE: February 17, 2023

/s/ Stephen E. Riffee

Stephen E. Riffee
Chief Financial Officer
(Principal Financial Officer)

Exhibit 31.3

CERTIFICATION

I, W. Drew Hammond, certify that:

1. I have reviewed this annual report on Form 10-K of Elme Communities;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
   a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
   b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
   c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
   d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
   a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
   b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

DATE: February 17, 2023

/s/ W. Drew Hammond
W. Drew Hammond
Vice President
Chief Accounting Officer
(Principal Accounting Officer)

Exhibit 32

WRITTEN STATEMENT OF
CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER
PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

The undersigned, the President and Chief Executive Officer, the Chief Financial Officer and Chief Accounting Officer of Elme Communities, each hereby certifies on the date hereof, that:

(a) the Annual Report on Form 10-K for the year ended December 31, 2022 filed on the date hereof with the Securities and Exchange Commission (the "Report") fully complies with the requirements of Section 13 (a) or 15(d) of the Securities Exchange Act of 1934; and

(b) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of Elme Communities.

DATE: February 17, 2023

/s/ Paul T. McDermott
Paul T. McDermott
Chief Executive Officer

DATE: February 17, 2023

/s/ Stephen E. Riffee
Stephen E. Riffee
Chief Financial Officer
(Principal Financial Officer)

DATE: February 17, 2023

/s/ W. Drew Hammond
W. Drew Hammond
Chief Accounting Officer
(Principal Accounting Officer)